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

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): September 26, 2014 (September 22, 2014)

HC2 HOLDINGS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-35210
(Commission
File Number)

54-1708481
(IRS. Employer
Identification No.)

**460 Herndon Parkway, Suite 150
Herndon, VA 20170**
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (703) 456-4100

Not Applicable
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement.

Sale and Purchase Agreement for Bridgehouse Marine Limited

On September 22, 2014, Global Marine Holdings, LLC (“Marine Holdings”), a subsidiary of HC2 Holdings, Inc. (the “Company”), entered into a Sale and Purchase Agreement (the “Share Purchase Agreement”) with Specialty Finance Limited and Bridge Properties (Arena Central) Limited (the “Sellers”) pursuant to which it purchased on such date 97% of the share capital of Bridgehouse Marine Limited (“Bridgehouse”), the parent holding company of Global Marine Systems Limited (“GMSL”) (together with its subsidiaries, “Global Marine”). On September 25, 2014, Marine Holdings purchased the remaining 3% of Bridgehouse’s share capital from an individual Bridgehouse shareholder (the “Additional Share Purchase”).

Pursuant to the terms of the Share Purchase Agreement, Marine Holdings paid the Sellers a purchase price of 69.9 million GBP, together with an additional 7.2 million GBP paid to acquire shares held by certain employees in GMSL, reflecting an enterprise value of 160 million GBP less the amount of Global Marine’s indebtedness and certain shares in GMSL to be retained by members of its senior management (the “Purchase Price”). The Purchase Price is subject to reduction based on the amount of Global Marine’s actual indebtedness and cash on hand at closing in comparison to referenced amounts. The Purchase Price is subject to further reduction based on the actual 2014 earnings of Global Marine before interest, taxes, depreciation and amortization (“EBITDA”) compared to a reference EBITDA amount. A portion of the Purchase Price was placed in escrow pending calculation of any required adjustments, together with a further portion of the Purchase Price which was also placed in escrow to satisfy any warranty or indemnity claims against Sellers. The purchase price for the Additional Share Purchase was GBP 2.15 million.

The Share Purchase Agreement contains customary warranties from each of the parties. The parties also have agreed to customary post-closing covenants and indemnities based on breaches of warranties or covenants.

The foregoing summary description of the Share Purchase Agreement is qualified in its entirety by reference to the full text of the agreement, which is filed as Exhibit 2.1 hereto and incorporated by reference herein. The Company has attached the Share Purchase Agreement to provide information about the terms contained therein, and the Share Purchase Agreement is not intended to provide any factual information about any party thereto. Specifically, the Share Purchase Agreement contains a number of warranties which the parties have made to each other. The assertions made in those warranties are qualified by information in confidential disclosures provided by the Sellers to Marine Holdings which have not been filed as exhibits to this Current Report on Form 8-K. Such warranties were used for the purpose of allocating risk, both known and unknown, among the parties to the Share Purchase Agreement rather than to make affirmative factual claims or statements. Accordingly, you should not rely on the warranties as current characterizations of factual information, or as definitively stating actual facts, with respect to any parties to the Share Purchase Agreement.

Senior Credit Facility

On September 22, 2014, the Company entered into a new senior secured credit facility consisting of a term loan in an aggregate principal amount of \$214 million (the “Initial Term Loan”) and a delayed draw term loan in an aggregate principal amount of \$36 million (the “Delayed Term Loan,” and together with the Initial Term Loan, the “Term Loans”) pursuant to a Credit Agreement (the “Credit Agreement”) by and among the Company, as borrower (the “Borrower”), certain subsidiaries of the Company, as subsidiary guarantors (the “Subsidiary Guarantors”), the lenders party thereto from time to time (the “Lenders”), Jefferies Finance LLC (“Jefferies”), as lead arranger, book manager, documentation agent and syndication agent for the Lenders, and Jefferies, as administrative agent for the Lenders and as collateral agent for the secured parties (in such capacity, the “Collateral Agent”). On the closing date of the Credit Agreement (the “Closing Date”), the Company used a portion of the net proceeds of the Initial Term Loan to (i) repay in full the indebtedness of the Company as discussed below under Item 1.02 of this Current Report on Item 8-K and (ii) pay a portion of the consideration for the acquisition of share capital of Bridgehouse discussed above under this Item 1.01 of this Current Report on Form 8-K. The Delayed Term Loan will be used to finance the Company’s purchase of the outstanding shares of Schuff International, Inc., that the Company does not currently own. The Term Loans initially mature twelve months after the Closing Date, but subject to the Company meeting certain requirements set forth in the Credit Agreement, the term of the Term Loans may be extended to any additional year after the first anniversary of the Closing Date (the “Extended Term Loans”).

Fees and Interest. Borrowings under the Credit Agreement bear interest at a floating rate which can be, at the Company’s option, either (i) an alternate base rate plus an applicable margin or (ii) a LIBOR borrowing rate for a specified interest period plus an applicable margin. The applicable margin for borrowings under the Credit Agreement starts at 7.50% per annum for alternate base rate loans and 8.50% per annum for LIBOR loans and increases incrementally every three months through the first twelve months of the Credit Agreement. In the event that the Company has any Extended Term Loans outstanding, or has failed to provide the necessary information to conduct a private placement of certain securities by October 26, 2014 and certain other events, such borrowings under the Credit Agreement will bear interest at a designated rate, subject to an overall cap as set forth in the Credit Agreement. If all or a portion of the principal amount of the Term Loans under the Credit Agreement shall not be paid when due or any other event of default occurs, the applicable interest rate under the Credit Agreement will increase a designated rate, subject to an overall cap, as set forth in the Credit Agreement.

Prepayments. The Company may voluntarily prepay any borrowing under the Credit Agreement at any time, subject to certain minimum prepayment requirements and the payment of customary “breakage” costs with respect to LIBOR loans. The Company is required to prepay its outstanding borrowings under the Credit Agreement, subject to certain exceptions and limitations, with (i) certain amounts released from escrow arrangements entered into in connection with certain Company transactions, (ii) certain of the net cash proceeds received from sales of assets, (iii) 75% of the net cash proceeds received from certain casualty events, (iv) 50% of certain extraordinary cash receipts and (v) certain of the net cash proceeds of certain issuances of debt and equity.

Guarantees and Collateral. The Company’s obligations under the Credit Agreement are unconditionally guaranteed jointly and severally by certain of the Company’s wholly owned domestic direct and indirect subsidiaries (the Subsidiary Guarantors and, together with the Company, collectively, the “Loan Parties”). The Company’s obligations under the Credit Agreement and the related loan documents are secured by first priority perfected liens on substantially all of the assets of the Loan Parties, other than 35% of the voting equity interests in their direct foreign subsidiaries and certain exceptions set forth in the Pledge and Security Agreement, dated as of September 22, 2014 (the “Security Agreement”), among the Loan Parties and the Collateral Agent, and the other related loan documents.

Covenants. The Credit Agreement includes financial covenants requiring the Company to maintain a (i) minimum consolidated EBITDA, (ii) minimum consolidated collateral ratio and (iii) minimum liquidity level. The Credit Agreement also includes representations, affirmative covenants and other negative covenants that are customary for credit facilities of this type.

Events of Default. The Credit Agreement also includes customary events of default, including payment defaults to the Lenders, material inaccuracies of representations and warranties, covenant defaults, voluntary and involuntary bankruptcy proceedings, material money judgments, material ERISA events, certain change of control events and other customary events of default. The events of default are subject to certain exceptions and cure rights.

The foregoing descriptions of the Credit Agreement and the Security Agreement are qualified in their entirety by reference to such agreements, copies of which are attached as Exhibits 10.1 and 10.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

Securities Purchase Agreement

On September 22, 2014, Company entered into a Securities Purchase Agreement (the “Securities Purchase Agreement”) with affiliates of DG Capital Management, LLC and another investor (collectively, the “Purchasers”), pursuant to which the Company agreed to sell an aggregate of 11,000 shares of Series A-1 Convertible Participating Preferred Stock of the Company (the “Series A-1 Preferred Stock”) to the Purchasers at a purchase price of \$1,000 per share, resulting in aggregate gross proceeds to the Company of \$11 million (the “Private Placement”). All conditions to closing that by their terms were to be satisfied prior to funding were satisfied and the funding of the transaction occurred on September 22, 2014. Pursuant to the Securities Purchase Agreement, the Company made certain customary representations and warranties concerning the Company and its subsidiaries and agreed to certain covenants for the benefit of the Purchasers. The net proceeds will be used to pay a portion of the consideration for the acquisition of Bridgehouse Marine Limited discussed above under this Item 1.01 of this Current Report on Form 8-K and for general corporate purposes.

Each share of Series A-1 Preferred Stock is initially convertible at a conversion price of \$4.25 (as it may be adjusted from time to time, the “Conversion Price”), which is subject to adjustment for dividends, certain distributions, stock splits, combinations, reclassifications, reorganizations, mergers, recapitalizations and similar events, as well as in connection with issuances of equity or equity-linked or other comparable securities by the Company at a price per share (or with a conversion or exercise price or effective issue price) that is below the Conversion Price (which adjustment shall be made on a weighted average basis). The \$4.25 initial Conversion Price represents an approximately 5.2% premium to the Company’s common stock’s (the “Common Stock”) thirty-day volume weighted average price (“VWAP”).

Subject to each Purchaser meeting (together with its affiliates) certain ownership thresholds and certain exceptions, the Securities Purchase Agreement provides that each Purchaser will be entitled to (i) participate, on a pro rata basis in accordance with its ownership percentage, in certain issuances of equity securities by the Company, (ii) purchase in the aggregate up to 6% of issuances of non-convertible and non-voting preferred equity securities of the Company, (iii) purchase in the aggregate up to 10% (or 1% in the case of any Purchaser affiliated with DG Capital Management, LLC) of the principal amount of debt securities issued or indebtedness incurred in debt transactions of the Company and (iv) exercise a right of first offer with respect to the issuance of any additional shares of Series A-1 Preferred Stock or shares of equity securities of the Company that rank on parity with the Series A-1 Preferred Stock if the conversion price of such additional shares is at least \$4.75.

This Current Report on Form 8-K is not an offer to sell or a solicitation of offers to buy Series A-1 Preferred Stock. The Series A-1 Preferred Stock sold in the Private Placement has not been registered under the Securities Act of 1933, as amended (the “Securities Act”) and may not be offered or sold in the United States absent an effective registration statement or an exemption from the registration requirements under applicable federal and state securities laws.

This description of the Securities Purchase Agreement is qualified in its entirety by reference to the Securities Purchase Agreement, a copy of which is attached to this Current Report on Form 8-K as Exhibit 10.3 and is incorporated herein by reference.

The Securities Purchase Agreement contains a number of representations and warranties that the Company and the Purchasers have made to each other. The assertions embodied in those representations and warranties are qualified by information in confidential

disclosure schedules that the Company and the Purchasers have exchanged in connection with signing the Securities Purchase Agreement. These disclosure schedules contain information that has been included in the general prior public disclosures of the Company, as well as additional non-public information. While we do not believe that this non-public information is required to be publicly disclosed by the Company under the applicable securities laws, that information does modify, qualify and create exceptions to the representations and warranties set forth in the Securities Purchase Agreement. In addition, these representations and warranties were made as September 22, 2014. Information concerning the subject matter of the representations and warranties may have changed since September 22, 2014, which subsequent information may or may not be fully reflected in the public disclosures of the Company. Moreover, representations and warranties are frequently utilized in Securities Purchase Agreements as a means of allocating risks, both known and unknown, rather than to make affirmative factual claims or statements. Accordingly, persons not party to the Securities Purchase Agreement should not rely on it for any current characterization of factual information about the Company or the Purchasers.

Series A-1 Preferred Stock

The following summary of the terms of the Series A-1 Preferred Stock is qualified in its entirety by reference to the Certificate of Designation of Series A-1 Convertible Participating Preferred Stock of HC2 Holdings, Inc., adopted on September 22, 2014 (the "Certificate of Designation"), a copy of which is attached to this Current Report on Form 8-K as Exhibit 4.1 and is incorporated herein by reference.

Dividends. The Series A-1 Preferred Stock will accrue a cumulative quarterly cash dividend at an annualized rate of 7.50%. The accrued value of the Series A-1 Preferred Stock will accrete quarterly at an annualized rate of 4.00% that will be reduced to 2.00% or 0.00% if the Company achieves specified rates of growth measured by increases in its net asset value; *provided*, that the accreting dividend rate will be 7.25% in the event that (A) the daily VWAP of the Common Stock is less than a certain threshold amount, (B) the Common Stock is not registered under Section 12(b) of the Securities Exchange Act of 1934, as amended, (C) following May 29, 2015, the Common Stock is not listed on certain national securities exchanges or the Company is delinquent in the payment of any cash dividends. The Series A-1 Preferred Stock is also entitled to participate in cash and in-kind distributions to holders of shares of Common Stock on an as-converted basis.

Optional Conversion. Each share of Series A-1 Preferred Stock may be converted by the holder into Common Stock at any time based on the then-applicable Conversion Price.

Redemption by the Holders / Automatic Conversion. On May 29, 2021, holders of the Series A-1 Preferred Stock shall be entitled to cause the Company to redeem the Series A-1 Preferred Stock at the accrued value per share plus accrued but unpaid dividends (to the extent not included in the accrued value of Series A-1 Preferred Stock). Each share of Series A-1 Preferred Stock that is not so redeemed will be automatically converted into shares of Common Stock at the Conversion Price then in effect.

Upon a change of control (as defined in the Certificate of Designation) holders of the Series A-1 Preferred Stock shall be entitled to cause the Company to redeem their Series A-1 Preferred Stock at a price per share of Series A-1 Preferred Stock equal to the greater of (i) the accrued value of the Series A-1 Preferred Stock, which amount would be multiplied by 150% in the event of a change of control occurring on or prior to May 29, 2017, plus any accrued and unpaid dividends (to the extent not included in the accrued value of Series A-1 Preferred Stock), and (ii) the value that would be received if the share of Series A-1 Preferred Stock were converted into Common Stock immediately prior to the change of control.

Redemption by the Company. At any time after May 29, 2017, the Company may redeem the Series A-1 Preferred Stock, in whole but not in part, at a price per share generally equal to 150% of the accrued value per share, plus accrued but unpaid dividends (to the extent not included in the accrued value of Series A-1 Preferred Stock), subject to the holder's right to convert prior to such redemption.

Forced Conversion. After May 29, 2017, the Company may force conversion of the Series A-1 Preferred Stock into Common Stock if the Common Stock's thirty-day VWAP exceeds 150% of the then-applicable Conversion Price and the Common Stock's daily VWAP exceeds 150% of the then-applicable Conversion Price for at least twenty trading days out of the thirty trading day period used to calculate the thirty-day VWAP. In the event of a forced conversion, the holders of Series A-1 Preferred Stock will have the ability to elect cash settlement in lieu of conversion if certain market liquidity thresholds for the Common Stock are not achieved.

Liquidation Preference. In the event of any liquidation, dissolution or winding up of the Company (any such event, a "Liquidation Event"), the holders of Series A-1 Preferred Stock will be entitled to receive per share the greater of (i) the accrued value of the Series A-1 Preferred Stock, which amount would be multiplied by 150% in the event of a Liquidation Event occurring on or prior to May 29, 2017, plus any accrued and unpaid dividends (to the extent not included in the accrued value of Series A-1 Preferred Stock), and (ii) the value that would be received if the share of Series A-1 Preferred Stock were converted into Common Stock immediately prior to such occurrence. The Series A-1 Preferred Stock will rank junior to any existing or future indebtedness but senior to the Common Stock and any future equity securities other than any future senior or *pari passu* preferred stock issued in compliance with the Certificate of Designation. The Company's outstanding Series A Convertible Participating Preferred Stock issued on May 29, 2014 ("Series A Preferred Stock", and together with the Series A-1 Preferred Stock, the "Preferred Stock") ranks at parity with the Series A-1 Preferred Stock.

Voting Rights. Except as required by applicable law, the holders of the shares of the Series A-1 Preferred Stock will be entitled to vote on an as-converted basis with the holders of the Series A Preferred Stock (on an as-converted basis) and holders of the Company's

Common Stock on all matters submitted to a vote of the holders of Common Stock with the holders of Series A Preferred Stock on certain matters, and separately as a class on certain limited matters. Subject to maintenance of certain ownership thresholds by the current holders of the Preferred Stock, the Purchasers will also have the right to vote shares of Series A-1 Preferred Stock, along with Series A Preferred Stock, as a separate class for at least one director, as discussed below under “Board Rights.”

Consent Rights. For so long as any of the Series A-1 Preferred Stock is outstanding, consent of the holders of shares representing at least 75% of the Series A-1 Preferred Stock then outstanding is required for certain material actions.

Board Rights. For so long as the Purchasers and the initial purchasers of Series A Preferred Stock (“May Purchasers”) own at least a 15% interest in the Company on an as-converted basis (the “Director Election Condition”), and at least 80% of the (i) shares issued to the Purchasers on September 22, 2014 and (ii) shares issued to the May Purchasers, each on an as-converted basis, the Purchasers and May Purchasers (collectively, the “Preferred Purchasers”) will have the right, to appoint and elect (voting as a separate class) a percentage of the board of directors of the Company that is no more than 5% less than the Preferred Purchasers’ as-converted equity percentage of the Common Stock (but no fewer than one director). One such elected director (as designated by the holders of shares representing at least 75% of the Preferred Stock then outstanding) shall be entitled to be a member of each committee of the board of directors of the Company, provided, that such director membership on any such committee will be dependent upon such director meeting the qualification, and if applicable, independence criteria deemed necessary to so comply in accordance with any listing requirements of the exchanges on which the Company’s capital stock is then listed. For so long as the Director Election Condition is satisfied, if a specified breach event shall occur with respect to the Series A-1 Preferred Stock (defined for such purposes to include the failure to timely pay required dividends for two or more consecutive quarters or the occurrence and continuation of certain breaches of covenants contained in the Certificate of Designation), the holders of the Series A-1 Preferred Stock shall be entitled (along with the holders of Series A Preferred Stock) to appoint the number of additional directors to the board of directors of the Company that will cause a majority of the board of directors to be comprised of directors appointed by the holders of the Preferred Stock and independent directors until the cure of such specified breach event.

Amended and Restated Registration Rights Agreement

The holders of the Series A Preferred Stock and the Series A-1 Preferred Stock will have certain registration rights with respect to the Common Stock underlying the Series A Preferred Stock and the Series A-1 Preferred Stock pursuant to an Amended and Restated Registration Rights Agreement, dated as of September 22, 2014, by and among the Company and the holders of the Series A Preferred Stock and the Series A-1 Preferred Stock (the “Registration Rights Agreement”).

Pursuant to the Registration Rights Agreement, the Company is obligated to, at any time upon request from a holder of registrable securities after September 22, 2014, file a registration statement on Form S-1 under the Securities Act within thirty days after the date of such request for the benefit of the holders of the registrable securities. Alternatively, the Company has also agreed to, within thirty days after receiving a request from a holder of registrable securities (provided, that the Company is, at the time of receipt of such request, eligible to use a registration statement on Form S-3 under the Securities Act for secondary offerings of the registrable securities use reasonable best efforts to cause such a registration statement to be filed and to maintain the effectiveness of such shelf registration statement for the benefit of the holders of the registrable securities. In the event of a registered offering by the Company of its Common Stock, holders of the registrable securities have the right to require the Company to include registrable securities held by them in such offering, subject to certain limitations, including as determined by any underwriters for the transaction. Subject to certain limitations, the Company will bear the expenses incurred in connection with registrations under the Registration Rights Agreement and will indemnify the holders of registrable securities and any underwriters against certain liabilities, including liabilities under the Securities Act.

The Registration Rights Agreement amends and restates, in its entirety, the Registration Rights Agreement entered into between the Company and the May Purchasers on May 29, 2014.

This summary of the Registration Rights Agreement is qualified in its entirety by reference to the Registration Rights Agreement, a copy of which is attached to this Current Report on Form 8-K as Exhibit 10.4 and is incorporated herein by reference.

Series A Preferred Stock

On September 22, 2014, the Company amended the Certificate of Designation of Series A Convertible Participating Preferred Stock originally adopted on May 29, 2014 (the “Revised Certificate”). The Revised Certificate reflects the issuance of the Series A-1 Preferred Stock as a class of preferred stock which ranks at parity with the Series A Preferred Stock, conforms certain of the terms described above under “Series A-1 Preferred Stock,” and reduces the conversion price of the Series A Preferred Stock from \$4.25 to \$4.00.

The following summary of the terms of the Revised Certificate is qualified in its entirety by reference to the Certificate of Amendment to the Certificate of Designation of Series A Convertible Participating Preferred Stock of HC2 Holdings, Inc., adopted on September 22, 2014, a copy of which is attached to this Current Report on Form 8-K as Exhibit 4.2 and is incorporated herein by reference.

Item 1.02. Termination of a Material Definitive Agreement.

As described above, on September 22, 2014, the Company entered into a new Credit Agreement. In connection with the receipt of the proceeds from the Credit Agreement, the Company paid off and subsequently terminated (i) that certain senior unsecured credit facility entered into on September 8, 2014 consisting of a term loan in an aggregate principal amount of \$17 million pursuant to a credit agreement by and among the Company, as borrower, the lenders party thereto from time to time, Jefferies, as arranger, book manager, documentation agent and syndication agent, and Jefferies, as administrative agent and (ii) that certain senior secured credit facility entered into on May 29, 2014 consisting of a term loan in an aggregate principal amount of \$80 million pursuant to a credit agreement by and among the Company, as borrower, certain subsidiaries of the Company, as subsidiary guarantors, the lenders party thereto from time to time, Jefferies LLC, as lead arranger, as book manager, as documentation agent for the lenders and as syndication agent for the lenders, and Jefferies LLC, as administrative agent for the lenders and as collateral agent for the secured parties and the related security agreement dated May 29, 2014.

The Registration Rights Agreement amends and restates, in its entirety, the Registration Rights Agreement entered into between the Company and the May Purchasers on May 29, 2014.

Item 2.01. Completion of Acquisition or Disposition of Assets.

As described above, on September 22, 2014, Marine Holdings, a subsidiary of the Company, entered into a Share Purchase Agreement. The information in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement of a Registrant.

As described above, on September 22, 2014, the Company entered into a new Credit Agreement. The information in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 3.02. Unregistered Sales of Equity Securities.

Preferred Stock Issuance

The Series A-1 Preferred Stock described in Item 1.01 of this Current Report on Form 8-K is being issued and sold in the Private Placement without registration under the Securities Act, in reliance upon an exemption from the registration requirements of the Securities Act under Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D ("Regulation D") promulgated under the Securities Act. The Company is basing such reliance upon representations made by each Purchaser, including, but not limited to, representations as to the Purchaser's status as an "accredited investor" (as defined in Rule 501(a) under Regulation D) and the Purchaser's investment intent. The Series A-1 Preferred Stock is not being offered or sold by any form of general solicitation or general advertising (as such terms are used in Rule 502 under Regulation D). The Series A-1 Preferred Stock may not be re-offered or sold in the United States absent an effective registration statement or an exemption from the registration requirements under applicable federal and state securities laws. The information in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 3.03. Material Modification to Rights of Security holders.

The filing of the Company's Certificate of Designation and the issuance of the Series A-1 Preferred Stock affect the holders of the Common Stock and the Series A Preferred Stock to the extent provided in the Certificate of Designation. The information in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

The filing of the Company's Revised Certificate affects the holders of the Common Stock and the Series A-1 Preferred Stock to the extent provided in the Revised Certificate. The information in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 5.03. Amendment to Articles of Incorporation or Bylaws; Change in Fiscal Year.

To create the Series A-1 Preferred Stock issuable under the Securities Purchase Agreement, the Company amended its amended and restated certificate of incorporation by filing the Certificate of Designation and the Revised Certificate on September 22, 2014, which are attached as Exhibit 4.1 and Exhibit 4.2, respectively, hereto and incorporated herein by reference. The information in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(a) Financial Statements of Business Acquired

Any financial statements that may be required by this Item 9.01, with respect to the acquisition described in Item 2.01 herein, will be filed by amendment to this Current Report on Form 8-K as soon as practicable, and in any event not later than 71 days after the date on which this Current Report on Form 8-K is required to be filed.

(b) Pro Forma Financial Statements

Any pro forma financial information that may be required by this Item 9.01, with respect to the acquisition described in Item 2.01 herein, will be filed by amendment to this Current Report on Form 8-K as soon as practicable, and in any event not later than 71 days after the date on which this Current Report on Form 8-K is required to be filed.

(d) Exhibits

- 2.1 Sale and Purchase Agreement, dated September 22, 2014, by and between Global Marine Holdings, LLC and the Sellers party thereto.
- 4.1 Certificate of Designation of Series A-1 Convertible Participating Preferred Stock of HC2 Holdings, Inc.
- 4.2 Certificate of Amendment to the Certificate of Designation of Series A Convertible Participating Preferred Stock of HC2 Holdings, Inc.
- 10.1 Credit Agreement, dated as of September 22, 2014, by and among HC2 Holdings, Inc., as Borrower, certain subsidiaries of HC2 Holdings, Inc., as Subsidiary Guarantors, the lenders party thereto from time to time, Jefferies Finance LLC, as lead arranger, as book manager, as documentation agent for the lenders and as syndication agent for the lenders, and Jefferies Finance LLC, as administrative agent for the lenders and as collateral agent for the secured parties.
- 10.2 Pledge and Security Agreement, dated as of September 22, 2014, by and among HC2 Holdings, Inc., as Borrower, certain subsidiaries of HC2 Holdings, Inc., as Subsidiary Guarantors, and Jefferies Finance LLC, as collateral agent for the secured parties.
- 10.3 Securities Purchase Agreement, dated as of September 22, 2014, by and among HC2 Holdings, Inc. and the Purchasers.
- 10.4 Amended and Restated Registration Rights Agreement, dated as of September 22, 2014, by and among HC2 Holdings, Inc. and the Preferred Purchasers.

SIGNATURE

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

HC2 Holdings, Inc.
(Registrant)

Date: September 26, 2014

By: /s/ Andrea L. Mancuso
Name: Andrea L. Mancuso
Title: Acting General Counsel & Corporate Secretary

22 September 2014

SELLERS

and

GLOBAL MARINE HOLDINGS LLC

**SALE AND PURCHASE AGREEMENT
BRIDGEHOUSE MARINE LIMITED**



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AGREED FORM DOCUMENTS

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Letter of Instruction

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Drag Along Notice

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THIS AGREEMENT is made on 2014

BETWEEN:

- (1) **THE PARTIES** whose names and addresses are set out in Schedule 1 (the “**Sellers**” and each a “**Seller**”); and
- (2) **GLOBAL MARINE HOLDINGS LLC**, a limited liability company incorporated in Delaware whose registered office is at c/o Corporation Service Company at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808 (the “**Purchaser**”).

RECITALS:

The Sellers have agreed to sell and transfer to the Purchaser the entire issued share capital of the Company upon the terms and subject to the conditions set out in this Agreement.

IT IS AGREED as follows:

1. DEFINITION AND INTERPRETATION

1.1 In this Agreement each of the following words and expressions shall have the following meanings:

“**2014 Audited Financial Statements**” audited balance sheet, profit and loss account, statement of total recognised gains and losses, statement of cash flows and the notes thereto of the Company and the audited consolidated balance sheet, profit and loss account, statement of total recognised gains and losses, statement of cash flows and the notes thereto of each member of the Group for the 12 month period ending on 31 December 2014, in each case prepared in accordance with the Applicable Laws for such period and using accounting policies consistent with those used to prepare the Accounts;

“**Accounts**” audited balance sheet, profit and loss account, statement of total recognised gains and losses, statement of cash flows and the notes thereto of the Company and the audited consolidated balance sheet, profit and loss account, statement of total recognised gains and losses, statement of cash flows and the notes thereto of each member of the Group for the 12 month period ended on the Accounts Date, in each case prepared in accordance with the Applicable Laws for such period;

“**Accounts Date**” 31st December 2013;

“**Actual 2014 EBITDA**” has the meaning given in Schedule 7;

“**Applicable Laws**” all laws, regulations, directives, statutes, subordinate legislation, common law and civil codes of any jurisdiction, all judgments, orders, notices, instructions, decisions and awards of any court or competent authority or tribunal and all codes of practice having force of law, statutory guidance and policy notes;

“**Appropriate Proportion**” in relation to any of the Sellers, that proportion which the number of Shares being sold by him or it under this Agreement bears to the total number of Shares being sold by the Sellers under this Agreement;

“**Articles**” the Company’s articles of association as at the Completion Date;

“**Auditors**” BDO Stoy Hayward LLP;

“**Available Tax Reliefs**” any allowance, credit, deduction, exemption or set off in respect of any Tax or relevant to the computation of income, profits or gains for the purposes of any Tax which can be claimed or utilised by the relevant person under Applicable Laws.

“**B Ordinary Shares**” the 2,999,999 B ordinary shares of £0.01 each in GMSL;

“**Business Day**” a day (other than a Saturday or Sunday) on which banks are open for general business in London;

“**Business Plans**” the business plans in respect of the Company’s projected financial performance for 2014 to 2017 (inclusive) as set out in the Information Memorandum dated May 2014 and the Information Memorandum Addendum dated June 2014, each prepared by Park Partners on behalf of the Company;

“**Cash**” all unrestricted (i.e. available for general use by the Group):

(a) cash on hand; and

(b) cash standing to the credit of any account with a bank or other financial institution;

in each case to which the Company or any of the Subsidiaries is beneficially entitled as at Completion, calculated on a consolidated basis in accordance with the accounting principles, policies, standards, practices, evaluation rules and estimation techniques used in preparation of the Accounts;

“**Change of Control**” shall mean a person who Controls any body corporate ceasing to do so or another person acquiring Control of it.

“**Claim**” a claim against the Sellers whether in contract or otherwise in respect of any of the Sellers’ Warranties, any Tax Schedule Claim, any Indemnity Claim and any other claim by the Purchaser under the provisions of this Agreement or in connection with the subject matter of this Agreement;

“**Claim Escrow**” means the sum of £4 million;

“**Companies Act**” the Companies Act 2006;

“**Company**” Bridgehouse Marine Limited, a company incorporated in England with registered number 04352407, further details of which are set out in Part 1 of Schedule 2;

“**Completion**” completion of the sale and purchase of the Shares in accordance with clause 3;

“**Completion Date**” the date on which Completion occurs;

“**Confidential Information**” has the meaning given to that term in clause 12.3;

“**Continuing B Shareholders**” means Nicci Broom, Bill Donaldson and Bruce Neilson-Watts;

“**Control**” in relation to a body corporate, means the power of a person to secure that the affairs of the body corporate are conducted in accordance with the wishes of that person:

(a) by means of the holding of shares, or the possession of voting power, in or in relation to that or any other body corporate; or

(b) by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating that or any other body corporate;

“**Core Claim**” has the meaning set out in clause 9.6;

“**CTA 2010**” the Corporation Tax Act 2010;

“**Data Room**” the documents (including correspondence, emails and information) made available by or on behalf of the Sellers or any Group Company for inspection by or on behalf of the Purchaser (including the Purchaser’s agents and advisers) in relation to or connected with each Group Company and their businesses which as at 10:00pm on 19 September 2014 were contained in the virtual data room titled “Project Portman” to which the Purchaser and its agents and advisers were given access in connection with the matters set out in this Agreement;

“**DC Scheme**” The Global Marine Systems Limited Group Personal Pension Plan;

“**Disclosed**” shall mean fairly disclosed to the Purchaser (with sufficient details to identify the nature and scope of the matter disclosed);

“**Disclosure Letter**” shall mean the letter in the agreed form of the same date as this Agreement, incorporating certain agreed general disclosures together with a bundle of documents from the Sellers to the Purchaser, and disclosing certain exceptions to the Warranties;

“**Drag-Along GMSL B Shareholders**” has the meaning given to it in clause 7.6;

“**Drag-Along Notice**” means a notice to the holders of B Ordinary Shares pursuant to article 11.1 of the GMSL Articles;

“Due Amount” the amount (if any) due for payment by the Sellers to the Purchaser in respect of a Notified Claim that has been Resolved;

“EBITDA Escrow” means the sum of £10 million;

“Encumbrance” any claim, option, charge (fixed or floating), mortgage, lien, pledge, equity, encumbrance, right to acquire, right of pre-emption, right of first refusal, title retention or any other third party right, or other security interest or any agreement or arrangement having a similar effect or any agreement to create any of the foregoing;

“Escrow Account” the interest-bearing deposit account to be opened in the name of the Escrow Agent at the Escrow Bank in accordance with the Escrow Letter;

“Escrow Agent” the Law Debenture Trust Corporation p.l.c.

“Escrow Amount” means the sum of the EBITDA Escrow, the Ship Escrow and the Claim Escrow;

“Escrow Bank” shall have the meaning set out in the Escrow Letter;

“Escrow Letter” the letter in the agreed form from the Purchaser and the Sellers’ Representative to the Escrow Agent instructing and authorising the Escrow Agent to establish and operate the Escrow Account at the Escrow Bank on the terms set out in the Escrow Letter;

“Estimated Indebtedness” means £80,166,000, calculated as set out in Schedule 7;

“Final Release Date” 31 January 2016;

“Full Title Guarantee” with the benefit of the implied covenants set out in Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994 when a disposition is expressed to be made with full title guarantee;

“GMSL” Global Marine Systems Limited, a company incorporated in England with registered number 01708481 further details of which are set out in Part 2 of Schedule 2;

“GMSL Articles” the articles of association of GMSL;

“GMSL B Shareholders” the holders of the B Ordinary Shares from time to time, other than the Continuing B Shareholders;

“GMSL B Shareholders’ Completion Payment” the sum of £7,209,842 as lent on Completion by the Purchaser to the Company (which shall then be held on trust for the GMSL B Shareholders and the Continuing B Shareholders and net of any relevant taxes or other deductions) on account of part of the Net Consideration payable to the GMSL B Shareholders and the Continuing B Shareholders by the Company;

“GMSL B Shareholders’ Proportion” in relation to any of the GMSL B Shareholders or Continuing B Shareholders, that proportion which the number of B Ordinary Shares being sold by him pursuant to the Offer Letter or Management Offer Letter, or the GMSL Articles, as applicable bears to the total number of B Ordinary Shares being sold by all the GMSL B Shareholders and Continuing B Shareholders under the Offer Letters, the Management Offer Letters and the GMSL Articles;

“Group” the Company and the Subsidiaries;

“Group Company” any one of the Company and the Subsidiaries;

“Guernsey Plan” The Global Marine Systems (Guernsey) Pension Plan;

“Indebtedness” in relation to the Company and the Subsidiaries, the aggregate amount of their respective borrowings and other financial indebtedness in the nature of borrowing as at Completion, including (without double counting):

(a) borrowings from any bank, financial institution or other entity;

(b) indebtedness arising under any bond, note, loan stock, debenture, commercial paper or similar instrument;

(c) obligations under any conditional sale, title retention, forward sale or purchase or any similar agreement or arrangement creating obligations with respect to the deferred purchase price of property (other than customary trade credit given in the ordinary course of trading);

(d) indebtedness under any hire purchase agreement or finance lease (whether for land, machinery, equipment or otherwise);

(e) any indebtedness for monies borrowed or raised under any other transaction that has the commercial effect of borrowing;

(f) all unpaid accrued interest on any borrowings or indebtedness referred to in the paragraphs above; and

(g) the shortfall in assets compared to liabilities based on the actuarial valuation as at 31 December 2013 of the UK Plan, in each case calculated on a consolidated basis in accordance with the accounting principles, policies, standards, practices, evaluation rules and estimation techniques used in the preparation of the Accounts, but excluding any amounts to be lent to the Company by the Purchaser pursuant to this Agreement;

“**Indemnity Claim**” a claim for breach of any of the indemnities in clauses 6, 7.8, 8.3 and 9.21.2;

“**Intergroup Debt**” the amount of £15,460,003 (consisting of principal and accrued interest) owed to GMSL as at the date of this Agreement by the Company pursuant to a facility letter dated on or around 19 June 2014;

“**Insured**” in relation to any Claim means a Claim which is insured under the Warranty Insurance;

“**JV Company**” means any Subsidiary, other than GMSL, that is not stated to be wholly owned by GMSL in Part 2 of Schedule 2 to this Agreement;

“**Letter of Instruction**” an irrevocable letter to the Sellers’ Solicitors signed by the Company authorising the Sellers’ Solicitors to pay the GMSL B Shareholders’ Completion Payment to the GMSL B Shareholders and Continuing B Shareholders, in accordance with this Agreement, the Offer Letters, the Management Offer Letters and the GMSL Articles, as applicable;

“**Management Offer Letters**” means the offer letters in the agreed form between each of the Continuing B Shareholders and BML;

“**MNOF**” The Merchant Navy Officers Pension Fund as currently governed by a trust deed and rules dated 25 June 1999 (as amended);

“**Net Consideration**” has the meaning given in clause 4.1;

“**NIC**” means national insurance or social security contributions;

“**Non-Core Claim**” a Claim which is not a Core Claim;

“**Non-Insured**” in relation to any Claim means a Claim which is not insured under the Warranty Insurance;

“**Non-Tax Claim**” means a Claim other than a Tax Claim;

“**Notified Claim**” a Relevant Claim that is notified by the Purchaser to the Sellers’ Representative in accordance with this Agreement on or before the Final Release Date;

“**Notional Rollover Amount**” means the sum of £542,517, being the amount that would have been received by the Continuing B Shareholders for the B Ordinary Shares that they will continue to hold post Completion if they had instead sold them to the Purchaser upon Completion on the same terms as the B Ordinary Shares that they are selling pursuant to the Management Offer Letters;

“**Offer Letters**” means the offer letters in the agreed form between each of the GMSL B Shareholders and BML;

“**Outstanding Claim**” a Notified Claim that has not been Resolved on or before the Final Release Date;

“**Outstanding Vessel**” means the Cable Innovator vessel, registered with the British Registry with number 728488, further details of which are contained in the Data Room in folder 16.06;

“**Party**” or “**Parties**” a party or the parties to this Agreement;

“**PAYE**” means any system for the deduction and withholding of Tax or National Insurance or social security contributions (or similar or corresponding obligations) or both from sums paid to employees in respect of their employment;

“**Purchaser’s Solicitors**” Milbank, Tweed, Hadley & McCloy of 10 Gresham Street, London, EC2V 7JD;

“**Purchaser Warranties**” the warranties given by the Purchaser in Schedule 5;

“**Q&A Documents**” the documents prepared by the Sellers containing answers to the questions asked by the Purchaser in relation to the documents contained in the Data Room, as appended to the Disclosure Letter;

“**Relevant Claim**” means a Claim or an Indemnity Claim;

“**Relief**” any relief, allowance, set-off, exemption, right to repayment or credit in respect of any Tax or relevant to the computation of Tax or the computation of income, profits or gains for Tax purposes;

“**Resolved**” has the meaning given in clause 6.16;

“**Sellers’ Completion Payment**” a sum equal to the Net Consideration, less the Shareholder Debt, GMSL B Shareholders’ Completion Payment and the Escrow Amount, as paid on Completion by the Purchaser to the Sellers on account of part of the Net Consideration;

“**Sellers’ Representative**” means Bridge Properties (Arena Central) Limited, acting through Dawna Stickler;

“**Sellers’ Solicitors**” Fox Williams LLP of Ten Dominion Street, London EC2A 2EE;

“**Sellers’ Solicitors’ Client Account**” the bank account operated for the Sellers’ Solicitors by the Royal Bank of Scotland plc, the details of which are:

(i) Sort Code: 16-01-02

(ii) Account Number: 14462171;

“**Sellers’ Warranties**” the warranties given by the Sellers in Schedule 4;

“**Ship Escrow**” means £1 million;

“**Shareholder Debt**” the amount of £15,460,003 (consisting of principal and accrued interest) owing as at the date of this Agreement to the Company pursuant to a loan dated on or around 19 June 2014 from the Company to Bridge Properties (Arena Central) Limited;

“**Shares**” the 1,227,795 issued ordinary shares of £1 each in the capital of the Company held by the Sellers;

“**Subsidiaries**” the undertakings details of which are set out in Part 2 of Schedule 2;

“**Tax**” or “**Taxation**” all forms of taxation and statutory, governmental, supra-governmental, state, local governmental or municipal impositions, duties, contributions, deductions, withholdings and levies wherever and whenever imposed and all penalties, charges, costs and interest relating to any of them, regardless of whether such taxes, impositions, duties, contributions, deductions, withholdings, levies, penalties, charges, costs, interest or amounts are chargeable directly or primarily against or attributable to the relevant person or any other person;

“**Taxation Authority**” any government, state or municipality or any local, state, federal or other fiscal, revenue, customs or excise authority, body or official competent to impose, administer, levy, assess or collect Tax;

“**Tax Claim**” any Tax Schedule Claim or claim for breach of one or more of the Tax Warranties;

“**Tax Longstop Date**” the earlier of (a) 31 January 2021 and (b) the date falling 3 months after the expiry of the period specified by statute during which an assessment of the relevant liability to Tax may be issued by the relevant Taxation Authority;

“**Tax Schedule**” means Schedule 8 to this Agreement;

“**Tax Schedule Claim**” means a claim by the Purchaser under the Tax Schedule;

“**Tax Warranties**” the warranties given by the Sellers in paragraph 28 of Schedule 4 to this Agreement;

“**Third Party Claim**” has the meaning given to it in clause 9.23;

“**UK GAAP**” the Financial Reporting Standards and Statements of Standard Accounting Practice and issued by the UK Accounting Standards Board and its predecessor bodies and Abstracts issued by the Urgent Issues Task Force and the applicable provisions of the Companies Act and any applicable Statement of Recommended Practice;

“**UK Plan**” The Global Marine Systems Pension Plan, as currently governed by a definitive deed and rules dated 27 April 2010 (as amended);

“**WAD**” means William Allan Donaldson;

“**Warranty Claim**” means a claim against the Sellers in respect of any of the Sellers’ Warranties; and

“**Warranty Insurance**” means the warranty insurance to be obtained by the Parties pursuant to clause 9.18.

1.2 In this Agreement, words and expressions defined in the Companies Act shall bear the same meaning as in those acts unless expressly stated otherwise.

1.3 In this Agreement, except where the context otherwise requires:

1.3.1 any reference to this Agreement includes the Schedules to it, each of which forms part of this Agreement for all purposes;

1.3.2 a reference to an enactment or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment or statutory provision and is a reference to that enactment, statutory provision or subordinate legislation as from time to time amended, consolidated, modified, re-enacted or replaced;

1.3.3 words in the singular shall include the plural and vice versa;

1.3.4 references to one gender include other genders;

1.3.5 a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership or to an individual’s executors or administrators;

1.3.6 a reference to a clause, paragraph, schedule (other than to a schedule to a statutory provision) shall be a reference to a clause, paragraph, Schedule (as the case may be) of or to this Agreement;

1.3.7 a person shall be deemed to be connected with another if that person is connected with another within the meaning of section 1122 of the CTA 2010;

1.3.8 references to writing shall include any modes of reproducing words in any legible form and shall exclude email except where expressly stated otherwise;

- 1.3.9 a reference to a balance sheet or profit and loss account shall include a reference to any note forming part of it;
- 1.3.10 references to documents “in the agreed terms” or any similar expression shall be to documents agreed between the Parties, annexed to this Agreement and initialled for identification by the Sellers’ Solicitors and the Purchaser’s Solicitors;
- 1.3.11 where any Warranty is qualified by the expression “so far as the Sellers are aware” or “to the best of the knowledge, information and belief of the Sellers”, or any similar expression or qualification, that statement shall mean the actual (but not constructive or imputed) knowledge of the Sellers, having made due and careful enquiry of each of the other Sellers, WAD and Ian Douglas;
- 1.3.12 references to procuring that a Group Company which is a JV Company do or refrain from doing something shall be construed as a requirement to use all powers which the relevant Party has under statute and/or the joint venture agreement governing such JV Company;
- 1.3.13 the headings in this Agreement are for convenience only and shall not affect its interpretation; and
- 1.3.14 references to this Agreement include this Agreement as amended or supplemented in accordance with its terms.

2. **SALE AND PURCHASE**

Sale and Purchase

- 2.1 Each of the Sellers is the legal and beneficial owner of and shall sell, and the Purchaser shall purchase, those Shares set opposite that Seller’s name in column (2) of Schedule 1 on the basis that they are sold at Completion with Full Title Guarantee and free from any Encumbrance and together with all rights attached to them at the date of this Agreement or subsequently becoming attached to them.

Waiver of rights

- 2.2 The Sellers waive and agree to procure the waiver of any restrictions on transfer, including pre-emption rights, which may exist in relation to the Shares, under the articles of association of the Company, any shareholders’ agreement or otherwise.

3. **COMPLETION**

Completion Date

- 3.1 Completion shall take place at the offices of the Purchaser’s Solicitors immediately after the execution of this Agreement on the date of this Agreement.

Sellers’ Obligations

- 3.2 At Completion, the Sellers shall observe and perform all of the provisions of Part 1 of Schedule 3.

Purchaser’s Obligations

- 3.3 At Completion, the Purchaser shall observe and perform all of the provisions of Part 2 of Schedule 3.

Completion

3.4 The Sellers shall not be obliged to complete this Agreement unless the Purchaser complies with clause 3.3. The Purchaser shall not be obliged to complete this Agreement unless the Sellers comply with clause 3.2.

4. CONSIDERATION

4.1 Subject to clause 4.2, the consideration for the sale of the Shares and the B Ordinary Shares shall be the sum of one hundred and fifty-seven million, eight hundred and forty six thousand, four hundred and sixty seven pounds sterling (£157,846,467) less the Estimated Indebtedness and the Notional Rollover Amount, and as adjusted pursuant to clause 4.3 (the “**Net Consideration**”), which shall be satisfied as follows:

- 4.1.1 by the payment of the Sellers’ Completion Payment in cash at Completion to each of the Sellers of an amount equal to the sum set opposite his or its name in column (4) of Schedule 1;
- 4.1.2 by the payment to the Company of the GMSL B Shareholders’ Completion Payment, by way of an interest-free intragroup loan, the proceeds of such loan to be used in accordance with clause 7;
- 4.1.3 by the payment to GMSL of an amount equal to the Intergroup Debt, which shall constitute the repayment to the Company of the Shareholder Debt on behalf of Bridge Properties (Arena Central) Limited, and the repayment to GMSL of the Intergroup Debt on behalf of the Company; and
- 4.1.4 the Escrow Amount shall be paid into the Escrow Account in cash on Completion by electronic transfer of immediately available funds,

with the Sellers’ Completion Payment, the GMSL B Shareholders’ Completion Payment and the payment to GMSL under clause 4.1.3 above to be transferred by the Purchaser to the Sellers’ Solicitors’ Client Account on the Completion Date, to be held on behalf of, respectively, the Sellers, the Company, the GMSL B Shareholders, the Continuing B Shareholders and GMSL.

4.2 The Sellers agree that any sums due to all or any of the Sellers, the Company, the GMSL B Shareholders, the Continuing B Shareholders or GMSL pursuant to this Agreement, the Management Offer Letters, the Offer Letters or the Articles, as applicable, may be paid by the Purchaser or released by the Escrow Agent to the Sellers’ Solicitors’ Client Account whose receipt shall constitute a full discharge of the Purchaser’s payment obligations in respect of such sums.

4.3 The consideration payable to the Sellers pursuant to clauses 4.1.1, 4.1.3 and clause 6 shall be deemed to be:

- 4.3.1 **reduced** by an amount equal to the aggregate amount (if any) paid by the Sellers to the Purchaser pursuant to a Claim or claim under the Tax Schedule or other Relevant Claim or otherwise released back to the Purchaser pursuant to the terms of clause 6; and
- 4.3.2 **increased** by an amount equal to the aggregate amount (if any) paid by the Purchaser to the Sellers pursuant to paragraphs 5, 8 or 9 of the Tax Schedule and clauses 9.20, 12.18 or 12.19 of this Agreement and/or pursuant to a claim brought in respect of the Purchaser Warranties or clause 10 of this Agreement.

4.4 The Parties acknowledge that the payment made by the Purchaser pursuant to clause 4.1.3 constitutes part of the Net Consideration to be received by Bridge Properties (Arena Central) Limited for the sale of its Shares and that the Escrow Amount shall be deducted from the Net Consideration that would otherwise have been received by Speciality Finance Limited for its Shares.

5. **ESCROW ACCOUNT**

- 5.1 Following Completion, the Escrow Amount shall be held in the Escrow Account in accordance with the terms of this clause 5, clause 6 and the Escrow Letter.
- 5.2 Any interest that accrues on the credit balance on the Escrow Account from time to time shall be credited to the Escrow Account and any payment of principal out of the Escrow Account shall include a payment of the interest earned on that principal sum.
- 5.3 The liability to taxation on any interest on any amount in the Escrow Account shall be borne by the party ultimately entitled to that interest.
- 5.4 The Purchaser and the Sellers' Representative shall promptly provide such instructions to the Escrow Agent (where relevant in the form specified by the Escrow Letter) and take all other actions in relation to the Escrow Account as are necessary to give effect to the provisions of this clause 5 and clause 6.
- 5.5 The amount of the Escrow Amount shall not be regarded as imposing any limit on the amount of any Claims under this Agreement or under any of the documents executed pursuant to this Agreement.
- 5.6 Nothing in this clause 5 or clause 6 shall prejudice, limit or otherwise affect any right or remedy the Purchaser may have against the Sellers from time to time, whether arising under this Agreement or any of the documents executed pursuant to this Agreement.

6. **PAYMENTS FROM THE ESCROW ACCOUNT**

- 6.1 No amount shall be released from the Escrow Account otherwise than in accordance with this clause 6 and the terms of the Escrow Letter.
- 6.2 If any amount is withheld or deducted by the Escrow Agent from the balance of the Escrow Account as a result of either the Sellers' Representative or the Purchaser, as the case may be, failing to pay amounts owed to the Escrow Agent by such Party pursuant to the terms of the Escrow Letter and associated fees letter, an amount equal to such withheld or deducted amount shall be deducted from the next payment to be made from the Escrow Account to Speciality Finance Limited (if the failure is that of the Sellers' Representative) or the Purchaser, as applicable, under the terms of this Agreement.

Warranty Insurance Release

- 6.3 Within 5 Business Days of the Warranty Insurance being purchased, the Purchaser and the Sellers' Representative shall instruct the Escrow Agent to release to Speciality Finance Limited from the Escrow Account an amount (if any) equal to the higher of (x) £2.4 million; and (y) an amount equal to the sum of £4 million less the deductible for claims pursuant to the terms of the Warranty Insurance, less in each case the following sums:
- 6.3.1 if there are any Outstanding Claims, an amount equal to the Purchaser's reasonable estimate of the Sellers' aggregate liability in respect of those Outstanding Claims; and
- 6.3.2 any Due Amounts to the extent they have not been satisfied in accordance with clauses 6.15 or 6.17.2(B) or otherwise on or before the Final Release Date,
- (together with any accrued interest on the amount so paid but less any applicable bank charges).

Indebtedness and Cash Shortfall

- 6.4 If, following Completion but no later than 10 Business Days from the Completion Date, the Purchaser believes that (i) the Indebtedness is greater than the Estimated Indebtedness;

and/or (ii) that the Cash at Completion was less than £30 million, the Purchaser shall notify the Sellers' Representative in writing, setting out its calculations (the "**Revised Calculation**").

- 6.5 If, during the 10 Business Days following the receipt of such notice (the "**Review Period**"), the Sellers' Representative:
- 6.5.1 serves a written notice on the Purchaser confirming the Sellers' agreement with the Revised Calculation, the Revised Calculation shall determine the Indebtedness and/or Cash at Completion, as applicable, and shall be final and binding on the Parties; or
- 6.5.2 fails to notify the Purchaser that the Sellers disagree with the Revised Calculation, the Revised Calculation shall, with effect from the expiry of the Review Period, determine the Indebtedness and/or the Cash at Completion, as applicable, and shall be final and binding on the Parties.
- 6.6 If the Sellers' Representative notifies the Purchaser that the Sellers disagree with the Revised Calculation during the Review Period, the Purchaser and Sellers' Representative shall jointly instruct the Auditors (the "**Expert**") to determine the Indebtedness and/or Cash at Completion, using all reasonable endeavours to agree the terms of appointment with the Expert. If the Auditors refuse to act as the Expert, the Purchaser and Sellers' Representative shall use all reasonable endeavours to reach agreement regarding the identity of the person to be appointed as the Expert and to agree terms of appointment with the Expert. If the Purchaser and Sellers' Representative fail to agree on an Expert and its terms of appointment within 10 Business Days of either Party serving details of a proposed Expert, either the Purchaser or the Sellers' Representative shall be entitled to request the President for the time being of the Institute of Chartered Accountants of England and Wales to appoint the Expert and to agree his terms of appointment on behalf of the parties.
- 6.7 Save in the event of manifest error or fraud the Expert's determination of Indebtedness and/or the Cash at Completion referred to under this clause 6 shall be final and binding on the parties.
- 6.8 The Parties shall act reasonably and co-operate to give effect to the provisions of clauses 6.5 and 6.6 and shall not do anything to hinder or prevent the Expert from making his determination. The Purchaser and Sellers' Representative shall be entitled to make submissions to the Expert and each Party shall, with reasonable promptness, supply the other Parties with all such information and access to its documentation, books and records as the other Parties may reasonably require in order to make a submission to the Expert in accordance with this paragraph.
- 6.9 Each Party shall bear and pay its own costs incurred in connection with the Expert's determination. The Expert's fees and any costs or expenses incurred in making his determination (including the fees and costs of any advisers appointed by the Expert) shall be borne equally between the Purchaser on the one hand and the Sellers on the other hand.
- 6.10 Each Party shall co-operate with the Expert and shall give the Expert reasonable access to any documents, books and records in that Party's possession or control that the Expert may reasonably require for the purpose of making his determination.
- 6.11 To the extent not provided for in this clause 6, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of his determination as he considers just or appropriate including (to the extent it considers necessary) instructing professional advisers to assist him in reaching his determination.
- 6.12 The Expert shall act as an expert and not as an arbitrator.

- 6.13 If the Cash at Completion as determined pursuant to clauses 6.4.1, 6.4.2, or 6.6 is less than £30 million, the Sellers shall be liable on a pound for pound basis to the Purchaser for the difference between the amount of the Cash at Completion and £30 million (the “**Cash Shortfall Amount**”).
- 6.14 If the Indebtedness as determined pursuant to clauses 6.4.1, 6.4.2, or 6.6 (the “**Final Indebtedness**”) is greater than the Estimated Indebtedness, the Sellers shall be liable on a pound for pound basis to the Purchaser for the difference between the amount of the Final Indebtedness and the Estimated Indebtedness (“**Indebtedness Repayment**”) but only if the Indebtedness Repayment is greater than £100,000, in which case the Sellers will be liable for the full amount of the Indebtedness Repayment.
- 6.15 The Purchaser and the Sellers’ Representative shall instruct the Escrow Agent within 10 Business Days of the determination of the Final Indebtedness, to release to the Purchaser from the Claim Escrow held in the Escrow Account an amount equal to the Indebtedness Repayment (together with any accrued interest on the amount so paid but less any applicable bank charges) or, if lower, the amount of the Claim Escrow standing to the credit of the Escrow Account (but less any applicable bank charges).

Resolved Claims

- 6.16 If a Notified Claim arises and is Resolved on or before the Final Release Date, the Purchaser and the Sellers’ Representative shall, as soon as reasonably practicable and in any event within 10 Business Days of the Notified Claim being Resolved, instruct the Escrow Agent to release to the Purchaser from the Claim Escrow held in the Escrow Account the Due Amount in respect of that Notified Claim (together with any accrued interest on the amount so paid but less any applicable bank charges) or, if lower, the amount of the Claim Escrow standing to the credit of the Escrow Account (but less any applicable bank charges).
- 6.17 A Notified Claim shall be deemed to be “**Resolved**” for the purposes of this clause 6 if it has been:
- 6.17.1 agreed in writing between the Purchaser and the Sellers’ Representative as to both liability and quantum;
 - 6.17.2 finally determined (as to both liability and quantum) by a court of competent jurisdiction from which there is no right of appeal, or from whose judgment the relevant party is debarred (by passage of time or otherwise) from making an appeal; or
 - 6.17.3 unconditionally withdrawn by the Purchaser in writing.

Actual 2014 EBITDA

- 6.18 Within 10 Business Days of the delivery of the 2014 Audited Financial Statements by the Auditors, the Purchaser and Sellers’ Representative shall instruct the Escrow Agent to release the EBITDA Escrow held in the Escrow Account as follows:
- 6.18.1 if the Actual 2014 EBITDA is less than £26.5 million, the difference between the Actual 2014 EBITDA and £26.5 million being the “**Shortfall**”, to the Purchaser an amount equal to the lesser of (i) the Shortfall multiplied by five; and (ii) £10 million; and
 - 6.18.2 to Speciality Finance Limited the balance, if any, of the EBITDA Escrow.
- 6.19 Actual 2014 EBITDA shall be calculated as set out in Schedule 7. The Purchaser covenants that it will ensure that, so far as is reasonably practicable, the business of the Group is carried on in the ordinary course between Completion and 31 December 2014

and will not, prior to 31 December 2014, take any action (or cause or permit anything to be done) in relation to the Group with the intention or direct effect of decreasing the Actual 2014 EBITDA including but not limited to:

- 6.19.1 entering into any transactions whether of a trading nature, on capital account or otherwise other than on an arm's length, commercial, bona fide basis for full value and for its own benefit;
- 6.19.2 otherwise than in the ordinary course of business, acquiring or disposing of any assets, businesses, undertakings or bodies corporate;
- 6.19.3 changing the Company's accounting reference date from 31 December;
- 6.19.4 removing or seeking to remove Ian Douglas or WAD as employees and/or directors of GMSL unless either individual is validly dismissed at law or under the terms of his service contract for gross misconduct; or
- 6.19.5 making any material change in the accounting policies or practices on which the Accounts were prepared unless required to do so to comply with UK GAAP or to avoid any qualification of these accounts by the Auditors.

Outstanding Vessel Inspection

- 6.20 The Purchaser shall procure that the Company, under the direction of WAD, shall use all reasonable endeavours to complete an inspection of the Outstanding Vessel on substantively the same basis as the prior inspections carried out on the other vessels owned by the Group as set out in folder 16 of the Data Room as soon as reasonably practicable following Completion. Within 10 Business Days of the completion of such inspection, the Purchaser shall procure that the Company shall deliver the inspection report in respect of the Vessel (the "**Inspection Report**") to both the Purchaser and the Sellers.
- 6.21 If the Inspection Report on the Outstanding Vessel is produced and either (i) no repairs are required (as agreed by the Purchaser and WAD, each acting reasonably and in good faith), (ii) repairs have been provided for in the Business Plans or (iii) repairs are required but the cost of such repairs is less than £50,000 (the "**Repair De Minimis**"), the Purchaser and the Sellers' Representative shall, within 10 Business Days of the receipt of the Inspection Report, instruct the Escrow Agent to release to Speciality Finance Limited the full amount of the Ship Escrow (together with any accrued interest on the amount so paid but less any applicable bank charges).
- 6.22 If the Inspection Report on the Outstanding Vessel is produced and repairs are required (as agreed by the Purchaser and WAD, each acting reasonably and in good faith), the Company shall arrange for necessary repairs to be carried out and, where the cost of such repairs which has not been specifically provided for in the Business Plans and the cost of such repairs is, in aggregate, in excess of the Repairs De Minimis, the Purchaser shall procure that the Company will notify the Parties:
 - 6.22.1 if such repairs are not covered by the insurance policies of the Group, of the costs incurred by the Group in relation to carrying out such repairs; or
 - 6.22.2 if the relevant repairs are covered by the insurance policies of the Group, the deductible payable by the relevant member of the Group to claim under such insurance policies,and the Purchaser and the Sellers' Representative shall, within 10 Business Days of the receipt of the notifications from the Company required by this clause, instruct the Escrow Agent to release:
 - 6.22.3 to the Purchaser from the Ship Escrow the amount specified in clause 6.21.1 or 6.21.2, as applicable up to a total cap of £1 million; and

6.22.4 to Speciality Finance Limited the balance, if any, of the Ship Escrow,
(in each case together with any accrued interest on the amount so paid but less any applicable bank charges).

Final Release

6.23 On the Final Release Date, the Purchaser and the Sellers' Representative shall instruct the Escrow Agent to release to Speciality Finance Limited from the Escrow Account an amount (if any) equal to the remaining balance of the Claim Escrow standing to the credit of the Escrow Account less the following sums:

6.23.1 if there are any Outstanding Claims, an amount equal to the Purchaser's reasonable estimate of the Sellers' aggregate liability in respect of those Outstanding Claims; and

6.23.2 any Due Amounts to the extent they have not been satisfied in accordance with clause 6.15 or otherwise on or before the Final Release Date,

(together with any accrued interest on the amount so paid but less any applicable bank charges).

6.24 If, following the Final Release Date, the Claim Escrow (or any part of it) continues to be held in the Escrow Account pending resolution of any Outstanding Claims, the following provisions shall apply:

6.24.1 upon an Outstanding Claim being Resolved, the Purchaser and the Sellers' Representative shall, as soon as reasonably practicable and in any event within 10 Business Days of the Outstanding Claim being Resolved, instruct the Escrow Agent to release to the Purchaser from the Claim Escrow in the Escrow Account any unpaid Due Amount in respect of that Outstanding Claim (together with any accrued interest on the amount so paid but less any applicable bank charges) or, if lower, the amount of the Claim Escrow standing to the credit of the Escrow Account (less any applicable bank charges); and

6.24.2 after all Outstanding Claims have been Resolved and all Due Amounts have been paid to the Purchaser in full, the Purchaser and the Sellers' Representative shall, as soon as practicable, instruct the Escrow Agent to release to Speciality Finance Limited the remaining balance (if any) of the Claim Escrow standing to the credit of the Escrow Account (together with any accrued interest on the amount so paid but less any applicable bank charges).

6.25 If a Due Amount, Cash Shortfall Amount, or Indebtedness Repayment is not satisfied in full by a payment to the Purchaser from the Escrow Account, nothing in this Agreement (but subject at all times to the provisions of clause 9, if applicable) shall prevent or otherwise restrict the Purchaser's right to recover the balance from the Sellers, and the Due Amount, Cash Shortfall Amount, or Indebtedness Repayment (as the case may be and to the extent not so satisfied from the Escrow Account) shall remain fully enforceable against the Sellers.

6.26 Any payments made from the Escrow Account to the Purchaser under this clause 6 shall (to the extent permitted at law) be treated as a reduction of the Purchase Price.

7. GMSL B SHAREHOLDERS

7.1 Prior to completion of the matters outlined in this clause 7, the Company shall, through the monies transferred to the Sellers' Solicitors' Client Account pursuant to clause 4.1, hold the GMSL B Shareholders' Completion Payment on trust for the GMSL B Shareholders and Continuing B Shareholders, as applicable, without any obligation to pay interest.

7.2 On the Completion Date the Parties shall deliver the duly executed Letter of Instruction to the Sellers' Solicitors.

- 7.3 On, or as soon as reasonably practicable following, the Completion Date, the Parties shall procure that the Company sends the Offer Letter to each of the GMSL B Shareholders.
- 7.4 With respect to those GMSL B Shareholders and Continuing B Shareholders who on the Completion Date deliver to the Company in relation to all of the B Ordinary Shares that they are selling pursuant to the terms of the Offer Letters or Management Offer Letters, as applicable:
- 7.4.1 a duly executed stock transfer form in favour of the Company; and
- 7.4.2 the definitive share certificate(s) showing the name of that GMSL B Shareholder or Continuing B Shareholder as the registered holder (or a suitable indemnity in respect thereof); and
- 7.4.3 a countersigned Offer Letter or Management Offer Letter, as applicable,
- the Sellers hereby instruct the Sellers' Solicitors to promptly transfer to each such GMSL B Shareholder or Continuing B Shareholder, as applicable, an amount equal to their GMSL B Shareholders' Proportion (net of any relevant taxes or other deductions) of the GMSL B Shareholders' Completion Payment.
- 7.5 With respect to those GMSL B Shareholders who on or before the date falling 30 Business Days after Completion (the "**GMSL Longstop Date**") deliver to the Company in relation to all of the B Ordinary Shares that they hold:
- 7.5.1 a duly executed stock transfer form in favour of the Company;
- 7.5.2 the definitive share certificate(s) showing the name of that GMSL B Shareholder as the registered holder (or a suitable indemnity in respect thereof); and
- 7.5.3 a countersigned Offer Letter,
- pursuant to the terms of the Offer Letters, the Sellers hereby instruct the Sellers' Solicitors to promptly transfer to each such GMSL B Shareholder an amount equal to their GMSL B Shareholders' Proportion (net of any relevant taxes or other deductions) of the GMSL B Shareholders' Completion Payment following the receipt of such documents.
- 7.6 To the extent that by the GMSL Longstop Date any GMSL B Shareholder has not delivered to the Company in relation to all of the B Ordinary Shares that he holds either or both of the documents referred to in clause 7.4 (the "**Drag-Along GMSL B Shareholders**"), all Parties shall use their reasonable endeavours to ensure that the Company adheres to the provisions of articles 11.1 to 11.5 of the GMSL Articles, including but not limited to:
- 7.6.1 the Company serving a Drag-Along Notice to all of the Drag-Along GMSL B Shareholders;
- 7.6.2 all Parties undertaking all such acts as are necessary to ensure that each Drag-Along GMSL B Shareholder is paid the amounts due to him pursuant to article 11.2 of the GMSL Articles net of any relevant taxes or other deductions; and
- 7.6.3 if any Drag-Along GMSL B Shareholder fails to deliver either or both of the documents referred to in clauses 7.4.1 or 7.4.2 within the time period specified in the Drag Along Notice, the Company authorising and instructing WAD to execute and deliver all necessary transfers and indemnities on such Drag-Along GMSL B Shareholder's behalf in accordance with article 11.3 of the GMSL Articles.
- 7.7 The Purchaser undertakes that it will not amend the GMSL Articles prior to the completion of the matters outlined in this clause 7 in a manner which would prejudice the process set-out in clause 7.6.

7.8 The Sellers shall, jointly and severally, indemnify the Purchaser in respect of all losses, damages, costs, charges and expenses that are reasonably and properly incurred or suffered by the Purchaser (or any other member of the Group) in connection with (i) enforcing the provisions of articles 11.1 to 11.5 of the GMSL Articles in order for the Company to obtain ownership of the B Ordinary Shares, including those which arise through any challenge by any GMSL B Shareholders to the applicability of the provisions of the GMSL Articles to them or any difference between the price that is required to be paid to the GMSL B Shareholders for the B Ordinary Shares under the terms of the GMSL Articles and the price per Share being paid as part of the Net Consideration or (ii) any GMSL B Shareholder remaining as a holder of B Ordinary Shares post completion, in each case excluding the payment of the GMSL B Shareholders' Completion Payment pursuant to the terms of this Agreement.

8. **SELLERS' WARRANTIES AND INDEMNITY**

Sellers' Warranties

8.1 Subject to the limitations in clause 9, the Sellers jointly and severally warrant to the Purchaser in the terms of the Sellers' Warranties.

No claims against the group

8.2 The Sellers shall not (if a claim is made against any of them in connection with the sale of the Shares to the Purchaser) make any claim, other than in respect of fraud or dishonesty, against any Group Company or against any person who is, at the time such claim is made, a director or employee of any Group Company on whom any of the Sellers may have relied before agreeing to any term of this Agreement. This shall not prevent any Sellers from claiming against any other Sellers under any right of contribution or indemnity to which he may be entitled.

Indemnity

8.3 The Sellers shall, jointly and severally, indemnify the Purchaser in respect of all losses, damages, costs, charges and expenses that are reasonably and properly incurred or suffered by the Purchaser (or any other member of the Group) in connection with the transactions contemplated by this Agreement being or constituting, or being alleged by China Telecommunications Corporation Industrial Assets Management Center ("China Telecoms") to be or constitute, a "Material Change" as defined in the joint venture contract between GMSL and China Telecoms dated 10 July 2009, including (without prejudice to the generality of the foregoing) (i) those which arise through any defence asserted by the Purchaser or any member of the Group to any such allegation; (ii) those which arise as a result of GMSL being determined to be in breach of that contract as a result of failing to comply with the provisions relating to Material Change; and/or (iii) any right that China Telecoms may have to purchase shares in any member of the Group pursuant to the Material Change provisions, in each case save where the only remedy being sought by China Telecoms pursuant to such allegation is to purchase the shares held by GMSL in S.B. Submarine Systems Company Limited at fair market value.

8.4 The Parties shall procure that China Telecoms is notified of the purchase of the Shares by the Purchaser as promptly as reasonably practicable following Completion, or such later date as the Parties agree.

8.5 If the Purchaser becomes aware of any claim, action or demand made against it or any Group Company by China Telecoms which may reasonably be considered likely to give rise to a claim under clause 8.3, the Purchaser shall as soon as reasonably practicable, notify the Sellers' Representative giving reasonable details of the relevant facts and circumstances relating to such potential claim which are known to the Purchaser and comply with the provisions of clause 9.23.

- 8.6 The Sellers shall not be liable for any Claim under clause 8.3 unless China Telecoms has taken any action which gives the Purchaser reasonable grounds to believe that China Telecoms considers or intends to allege that the transactions contemplated by this Agreement are or constitute a “Material Change” before the earlier of:
- 8.6.1 the date falling 12 months after the Completion Date; and
 - 8.6.2 the date that Dick Fagerstal, or another representative of the Purchaser, is appointed to the board of directors of S.B. Submarine Systems Company Limited.

9. **SELLERS’ LIMITATIONS ON LIABILITY**

Disclosure

- 9.1 The Sellers shall not be liable in respect of a Claim other than a Tax Schedule Claim to the extent that the facts and circumstances giving rise to the Claim are Disclosed:
- 9.1.1 in the Disclosure Letter; or
 - 9.1.2 in the Data Room and the Q&A Document.

Time Limits

- 9.2 The Sellers shall not be liable for any Non-Tax Claim unless the Purchaser gives written notice containing full details of the legal and factual basis of the Claim, including the Purchaser’s estimate of the amount of the Claim, to the Sellers’ Representative on or before the Final Release Date.
- 9.3 The Sellers shall not be liable for any Tax Claim unless the Purchaser gives written notice containing full details of the legal and factual basis of the Claim, including the Purchaser’s estimate of the amount of the Tax Claim, to the Sellers’ Representative on or before the Tax Longstop Date.
- 9.4 To the extent that a Claim arises out of a liability which at the time that it is notified to the Sellers is contingent only, the Sellers shall not be under any obligation to make any payment to the Purchaser until the liability ceases to be contingent.
- 9.5 A Claim shall not be enforceable against the Sellers and shall be deemed to have been withdrawn, and no new Claim may be made in respect of the facts giving rise to such Claim, unless legal proceedings in respect of such Claim are commenced (by being issued and served):
- 9.5.1 within 3 months of the such Claim ceasing to be contingent, if the Claim is based upon what, at the time of service of notice of the Claim on the Sellers, was a contingent liability; and
 - 9.5.2 within 3 months of service of notice of the Claim on the Sellers with regard to any other Claim.

Monetary Limits

- 9.6 Until Warranty Insurance is obtained pursuant to the provisions of Clause 9.17, the total aggregate liability of the Sellers for all Claims other than Claims in relation to the Warranties set out in paragraphs 1 to 7 of Schedule 4, Indemnity Claims and Tax Schedule Claims (each a “**Core Claim**”), except in the case of fraud, shall be an amount equal to £28

million and the total aggregate liability of the Sellers for Core Claims only shall be equivalent to the Net Consideration. Upon the entry into the Warranty Insurance, the total aggregate liability of the Sellers for all Insured Claims shall be £1.6 million, for all Non-Insured Non-Core Claims shall be £28 million and for any Non-Insured Core Claims shall be equivalent to the Net Consideration.

- 9.7 The Parties acknowledge that in no event shall any Seller be liable in aggregate for all Claims under this Agreement, including Core Claims and Non-Core Claims, for more than their Appropriate Proportion of the Net Consideration.
- 9.8 The Sellers shall have no liability in respect of any Warranty Claim unless the aggregate amount of the liability of the Sellers in respect of all Warranty Claims exceeds £1 million in which case the Sellers shall be liable for the full amount of the Warranty Claims not just the excess.
- 9.9 The Sellers shall have no liability in respect of any Warranty Claim unless the amount of the Warranty Claim exceeds £100,000 in which case the Sellers shall be liable for the full amount of the Warranty Claim not just the excess and the full amount of the Warranty Claim shall be taken into account when calculating whether the aggregate amount of the liability of the Sellers exceeds £1 million for the purposes of clause 9.7. A Warranty Claim for which the Sellers have no liability pursuant to this clause shall not be taken into account when calculating whether the aggregate amount of the liability of the Sellers exceeds £1 million for the purposes of clause 9.7. For the purpose of this clause, any amount claimed which relates to more than one event or circumstance shall be treated as a number of separate claims in respect of each event or circumstance.
- 9.10 The Sellers shall have no liability in respect of any Tax Schedule Claim unless the aggregate amount of the liability of the Sellers in respect of all Tax Schedule Claims exceeds £100,000 in which case the Sellers shall be liable for the full amount of the Tax Schedule Claims not just the excess.
- 9.11 The Sellers shall have no liability in respect of any Tax Schedule Claim unless the amount of the Claim exceeds £10,000 in which case the Sellers shall be liable for the full amount of the Tax Schedule Claim not just the excess and the full amount of the Tax Schedule Claim shall be taken into account when calculating whether the aggregate amount of the liability of the Sellers exceeds £100,000 for the purposes of clause 9.9. A Tax Schedule Claim for which the Sellers have no liability pursuant to this clause shall not be taken into account when calculating whether the aggregate amount of the liability of the Sellers exceeds £100,000 for the purposes of clause 9.9. For the purpose of this clause, any amount claimed which relates to more than one event or circumstance shall be treated as a number of separate claims in respect of each event or circumstance.
- 9.12 The amount of the liability of each of the Sellers in respect of any Claim shall not exceed the Appropriate Proportion of the amount of the Claim. The aggregate amount of the liability of each Seller in respect of the aggregate of all Claims shall not exceed the Appropriate Proportion of the aggregate liability of the Sellers mentioned in clause 9.6.

Provision of information to Sellers

- 9.13 Upon the Purchaser notifying the Sellers' Representative of a Claim or a matter or event which may lead to a Claim being made, the Purchaser shall, and shall procure that each Group Company shall, give the Sellers and their advisers such access as the Sellers reasonably request to the personnel, records and information of each Group Company which relate to such Claim (with the exception of any documents, records and information which are legally privileged under Applicable Laws) together with the right to examine and copy or photograph such assets, documents, records and information as the Sellers reasonably require, in each case to assess the relevant Claim.
- 9.14 The Purchaser shall, and shall procure that the each Group Company shall, keep safe all

information, books, records, documents (including information in electronic form) relating to the relevant Group Company and its business which are or may be relevant in connection with any matter which may give rise to a Claim for the period within which any Claim may be brought under this Agreement and after that for as long as any actual or prospective Claim remains outstanding.

Purchaser's actions

9.15 The Sellers shall not be liable in respect of a Non-Tax Claim:

9.15.1 to the extent that the Claim would not have arisen but for an act or omission of the Purchaser or a Group Company or any of their respective agents, employees, assignees or other successors in title after Completion (save where such act or omission was carried out or effected pursuant to a legally binding obligation entered into on or before the date of this Agreement or was in the ordinary course of business of the Company or the Subsidiaries as carried on at Completion); or

9.15.2 to the extent that the Claim would not have arisen but for a breach of this Agreement by the Purchaser.

9.16 The Sellers shall not be liable in respect of a Claim to the extent that the Claim would not have arisen but for an act, omission or transaction occurring before Completion at the request or direction of or with the prior written consent of the Purchaser and the Purchaser was aware at the time of making such request or direction or giving such consent that such act, omission or transaction could reasonably be expected to give rise to a Claim.

Changes in law, regulation and practice

9.17 The Sellers shall not be liable in respect of a Non-Tax Claim to the extent that the Claim arises or is increased as a result of:

9.17.1 a change in law, administrative practice or published interpretation of the law, after the Completion Date;

9.17.2 any change in generally accepted accounting practice after the Completion Date (save where such change is necessary to comply with UK GAAP or to avoid accounts being qualified);

9.17.3 any change in the accounting policies or practice of the Purchaser, or any of its group undertakings, or any Group Company after the Completion Date; or

9.17.4 the passing of any legislation, or making of any subordinate legislation after the date of Completion Date.

Insurance

9.18 The Parties shall use their reasonable efforts to negotiate and agree warranty insurance in the name of the Purchaser as soon as reasonably practicable following Completion on terms which are reasonably acceptable to all Parties (the "**Warranty Insurance**"). The Warranty Insurance shall have an excess of no more than £1.6 million and a policy limit of £26.4 million. The Sellers on the one hand, and the Purchaser on the other, shall each pay 50% of the cost of obtaining the Warranty Insurance on this basis, provided that the Purchaser shall not be required to pay any sum in excess of £200,000 and the Sellers shall pay any remaining balance if such cap is exceeded. If the Parties and the insurer agree that the deductible shall be an amount which is lower than £1.6 million, the Sellers shall pay any additional cost associated with such lower deductible.

9.19 The Sellers shall not be liable in respect of a Non-Tax Claim to the extent that the Claim relates to any loss which actually recovered by the Purchaser (or any assignee or successor in title thereof) or any Group Company from its insurers or which would have

been recoverable if at all times following Completion there had been maintained valid and adequate insurance cover of a type and affording the same degree of cover as that in force in relation to each Group Company at the date of this Agreement.

Matters included in the Accounts

- 9.20 The Sellers shall not be liable in respect of a Non-Tax Claim to the extent that the Claim relates to any matter provided for, or included as a liability, in the Accounts.

Sums recoverable from third parties

- 9.21 Where the Purchaser, or any Group Company (or any assignee or successor in title thereof) is entitled to recover from any third party any sum in respect of any matter or event which is likely to give rise to a Non-Tax Claim, the Purchaser shall, or shall procure that the person so entitled shall, use all reasonable endeavours to recover that sum and before any steps are taken against the Sellers under this Agreement in respect of such Claim (other than service of notice of such Claim on the Sellers pursuant to clauses 9.2 and 9.5). The Purchaser shall keep the Sellers' Representative at all times fully and promptly informed of the conduct of such recovery. Any sum actually recovered by the Purchaser, or any Group Company (less any reasonable costs, charges and expenses incurred by the Purchaser or any Group Company in recovering the sum and any tax attributable to or suffered in respect of the sum recovered) will reduce the amount of the Claim by an equivalent amount.
- 9.22 If recovery from the third party is delayed until after the Claim has been satisfied by the Sellers, the Purchaser shall repay to the Sellers the amount so recovered (less any reasonable costs, charges or expenses incurred by the Purchaser or any Group Company in recovering the sum and any tax attributable to or suffered in respect of the sum recovered), and any amount so repaid shall be deemed to have never been paid by the Sellers to the Purchaser.

Actions by third parties

- 9.23 If the Purchaser becomes aware of any claim, action or demand made against it or any Group Company by a third party which may reasonably be considered likely to give rise to a Non-Tax Claim (a "**Third Party Claim**"):
- 9.23.1 the Purchaser shall as soon as reasonably practicable, notify the Sellers' Representative giving reasonable details of the relevant facts and circumstances relating to the Third Party Claim which are known to the Purchaser; and
- 9.23.2 the Purchaser shall, and shall procure that the relevant Group Company shall, keep the Sellers' Representative informed of all material developments in relation to the Third Party Claim and, not settle or make any admission of liability, agreement or compromise any claim or matter relating to the Third Party Claim without written consent of the Sellers' Representative, such consent not to be unreasonably withheld or delayed, subject to the Sellers indemnifying the Purchaser in respect of all costs, charges and expenses that are reasonably and properly incurred by the Purchaser (or any other member of the Group) as a consequence of any such actions taken or not taken at the request of the Sellers' Representative. The Purchaser may reasonably request security from the Sellers in support of any indemnity and the Purchaser shall have no obligation under this clause 9.21.2, if such security is not provided within 10 Business Days of such request.

Mitigation

- 9.24 Nothing in this clause 9 restricts or limits the general obligation at law of each of the Purchaser and the Group Companies to mitigate any loss or damage which it may suffer or

incur as a consequence of any breach of any Sellers' Warranty or any other provision of this Agreement or in relation to any other matter, event or circumstance which gives rise to a Claim.

No liability to third parties

9.25 No person other than the Purchaser, and those persons set out in clause 12.9 in relation to those specified rights only, is entitled to make any Claim.

No double recovery

9.26 The Purchaser agrees that it shall not be entitled to recover damages or obtain payment, reimbursement, restitution or indemnity more than once in respect of any one shortfall, damage, deficiency, breach or other set of circumstances which give rise to one or more Claims. For this purpose, recovery by the relevant Group Company shall be deemed to be recovery by the Purchaser.

Indirect and consequential loss

9.27 Other than in respect of a Tax Schedule Claim, the Sellers shall not be liable to the Purchaser for any:

9.27.1 loss which does not naturally arise from a breach of this Agreement; or

9.27.2 punitive damages (whether direct or indirect).

Change of control

9.28 The Sellers shall not be liable for any Claim arising from any loss suffered or payment made by the Purchaser or any Group Company as a result of any person (other than the Purchaser) acquiring all or part of the shares in or assets or undertaking of any Group Company on or after Completion.

Withdrawal and settlement of Claims

9.29 If the Purchaser withdraws a Claim against any of the Sellers, the Purchaser shall also withdraw that Claim against each of the other Sellers.

9.30 If the Purchaser settles a Claim against a Seller the Purchaser shall offer to the other Sellers settlement terms which are, so far as practicable, the same (having regard to the percentage of each Claim to be borne by and the aggregate liability of such Seller) as those agreed with that Seller with whom the Purchaser has settled.

General

9.31 The limitations on the liability of the Sellers set out in this clause 9 shall not apply in relation to a Seller to the extent that the Claim arises or is delayed as a result of the fraud, dishonesty, wilful misconduct or wilful concealment of or by that Seller, its agents or advisers.

10. PURCHASER WARRANTIES AND UNDERTAKINGS

Purchaser Warranties

10.1 The Purchaser warrants and represents to the Sellers in the terms of the Purchaser Warranties.

Preservation of information

10.2 The Purchaser undertakes to the Sellers that it shall, and shall procure that its group

undertakings shall preserve for a period of at least four years from Completion all books, records and documents of or relating to the Group existing at Completion. The Purchaser shall permit and allow and shall procure that its group undertakings shall permit and allow, upon reasonable notice (and in any event on 7 days' written notice) and during normal business hours, for and only to the extent necessary to deal with the Sellers' tax affairs, the employees, agents and professional advisers of the Sellers access to such books, records and documents and to inspect and make copies of them at the Sellers' expense, in each case subject to such persons and the Sellers giving such confidentiality undertakings as the Purchaser may reasonably require.

11. PROTECTION OF PURCHASER INTERESTS

Definitions

11.1 In this clause 11:

- 11.1.1 **"Competing Business"** any business carried on which wholly or partly competes with any business carried on at Completion by the Company or any Group Company;
- 11.1.2 **"Recognised Stock Exchange"** has the meaning given to it in section 1137 of the CTA 2010;
- 11.1.3 **"Restricted Goods or Services"** means goods or services of the same type as or similar to or competitive with any goods or services supplied by the Company or any Group Company in the 12 months prior to the date of Completion.

Competition, customers, employees and confidentiality

11.2 The Sellers jointly and severally covenant with the Purchaser that:

- 11.2.1 until the expiration of 36 months from Completion, each Seller shall not, and shall procure that each of its group undertakings shall not, carry on or be directly or indirectly interested in a Competing Business save that each of them may hold for investment up to 3% of any class of securities quoted or dealt in on a Recognised Stock Exchange provided that such Seller does not exercise any management function at the company concerned;
- 11.2.2 until the expiration of 36 months from Completion, each Seller shall not, and shall procure that each of its group undertakings shall not:
- (A) accept orders for or supply Restricted Goods or Services to any person who, to his/its knowledge, was provided with goods or services by the Company or any Group Company at any time during the 12 months up to and including Completion;
 - (B) solicit any person, for the purpose of offering Restricted Goods or Services to that person, who, to his/its knowledge, was provided with goods or services by the Company or any Group Company at any time during the 12 months up to and including Completion; and/or
 - (C) solicit from the Company or any Group Company any person who is, and was at Completion, employed or engaged by the Company or any Group Company in an executive capacity, with a view to inducing that person to leave such employment or engagement (whether or not such person would commit a breach of his contract of employment or engagement by reason of leaving).

Benefit of restrictions

11.3 The restrictions entered into by the Sellers and the obligations of each Seller with respect to their group undertakings in clause 11.2 are given to the Purchaser for itself and for each Group Company. The rights of each Group Company under this clause are subject to the provisions of clause 12.9 (Third party rights).

12. MISCELLANEOUS

Sellers' Representative

12.1 The Sellers' Representative is hereby appointed the representative of the Sellers for all purposes in connection with this Agreement including, without limitation, the giving and receiving of notices on the part of the Sellers, the giving of consents, the exercise of rights and the compromise or settlement of all Claims. The Purchaser shall be entitled to deal, in relation to all matters concerning this Agreement and the Tax Schedule, with the Sellers' Representative and shall not be obliged to enquire in relation to any such matter of any other Seller. Each Seller irrevocably undertakes to confirm and ratify, for the benefit of the Purchaser, anything done on behalf of that Seller by the Sellers' Representative.

Announcements

12.2 Subject to the remaining provisions of this clause 12.2, no Party shall release any announcement or despatch any announcement or circular, relating to this Agreement unless the form and content of such announcement or circular have been submitted to, and agreed by, the other Parties. Nothing contained in this Agreement shall preclude any announcement, circular or other disclosure necessary to comply with applicable securities and other laws and regulations, including disclosures made in order to comply with the regulations of the Securities and Exchange Commission ("SEC") or with the regulations of any applicable securities exchange (including the regulations of the New York Stock Exchange or the Nasdaq Stock Market); *provided, however*, that any such announcement, circular or other disclosure shall include only such information as the Party is required, in the opinion of the its counsel, by law or other disclosure obligations to disclose. If a Party intends to release any announcement or circular or otherwise make a disclosure pursuant to this paragraph, it shall, in the event and to the extent practicable, notify the other Parties prior to such disclosure so that the other Parties shall have an opportunity to discuss the content and timing of the proposed disclosure.

Confidentiality

12.3 Each Party undertakes to the other that, subject to clause 12.4, unless the prior written consent of the other Parties shall first have been obtained it shall, and shall procure that its officers, employees, advisers and agents shall keep confidential and shall not by failure to exercise due care or otherwise by any act or omission disclose to any person whatever, or use or exploit commercially for its or their own purposes, any of the confidential information of the other Parties. For the purposes of this clause 12.3, "**Confidential Information**" is the contents of this Agreement and any other agreement or arrangement contemplated by this Agreement and:

12.3.1 information of whatever nature concerning the business, finances, assets, liabilities, dealings, transactions, know-how, customers, suppliers, processes or affairs of the other Parties, or any of their group undertakings from time to time including the Company and each member of the Group; and

12.3.2 any information which is expressly indicated to be confidential in relation to the Party disclosing it (or in relation to any of its group undertakings from time to time);

which any Party may from time to time receive or obtain (verbally or in writing or in disk or electronic form) from any other Party as a result of negotiating, entering into, or performing its obligations pursuant to this Agreement and provided that such information concerning

the Group in relation to the period before Completion shall not be confidential information of the Sellers following Completion and, for the avoidance of doubt, such information concerning the Group in relation to the period before Completion shall be confidential information of the Purchaser following Completion.

- 12.4 The consent referred to in clause 12.3 shall not be required for disclosure by a Party of any confidential information:-
- 12.4.1 to its officers, employees, advisers and agents, in each case, as may be contemplated by this Agreement or, to the extent reasonably required to enable such Party to carry out its obligations under this Agreement and who shall in each case be made aware by such Party of its obligations under this clause and shall be required by such Party to observe the same restrictions on the use of the relevant information as are contained in clause 12.3;
 - 12.4.2 to the extent required by applicable law or by the regulations of any stock exchange or regulatory or fiscal authority to which such Party is or may become subject or, subject to clause 12.5, pursuant to any order of court or other competent authority or tribunal;
 - 12.4.3 to the extent that the relevant confidential information is in the public domain otherwise than by breach of this Agreement by any Party;
 - 12.4.4 which is disclosed to such Party by a third party who is not in breach or of any undertaking or duty as to confidentiality whether express or implied;
 - 12.4.5 which that Party lawfully possessed prior to obtaining it from another;
 - 12.4.6 to any professional advisers to the disclosing party who are bound to the disclosing party by a duty of confidence which applies to any information disclosed;
 - 12.4.7 in the case of the Purchaser only, to its funders, potential investors and their respective advisers, employees, officers, representatives or consultants; or
 - 12.4.8 to any other Party to this Agreement or pursuant to its terms.
- 12.5 If a Party becomes required, in circumstances contemplated by clause 12.4.2, to disclose any information such Party shall (save to the extent prohibited by law) give to the other Parties such notice as is practical in the circumstances of such disclosure and shall co-operate with the other Parties, having due regard to the other Parties' views, and take such steps, at the expense of the other Parties, as the other Parties may reasonably require in order to enable it to mitigate the effects of, or avoid the requirements for, any such disclosure.
- 12.6 The Sellers shall take all reasonable steps to assign to the Purchaser the benefit of any confidentiality undertakings which have been given to any or all of the Sellers by third parties in connection with the matters set out in this Agreement and/or the provision of information concerning the Group.

No partnership

- 12.7 Nothing in the Agreement or in any document referred to in it shall constitute any of the Parties a partner of any other, nor shall the execution, completion and implementation of this Agreement confer on any Party any power to bind or impose any obligations to any third Parties on any other Party or to pledge the credit of any other Party.

Assignment

- 12.8 This Agreement shall be binding on and be for the benefit of the successors and personal representatives of the Parties, but no Party may assign its rights under this Agreement.

Third party rights

- 12.9 With the exception of the rights of any director or former director or employee of any Group Company, pursuant to clauses 7.4, 7.5, 7.6 and/or 8.2 and any Group Company pursuant to clause 11 (such persons being together, the “**Third Parties**”) no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement. The rights of the Third Parties under clauses 7.4, 7.5, 7.6, 8.2 and 11 are also subject to the terms of clause 15.

Entire agreement

- 12.10 Each of the Parties to this Agreement confirms on behalf of itself and its group undertakings that this Agreement together with the documents in the agreed terms, represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing.
- 12.11 Each Party confirms on behalf of itself and its group undertakings that:
- 12.11.1 in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Agreement or the documents in the agreed terms; and
- 12.11.2 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, undertaking or commitment given or action taken in connection with this Agreement or with any of the documents in the agreed terms are those pursuant to this Agreement or such document in the agreed terms, and for the avoidance of doubt and without limitation, no Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in this Agreement).

Unenforceable provisions

- 12.12 If any provision or part of this Agreement is void or unenforceable due to any applicable law, it shall be deemed to be deleted and the remaining provisions of this Agreement shall continue in full force and effect.

Effect of Completion

- 12.13 So far as it remains to be performed this Agreement shall continue in full force and effect after Completion. The rights and remedies of the Parties shall not be affected by Completion.

Waiver

- 12.14 The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other Party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

Variation

- 12.15 No variation of this Agreement (or any of the documents referred to in it) shall be valid

unless it is in writing (which, for this purpose, does not include email) and signed by or on behalf of each of the Parties. The expression "variation" includes any variation, supplement, deletion or replacement however effected.

Counterparts

- 12.16 This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which when executed and delivered shall be an original but all the counterparts together constitute one instrument.

No set-off, deduction or counterclaim

- 12.17 Subject to clause 12.18 below in relation to withholdings and deductions that are required by law, every payment payable by the Purchaser under this Agreement shall be made in full without any set-off or counterclaim howsoever arising and shall be free and clear of, and without deduction of, or withholding for or on account of, any amount which is due and payable by the Sellers under this Agreement.

Gross up

- 12.18 All payments to be made under this Agreement shall be made without deduction or withholding other than any deduction or withholding required by law. If the payor of a payment under paragraphs 2 and 9 of the Tax Schedule or in respect of a Warranty Claim is required by law to make a deduction or withholding from any such payment under this Agreement:

- 12.18.1 the sum due under paragraphs 2 and 9 of the Tax Schedule or in respect of any Warranty Claim shall be increased to the extent necessary to ensure that, after the making of any deduction or withholding, the payee receives and retains a sum equal to that sum it would have received had no deduction or withholding been made;
- 12.18.2 the payor shall account to the relevant Taxation Authority for the amount deducted or withheld;
- 12.18.3 the payor shall give the payee a certificate or official receipt of the amount for which it accounted to the relevant Taxation Authority;

provided that to the extent that any additional amount paid under this Clause 12.18 or the circumstances giving rise to that payment result in the payee obtaining a Relief, the payee shall reimburse to the payor(s) such part of such additional amount as the payee certifies to the payor will leave it (after reimbursement) in no better or worse position than it would have been had the payor(s) not been required to make a deduction or withholding.

- 12.19 If any sum payable in respect of a Warranty Claim or a claim under paragraphs 2 and 9 of the Tax Schedule (the "**Basic Sum**") will be or has been subject to Tax in the hands of the person who is beneficially entitled to that payment (the "**recipient**"), the party making that payment shall, on demand of the recipient, pay an additional amount (an "**Additional Amount**") to the recipient after taking into account:

- 12.19.1 any Tax payable by the recipient in respect of the Basic Sum and the Additional Amount or either of the same; and
- 12.19.2 any Available Tax Reliefs in respect of the loss or outgoing to which the Basic Sum relates and which the recipient reasonably determines that it has utilised or will utilise to reduce its liability to Tax in respect of the Basic Sum or the Additional Amount (but subject always to the freedom of the recipient to order its Tax affairs as it thinks fit);

as will ensure that the recipient receives and retains a net sum equal to the sum which it would have received and retained had the Basic Sum not been subject to Tax (subject to not putting the recipient in a better after-Tax position than it would have been in if it had not incurred the loss or other matter in respect of which the Basic Sum is payable).

- 12.20 If a payor would otherwise be required to make an additional or increased payment to the Purchaser under Clauses 12.18 and 12.19 above, the payor and the payee shall co-operate in good faith to determine if any reasonable steps that are not materially prejudicial to either of them can be taken to mitigate that additional or increased payment obligation. Where any such steps are identified, the payor and the payee shall cooperate in good faith to take such steps or procure that such steps are taken (subject to the payor reimbursing the payee's reasonable costs and expenses incurred in connection with such steps).

Tax Schedule

- 12.21 The provisions of Schedule 9 to this Agreement (Tax Schedule) shall come into effect on Completion.

Costs

- 12.22 The Parties shall pay their own costs in connection with the preparation and negotiation of this Agreement and any matter contemplated by it.

Arms' Length basis

- 12.23 The Parties acknowledge that they have negotiated the terms of this Agreement with each other on an arms' length and good faith basis

13. NOTICES

- 13.1 Subject to the provisions of clause 12.1 in relation to the Sellers, a notice (including any approval, consent or other communication) in connection with this Agreement and the documents referred to in it:

13.1.1 must be in writing;

13.1.2 must be left at or delivered by courier to the address of the addressee or sent by recorded delivery (or airmail if posted to or from a place outside the United Kingdom) to the address of the addressee or sent by facsimile to the facsimile number of the addressee in each case which is specified in this clause in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address or facsimile number in the United Kingdom and/or marked for the attention of such other person, as the relevant Party may from time to time specify by notice given in accordance with this clause.

The relevant details of each Party at the date of this Agreement are:

Sellers:

Speciality Finance Limited
c/o Pro Vinci Limited 3rd Floor
70 Conduit Street
W1S 2GF

Attention of: Dawna Stickler

Bridge Properties (Arena Central) Limited
c/o Pro Vinci Limited 3rd Floor
70 Conduit Street
W1S 2GF

Attention of: Dawna Stickler

Purchaser:

Global Marine Holdings LLC
c/o Law Debenture Corporate Services Limited
Fifth Floor
100 Wood Street
London EC2V 7EX

Attention of: Andrea Marcuso

13.1.3 for the avoidance of doubt, must not be sent by electronic mail.

13.2 In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with clause 13.3.

13.3 Subject to clause 13.4 a notice is deemed to be received:

13.3.1 in the case of a notice left at the address of the addressee, upon delivery at that address;

13.3.2 in the case of a posted letter, on the third day after posting or, if posted to or from a place outside the United Kingdom, the seventh day after posting; and

13.3.3 in the case of a facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

13.4 A notice received or deemed to be received on a day which is not a business day in the place of receipt, or after 5pm on any business day in the place of receipt, shall be deemed to have been received on the next following business day in the place of receipt (and for the purposes of this clause a business day in the place of receipt shall mean a day (other than a Saturday or Sunday) on which banks are open for general business in that place)

13.5 A notice given or document supplied to the Sellers or any of them in accordance with the details specified for the Sellers above shall be deemed to have been given or supplied to all the Sellers to whom such notice is addressed.

14. PROCESS AGENTS

14.1 Each Seller irrevocably appoints Paul Taylor of Fox Williams LLP, Ten Dominion Street, London EC2M 2EE as its agent to receive on its behalf in England or Wales service of any proceedings, including any matters relating to the operation of the Escrow Account. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by each Seller) and shall be valid until such time as the Purchaser has received prior written notice that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Sellers shall forthwith appoint a substitute acceptable to the Purchaser and deliver to the Purchaser the new agent's name and address within England and Wales.

14.2 The Purchaser irrevocably appoints Law Debenture Corporate Services Limited of fifth floor, 100 Wood Street, London, EC2V 7EX as its agent to receive on its behalf in England or Wales service of any proceedings, including any matters relating to the operation of the Escrow Account. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Purchaser) and shall be valid until such time as the Sellers' Representative has received prior written notice that such agent

has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Purchaser shall forthwith appoint a substitute acceptable to the Sellers and deliver to the Sellers' Representative the new agent's name and address within England and Wales.

15. **GOVERNING LAW AND JURISDICTION**

15.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

15.2 Each Party irrevocably agrees that the Courts of England shall have exclusive jurisdiction in relation to any dispute or claim arising out of or in connection with this Agreement or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims).

15.3 Each Party irrevocably waives any right that it may have to object to an action being brought in those Courts, to claim that the action has been brought in an inconvenient forum, or to claim that those Courts do not have jurisdiction.

IN WITNESS of which the Parties have executed this Agreement on the date first mentioned above.

SCHEDULE 1

DETAILS OF SELLERS, SHARES AND CONSIDERATION

Sellers' Names and Addresses	Number of Shares held at date of Agreement	Proportion of Sellers' Completion Payment plus Shareholder Debt payment/Escrow amount in £ sterling	Less Shareholder Debt/Escrow Amount £ Sterling
Speciality Finance Limited	664,510	37,845,098	22,845,098
Bridge Properties (Arena Central) Limited	563,285	32,083,010	16,623,007
TOTALS	<u>1,227,795</u>	<u>69,928,108</u>	<u>39,468,105</u>

SCHEDULE 2
DETAILS OF THE COMPANY
PART 1

Name: Bridgehouse Marine Limited

Registered number: 04352407

Company status: Private limited company

Registered office: 3rd Floor, Mutual House, 70 Conduit Street, London W1S 2GF

Issued share capital: 1,265,732 ordinary shares

Directors: Sinead Irving
Dawna Stickler

Secretary (if any): Nominee Service Holdings Limited

Outstanding charges: Guarantee and debenture in favour of Barclays Bank Plc (created 7 June 2012)

PART 2
DETAILS OF THE SUBSIDIARIES

Name: Global Marine Systems Limited

Registered number: 01708481

Company status: Private limited company

Country of incorporation: United Kingdom

Registered office: New Saxon House, 1 Winsford Way, Boreham Interchange, Chelmsford CM2 5PD

Issued share capital: 27,000,000 Ordinary A shares and 2,999,999 Ordinary B shares

Registered shareholders: Bridgehouse Marine Limited (all of the Ordinary A shares) and various employees of Global Marine Systems Limited (all of the Ordinary B shares)

Directors: Ian Douglas, Bill Donaldson, Philip Metcalf and Dawna Stickler

Secretary (if any): Beverley Neilson-Watts

Outstanding charges: (1) Mortgage in favour of DYVI Cable Ship AS (created 14 March 2006)
(2) Deed of Charge in favour of Barclays Bank Plc (created 7 June 2012)
(3) Guarantee and Debenture in favour of Barclays Bank Plc (created 7 June 2012)
(4) Fixed Charge in favour of Barclays Bank Plc (created 30 April 2013)
(5) Fixed Charge in favour of DVB Bank SE Nordic Branch (created 23 January 2014)
(6) Fixed Charge in favour of DVB Bank SE Nordic Branch (created 23 January 2014)
(7) Fixed Charge in favour of DVB Bank SE Nordic Branch (created 23 January 2014)

Name: Global Marine Systems Oil and Gas Limited

Registered number: 07630173

Company status: Private limited company

Country of incorporation: United Kingdom

Registered office: New Saxon House, 1 Winsford Way, Boreham Interchange, Chelmsford CM2 5PD

Issued share capital: 1 ordinary share

Registered shareholders: wholly owned by Global Marine Systems Limited

Directors: Ian Douglas, Bill Donaldson

Secretary (if any): none

Outstanding charges: n/a

Name: Red Sky Subsea Limited
Registered number: 03812088
Company status: Private limited company
Country of incorporation: United Kingdom
Registered office: New Saxon House, 1 Winsford Way, Boreham Interchange, Chelmsford CM2 5PD
Issued share capital: 100 ordinary shares
Registered shareholders: wholly owned by Global Marine Systems Limited
Directors: Ian Douglas, Bill Donaldson
Secretary (if any): Beverley Neilson-Watts
Outstanding charges: n/a

Name: Global Marine Systems (Depots) Limited
Registered number: 414820-7
Company status: Private corporation
Country of incorporation: Canada
Registered office: Suite 2600, Three Bentall Centre, PO Box 49314, 595 Burrard St, Vancouver BC V7X 1L3
Issued share capital: 60,000 ordinary shares
Registered shareholders: wholly owned by Global Marine Systems Limited
Directors: Ian Douglas
Secretary (if any): none
Outstanding charges: n/a

Name: Global Marine Systems (Vessels) Limited
Registered number: 06057657
Company status: Private limited company
Country of incorporation: United Kingdom
Registered office: New Saxon House, 1 Winsford Way, Boreham Interchange, Chelmsford CM2 5PD
Issued share capital: 2 ordinary shares

Registered shareholders: wholly owned by Global Marine Systems Limited

Directors: Ian Douglas, Bill Donaldson

Secretary (if any): Beverley Neilson-Watts

Outstanding charges: 7 charges in favour of DVB Bank SE Nordic Branch (all created on 23 January 2014)

Name: GMSG Limited

Registered number: 42581

Company status: Private limited company

Country of incorporation: Guernsey

Registered office: Frances House, Sir William Place, St Peter Port, Guernsey GY1 4EA

Issued share capital: 2 ordinary shares

Registered shareholders: wholly owned by Bachmann Secretarial Services Limited in Trust for Global Marine Systems Limited

Directors: N Saul, C McMinn,

Secretary (if any): Bachmann Secretarial Services Limited

Outstanding charges: n/a

Name: Global Marine Search Limited

Registered number: 06629207

Company status: Private limited company

Country of incorporation: United Kingdom

Registered office: New Saxon House, 1 Winsford Way, Boreham Interchange, Chelmsford CM2 5PD

Issued share capital: 1 ordinary share

Registered shareholders: wholly owned by Global Marine Systems Limited

Directors: Ian Douglas, Bill Donaldson

Secretary (if any): Beverley Neilson-Watts

Outstanding charges: n/a

Name: Global Marine Systems Pension Trustee Limited
Registered number: 03817255
Company status: Private limited company
Country of incorporation: United Kingdom
Registered office: New Saxon House, 1 Winsford Way, Boreham Interchange, Chelmsford CM2 5PD
Issued share capital: 1 ordinary share
Registered shareholders: wholly owned by Global Marine Systems Limited
Directors: Jaime Cable, Guy Harding, Roy Webber
Secretary (if any): Beverley Neilson-Watts
Outstanding charges: n/a

Name: Global Marine Salvage Limited
Registered number: 105745C
Company status: Private limited company
Country of incorporation: Isle of Man
Registered office: Bridge House, Bridge Street, Castletown, Isle of Man IM9 1AX
Issued share capital: 2 ordinary shares
Registered shareholders: wholly owned by Global Marine Systems Limited
Directors: Simon McNally, Donna Hocking
Secretary (if any): Simon McNally
Outstanding charges: n/a

Name: GMSL Employee Benefit Trust Limited
Registered number: 06424903
Company status: Private limited company
Country of incorporation: United Kingdom
Registered office: New Saxon House, 1 Winsford Way, Boreham Interchange, Chelmsford CM2 5PD
Issued share capital: 1 ordinary share
Registered shareholders: wholly owned by Global Marine Systems Limited
Directors: Ian Douglas, Bill Donaldson

Secretary (if any): Beverley Neilson-Watts

Outstanding charges: n/a

Name: GMS Guernsey Pension Plans Limited

Registered number: 36861

Company status: Private limited company

Country of incorporation: Guernsey

Registered office: PO Box 100, Trafalgar Court, Admiral Park, St Peter Port, Guernsey. GY1 3EL

Issued share capital: 2 ordinary shares

Registered shareholders: GMSG limited 1 shares and Artemis Trustees Limited 1 share.

Directors: Ian Clarke, Robert Sinclair, Roy Webber, Jaime Cable

Secretary (if any): Artemis Secretaries Limited

Outstanding charges: n/a

Name: Global Marine Systems (Bermuda) Limited

Registered number: EC 27645

Company status: Private limited company

Country of incorporation: Bermuda

Registered office: Canons Court, 22 Victoria Street, Hamilton HM 12 Bermuda

Issued share capital: 12,000 ordinary shares

Registered shareholders: wholly owned by Global Marine Systems Limited

Directors: Ian Douglas, Nicola Broom

Secretary (if any): Appleby Services (Bemuda) Limited

Outstanding charges: n/a

Name: Global Marine Systems (Netherlands) BV

Registered number: 27350374

Company status: Private limited company

Country of incorporation: Netherlands

Registered office: New Saxon House, 1 Winsford Way, Boreham Interchange, Chelmsford CM2 5PD
Issued share capital: 180 ordinary shares
Registered shareholders: wholly owned by Global Marine Systems Limited
Directors: Global Marine Systems Limited
Secretary (if any): none
Outstanding charges: n/a

Name: Global Marine Systems (Investments) Limited
Registered number: 03917661
Company status: Private limited company

Country of incorporation: United Kingdom

Registered office: New Saxon House, 1 Winsford Way, Boreham Interchange, Chelmsford CM2 5PD
Issued share capital: 2 ordinary shares
Registered shareholders: wholly owned by Global Marine Systems Limited
Directors: Ian Douglas, Bill Donaldson
Secretary (if any): Beverley Neilson-Watts
Outstanding charges: n/a

Name: Global Marine Systems (Americas) Inc
Registered number: 000968460
Company status: Private limited company
Country of incorporation: United States of America
Registered office: 425 Boylston Street, 3rd Floor, Boston, MA 02116 USA
Issued share capital: 1000 ordinary shares
Registered shareholders: wholly owned by Global Marine Systems Limited
Directors: Ian Douglas, Nicola Broom
Secretary (if any): Nicola Broom
Outstanding charges: n/a

Name: Vibro-Einspultechnik Duker and Wasserbau GmbH
Registered number: HRB 17927
Company status: Private limited company
Country of incorporation: Germany
Registered office: c/o avocado rechtsanwälte Schillerstrasse 20, D-60313 Frankfurt an Main
Issued share capital: 1 ordinary share
Registered shareholders: wholly owned by Global Marine Systems Limited
Directors: Ian Douglas
Secretary (if any): None
Outstanding charges: n/a

Name: Global Marine Cable Systems Pte Limited
Registered number: 199303480D
Company status: Private limited company
Country of incorporation: Singapore
Registered office: 80 Raffles Place, ~32-01 UOB Plaza, Singapore 048624
Issued share capital: 100,000 ordinary shares
Registered shareholders: wholly owned by Vibro-Einspultechnik Duker and Wasserbau GmbH
Directors: Ian Douglas, Vernon Walters
Secretary (if any): M Sivaanathan, G Singham
Outstanding charges: none

Name: Global Marine Systems (Vessels II) Limited
Registered number: 03333410
Company status: Private limited company
Country of incorporation: United Kingdom
Registered office: New Saxon House, 1 Winsford Way, Boreham Interchange, Chelmsford CM2 5PD
Issued share capital: 10,000 ordinary shares
Registered shareholders: wholly owned by Global Marine Systems Limited
Directors: Ian Douglas, Bill Donaldson

Secretary (if any): Beverley Neilson-Watts

Outstanding charges: n/a

Name: Global Cable Technology Limited

Registered number: 07268234

Company status: Private limited company

Country of incorporation: United Kingdom

Registered office: A7 Railway Triangle, Walton Road, Portsmouth P06 1TN

Issued share capital: 35 Ordinary A shares and 65 Ordinary B shares

Registered shareholders: Ocean Cable Technologies Limited (all of the Ordinary A shares) and Global Marine Systems Limited (all of the Ordinary B shares)

Directors: Stephen Beech, Peter Madden, Andrew Thomas, Vernon Walters

Secretary (if any): Peter Madden

Outstanding charges: n/a

Name: Harmstorf Submarine Systems (Malaysia) Sdn Bhd (Malaysia)

Registered number: 286540-U

Company status: Private limited company

Country of incorporation: Malaysia

Registered office: 84 Jalan K-2, Aman Melawati, Kuala Lumpur, Wilayah Persekutuan 53100

Issued share capital: 200,000 ordinary shares

Registered shareholders: Global Marine Systems Limited 60,000 shares, Aznam Bin Mansor 140,000 shares

Directors: Vernon Walters, Aznam Bin Mansor, Loong Caesar

Secretary (if any): Othman Bin Mohd Shah

Outstanding charges: n/a

Name: Visser Smit – Global Marine VOF

Registered number: 24428882

Company status: Partnership

Country of incorporation: Netherlands

Registered office: Rietgorsweg 67, 3356LJ Oaoendrecht

Issued share capital: none

Registered shareholders: Global Marine Systems Limited - 50%, Volker Stevin Marine Contracting BV – 50%

Partners: Volker Stevin Marine Contracting BV, Global Marine Systems Limited

Secretary (if any): none

Outstanding charges: n/a

Name: International Cablesip Pte Limited

Registered number: 199105577G

Company status: Private limited company

Country of incorporation: Singapore

Registered office: 375 Tanjong Katong Road, Tanjong Katong Telephone Exchange, Singapore 437132

Issued share capital: 1,000,000 ordinary shares

Registered shareholders: Global Marine Systems Limited - 30%, Asean Cablesip Private Limited – 30%, Singapore Telecommunications Limited – 40%

Directors: Ooi Seng Keat, Lian Bee Leng, Ian Douglas, Vernon Walters, Ho Chiang Chien, Fuad Fachroeddin, Apichet Chulakasien, Lim Ming Soon, Albert Tuason, Jaime Cable

Secretary (if any): None

Outstanding charges: n/a

Name: Sembawang Cable Depot Pte Limited

Registered number: 198601184R

Company status: Private limited company

Country of incorporation: Singapore

Registered office: 375 Tanjong Katong Road, Tanjong Katong Telephone Exchange, Singapore 437132

Issued share capital: 10 ordinary shares

Registered shareholders: Global Marine Systems Limited - 40%, Singapore Telecommunications Limited – 60%

Directors: Ang Joon Ping Joshua, Ian Douglas, Ooi Seng Keat, Vernon Walters, Lian Bee Leng

Secretary (if any): None

Outstanding charges: n/a

Name: Sino British Submarine Systems Co Limited

Registered number: 310000400105846

Company status: Private limited company

Country of incorporation: China

Registered office: 295 Tonghai Road, Minhang District, Shanghai Legal

Issued share capital: 39,000 ordinary shares

Registered shareholders: Global Marine Systems Limited - 49%. China Communications Services Corporation - 51%

Directors: Yuan Jinlin, Bruce Neilson-Watts, Zhao Xujing

Secretary (if any): None

Outstanding charges: n/a

Name: Shanghai Jian Long ROV Science and Technology Co. Ltd

Registered number: 310104000525783

Company status: Private limited company

Country of incorporation: China

Registered office: Room D278, Building 2, No. 1500, LongWu Road, Shanghai

Issued share capital: 1,000,000 ordinary shares

Registered shareholders: Sino British Submarine Systems Co Limited - 80% (therefore Global Marine Systems owns 39.2% of Shanghai Jian Long)
Shanghai JiaoTong University Underwater Technology (Group) Co. Ltd - 20%

Directors: Zhao Xujing, Wang Aiqiang, Shen Yu

Secretary (if any): None

Outstanding charges: n/a

Name: Huawei Marine Systems Co Limited

Registered number: 01207516

Company status: Private limited company

Country of incorporation: Hong Kong

Registered office: 9/F, Tower 6, The Gateway, No.9 Canton Road, Tsimshatsui, Kowloon, Hong Kong

Issued share capital: 300,000,000 ordinary shares

Registered shareholders: Global Marine Systems Limited - 49%, Huawei Tech Investment Co. Limited – 51%

Directors: Guo Ping, Ding Yun, Zha Jun, Mao Shengjiang, Ian Douglas, Nigel Bayliff, Gabriel Ruhan

Secretary (if any): None

Outstanding charges: n/a

Name: Huawei Marine Networks Limited

Registered number: 120000400096093

Company status: Private limited company

Country of incorporation: China

Registered office: No. W3C West Sec, Binhai Fin. Ave, No 51, 3rd Street, Tianjin, China

Issued share capital: 238,887,200 ordinary shares

Registered shareholders: wholly owned by Huawei Submarine Systems Co Limited (therefore Global Marine Systems owns 49% of Huawei Marine Networks Limited)

Directors: Guo Ping, Wang Wenqing, Mao Shengjiang, Ian Douglas, Nigel Bayliff, Gabriel Ruhan

Secretary (if any): None

Outstanding charges: n/a

SCHEDULE 3
COMPLETION OBLIGATIONS
PART 1
SELLERS' OBLIGATIONS

At Completion, the Sellers shall:

1. deliver or cause to be delivered to the Purchaser:
 - 1.1 a copy of the minutes of a meeting of the directors of both Speciality Finance Limited and Bridge Properties Limited authorising each company to enter into and perform their obligations under this Agreement;
 - 1.2 transfers of all the Shares each duly executed by the appropriate Seller in favour of the Purchaser together with definitive share certificates for them each showing the name of the relevant Seller as the registered holder;
 - 1.3 the written resignations of each of the directors and the secretary of the Company and of Philip Metcalf and Dawna Stickler from each Subsidiary of which they are a director in the agreed form;
 - 1.4 to the extent not in the possession of a Group Company, the cheque books, certificates of incorporation, common seals and all statutory and minute books (which shall be written up to, but not including, the date of Completion) of each Group Company together with all unused share certificate forms;
 - 1.5 in respect of each Group Company, any authentication code issued by Companies House or written confirmation that no such code has been issued;
 - 1.6 the duly executed Management Comfort Letters;
 - 1.7 a power of attorney in the agreed form executed by each of the Sellers; and
 - 1.8 the Escrow Letter duly executed by the Escrow Agent and the Sellers' Representative; and
2. procure that the following business is transacted at a meeting of the directors of the Company:
 - 2.1 the directors of the Company shall approve registration of the transfers of the Shares to the Purchaser and the entry of the Purchaser in the register of members of the Company, in each case subject to the transfers being presented duly stamped;
 - 2.2 the situation of the registered office of the Company shall be changed to the registered office of GMSL;
 - 2.3 Mr. Paul Voight, Mr. Dick Fagerstal and Mr. Wayne Barr shall be appointed as directors of the Company and Ms. Andrea Mancuso shall be appointed as secretary of the Company, in each case subject to such person having consented to act; and
3. procure that the Company:
 - 3.1 signs the Letter of Instruction; and
 - 3.2 sends the Offer Letter to all of the GMSL B Shareholders.

PART 2
PURCHASER'S OBLIGATIONS

At Completion, the Purchaser shall:

1. deliver to the Sellers:
 - 1.1 a copy of the minutes of a meeting of the directors of the Purchaser authorising the Purchaser to enter into and perform its obligations under this Agreement;
 - 1.2 any power of attorney or other authority under which this Agreement or any document referred to in it is executed on behalf of the Purchaser;
 - 1.3 the duly signed Letter of Instruction;
 - 1.4 the Escrow Letter duly executed by the Purchaser; and
2. pay by electronic transfer to the Sellers' Solicitors' Client Account the Sellers' Completion Payment, the GMSL B Shareholders' Completion Payment and the payment to GMSL pursuant to clause 4.1.3 on the Completion Date or such later time as the Sellers may agree.
3. pay the Escrow Amount into the Escrow Account on the Completion Date or such later time as the Sellers may agree.

SCHEDULE 4
SELLERS' WARRANTIES

1. Title to Shares

- 1.1 Each of the Sellers is the legal and beneficial owner of, and is or will at Completion be entitled to transfer the legal and beneficial title to, those Shares set out opposite the Seller's name in column (2) of Schedule 1, free from any Encumbrances.
- 1.2 The Shares set out in Schedule 1, together with the 37,937 ordinary shares in the Company held by Andrew Ruhan, constitute the whole of the issued share capital of the Company and are fully paid.
- 1.3 The Shares and the shares of the Company's Subsidiaries are free from all Encumbrances.
- 1.4 So far as the Sellers are aware, the drag-along provisions contained in the articles of association of GMSL constitute valid and binding obligations enforceable by the Sellers against the GMSL B Shareholders, in accordance with their respective terms, and the Sellers are not aware of any grounds on which the GMSL B Shareholders may legitimately fail to give effect to such provisions or on which the GMSL B Shareholders may be entitled to receive a different consideration for the B Ordinary Shares than that paid for the Shares.

2. Subsidiaries

- 2.1 The share capital of each of the Subsidiaries is beneficially owned as shown in Part 2 of Schedule 2, free from any Encumbrances.
- 2.2 Part 2 of Schedule 2 lists all the Subsidiaries of the Company at the date of this Agreement and sets out particulars of their issued share capital.
- 2.3 The Company is the sole legal and beneficial owner of the whole issued share capital of each company listed in Part 2 of Schedule 2.
- 2.4 The issued shares of the Company's Subsidiaries are fully paid up.

3. Share capital of the Company and Subsidiaries

- 3.1 No right has been granted to any person to require the Company or any of its Subsidiaries to issue any share capital and no Encumbrance has been created in favour of any person affecting any unissued shares or debentures or other unissued securities of the Company or any of its Subsidiaries.
- 3.2 No commitment has been given to create an Encumbrance affecting the Shares or the issued shares of the Company's Subsidiaries (or any unissued shares or debentures or other unissued securities of the Company or any of its Subsidiaries) or for any of them to issue any share capital and no person has claimed any rights in connection with any of those things.
- 3.3 Neither the Company nor any of its Subsidiaries:
- 3.3.1 holds or beneficially owns, or has agreed to acquire, any securities of any corporation other than its own Subsidiaries;
- 3.3.2 is or has agreed to become a member of any partnership or other unincorporated association, joint venture or consortium (other than recognised trade associations);

3.3.3 has, outside its country of incorporation, any branch or permanent establishment; or

3.3.4 has issued any securities that are convertible into shares.

3.4 Neither the Company nor any of its Subsidiaries has at any time in the six years prior to the Completion Date:

3.4.1 purchased, redeemed or repaid any of its own share capital; or

3.4.2 given any financial assistance in contravention of any applicable law or regulation.

3.5 In the six years prior to the Completion Date, all dividends or distributions declared, made or paid by the Company or any of its Subsidiaries have declared, made or paid in accordance with that company's constitutional documents, all applicable legislation and any agreements or arrangements made with any third party regulating the payment of dividends and distributions.

4. **Constitutional and corporate documents**

4.1 The copies of the constitutional and corporate documents of the Company and its Subsidiaries Disclosed to the Purchaser or its advisers in the Data Room are true, accurate and complete in all respects and copies of all the resolutions and agreements required to be annexed to or incorporated in those documents by the applicable law are annexed or incorporated.

4.2 All statutory books and registers of the Company and its Subsidiaries have been properly kept and no notice or allegation that any of them is incorrect or should be rectified has been received.

4.3 All returns, particulars, resolutions and other documents which the Company or any of its Subsidiaries is required by law to file with or deliver to any authority in any jurisdiction (including, in particular, one responsible for maintaining a register of companies) have been correctly made up and filed or, as the case may be, delivered.

5. **Corporate power and authority**

Each Seller has the power and authority to enter into and perform this Agreement and any agreement entered into pursuant to the terms of this Agreement and the provisions of this Agreement and any agreement entered into pursuant to the terms of this Agreement, constitute valid and binding obligations on the Sellers and are enforceable against the Sellers, in accordance with their respective terms.

6. **No breach**

6.1 The execution and delivery by each Seller of, and the performance by each Seller of their obligations under, this Agreement and any agreement entered into pursuant to the terms of this Agreement will not:

6.1.1 result in a breach of or conflict with any provision of any constitutional documents; or

6.1.2 result in a material breach of, or constitute a material default under, any instrument to which it is a party or by which it is bound; or

6.1.3 so far as the Sellers are aware, result in a breach of any order, judgment or decree of any court or governmental agency to which any Seller is a party or by which any Seller is bound.

7. **Consents**

All consents, permissions, authorisations, approvals and agreements of third parties and all authorisations, registrations, declarations, filings with any governmental department, commission, agency or other organisation having jurisdiction over the Sellers which are necessary or desirable for the Sellers to obtain in order to enter into and perform this Agreement and any agreement entered into pursuant to the terms of this Agreement in accordance with its terms, have been unconditionally obtained in writing and have been Disclosed in writing to the Sellers in the Data Room.

8. **Power of attorney**

8.1 There are no powers of attorney in force given by the Company or any of its Subsidiaries.

8.2 No person, as agent or otherwise, is entitled or authorised to bind or commit the Company or any of its Subsidiaries to any obligation not in the ordinary course of the Company's or, in the case of a Subsidiary, the Subsidiary's, business.

8.3 The Data Room contains details of all persons who have authority to bind the Company and its Subsidiaries in the ordinary course of business.

9. **Solvency**

No order has been made, petition presented or meeting convened for the winding up, or bankruptcy of the Sellers, nor any other action taken in relation to the appointment of an administrator, liquidator, receiver, administrative receiver, compulsory manager or any provisional liquidator (or equivalent in any other jurisdiction) (or other process whereby the business is terminated and the assets of the company concerned are distributed amongst the creditors and/or shareholders or other contributors), and there are no proceedings under any applicable insolvency, reorganisation or similar laws in any relevant jurisdiction, and no events have occurred which, under applicable laws, would justify any such proceedings.

10. **Effect of sale of shares**

Neither the acquisition of the Shares by the Purchaser nor compliance with the terms of this Agreement will entitle any person to receive from the Company or any of its Subsidiaries any bonus payment, finder's fee, brokerage or other commission in connection with the purchase of the Shares by the Purchaser.

11. **Accounts**

11.1 The Accounts have been prepared in accordance with UK GAAP.

11.2 The Accounts have been audited by an auditor of good repute qualified in the UK and the auditor has given an auditor's certificate without qualification.

11.3 The Accounts:

11.3.1 make proper and adequate provision or reserve for all bad and doubtful debts, obsolete or slow-moving stock and for depreciation on non-current assets;

11.3.2 do not overstate the value of current or non-current assets; and

11.3.3 do not understate any liabilities (whether actual or contingent).

11.4 The Accounts give a true and fair view of the state of affairs of the Company and its Subsidiaries (and, in relation to the consolidated accounts of the Company and its Subsidiaries and of the Group as a whole) as at the Accounts Date and of the profit and loss of the Company and its Subsidiaries and of the Group for the financial year ended on that date.

- 11.5 The Accounts contain either provision adequate to cover, or full particulars in notes of, all Taxation (including deferred taxation) and other liabilities (whether quantified, contingent, disputed or otherwise) of the Company and its Subsidiaries as at the Accounts Date.
- 11.6 The Accounts are not affected by any unusual or non-recurring items or any other factor that would make the financial position and results shown by the Accounts unusual or misleading in any material respect.
- 11.7 The Accounts have been filed in accordance with the requirements of the laws of England.
- 11.8 The Accounts have been prepared on a basis consistent with the audited accounts of, as the case may be, the Company, its Subsidiaries or the consolidated accounts of the Company and Subsidiaries, for the two prior accounting periods without any change in accounting policies used.

12. **Contracts**

- 12.1 For the purposes of this paragraph, “**Material Contract**” shall mean an agreement or arrangement to which the Company or one of its Subsidiaries is a party and which is of material importance to the business, profits or assets of the Company or any of its Subsidiaries.
- 12.2 Except for the agreements and arrangements Disclosed in the Data Room, neither the Company nor any of its Subsidiaries is a party to or subject to any agreement or arrangement which:
- 12.2.1 is a Material Contract; or
 - 12.2.2 is of an unusual or exceptional nature; or
 - 12.2.3 is not in the ordinary and usual course of business of the Company or its Subsidiaries; or
 - 12.2.4 may be terminated as a result of any Change of Control of the Company; or
 - 12.2.5 restricts the freedom of the Company or any of its Subsidiaries to carry on the whole or any part of its business in any part of the world in such manner as it thinks fit; or
 - 12.2.6 involves agency or distributorship; or
 - 12.2.7 involves partnership, joint venture, consortium, joint development, shareholders or similar arrangements; or
 - 12.2.8 is incapable of complete performance in accordance with its terms within six months after the date on which it was entered into; or
 - 12.2.9 cannot be readily fulfilled or performed by the Company or the relevant Subsidiary on time without undue or unusual expenditure of money and effort outside the ordinary course of business; or
 - 12.2.10 involves or is likely to involve an aggregate consideration payable by or to the Company or any of its Subsidiaries in excess of £25 million; or
 - 12.2.11 requires the Company or any of its Subsidiaries to pay any commission, finders’ fee, royalty or the like; or

- 12.2.12 is not on arm's length terms; or
- 12.2.13 is for the supply of goods and/or services by or to the Company or any of its Subsidiaries on terms under which retrospective or future discounts, price reductions or other financial incentives are given.
- 12.3 The Sellers have obtained all requisite consents required under any Material Contracts necessary to permit, or to give full effect to, the transactions contemplated by this Agreement.
- 12.4 So far as the Sellers are aware, each Material Contract is in full force and effect and binding on the parties to it. Neither the Company nor any of its Subsidiaries have defaulted under or breached a Material Contract and so far as each Seller is aware:
- 12.4.1 no other party to a Material Contract has materially defaulted under or breached such a contract; and
- 12.4.2 no such material default or breach by the Company, any of its Subsidiaries or any other party is likely or has been threatened.
- 12.5 No notice of termination of a Material Contract has been received or served by the Company or any of its Subsidiaries and there are no grounds for determination, rescission, avoidance, repudiation or a material change in the terms of any such contract.
- 12.6 The Sellers have obtained all requisite consents required any under joint venture arrangements to which the Company and/ or any of the Subsidiaries are party or subject, or waivers of any applicable rights thereunder (including, without limitation, any rights relating to a Change of Control), necessary to allow full effect to be given to this Agreement and the transactions contemplated hereunder, in each case excluding the joint venture contract between GMSL and China Telecommunications Corporation Industrial Assets Management Center dated 10 July 2009 and, so far as the Sellers are aware, the entry into this Agreement and the transactions contemplated hereunder will not result in the termination of any of such joint venture arrangements.
13. **Information**
- 13.1 The particulars relating to the Company and its Subsidiaries in this Agreement are accurate and not misleading.
- 13.2 So far as the Sellers are aware, there is no information that has not been Disclosed in the Data Room which, if disclosed, might reasonably affect the willingness of the Purchaser to buy the Shares on the terms of this Agreement.
14. **Insurance**
- 14.1 The insurance policies maintained by or on behalf of the Company and its Subsidiaries provide full indemnity cover against all losses and liabilities including business interruption and other risks that are normally insured against by a person carrying on the same type of business as the Company and its Subsidiaries.
- 14.2 The particulars of the insurance policies set out in the Data Room are accurate and not misleading.
- 14.3 There are no material outstanding claims under, or in respect of the validity of, any of those policies and so far as the Sellers are aware, there are no circumstances likely to give rise to any claim under those policies.
- 14.4 All the insurance policies are in full force and effect, are not void or voidable, and so far as the Sellers are aware, nothing has been done or not done which could make any of them void or voidable and Completion will not terminate, or entitle any insurer to terminate, any such policy.

15. **Customers and suppliers**
- 15.1 In the 12 months ending with the date of this Agreement, neither the business of the Company nor of any of its Subsidiaries has been materially affected in an adverse manner as a result of any one or more of the following things happening to the Company or any of its Subsidiaries:
- 15.1.1 the loss of any of its customers or suppliers; or
- 15.1.2 a reduction in trade with its customers or in the extent to which it is supplied by any of its suppliers; or
- 15.1.3 a change in the terms on which it trades with or is supplied by any of its customers or suppliers.
16. **Bank accounts and borrowings**
- 16.1 Full particulars of all money borrowed by the Company and each of its Subsidiaries (including full particulars of the terms on which such money has been borrowed) have been Disclosed in the Data Room.
- 16.2 No guarantee, mortgage, charge, pledge, lien assignment or other security agreement or arrangement has been given by or entered into by the Company or any of its Subsidiaries or any third party in respect of borrowings or other obligations of the Company or its Subsidiaries.
- 16.3 The total amount borrowed by the Company or any of its Subsidiaries does not exceed any limitations on the borrowing powers contained:
- 16.3.1 in the constitutional documents of the Company or (in the case of a Subsidiary) the Subsidiary; or
- 16.3.2 in any debenture or other deed or document binding on the Company or Subsidiary.
- 16.4 Neither the Company nor any of its Subsidiaries has any outstanding loan capital or has lent any money that has not been repaid and there are no debts owing to the Company or its Subsidiaries other than debts that have arisen in the normal course of business.
- 16.5 Neither the Company nor any of its Subsidiaries:
- 16.5.1 factored any of its debts or discounted any of its debts or engaged in financing of a type which would not need to be shown or reflected in the Accounts; or
- 16.5.2 waived any right of set-off it may have against any third party.
- 16.6 No indebtedness of the Company or any of its Subsidiaries is due and payable and no security over any of the assets of the Company or any of its Subsidiaries is now enforceable, whether by virtue of the stated maturity date of the indebtedness having been reached or otherwise. Neither the Company nor any of its Subsidiaries has received any notice the terms of which have not been fully complied with and/or carried out from any creditor requiring any payment to be made and/or intimating the enforcement of any security which it may hold over the assets of the Company of its Subsidiaries.
- 16.7 Neither the Company nor any of its Subsidiaries has given or entered into any guarantee, mortgage, charge, pledge, lien, assignment or other security agreement or arrangement or is responsible for the indebtedness, or for the default in the performance of any obligation, of any other person.

- 16.8 Neither the Company nor any of its Subsidiaries is subject to any arrangement for receipt or repayment of any grant, subsidy or financial assistance from any government department or other body.
- 16.9 Following Completion but no later than 5 Business Days from the Completion Date, particulars of the balances on all the bank accounts of the Company and its Subsidiaries showing the position as at the Completion Date will be handed to the Purchaser. The Company and its Subsidiaries have no other bank accounts.
- 16.10 As far as the Sellers are aware, a Change of Control of the Company will not result in:
- 16.10.1 the termination of or material effect on any financial agreement or arrangement to which the Company, or any of its Subsidiaries, is a party or subject; or
 - 16.10.2 any indebtedness of the Company or of any of its Subsidiaries becoming due, or capable of being declared due and payable, prior to its stated maturity; or
 - 16.10.3 any fee or penalty becoming payable under any financial agreement or arrangement to which the Company, or any of its Subsidiaries, is party or subject.

17. **Licences**

- 17.1 Each of the Company and its Subsidiaries has all necessary licences, consents, permits and authorities necessary to carry on its business in the places and in the manner in which its business is now carried on, all of which are valid and subsisting.
- 17.2 So far as the Sellers are aware, there is no reason why any of the licences, consents, permits and authorities referred to in paragraph 17.1 should be suspended, cancelled, revoked or not renewed on the same terms.

18. **Litigation and claims**

- 18.1 Neither the Company nor any of its Subsidiaries nor any person for whom the Company or any of its Subsidiaries is vicariously liable:
- 18.1.1 is engaged in any litigation, administrative, mediation or arbitration proceedings or other proceedings or hearings before any statutory or government body, department, board or agency (except for debt collection in the normal course of business); or
 - 18.1.2 is the subject of any investigation, inquiry or enforcement proceedings by any government, administrative or regulatory body.
- 18.2 No proceedings, investigation or inquiry as are mentioned in paragraph 18.1 of this Schedule have been threatened or are pending and, so far as the Sellers are aware, there are no circumstances likely to give rise to any such proceedings.
- 18.3 The Company and its Subsidiaries are not affected by any existing or pending judgments or rulings and have not given any undertakings arising from legal proceedings to a court, governmental agency, regulator or third party.

19. **Anti-corruption and anti-bribery**

- 19.1 In this paragraph, “**Associated Person**” shall mean, in relation to a company, a person (including an employee, agent or subsidiary) who performs or has performed services for or on that company’s behalf.
- 19.2 Neither the Company nor any of the Subsidiaries is or has at any time engaged in any activity, practice or conduct which would constitute an offence under any laws or regulations concerning money laundering, corruption, or bribery of any jurisdiction

(including, for the avoidance of doubt and without limitation, the US Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder, EU Directive 2005/60/EC as implemented in any member state of the European Union and the UK Bribery Act 2010), any rules and regulations thereunder, or any related or similar laws, rules, regulations, or guidelines, issued, administered, or enforced by any governmental agency or any such jurisdiction (collectively, “**Anti-Corruption Legislation**”).

- 19.3 No Associated Person of the Company or any of the Subsidiaries has bribed another person (within the meaning given in section 7(3) of the Bribery Act 2010) intending to obtain or retain business or an advantage in the conduct of business for the Company and/or any of the Subsidiaries, and the Company and each of the Subsidiaries has in place adequate designed to prevent their Associated Persons from undertaking any such conduct.
- 19.4 Neither the Company nor any of the Subsidiaries nor any of their Associated Persons is or has been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body or any customer regarding any offence or alleged offence under any Anti-Corruption Legislation, and no such investigation, inquiry or proceedings have been threatened or are pending and there are no circumstances likely to give rise to any such investigation, inquiry or proceedings.
- 19.5 Neither the Company nor any of the Subsidiaries has been excluded from participation in a public contract as a result of being convicted of bribery or corruption, including (without limitation) any exclusion under section 23 of the Public Contracts Regulations 2006 (SI 2006/5) or section 26 of the Utilities Contracts Regulations 2006 (SI 2006/6), or under any other Anti-Corruption Legislation.

20. **Data protection**

The Company and, so far as the Sellers are aware, its Subsidiaries have fully complied with the requirements of all applicable legislation concerning rights in respect of privacy and personal data.

21. **Antitrust**

- 21.1 For the purposes of this paragraph, “**Antitrust Law**” shall mean the national and directly effective legislation of any jurisdiction which governs the conduct of companies or individuals in relation to restrictive or other anti-competitive agreements or practices (including, but not limited to, cartels, pricing, resale pricing, market sharing, bid rigging, terms of trading, purchase or supply and joint ventures), dominant or monopoly market positions (whether held individually or collectively) and the control of acquisitions or mergers.
- 21.2 Neither the Company nor any of its Subsidiaries is engaged in any agreement, arrangement, practice or conduct which amounts to an infringement of the Antitrust Law of any jurisdiction in which the Company or any of its Subsidiaries conduct business and no director of the Company or any of the Subsidiaries is engaged in any activity which would be an offence or infringement under any such Antitrust Law.
- 21.3 Neither the Company nor any of its Subsidiaries is the subject of any investigation, inquiry or proceedings by any relevant government body, agency or authority in connection with any actual or alleged infringement of the Antitrust Law of any jurisdiction in which the Company or any of its Subsidiaries conducts business.
- 21.4 No such investigation, inquiry or proceedings as mentioned in paragraph 21.3 of this Schedule have been threatened or are pending and, so far as the Sellers are aware, there are no circumstances likely to give rise to any such investigation, inquiry or proceedings.
- 21.5 Neither the Company nor any of its Subsidiaries is affected by any existing or pending

decisions, judgments, orders or rulings of any relevant government body, agency or authority responsible for enforcing the Antitrust Law of any jurisdiction and neither the Company nor any of its Subsidiaries have given any undertakings or commitments to such bodies which affect the conduct of the business of the Company or the Subsidiaries.

22. **Assets**

- 22.1 The Company or one of its Subsidiaries is the full legal and beneficial owner of and has good marketable title to all the assets included in the Accounts, and any assets acquired since the Accounts Date, and all other assets used by the Company or its Subsidiaries except for those disposed of since the Accounts Date in the normal course of business.
- 22.2 None of the assets shown in the Accounts or acquired by the Company or its Subsidiaries since the Accounts Date or used by the Company or any of its Subsidiaries is the subject of any lease, lease hire agreement, hire purchase agreement or agreement for payment on deferred terms or is the subject of any licence or factoring arrangement.
- 22.3 The Company or one of its Subsidiaries is in possession and control of all the assets included in the Accounts, and those acquired since the Accounts Date, except for those Disclosed as being in the possession of a third party in the normal course of business.
- 22.4 None of the assets, undertaking or goodwill of the Company or its Subsidiaries is subject to an Encumbrance, or to any agreement or commitment to create an Encumbrance, and no person has claimed to be entitled to create such an Encumbrance.
- 22.5 The assets of the Company and of each of its Subsidiaries comprise all the assets necessary for the continuation of the relevant company's business in the manner in which such business is carried on at the Accounts Date and Completion.

23. **Intellectual property and Information Technology**

- 23.1 For the purposes of this paragraph, "**Intellectual Property Rights**" shall mean patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 23.2 For the purposes of this paragraph, "**Business Information**" means all information (in whatever form held) including (without limitation) all:
- 23.2.1 formulas, designs, specifications, drawings, know-how, manuals and instructions;
 - 23.2.2 customer lists, sales, marketing and promotional information;
 - 23.2.3 business plans and forecasts;
 - 23.2.4 technical or other expertise; and
 - 23.2.5 computer software and all accounting and tax records, correspondence, orders and enquiries;
- 23.3 Complete and accurate particulars are attached to the Data Room of all registered Intellectual Property Rights (including applications for such rights) and material unregistered Intellectual Property Rights owned, used or held for use by any member of the Group.

- 23.4 A list of all material licences of Intellectual Property Rights granted to or by any member of the Group is set out in the Data Room
- 23.5 No member of the Group, nor, so far as the Sellers are aware, any other party is in material breach of any of the licences Disclosed pursuant to paragraph 23.4.
- 23.6 So far as the Sellers are aware, no third party is infringing any Intellectual Property Rights owned by any member of the Group.
- 23.7 So far as the Sellers are aware, the activities of the Group do not infringe the Intellectual Property Rights of any third party.
- 23.8 So far as the Sellers are aware, and save in the ordinary course of business or to its employees, no member of the Group has disclosed any confidential Business Information to any third party other than under an obligation of confidentiality.
- 23.9 So far as the Sellers are aware, there has been no material disruption to the commercial activities of the Group in the twelve months prior to the date of this Agreement which has been caused only by any failure or breakdown of any material information technology used by the Group.

24. **Property**

- 24.1 For the purposes of this paragraph:
- 24.1.1 “**Current Use**” shall mean the use for each Property as set out in folder 20 in the Data Room.
- 24.1.2 “**Previously-owned Land and Buildings**” shall mean land and buildings that have, at any time before the date of this Agreement, been owned and/or occupied and/or used by the Company or any of its Subsidiaries, but which are either no longer owned, occupied or used by the Company or any of its Subsidiaries, or are owned, occupied or used by one of them but pursuant to a different lease, licence, transfer or conveyance.
- 24.1.3 “**Properties**” shall mean all those properties identified in folder 20 in the Data Room and Property means any one of them or any part or parts of them.
- 24.2 The particulars of the Properties set out in folder 20 in the Data Room are true, complete and accurate in all material respects.
- 24.3 The Properties are the only real properties owned / leased, used or occupied by the Company and its Subsidiaries.
- 24.4 Neither the Company nor any of its Subsidiaries has any right of ownership, right of use, option, right of first refusal or contractual obligation to purchase, or any other legal or equitable right affecting any land or buildings other than the Properties.
- 24.5 Neither the Company, nor any company that is or has at any time been a Subsidiary of the Company, has any actual or contingent liability in respect of Previously-owned Land and Buildings.
- 24.6 Neither the Company nor any company that is or has at any time been a Subsidiary of the Company has given any guarantee or indemnity for any liability relating to any of the Properties and Previously-owned Land and Buildings or any other land or buildings.
- 24.7 All the Properties are actively used by the Company or its Subsidiaries in connection with the business of the Company or its Subsidiaries
- 24.8 The Properties are each exclusively occupied either by the Company or by the Subsidiary identified as the occupier in folder 20 in the Data Room.

- 24.9 As far as the Sellers are aware, the Properties are free from claims, liabilities, third party rights, private rights to restrict the use of any Property (other than any right to restrict use in accordance with the terms of any lease under which a Property is held), rights of occupation, options, rights to acquire, rights of first refusal, financial obligations (including public financial obligations), security interests, public rights and public restrictions.
- 24.10 There are appurtenant to each Property, all rights necessary for their Current Use and enjoyment (without restriction as to time or otherwise). Access to each Property is over public roads maintained at public expense and such roads immediately abut each Property at each point where access is gained.
- 24.11 The contractual date for termination of each lease under which any Property is held is accurately stated in folder 20 in the Data Room.
- 24.12 The terms of any lease under which any Property is held are not unusual or onerous. There is no outstanding material breach of any obligation under any such lease. There is no outstanding application for any consent under any such lease. There is no pending rent review under any such lease.
- 24.13 Neither the Company nor any of its Subsidiaries have received or are aware of any notice, order or proposal, which would adversely affect the value or use or enjoyment of any of the Properties, or access to or from any of them.
- 24.14 None of the Properties is held on terms that would allow any landlord or other third party to change those terms, or terminate the right of the Company or any of its Subsidiaries to hold the Property, by reason of a Change of Control of the Company.
- 24.15 There are no disputes relating to or affecting any of the Properties.
- 24.16 The Current Use of each of the Properties is set out in folder 20 of the Data Room and is authorised under the applicable law and regulations and any permissions authorising that use are unconditional, permanent and not personal. Where applicable, the present use is in accordance with the provisions of the relevant Investment Lease or any lease under which the Property is held.
- 24.17 There has been no breach of any applicable law or regulation in respect of any of the Properties.
- 24.18 Each of the Properties is in a good state of repair and condition and is fit for the Current Use having regard to fair wear and tear.
- 24.19 There are no material development works, redevelopment works or fitting-out works outstanding in respect of any of the Properties.
- 24.20 So far as the Sellers are aware, none of the Properties has, in the last five years, suffered from any of the following:
- 24.20.1 flooding;
 - 24.20.2 subsidence;
 - 24.20.3 heave;
 - 24.20.4 landslip;
 - 24.20.5 mining activities;
 - 24.20.6 structural defects;

24.20.7 defects in the drains and services from time to time serving the Properties; or

24.20.8 dry rot, wet rot, rising damp and any infestation,
which had a material impact on the occupier's business.

24.21 Neither the Company, nor any of its Subsidiaries, have received any adverse report from any engineer, surveyor or other professional relating to any of the Properties and the Sellers are not aware of any predecessor in title having done so.

24.22 All replies given in writing by or on behalf of the Sellers or the Company, or any Subsidiary of the Sellers or Company, in response to any enquiries raised in writing by or on behalf of the Purchaser in relation to the Properties were complete and accurate at the date they were given and would still be complete and accurate if the replies were instead being given on the Completion Date.

25. **Environmental**

25.1 For the purposes of this paragraph:

25.1.1 “**Environment**” shall mean the natural and man-made environment including all or any of the following media: air (including air within buildings and other natural or man-made structures above or below the ground), water, land, and any ecological systems and living organisms (including man) supported by those media.

25.1.2 “**EHS Laws**” shall mean all applicable laws, statutes, regulations, subordinate legislation, bye-laws, common law and other national, international, federal, European Union, state and local laws, judgments, decisions and injunctions of any court or tribunal, codes of practice and guidance notes that are legally binding and in force as at the date of this Agreement to the extent that they relate to or apply to the Environment or to the health and safety of any person.

25.1.3 “**EHS Matters**” shall mean all matters relating to:

(A) pollution or contamination of the Environment;

(B) the presence, disposal, release, spillage, deposit, escape, discharge, leak, migration or emission of Hazardous Substances or Waste;

(C) the exposure of any person to any Hazardous Substances or Waste;

(D) the health and safety of any person, including any accidents, injuries, illnesses and diseases;

(E) the creation or existence of any noise, vibration, odour, radiation, common law or statutory nuisance or other adverse impact on the Environment; or

(F) the condition, protection, maintenance, remediation, reinstatement, restoration or replacement of the Environment or any part of it.

25.1.4 “**EHS Permits**” shall mean any permits, licences, consents, certificates, registrations, **notifications** or other authorisations required under any EHS Laws for the operation of the Business or in relation to any of the Properties.

25.1.5 “**Harm**” harm to the Environment, and in the case of man, this includes offence caused to any of his **senses** or harm to his property.

25.1.6 “**Hazardous Substances**” any material, substances or organism which, alone or in **combination** with others, is capable of causing Harm, including radioactive substances and materials containing asbestos.

- 25.1.7 “Waste” any waste, including any by-product of an industrial process and anything that is discarded, disposed of, spoiled, abandoned, unwanted or surplus, irrespective of whether it is **capable** of being recovered or recycled or has any value.
- 25.2 The Company and each of the Subsidiaries have obtained and complied at all times with all EHS Permits. All EHS Permits are in full force and effect, and, so far as the Sellers are aware, there are no facts or circumstances that may lead to the revocation, suspension, variation or non-renewal of or the inability to transfer any EHS Permits.
- 25.3 The Company and each of the Subsidiaries have at all times been operated in compliance with all EHS Laws and there are no facts or circumstances that may lead to any breach of or liability under any EHS Laws.
- 25.4 All information provided by or on behalf of the Company or any of the Subsidiaries to any relevant enforcement authority, and all records and data required to be maintained by the Company or any of the Subsidiaries under the provisions of any EHS Laws, are complete and accurate.
- 25.5 There are no Hazardous Substances at, on or under, nor have any Hazardous Substances been emitted, escaped or migrated from, any of the Properties.
- 25.6 There are, and have been, no landfills, underground storage tanks, or uncontained or unlined storage treatment or disposal areas for Hazardous Substances or Waste (whether permitted by EHS Laws or otherwise) present or carried out at, on or under any of the Properties or within 200 metres of any of the Properties, and so far as the Sellers are aware no such operations are proposed.
- 25.7 The Company or any of the Subsidiaries have never been required to hold, or have never applied for, a waste disposal licence or waste management licence under any EHS Laws.
- 25.8 There have been no claims, investigations, prosecutions or other proceedings against or threatened against the Company, any of the Subsidiaries or any of its respective directors, officers or employees in respect of Harm arising from the operation of the Business or occupation of any of the Properties or for any breach or alleged breach of any EHS Permits or EHS Laws, and there are no facts or circumstances that may lead to any such claims, investigations, prosecutions or other proceedings. At no time has the Company or any of the Subsidiaries received any notice, communication or information alleging any liability in relation to any EHS Matters or that any remediation works are required.
- 25.9 Neither the Company nor any of the Subsidiaries has received any enforcement, prohibition, stop, remediation, improvement or any other notice from any enforcement authority, including the Environment Agency, the Health and Safety Executive or the relevant local authority, with regard to any breach of EHS Laws.
- 25.10 Neither the Company nor any of the Subsidiaries has or is likely to have any actual or potential liability under any EHS Laws by reason of it having owned, occupied or used any Previously-owned Land and Buildings.
- 25.11 The Company and the Subsidiaries have adequate employers’ liability and public liability insurance cover in respect of the Business and the Properties and no claims have been made or are contemplated under any such insurance.
- 25.12 Copies of all:
- 25.12.1 current EHS Permits;

- 25.12.2 environmental and health and safety policy statements;
- 25.12.3 reports in respect of environmental and health and safety audits, investigations or other assessments;
- 25.12.4 records of accidents, illnesses and reportable diseases;
- 25.12.5 assessments of substances hazardous to health;
- 25.12.6 correspondence on EHS Matters between the Company or any of the Subsidiaries and any relevant enforcement authority; and
- 25.12.7 copies or details of all Waste disposal contracts,

relating to the business of the Company of the Subsidiaries or any of the Properties have been Disclosed to the Purchaser and all such statements, reports, records, correspondence and other information are complete and accurate and are not misleading.

25.13 Neither the Company nor any of the Subsidiaries have given or received any warranties or indemnities or any other agreement in respect of any liabilities, duties or obligations that arise under EHS Laws.

26. **Employment**

26.1 The name of each person who is a director of the Company or the Subsidiaries is set out in Schedule 2.

26.2 A list of the names, jobs and details of the basic salary, start date of employment and the years of continuous service for redundancy purposes of the top ten employees of the Group by aggregate compensation, and of every director who is also an employee (together "Senior Employees"), have been on a confidential basis given to the Purchaser.

26.3 No options have been granted under the Global Marine Systems Limited Phantom Share Option Plan dated 31 October 2013.

26.4 No notice to terminate the contract of employment of any material employee (a "material employee" being someone in receipt of total remuneration in excess of £100,000 pa) of the Company or any of its Subsidiaries (whether given by the relevant employer or by the material employee) is pending, outstanding or threatened and no dispute is otherwise outstanding between:

- 26.4.1 the Company and any of its current or former employees relating to their employment, its termination or any reference given by the Company regarding them; or
- 26.4.2 any of the Company's Subsidiaries and any of their current or former employees relating to their employment, its termination or any reference given by any of the Company's Subsidiaries regarding them.

26.5 No offer of employment has been made by the Company or by any of its Subsidiaries to any individual (being someone who would be in receipt of total remuneration in excess of £100,000 per annum if he accepts the offer) which has not yet been accepted or which has been accepted but where the individual's employment has not yet started.

26.6 The acquisition of the Shares by the Purchaser or compliance with the terms of this Agreement will not entitle any directors, officers or employees of the Company or any of its Subsidiaries to terminate their employment or receive any payment or other benefit.

26.7 All contracts of employment between the Company and its employees and between each

- of its Subsidiaries and that Subsidiary's employees are terminable on not more than 12 months' notice without compensation (except compensation payable under the applicable law).
- 26.8 Neither the Company nor any of its Subsidiaries is a party to, bound by or proposing to introduce in respect of its directors and employees any redundancy payment scheme in addition to statutory redundancy pay, nor is there any agreed procedure for redundancy selection.
- 26.9 Neither the Company nor any of its Subsidiaries is a party to, bound by or proposing to introduce in respect of any of its directors or employees any incentive scheme (including, without limitation, any share option arrangement, profit sharing, commission or bonus scheme).
- 26.10 There are no incentive schemes or other incentive arrangements (including, without limitation, any share option arrangement, commission, profit sharing or bonus scheme) established by any member of any Seller's Group in which the Company or any of its Subsidiaries or any of their respective directors or employees participates.
- 26.11 Neither the Company nor any of its Subsidiaries has incurred any actual or contingent liability in connection with any termination of employment of its employees (including redundancy payments), or for failure to comply with any order for the reinstatement or re-engagement of any employee.
- 26.12 Neither the Company nor any of its Subsidiaries has incurred any liability for failure to provide information or to consult with employees under any applicable employment legislation.
- 26.13 Neither the Company nor any of its Subsidiaries has agreed to make a payment, or agreed to provide a benefit to a present or former director, officer or material employee, or to their dependants in connection with the actual or proposed termination or suspension or variation of an employment contract.
- 26.14 Neither the Company nor any of its Subsidiaries has in the last 12 months materially altered and they shall not alter (whether to take effect prior to, on or after Completion) any of the terms of employment or engagement of any of the employees (without the prior written consent of the Purchaser).
- 26.15 As far as the Sellers are aware, neither the Company nor any of its Subsidiaries has agreed to transfer any material employee from working for the Company or any of its Subsidiaries or induce any employee to resign their employment with the Company or any of its Subsidiaries without the prior written consent of the Purchaser.
- 26.16 There are no sums over £10,000 owing to or from any employee other than reimbursement of expenses, wages for the current salary period and holiday pay for the current holiday year.
- 26.17 Neither the Company nor any of its Subsidiaries has offered, promised or agreed to any future variation in the contract of any employee.
- 26.18 The Data Room includes true, complete and accurate:
- 26.18.1 copies of all contracts, handbooks, policies and other documents which apply to the employees.
 - 26.18.2 copies of all agreements or arrangements with any trade union, employee representative body or body of employees and their representatives (whether binding or not) and details of any unwritten agreements or arrangements which may affect any employee.

- 26.19 In respect of each employee, the Company and its Subsidiaries have as far as the Sellers are aware:
- 26.19.1 performed all obligations and duties they are required to perform (and settled all outstanding claims), whether or not legally binding and whether arising under contract, applicable legislation or otherwise;
 - 26.19.2 complied with the terms of any relevant agreement or arrangement with any trade union, employee representative or body of employees or their representatives (whether binding or not); and
 - 26.19.3 maintained adequate, suitable and up to date records.
- 26.20 No material employee is subject to a current disciplinary warning or procedure.
- 26.21 Neither the Company nor any of its Subsidiaries is involved in any material industrial or trade dispute or negotiation regarding a claim with any trade union or other group or organisation representing employees and there is nothing likely to give rise to such a dispute or claim.
27. **Retirement benefits**
- 27.1 For the purposes of this paragraph, “**Pension Schemes**” shall mean the UK Plan, the Guernsey Plan, the MNOFP and DC Scheme.
- 27.2 The Pension Schemes are the only arrangements under which the Company or any of the Subsidiaries has or may have any obligation (whether or not legally binding) to provide or contribute towards pension, lump-sum, death, ill-health, disability or accident benefits in respect of their past or present officers and employees (“**Pensionable Employees**”). No proposal or announcement has been made to any Pensionable Employee as to the introduction, continuance, increase or improvement of, or the payment of a contribution towards, any other pension, lump-sum, death, ill-health, disability or accident benefit.
- 27.3 Full details of the Pension Schemes are set out in Data Room, including (but not limited to):
- 27.3.1 copies of all documents governing the Pension Schemes and of any announcements and explanatory booklets relating to it;
 - 27.3.2 the two latest annual reports and accounts of the Pension Schemes;
 - 27.3.3 a list of all Pensionable Employees who are members of the Pension Schemes with all details relevant to their membership and necessary to establish their entitlements under the Pension Schemes;
 - 27.3.4 for each Pension Scheme that provides defined benefits, a true and complete copy of the most recent actuarial valuation of the Pension Scheme and a true and complete copy of all subsequent actuarial advice;
 - 27.3.5 for each Pension Scheme that is an occupational pension scheme, all reports relating to the investment of the assets of the Pension Scheme during the last year and a list showing each asset of the Pension Scheme and its market value as at a date no earlier than one month before the date of this Agreement; and
 - 27.3.6 all agreements for the provision of services and any insurance contracts relating to the Pension Schemes.
- 27.4 The documents listed in the Data Room contain full details of all benefits payable in respect of the Pensionable Employees as a group under the Pension Schemes (including any benefits payable to any Pensionable Employee on early retirement or redundancy under the Pension Scheme, or any previous schemes of which the Pensionable Employee was a

- member). No power to increase those benefits or to provide different benefits has been exercised, and there are no circumstances in which there is a practice of exercising such a power under the Pension Schemes.
- 27.5 No undertaking or assurance (whether or not constituting a legally binding commitment) has been given to any Pensionable Employee about the continuation of the Pension Schemes or any alteration to or exception from their terms or the increase or improvement of benefits or the exercise of any discretion.
- 27.6 The Company and Subsidiaries have complied with their automatic enrolment obligations as required by the Pensions Act 2008 and associated legislation. No notices, fines, or other sanctions have been issued by the Pensions Regulator and no instances of non-compliance with the automatic enrolment obligations have been notified to the Regulator in respect of the Company and Subsidiaries.
- 27.7 All contributions, insurance premiums, tax and expenses due to and in respect of the Pension Schemes have been duly paid. The contributions in respect of the Pension Schemes have been paid at the rates set out in the most recent schedule of contributions or the most recent payment schedule.
- 27.8 All death and disability benefits provided to the employees of the Company and Subsidiaries are fully insured by an insurance policy with an insurer of good repute. The Company and the Subsidiaries are not aware of any reason why these policies might be invalidated, or why the insurer might try to set them aside.
- 27.9 The Data Room has details of the rates at which the Company's, any Subsidiaries' and employees' contributions to the Pension Schemes are being paid and how they are calculated, and whether they are paid in advance or in arrears. All amounts due to the Pension Schemes have been paid.
- 27.10 No contribution notice or financial support direction under the Pensions Act 2004 has been issued to the Company or to any Subsidiary or any officer or employee of those companies and there is no fact or circumstance likely to give rise to any such notice or direction.
- 27.11 Each Pension Scheme is a registered pension scheme for the purposes of Chapter 2 of Part 4 of the Finance Act 2004 and there is no reason why HM Revenue & Customs might de-register the scheme.
- 27.12 If a Pension Scheme is a contracted-out scheme within the meaning of the Pension Schemes Act 1993, there is in force a contracting-out certificate covering the Company and the Subsidiaries and there is no reason why the certificate might be cancelled. No Pension Scheme that provides money purchase benefits is contracted out on a final salary basis.
- 27.13 The Pension Schemes have been designed to comply with, and has been administered in accordance with, all applicable legal and administrative requirements and in compliance with their governing documents. The Company, the Subsidiaries have complied in all material respects with their obligations under and in respect of the Pension Schemes.
- 27.14 For any Pension Scheme that provides defined benefits, the Actuary's report on the latest actuarial valuation describes the financial position of that scheme at its effective date. Nothing has happened since that date which would affect the level of funding of that Pension Scheme to a material extent. Since that date, contributions have been paid to that scheme at the rate recommended by the Actuary. No assets have been withdrawn from that Pension Scheme (except to pay benefits).
- 27.15 Prior to 1 October 2012 the Company and the Subsidiaries provided access to a designated stakeholder scheme for their Pensionable Employees who were not members of the Pension Schemes, as was required by section 3 of the Welfare Reform and Pensions Act 1999 or were exempt from providing access to a stakeholder scheme for their Pensionable Employees.

- 27.16 Neither the Company nor the Subsidiaries nor the trustees of any Pension Scheme that is an occupational pension scheme have discriminated against, or in relation to, any Pensionable Employee on grounds of age, sex, disability, marital status, hours of work, fixed-term or temporary agency worker status, sexual orientation, religion or belief in providing pension, lump-sum, death, ill-health, disability or accident benefits.
- 27.17 No claims or complaints (including without limitation contact with the Pensions Regulator, the Pensions Advisory Service or the Pensions Ombudsman) have been made or are pending or threatened in relation to the Pension Schemes or otherwise in respect of the provision of (or failure to provide) pension, lump-sum, death, ill-health, disability or accident benefits by the Company or any of the Subsidiaries in relation to any of the Pensionable Employees. There are no facts or circumstances likely to give rise to such claims or complaints.
- 27.18 No acts, omissions or other events have been reported to the Pensions Regulator under sections 69 or 70 of the Pensions Act 2004 and there is no fact or circumstance likely to give rise to such reports.
- 27.19 The Pension Schemes do not and have not accepted any contributions from a European employer as defined for the purposes of Part 7 of the Pensions Act 2004.
- 27.20 For any Pension Scheme that provides defined benefits, there has been no arrangement which might be construed as a compromise or a reduction of a statutory debt under section 75 or 75A of the Pensions Act 1995.
- 27.21 For any Pension Scheme that provides defined benefits, there is no amount that is treated as a debt due to the trustees of that Pension Scheme, or from the Company or any Subsidiary to the trustees of any other pension scheme, under section 75 or 75A of the Pensions Act 1995 (or its predecessor, section 144 of the Pension Schemes Act 1993). Neither the Company nor any Subsidiary has ever participated in any occupational pension scheme other than the UK Plan, the Guernsey Plan and the MNOPF.
- 27.22 The DC Scheme provides money purchase benefits only as defined in sections 181 and 181B of the Pension Schemes Act 1993. The remaining three Pension Schemes are defined benefit schemes.
- 27.23 No Pensionable Employee has had his or employment transferred to the Company or any Subsidiary by operation of the Transfer of Undertakings (Protection of Employment) Regulations 1981 or 2006 or the Acquired Rights Directive.

28. Tax

General

- 28.1 Each Group Company has paid all Tax which it has become liable to pay within any applicable time limits except where the amount in question is immaterial.
- 28.2 The Accounts make adequate provision or reserve in accordance with applicable generally accepted accounting principles for all Taxation liabilities (whether actual, contingent or disputed) of each Group Company and the amount of any Relief shown in the Accounts as an asset does not exceed the amount of that Relief that is actually available. Proper provision has been made and shown in the Accounts for deferred taxation in accordance with generally accepted accounting principles.
- 28.3 Each Group Company has within applicable time limits made all returns, provided all information, given all notices and maintained all records in relation to Tax as it is required to make, provide, give or maintain. So far as the Sellers are aware, all such returns, information, records and notices are and remain complete, correct and accurate in all material respects, and are not the subject of any dispute with a Taxation Authority.

- 28.4 Each Group Company has in its possession or power or otherwise has reasonable access to reasonably sufficient records and information to determine its liabilities to Tax insofar as such liabilities relate to transactions occurring on or before the Completion.
- 28.5 No Group Company is, and has at no time in the last six years been, involved in a material dispute or non-routine investigation, audit or enquiry in relation to Tax. So far as the Sellers are aware after due inquiry, no Taxation Authority has within the last twelve months indicated in writing to any Group Company that it intends to commence any audit, enquiry or investigation into the Tax affairs of any Group Company other than under the routine audit procedures of the relevant Taxation Authority and, so far as the Sellers are aware, there are no grounds for any such audits, enquiries or investigations.
- 28.6 No asset of a Group Company is subject to any charge or power of sale in favour of any Taxation Authority.
- 28.7 Each Group Company has made (i) all material deductions and retentions of or on account of Tax as it was or is obliged or entitled to make under applicable law (including, but not limited, to any deductions and retentions in relation to PAYE or NICs) and (ii) all such payments of or on account of Tax as should have been made to any Taxation Authority in respect of such deductions or retentions. Proper records have been maintained by the Group Companies in respect of all such deductions and payments under this paragraph and applicable regulations have been complied with in all material respects. There are no current dispensations agreed with any Taxation Authority in relation to PAYE for any Group Company.
- 28.8 No Group Company is bound by or party to any Tax indemnity, Tax sharing or Tax allocation agreement in respect of which claims against the Group Company would not be time barred.

Capital gains and depreciation reliefs

- 28.9 The gross book value shown in, or adopted for the purposes of, the Accounts as the value of each of the tangible fixed assets of a Group Company does not exceed the amount which on a disposal of such asset at the date of this Agreement would be deductible as acquisition cost in computing the capital gain or allowable loss.
- 28.10 No Group Company has owned at the Accounts date any asset which, if disposed of at the date of this Agreement for consideration equal to its net book value as included in the Accounts, would give rise to a clawback or disallowance of depreciation relief.

Avoidance, consents, clearances and special arrangements

- 28.11 In the last six years, no Group Company has entered into a transaction or series of transactions, the main purpose of which, or one of the main purposes of which, was the avoidance of Tax. In the last six years, no Group Company has been a party or has otherwise been involved in any transaction, scheme or arrangement in respect of which clearance or a ruling from, or the consent of, a Taxation Authority was required or sought.
- 28.12 No Taxation Authority has operated or agreed to operate any special arrangement (being an arrangement which is not based on an interpretation of relevant legislation or any published practice that the Taxation Authority applies to applicable companies generally) in relation to a Group Company's Tax affairs.

Value added tax ("VAT") and Goods and Services Tax ("GST")

- 28.13 Each Group Company has complied with all material statutory provisions and regulations in respect of VAT and GST and any similar taxes and maintains accurate VAT and GST records.

Stamp Duty

- 28.14 All documents which are necessary to establish the title of any Group Company to any material assets in respect of which any stamp duty, registration tax or other similar tax is payable (whether as a condition to validity, registration or otherwise) have been duly stamped or have had the applicable tax due in respect of them paid.

Company residence/permanent establishment

- 28.15 Each Group Company has throughout the last six years been resident for Tax purposes in its place of incorporation and has not during that time been treated as resident in any other jurisdiction for any Tax purpose. Save as Disclosed in the Data Room, no Group Company is subject to Tax in any jurisdiction other than its place of incorporation by virtue of having a permanent establishment or other place of business in that jurisdiction.

Groups and secondary liabilities

- 28.16 No Group Company is, nor has been during the six years prior to the date of this Agreement, a member of: (a) a group of companies for applicable Tax purposes; (b) a fiscal consolidation; or (c) a fiscal unity for the purposes of any corporate income Tax, of which any company other than a Group Company is a member.
- 28.17 So far as the Sellers are aware, no Group Company is liable to make to any person (including any Taxation Authority) any payment in respect of any liability to Tax which is primarily or directly chargeable against, or attributable to, any other person (other than another Group Company).

Withdrawal of Reliefs etc.

- 28.18 No Relief has been claimed by and/or given to a Group Company, or taken into account in determining or eliminating any provision for Tax or deferred Tax in the Accounts, which will be withdrawn, postponed, restricted or otherwise lost as a result of the execution of this Agreement or the sale and purchase of the Shares hereunder.
- 28.19 The execution of this Agreement or the sale and purchase of the Shares hereunder will not give rise to any liability to Tax for any Group Company.

Transfer pricing

- 28.20 All transactions or arrangements made by any Group Company have been made on arm's length terms and the processes by which prices and terms have been arrived at have, in each case, been fully documented. No notice, enquiry or adjustment has been made by any Taxation Authority in connection with any such transactions or arrangements.

Employment-related securities

- 28.21 In respect of any employment-related securities or securities options (as defined in Part 7 of ITEPA 2003) (including, without limitation, shares in a Group Company and options over them) acquired by any current, former or proposed employees or directors of any Group Company (or any nominees or associates of such employees or directors):
- 28.21.1 a joint election to fully disapply Chapter 2 of Part 7 of ITEPA 2003 has been made under section 431(1) of ITEPA 2003; and
 - 28.21.2 all such joint elections have been properly made within the applicable time limits based on HM Revenue & Customs pro forma election.

SCHEDULE 5
PURCHASER WARRANTIES

1. Incorporation

The Purchaser is duly incorporated, duly organised and validly existing under the laws of its jurisdiction and has full power to conduct its business as conducted at the date of this Agreement.

2. Corporate power and authority

The Purchaser has the corporate power and authority to enter into and perform this Agreement and any agreement entered into pursuant to the terms of this Agreement and the provisions of this Agreement and any agreement entered into pursuant to the terms of this Agreement, constitute valid and binding obligations on the Purchaser and are enforceable against the Purchaser, in accordance with their respective terms.

3. No breach

The execution and delivery by the Purchaser of, and the performance by the Purchaser of its obligations under, this Agreement and any agreement entered into pursuant to the terms of this Agreement will not:

3.1 result in a breach of or conflict with any provision of its constitutional documents; or

3.2 result in a material breach of, or constitute a material default under, any instrument to which it is a party or by which it is bound;

4. Consents

All consents, permissions, authorisations, approvals and agreements of third Parties and all authorisations, registrations, declarations, filings with any governmental department, commission, agency or other organisation having jurisdiction over the Purchaser which are necessary or desirable for the Purchaser to obtain in order to enter into and perform this Agreement and any agreement entered into pursuant to the terms of this Agreement in accordance with its terms, have been unconditionally obtained in writing and have been disclosed in writing to the Sellers.

5. Solvency

No order has been made, petition presented or meeting convened for the winding up or the bankruptcy of the Purchaser or any of its group undertakings, nor any other action taken in relation to the appointment of an administrator, liquidator, receiver, administrative receiver, compulsory manager or any provisional liquidator (or equivalent in any other jurisdiction) (or other process whereby the business is terminated and the assets of the company concerned are distributed amongst the creditors and/or shareholders or other contributors), and there are no proceedings under any applicable insolvency, reorganisation or similar laws in any relevant jurisdiction, and no events have occurred which, under applicable laws, would justify any such proceedings.

SCHEDULE 6

CALCULATION OF ACTUAL 2014 EBITDA

Calculation of the 2014 EBITDA (the “**Actual 2014 EBITDA**”) will initially be as per the Information Memorandum dated May 2014 prepared by Park Partners on behalf of the Company; but will exclude all additional costs and expenses incurred by the Purchaser, Zencor LLP, HC2 Holdings Inc or any related party from the Completion Date to 31 December 2014 save where consistent with the Company and GMSL’s existing projections for the 2014 EBITDA.

SCHEDULE 7
ESTIMATED INDEBTEDNESS

<u>Source</u>	<u>£</u>
Finance Leases	37,393,000
Loan between, <i>inter alia</i> , DVB Bank SE Nordic Branch (as Agent and Security Agent) and Global Marine Systems (Vessels) Limited dated 20 January 2014	10,833,000
Pensions deficit	31,940,000
Total	<u>80,166,000</u>

SCHEDULE 8

TAX

1. INTERPRETATION

1.1 In this Schedule:

- “Accounting Practices”** means the accounting bases and policies used by the relevant Group Company and the date to which that Group Company makes up its accounts.
- “Accounts Relief”** means:
(i) a Relief that has been treated as an asset in the Accounts; or
(ii) a Relief that has been taken into account in computing (and so reducing or eliminating) any provision for Tax that appears or would otherwise have appeared in the Accounts.
- “Demand”** includes any assessment, notice, letter, determination, demand or other document issued, or any action taken, by or on behalf of any Taxation Authority and any return, computation, account or other document required for any Tax purpose from which it appears that a Tax Liability has been or may be, imposed on a Group Company (or the Purchaser in relation to paragraph 2.1.4 of this Schedule) in respect of which the Sellers are or may be liable under this Tax Schedule or under the Tax Warranties;
- “Event”** means any transaction, action, omission or occurrence of whatever nature, including any change in the residence of any person for Taxation purposes, any change in accounting reference date, ceasing to trade or carry on one or more trades, the accrual of income or gains and the execution of this Agreement and Completion;
- “Post-completion Relief”** means a Relief to the extent that it arises in respect of any period ending or any Event occurring after Completion.
- “Relevant Percentage”** means 100% unless the relevant Group Company is a JV Company, in which case it shall be such percentage as corresponds to Global Marine Systems Limited’s ownership percentage in the JV Company as indicated (including by reference to the number of shares and proportion of issued share capital held by Global Marine Systems Limited in the relevant JV Company) in Part 2 of Schedule 2 to this Agreement.

“Tax Liability”

means:

- (i) liabilities of a Group Company to make actual payments of Tax (or amounts in respect of Tax arising under section 455 CTA 2010 and/or Part 9A of the Taxation (International and Other Provisions) Act 2010);
- (ii) the loss of any Accounts Relief; of
- (iii) the use or setting off of any Accounts Relief or Post-completion Relief in circumstances where, but for such setting off, the relevant Group Company would have had a liability to make an actual payment of Tax in respect of which the Purchaser would have been entitled to make a claim against the Sellers under this Schedule.

1.2 For the purposes of this Schedule, any stamp duty that has to be paid by a Group Company after Completion in order that an instrument executed before Completion: (i) be given in evidence by a Group Company to any Taxation Authority or in any proceeding or in a hearing before an arbitrator or referee or in order to effect registration in respect of an asset or to demonstrate title to an asset in connection with the disposal of that asset; or (ii) be available for any other purpose of the Group Company (that is, where in any such case a copy of that instrument is not sufficient for the applicable purpose and the production of the copy would not avoid the stamp duty having to be paid) is deemed to be a Tax Liability of the Group Company arising as a consequence of an Event that occurred on or before Completion.

1.3 In this Schedule, references to:

- 1.3.1 “income, profits or gains” includes income, profits, gains and any other standard or measure for any Tax purpose and also includes any income, profits or gains that are deemed to be earned, accrued or received for any Tax purpose;
- 1.3.2 “loss”, in respect of any Relief, means the reduction, cancellation, non-availability or non-existence of that Relief, and “lost” shall be construed accordingly;
- 1.3.3 any payment or distribution as being made on or before a particular date includes any payment or distribution that has fallen due and payable on or before that date;
- 1.3.4 the occurrence of Events on or before a particular date or in respect of a particular period includes Events that are for any Tax purpose treated as having occurred or existed at or before that date or in respect of that period.

2. Covenant

2.1 The Sellers hereby covenant with the Purchaser to pay to the Purchaser in their Appropriate Portions an amount equal to the Relevant Percentage of each of the following:

- 2.1.1 any Tax Liability of a Group Company which arises in respect of or in consequence of:
 - (A) any income, profits or gains earned, accrued or received on or before Completion; or

- (B) any Event which occurs or occurred on or before Completion; and/or
- 2.1.2 any Tax Liability arising as a consequence of an Event occurring:
 - (A) after Completion and for which a Group Company is liable solely as a result of having been a member of a group for any Tax purpose at any time before Completion; or
 - (B) at any time and for which a Group Company is liable solely as a result of having been controlled by any person for any Tax purpose at any time before Completion; and/or
- 2.1.3 any Tax Liability of a Group Company arising as a consequence of a failure occurring on or before Completion to deduct and/or account for any PAYE, withholding tax or national insurance contributions; and/or
- 2.1.4 any Tax Liability of a Group Company or the Purchaser arising in consequence of any of the consideration for the sale of the Shares or B Ordinary Shares under this Agreement constituting general earnings or remuneration or profit derived from employment and so being subject to income tax (via PAYE) and/or NIC; and/or
- 2.1.5 any reasonable costs and expenses incurred and payable by a Group Company or the Purchaser in connection with or in consequence of any matter for which the Sellers are liable under this paragraph 2 or in taking any successful action under that paragraph.

3. **Limitations**

- 3.1 The Sellers shall not be liable in respect of a Tax Claim to the extent that:
 - 3.1.1 the Tax Claim relates to Taxation of a Group Company that has been provided for or reserved in the Accounts or which has been paid on or before Completion or which has been made good by insurers or otherwise compensated without cost to the Purchaser or the Group Company;
 - 3.1.2 a Relief other than a Post-Completion Relief or Accounts Relief is available to extinguish or reduce the Tax to which the Tax Claim relates at no cost to the relevant Group Company;
 - 3.1.3 the Tax to which the Tax Claim relates would not have arisen but for the failure or the omission to make any claim, election, surrender or disclaimer, or to give any notice or consent or to do any other thing, in circumstances where the making, giving or doing of any such claim, election, surrender or disclaimer or the giving of any such notice or consent is or has been notified in writing to the Purchaser prior to Completion and is or has been assumed in computing any provision for Taxation in the Accounts;
 - 3.1.4 the Tax Claim would not have arisen but for any increase in rates of Tax or any change in law, published practice or any withdrawal of any extra statutory concession by a Taxation Authority, being an increase, change or withdrawal made after Completion with retrospective effect (a “**Change in Law**”);
 - 3.1.5 the Tax Claim would not have arisen but for a change, after the date of this Agreement, in Accounting Practices other than a change required to ensure compliance with the law or with the generally accepted accounting principles (including International Financial Reporting Standards, if relevant) applicable to the relevant Group Company at Completion;

- 3.1.6 the Tax Claim arises or is increased as a consequence of the voluntary withdrawal, amendment, disclaimer or postponement by a Group Company after Completion of any valid claim for Relief made on or before Completion;
- 3.1.7 the Tax Claim would not have arisen but for a cessation of, or change in the nature or conduct of, any trade or business carried on by a Group Company, being a cessation or change occurring on or after Completion;
- 3.1.8 the Tax Claim arises by virtue of the average rate of tax of a Group Company increasing as a consequence of the Purchaser acquiring the Shares;
- 3.1.9 the Tax Claim would not have arisen but for a voluntary transaction or action carried out or effected by the Purchaser or a Group Company at any time after Completion in circumstances where the Group Company or the Purchaser was aware or ought reasonably to be aware that the transaction or action in question would give rise to a Tax Liability, other than any such transaction or action:
 - (A) carried out or effected pursuant to a legally binding commitment created on or before Completion; or
 - (B) carried out or effected to comply with any law or regulation; or
 - (C) carried out or effected in the ordinary course of business of the Group Company;
 - (D) involving the payment of any stamp duty or the bringing into the United Kingdom of any instrument referred to in paragraph 1.2 of this Schedule and in the circumstance referred to in that paragraph; or
 - (E) carried out or effected at the written request of any of the Sellers;
- 3.1.10 the Tax Claim relates to Taxation in respect of which the Purchaser has made recovery under this Schedule or under the Tax Warranties;
- 3.1.11 the Tax Claim relates to Taxation that arises or is increased as a result of the Purchaser or (after Completion) a Group Company failing to comply with its obligations under this Agreement; or
- 3.1.12 the Tax Claim relates to Taxation that would not have arisen but for a Group Company failing to make payment to the relevant Taxation Authority of an amount of Taxation equal to the payment made by the Sellers to the Purchaser in respect of such Taxation not later than five (5) Business Days following the date such payment is made in cleared funds under this Agreement.

4. **Amount payable and due date for payment**

4.1 In any case falling within any of paragraphs (ii) and (iii) of the definition of Tax Liability, the amount that is to be treated as a Tax Liability of the Group Company ("**Deemed Tax Liability**") is:

- 4.1.1 in a case that falls within paragraph (ii) where the Accounts Relief lost was a right to repayment of Tax, the Deemed Tax Liability is the amount of the repayment that would have been obtained but for the loss;

- 4.1.2 in a case that falls within paragraph (ii) where the Accounts Relief lost was not a right to repayment of Tax, the Deemed Tax Liability is the amount of the additional Tax that the Group Company is (or would but for the availability of any Accounts Relief or Post Completion Relief be) liable to pay as a result of such loss; and
- 4.1.3 in a case that falls within paragraph (iii), the Deemed Tax Liability is the amount of Tax that would have been payable by the Group Company but for such use or setting-off.
- 4.2 Where the Sellers become liable to make any payment in respect of a Tax Claim, the due date for making that payment is:
- 4.2.1 in a case that involves an actual payment by the Group Company, the later of:
- (A) five Business Days before the last date on which the Group Company can make the payment in question without incurring a liability to interest or penalties; and
 - (B) five Business Days after the Purchaser or the Group Company notifies the Sellers' Representative of the liability to make a payment and the amount of that payment;
- 4.2.2 in a case that falls within paragraph 4.1.1 of this Schedule, the later of:
- (A) the date on which repayment would have been received; and
 - (B) five Business Days after the Purchaser or the Group Company notifies the Sellers' Representative of the liability to make a payment and the amount of that payment;
- 4.2.3 in a case that falls within paragraph 4.1.2 of this Schedule, the later of:
- (A) five Business Days before the Group Company becomes due to pay any Tax which it would not, but for such loss, have had to pay (or would have become so due but for the use of any Accounts Relief or Post-completion Relief); and
 - (B) five Business Days after the Purchaser or the Group Company notifies the Sellers' Representative of the liability to make a payment and the amount of that payment;
- 4.2.4 in a case that falls within paragraph 4.1.3 of this Schedule, the later of:
- (A) five Business Days before the Group Company would have been due to pay the Tax but for such use or setting off; and
 - (B) five Business Days after the Purchaser or the Group Company notifies the Sellers' Representative of the liability to make a payment and the amount of that payment; or
- 4.2.5 in any other case, five Business Days after the Purchaser or the Group Company notifies the Sellers' Representative of the liability to make a payment and the amount of that payment.
- 4.3 Sums not paid by the dates specified in this paragraph 4 shall bear interest (which shall accrue from day to day after, as well as before, judgement) at the rate of 2% per annum

above the base lending rate for the time being of Barclays Bank Plc for the period from the date following that specified date up to and including the day of actual payment of such sums (or the next Business Day if the day of actual payment is not a Business Day) compounded yearly.

5. **Recovery From Other Persons**

Recovery

- 5.1 If the Purchaser or a Group Company is entitled to recover from any other person (including a Taxation Authority but not including the Group Company or any of its employees, agents or officers) a sum in respect of any matter to which a claim under this Schedule or under the Tax Warranties relates and that has been satisfied in full by the Sellers, the Purchaser shall, or shall procure that the Group Company shall (as relevant), as soon as reasonably practicable give written notice of that entitlement to the Sellers' Representative and if the Sellers indemnify the Purchaser or, as appropriate, the Group Company (to the Purchaser's reasonable satisfaction) against the reasonable costs of the Purchaser or, as appropriate, the Group Company in connection with taking the following action, the Purchaser shall or shall procure that the Group Company shall take such action as may be reasonably requested by the Sellers' Representative to enforce recovery against that person.

Accounting for Amount Recovered

- 5.2 In the event that the Purchaser or the Group Company recovers any sum referred to in paragraph 5.1 of this Schedule, the Purchaser shall as soon as is reasonably practicable account to the Sellers' Representative on behalf of the Sellers for the lesser of:

5.2.1 the sum recovered, net of any Tax on the sum and the costs and expenses of recovering it; and

5.2.2 the amount already paid by the Sellers in respect of the Tax Claim in question.

6. **Claims procedure**

Notice of Demand and Action and Assistance

- 6.1 If the Purchaser or a Group Company becomes aware of a Demand that may give rise to a Tax Claim:

6.1.1 the Purchaser shall as soon as reasonably practicable, and in any event where possible in the case of a Demand that requires action to be taken within a specific period, not later than ten Business Days before that period ends, give or procure the Group Company gives written notice of the Demand to the Sellers' Representative but notice is not a condition precedent to the liability of the Sellers under this Schedule; and

6.1.2 subject to paragraphs 6.2 and 6.3 the Group Company shall take any action the Sellers' Representative may reasonably by written notice request to avoid, resist, appeal or compromise the Demand if the Sellers first agree to indemnify the Purchaser and the Group Company (to the Purchaser's reasonable satisfaction) against all costs and expenses (including interest on overdue Tax) that the Purchaser or the Group Company may incur in connection with the taking of action pursuant to this paragraph 6.1.

Purchaser Conduct

- 6.2 The actions that the Sellers can reasonably request under paragraph 6.1.2 of this Schedule do not include the Group Company allowing the Sellers to have the right to conduct any action referred to in paragraph 6.1.2, but in taking any action at the request of the Sellers pursuant to paragraph 6.1.2 the Purchaser shall:
- 6.2.1 keep the Sellers' Representative fully informed of all material matters relating to the Demand and deliver to the Sellers' Representative copies of all material correspondence relating to the Demand; and
 - 6.2.2 obtain the prior written approval of the Sellers' Representative (not to be unreasonably withheld or delayed) to:
 - (A) the content of all material communications relating to the Demand sent to a Taxation Authority; and
 - (B) the settlement or compromise of the Demand.

Court Proceedings

- 6.3 The Purchaser is not obliged to take any action under paragraph 6.1.2 of this Schedule that involves contesting any Demand before any court or other appellate body (excluding the Taxation Authority that has made the Demand) unless the Sellers' Representative furnishes the Purchaser with the written opinion of Tax counsel of at least 10 years' call to the effect that an appeal against the Demand in question is a reasonable course of action given the amounts involved and the likelihood of success.

Group Company Action

- 6.4 Where the Sellers' Representative does not make a request under paragraph 6.1.2 of this Schedule within 20 Business Days of being given written notice of the applicable Demand in accordance with paragraph 6.1.1, the Group Company shall be free, without prejudice to the rights of the Purchaser in respect of the Demand, to take such action as it in its absolute discretion considers appropriate in the circumstances to settle the matter to which the Demand relates.

Fraudulent Conduct

- 6.5 Paragraph 6.1.2 of this Schedule does not apply if there is a reasonably substantiated claim by a Taxation Authority that any of the Sellers or the Group Companies whilst under the control of the Sellers has committed an act or is responsible for an omission that constitutes fraudulent conduct.

7. Management of Tax Affairs

- 7.1 Other than in respect of the JV Companies, the Purchaser shall have the responsibility for, and the conduct of (at its cost and expense) preparing, submitting, negotiating and agreeing with the relevant Taxation Authorities all outstanding Tax returns and computations of the Group Companies for all accounting periods ended on or prior to Completion and for the accounting period current at Completion (the "**Relevant Accounting Periods**"). Subject to the Sellers complying with paragraph 7.3 below, any relevant Change in Law and it otherwise being reasonable for the Purchaser to do so taking account of the information available to it and the Group Companies, the Purchaser shall procure that the Group Companies prepare all outstanding Tax returns of the Group Companies for Relevant Accounting Periods on a basis which is consistent with the manner in which those Tax returns were prepared for all accounting periods for which Tax returns have already been prepared and submitted prior to Completion and that no Tax return or other document is submitted to any Taxation Authority by any Group Company which is not, so far as the Purchaser or the relevant Group Company is aware, complete, true and accurate in all material respects.

Purchaser's Obligations

7.2 The Purchaser shall procure that the Group Companies (via the Sellers' Representative) keep the Sellers fully informed of the progress of all matters relating to the Tax affairs of each Group Company in respect of the Relevant Accounting Periods where the Purchaser is aware or ought reasonably to be aware that such affairs are relevant to the liability or potential liability of the Sellers under this Schedule or the Tax Warranties. In particular, the Purchaser shall submit to the Sellers (via the Sellers' Representative) for comment in a timely fashion all Tax returns and other material documents that it or any Group Company intends to submit to a Taxation Authority (in the case of all Tax returns no later than 20 Business Days before the date on which such Tax returns are required to be filed with the appropriate Taxation Authority without incurring interest or penalties) and which the Purchaser is aware or ought reasonably to be aware may give rise to or increase a claim by the Purchaser under this Schedule or the Tax Warranties, and take into account all timely and reasonable comments made by the Sellers' Representative.

Sellers' Assistance

7.3 The Sellers shall and shall procure that the Sellers' Representative shall, to the extent they are able:

7.3.1 procure the provision to the Purchaser of such information and assistance that it reasonably requires to prepare, submit, negotiate and agree all Tax returns, computations and related correspondence in accordance with paragraph 7; and

7.3.2 promptly deliver to the Purchaser copies of all correspondence received from a Taxation Authority in relation to the Tax returns and computations for the Group Companies.

Purchaser Assistance

7.4 The Purchaser covenants with the Sellers to procure that the Group Companies:

7.4.1 at the Sellers' cost and expense, afford such access to their books, accounts and records as is reasonable to enable the Sellers or its duly authorised agent to comment on any Tax returns and other documents as set out in this paragraph 7 and shall promptly provide to the Sellers copies of any relevant communications from Tax Authorities; and

7.4.2 take such action (including signing and authorising Tax returns and computations) as is necessary or desirable to give effect to this paragraph 7 but this covenant does not require the Purchaser to procure that the Group Companies take any action in relation to any Tax return that is not true and accurate in all material respects.

Fraudulent Conduct

7.5 Paragraph 7.2 and 7.4 of this Schedule do not apply if there is a reasonably substantiated claim by a Taxation Authority that any of the Sellers or the Group Companies whilst under the Control of the Sellers has committed an act or are responsible for an omission that constitutes fraudulent conduct.

8. Overprovisions and corresponding savings

8.1 If the Accounts make provision for any Tax Liability of a Group Company and the auditors of the Group Company for the time being certify that the Group Company's Tax Liability is less than such provision (otherwise than as a result of the utilisation of an Accounts Relief or a Post-completion Relief or a Change in Law), an amount equal to the excess of such provision over that Tax Liability (in this paragraph 8 an "overprovision") shall be dealt with in accordance with paragraph 8.3.

- 8.2 If (i) any Tax Liability of a Group Company has arisen which has resulted in a payment being made or becoming due from Sellers under paragraph 2 of this Schedule or in respect of the Tax Warranties, (ii) that liability has given rise to a Tax saving for the Purchaser or a Group Company (which Tax saving has not been taken into account in computing any liability of the Sellers under this Agreement) and (iii) the auditors for the time being of the Group Company have certified that the saving has arisen and has been utilised, then an amount equal to the amount by which the Tax Liability of the Group Company (other than a Tax Liability which would have given rise to a claim under the Tax Warranties or under paragraph 2.1 of this Schedule) is reduced as a result of the utilisation of the tax saving shall be dealt with in accordance with paragraph 8.3.
- 8.3 Where any amount (in this paragraph 8, the “Relevant Amount”) is to be dealt with in accordance with this paragraph 8.3:
- 8.3.1 first, the Relevant Amount shall be set off against any payment then due from (but not then paid by) the Sellers under this Schedule or in respect of the Tax Warranties;
- 8.3.2 second, to the extent that there is any excess, a refund shall be made to the Sellers’ Representative on behalf of the Sellers of any previous payment or payments made by them under this Schedule or the Tax Warranties and not previously refunded under this sub-clause 8.3.2 up to the amount of such excess; and
- 8.3.3 third, to the extent that the excess referred to in sub-clause 8.3.2 is not exhausted under that sub-clause, the remainder of that excess shall be carried forward and set off against any future payments which may become due from the Sellers under this Schedule or the Tax Warranties.
- 8.4 If so requested by the Sellers and at the Sellers’ expense, the Purchaser shall request the auditors for the time being of a Group Company to certify the amount of any overprovision as referred to in paragraph 8.1 or the amount of any Taxation saving as referred to in paragraph 8.2
- 8.5 Where the Sellers disagree with the amount certified in accordance with paragraph 8.4 as being the amount of such overprovision or reduction or extinction of any Tax Liability and notify the Purchaser of such disagreement, the matter shall be determined at the Sellers’ expense by an independent firm of internationally recognised accountants (who shall act as experts and not as arbitrators and whose determination shall, in the absence of manifest error, be final and binding) to be agreed between Purchaser and Sellers or, failing agreement within fourteen (14) Business Days, to be nominated, upon the request of either the Purchaser or Sellers, by the President for the time being of the Institute of Chartered Accountants in England and Wales.
9. **Purchaser’s Covenant**
- 9.1 Subject to paragraph 9.4 below, the Purchaser hereby covenants with each Seller to pay to that Seller, by way of adjustment to the consideration for the sale of the Shares and within 10 Business Days of demand thereof, an amount equal to any Tax that the Seller is required to pay as a result of a failure after Completion by a Group Company or the Purchaser to discharge Tax for which they are liable.
- 9.2 The covenant contained in paragraph 9.1 shall extend to any reasonable costs incurred by the Seller in connection with any Tax Liability in respect of which a payment obligation arises under paragraph 9.1.

- 9.3 The provisions of paragraph 6 of this Schedule shall apply mutatis mutandis to the covenant in paragraph 9.1 above.
- 9.4 The Purchaser shall incur no liability under this paragraph 9 in respect of a Tax Liability to the extent that:
- 9.4.1 the relevant Seller has recovered an amount in respect of that liability under a relevant statutory provision (and the Seller shall procure that no such recovery is sought to the extent that payment is made hereunder); or
 - 9.4.2 the Purchaser is entitled to payment from the Sellers under paragraph 2.1 in respect of the liability and the Sellers have not previously made that payment.
- 9.5 The Purchaser shall not be liable in respect of any claim under paragraph 9.1 unless written notice of that claim has been made prior to what would be the Tax Longstop Date in respect of that claim if it were a Tax Claim.

SIGNED by

duly authorised for and on behalf of
SPECIALITY FINANCE LIMITED
presence of:

)
) /s/ Dawna Stickler
) _____
(Director)

SIGNED by

duly authorised for and on behalf of
**BRIDGE PROPERTIES (ARENA
CENTRAL) LIMITED** in the
presence of:

)
)
)
)

/s/ Dawna Stickler
(Director)

SIGNED by

duly authorised for and on behalf
of **GLOBAL MARINE HOLDINGS LLC**

)
)
)
)

/s/ Keith M. Hladek
(Authorised Signatory)

**CERTIFICATE OF DESIGNATION
OF
SERIES A-1 CONVERTIBLE PARTICIPATING PREFERRED STOCK
OF
HC2 HOLDINGS, INC.**

The undersigned, Mesfin Demise, the Chief Financial Officer of HC2 Holdings, Inc. (including any successor in interest, the "Company"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "DGCL"), does hereby certify, in accordance with Sections 103 and 151 of the DGCL, that the following resolutions were duly adopted by its Board of Directors (the "Board") on September 22, 2014:

WHEREAS, the Company's Second Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation"), authorizes 20,000,000 shares of preferred stock, par value \$0.001 per share (the "Preferred Stock"), issuable from time to time in one or more series;

WHEREAS, the Certificate of Incorporation authorizes the Board to provide by resolution for the issuance of the shares of Preferred Stock in one or more series, the number of shares in each series, the voting powers, if any, and such designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions thereof;

WHEREAS, the Board desires, pursuant to its authority as aforesaid, to designate a new series of Preferred Stock, set the number of shares constituting such series, and the voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions thereof.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby designates a new series of Preferred Stock, consisting of the number of shares set forth herein, with the voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions relating to such series as follows:

SECTION 1. Number; Designation; Rank.

(a) This series of convertible participating preferred stock is designated as the "Series A-1 Convertible Participating Preferred Stock" (the "Series A-1 Preferred Stock"). The number of shares constituting the Series A-1 Preferred Stock is 11,000 shares, par value \$0.001 per share.

(b) The Series A-1 Preferred Stock ranks, with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company or otherwise:

(i) senior in preference and priority to the Common Stock and each other class or series of Capital Stock of the Company, except for (x) any class or series of Capital Stock hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank senior to or on parity, without preference or priority, with the Series A-1 Preferred Stock with respect to the payment of dividends, redemption payments, rights

(including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company, or otherwise (collectively with the Common Stock, the “Junior Securities”) and (y) the shares of Series A Preferred Stock;

(ii) on parity, without preference and priority, with the Series A Preferred Stock and each other class or series of Capital Stock of the Company hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank on parity, without preference or priority, with the Series A-1 Preferred Stock with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company, or otherwise (collectively, the “Parity Securities”); and

(iii) junior in preference and priority to each other class or series of Preferred Stock or any other Capital Stock of the Company hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank senior in preference or priority to the Series A-1 Preferred Stock with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company or otherwise (collectively, “Senior Securities”).

SECTION 2. Dividends.

(a) Cash Dividends. Holders shall be entitled to receive, out of funds legally available for the payment of dividends to the Company’s stockholders under Delaware law, on each Preferred Share, cumulative cash dividends which accrue daily at a per annum rate of 7.50% on the Accrued Value of such Preferred Share (“Cash Dividends”). Such Cash Dividends shall begin to accrue and be cumulative from the Issue Date. Cash Dividends shall be payable quarterly with respect to each Dividend Period in arrears on the first Dividend Payment Date after such Dividend Period. If and to the extent that the Company does not for any reason (including because there are insufficient funds legally available for the payment of dividends) pay the entire Cash Dividend payable for a particular Dividend Period in cash on the applicable Dividend Payment Date for such period (whether or not there are funds of the Company legally available for the payment of dividends to the Company’s stockholders under Delaware law or such dividends are declared by the Board), during the period in which such Cash Dividend remains unpaid, an additional accreting dividend (the “Cash Accretion Dividends”) shall accrue and be payable at an annual rate equal to the Dividend Rate on the amount of the unpaid Cash Dividend through the daily addition of such Cash Accretion Dividends to the Accrued Value (whether or not such Cash Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company’s stockholders under Delaware law).

(b) Accreting Dividends. In addition to the Cash Dividend, for each Dividend Period beginning on or after the Issue Date, the Holders shall be entitled to receive on each Preferred Share additional dividends at the per annum rates set forth in this SECTION 2(b) (the “Basic Accreting Dividends”) and, together with the Cash Accretion Dividends, the Participating Accretion Dividends and the In-Kind Participating Dividends, the “Accreting Dividends”; the Accreting Dividends, together with the Cash Dividend and

the Participating Dividends, the "Dividends"). Basic Accreting Dividends shall accrue and be cumulative from the Issue Date. Basic Accreting Dividends shall be payable quarterly with respect to each Dividend Period in arrears on the first Dividend Payment Date after such Dividend Period by the addition of such amount to the Accrued Value, whether or not declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company's stockholders under Delaware law. Such Basic Accreting Dividend for any Dividend Period shall be at a per annum rate (the "Accreting Dividend Rate") determined as follows:

(i) If Net Asset Value as of the last day of any Dividend Period is less than 120% of Original Issue Date NAV, a per annum rate of 4.00% of the Accrued Value for the next succeeding Dividend Period;

(ii) If Net Asset Value as of the last day of any Dividend Period is equal to or greater than 120% and less than or equal to 140% of Original Issue Date NAV, a per annum rate of 2.00% of the Accrued Value for the next succeeding Dividend Period; and

(iii) If Net Asset Value as of the last day of any Dividend Period is greater than 140% of Original Issue Date NAV, no additional per annum rate for the next succeeding Dividend Period;

provided, however, that (1) the Accreting Dividend Rate with respect to the period from the Original Issue Date through June 30, 2014 shall be 4.00% of the Accrued Value and (2) notwithstanding anything to the contrary contained herein, the Accreting Dividend Rate shall be 7.25% of the Accrued Value during any portion of any Dividend Period during which any of the following is true: (w) the Daily VWAP for the immediately preceding trading day was less than \$1.00 (as adjusted for stock splits, stock dividends, stock combinations and similar events), (x) the Common Stock is not registered under Section 12(b) of the Exchange Act, (y) the Common Stock is not listed on an Exchange or (z) the Company is delinquent in the payment of any Cash Dividends; *provided*, that the Company's failure to comply with requirements (y) and (z) above will not trigger the increased Accreting Dividend Rate during the first year after the Original Issue Date.

(c) Participating Cash Dividends. If the Company declares, makes or pays any cash dividend or distribution in respect of the Common Stock (a "Common Dividend"), each Holder shall receive a dividend (in addition to the Dividends provided for by SECTION 2(a) and SECTION 2(b)) in respect of each Preferred Share held thereby, in an amount equal to the product of (x) the amount of such Common Dividend paid per share of Common Stock, multiplied by (y) the number of shares of Common Stock issuable if such Preferred Share had been converted into shares of Common Stock immediately prior to the record date for such Common Dividend (such amount per share of Preferred Stock, the "Participating Cash Dividend"). Participating Cash Dividends shall be payable to Holders on the record date for such Common Dividend at the same time and in the same manner as the Common Dividend triggering such Participating Cash Dividend is paid. If and to the extent that the Company does not for any reason pay the entire Participating Cash Dividend when the Common Dividend is paid to the holders of Common Stock, during the period in

which such Participating Cash Dividend remains unpaid, an additional accreting dividend (the “Participating Accretion Dividends”) shall accrue and be payable at an annual rate equal to the Dividend Rate on the amount of the unpaid Participating Cash Dividend through the daily addition of such Participating Accretion Dividends to the Accrued Value (whether or not such Participating Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company’s stockholders under Delaware law).

(d) In-Kind Participating Dividends. If the Company distributes shares of its Capital Stock, evidences of its indebtedness or other assets, securities or property, in respect of the Common Stock (an “In-Kind Common Dividend”), including without limitation any spin-off of one or more subsidiaries or businesses of the Company but excluding: (I) dividends or distributions referred to in SECTIONS 5(g)(i)(A) and 5(g)(i)(B); and (II) cash dividends with respect to which Holders are entitled to Participating Cash Dividends, then the Holders shall receive in such distribution or other transaction, at the same time and in the same manner as holders of Common Stock, the same type and amount of consideration (the “In-Kind Participating Dividend”) and, collectively with the Participating Cash Dividend, the “Participating Dividends”) as Holders would have received if, immediately prior to the record date of such In-Kind Common Dividend, they had held the number of shares of Common Stock issuable upon conversion of the Preferred Shares. To the extent that the Company establishes or adopts a stockholder rights plan or agreement (i.e., a “poison pill”), the Company shall ensure that the Holders will receive, as an In-Kind Participating Dividend, rights under the stockholder rights plan or agreement with respect to any shares of Common Stock that at the time of such distribution would be issuable upon conversion of the Preferred Shares. If and to the extent that the Company does not for any reason pay the entire In-Kind Participating Dividend when the In-Kind Common Dividend is paid to the holders of Common Stock, during the period in which such In-Kind Participating Dividend remains unpaid, an additional accreting dividend (the “In-Kind Accretion Dividends”) shall accrue and be payable at an annual rate equal to the Dividend Rate on the amount of the unpaid In-Kind Participating Dividend through the daily addition of such In-Kind Accretion Dividends to the Accrued Value (whether or not such In-Kind Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company’s stockholders under Delaware law).

(e) Dividends (other than Participating Dividends) payable on the Series A-1 Preferred Stock in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of Dividends (other than Participating Dividends) payable on the Series A-1 Preferred Stock on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

(f) Cash Dividends and Accreting Dividends that are payable on Series A-1 Preferred Stock on any Dividend Payment Date will be payable to Holders of record on the applicable record date, which shall be the fifteenth (15th) calendar day before the applicable Dividend Payment Date, or, with respect to any Cash Dividends not paid on the scheduled Dividend Payment Date therefor, such record date fixed by the Board (or a

duly authorized committee of the Board) that is not more than sixty (60) nor less than ten (10) days prior to such date on which such accrued and unpaid Cash Dividends are to be paid (each such record date, a "Dividend Record Date"). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

(g) The quarterly dividend periods with respect to Cash Dividends and Accreting Dividends shall commence on and include January 1, April 1, July 1 and October 1 (other than the initial Dividend Period, which shall commence on and include the Issue Date) and shall end on and include the last calendar day of the calendar quarter ending March 31, June 30, September 30 and December 31 preceding the next Dividend Payment Date (a "Dividend Period").

SECTION 3. Liquidation Preference.

(a) Upon any Liquidation Event, each Preferred Share entitles the Holder thereof to receive and to be paid out of the assets of the Company legally available for distribution to the Company's stockholders, before any distribution or payment may be made to a holder of any Junior Securities, an amount in cash per share equal to the greater of: (i) the sum of (A) the Specified Percentage of the Accrued Value, plus (B) all accrued and unpaid Dividends (including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on such share to the extent not included in the Accrued Value (such sum, after the Specified Percentage multiplier and as adjusted, the "Regular Liquidation Preference") and (ii) an amount equal to the amount the Holder of such share would have received upon such Liquidation Event had such Holder converted such Preferred Share into Common Stock (or Reference Property, to the extent applicable) immediately prior thereto (such greater amount, the "Liquidation Preference").

(b) If upon any such Liquidation Event, the assets of the Company legally available for distribution to the Company's stockholders are insufficient to pay the Holders the full Liquidation Preference and the holders of all Parity Securities the full liquidation preferences to which they are entitled, the Holders and the holders of such Parity Securities will share ratably in any such distribution of the assets of the Company in proportion to the full respective amounts to which they are entitled.

(c) After payment to the Holders of the full Liquidation Preference to which they are entitled, the Holders as such will have no right or claim to any of the assets of the Company.

(d) The value of any property not consisting of cash that is distributed by the Company to the Holders will equal the Fair Market Value thereof on the date of distribution.

(e) No holder of Junior Securities shall receive any cash upon a Liquidation Event unless the entire Liquidation Preference in respect of the Preferred Shares has been paid in cash. To the extent that there is insufficient cash available to pay the entire Liquidation Preference in respect of the Preferred Shares and any liquidation preference in

respect of Parity Securities in full in cash upon a Liquidation Event, the Holders and the holders of such Parity Securities will share ratably in any cash available for distribution in proportion to the full respective amounts to which they are entitled upon such Liquidation Event.

SECTION 4. As-Converted Voting Rights; Certain Consent Rights.

(a) The Holders are entitled to vote on all matters on which the holders of shares of Common Stock are entitled to vote and, except as otherwise provided herein (including under SECTION 7 below) or by law, the Holders shall vote together with the holders of shares of Common Stock as a single class. As of any record date or other determination date, each Holder shall be entitled to the number of votes such Holder would have had if all Preferred Shares held by such Holder on such date had been converted into shares of Common Stock immediately prior thereto, except that, in the event that any Holder would be required to file any Notification and Report Form pursuant to the HSR Act as a result of the receipt of any Accreting Dividends by such Holder, the voting rights of such Holder pursuant to this Section 4(a) shall not be increased as a result of such Holder's receipt of such Accreting Dividends unless and until such Holder and the Company shall have made their respective filings under the HSR Act and the applicable waiting period shall have expired or been terminated in connection with such filings. The Company shall make all required filings and reasonably cooperate with and assist such Holder in connection with the making of such filing and obtaining the expiration or termination of such waiting period and shall be reimbursed by such Holder for any reasonable and documented out-of-pocket costs incurred by the Company in connection with such filings and cooperation.

(b) In addition to the voting rights provided for by SECTION 4(a) and SECTION 7 and any voting rights to which the Holders may be entitled to under law, for so long as any Preferred Shares or shares of Series A Preferred Stock are outstanding, the Company may not, directly or indirectly, take any of the following actions (including by means of merger, consolidation, reorganization, recapitalization or otherwise) without the prior written consent of the Requisite Holders:

(i) amend the Certificate of Incorporation (excluding for this purpose this Certificate of Designation) or the By-Laws of the Company (including by means of merger, consolidation, reorganization, recapitalization or otherwise), in each case, in a manner adverse to the Holders;

(ii) authorize, create or issue any (x) Senior Securities or any debt securities convertible into or exchangeable for Equity Securities;

(y) except as permitted under and in compliance with SECTION 9(b) and otherwise by this Certificate of Designation, Parity Securities or

(z) any voting securities providing the holders thereof voting or board designation or appointment rights that are disproportionate to such holders' fully diluted ownership of the Common Stock;

(iii) (a) authorize or effect the commencement by the Company of any case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, (b) consent to

entry of an order for relief in an involuntary case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, or (c) consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or similar official of the Company, or any general assignment for the benefit of creditors;

(iv) incur, or permit any Subsidiary to incur, any Indebtedness not otherwise permitted by the terms of SECTION 9(a);

(v) enter into, consummate, adopt, approve, establish or amend any Related Party Transaction (including any agreements or arrangements with HRG Affiliates relating to corporate opportunities and including all amendments, waivers and consents relating to any agreements and arrangements subject to this clause (vi)) (other than a Permitted Related Party Transaction, in either case, that has not been approved by a committee of the Board consisting solely of Independent Directors and, at all times that there is a Preferred Elected Director, not less than one Preferred Elected Director;

(vi) make, or permit any of its Subsidiaries to make, any Restricted Payments other than (A) the purchase of Equity Securities held by officers, directors, employees, consultants or independent contractors or former officers, directors, employees, consultants or independent contractors (or their estates or beneficiaries under their estates), upon death, disability, retirement, severance or other termination of employment provided that the aggregate cash consideration paid therefor in any twelve-month period after the Original Issue Date does not exceed an aggregate amount of (I) \$250,000 with respect to the Company and its Wholly Owned Subsidiaries, taken together, and (II) \$250,000 with respect to any Non-Wholly Owned Subsidiary of the Company, taken together with all Wholly Owned Subsidiaries of such Non-Wholly Owned Subsidiary, (B) dividends and distributions by Non-Wholly owned Subsidiaries made in accordance with the Organizational Documents of such Non-Wholly Owned Subsidiaries, (C) dividends and distributions to the Company or its Wholly Owned Subsidiaries and (D) Permitted Payments;

(vii) create a new Subsidiary of the Company not in existence on the Original Issue Date for the primary purpose of issuing Equity Securities of such Subsidiary or incurring Debt the proceeds of which will, directly or indirectly, be used to make dividends or other distributions or payments of cash to holders of the Company's Capital Stock other than the Holders; provided, that for the avoidance of doubt, the foregoing shall not prohibit dividends or other distributions to the Company;

(viii) effect any voluntary deregistration under the Exchange Act or voluntary delisting with any Exchange in respect to the Common Stock other than in connection with a Change of Control transaction pursuant to which the Company satisfies in full (in cash with respect to payment obligations) all of its obligations under SECTION 6(c); or

(ix) agree to do, directly or indirectly, any of the foregoing actions set forth in clauses (i) through (viii), unless such agreement expressly provides that the Company's obligation to undertake any of the foregoing is subject to the prior approval of the Requisite Holders.

(c) In addition to the voting rights provided for by SECTION 4(a), SECTION 4(b) and SECTION 7 and any voting rights to which the Holders may be entitled to under law, for so long as any Preferred Shares are outstanding, the Company may not, directly or indirectly, take any of the following actions (including by means of merger, consolidation, reorganization, recapitalization or otherwise) without the prior written consent of the Series A-1 Requisite Holders:

(i) amend, repeal, alter or add, delete or otherwise change the powers, preferences, rights or privileges of the Series A-1 Preferred Stock;

(ii) authorize or issue any shares of Series A-1 Preferred Stock other than to the September 2014 Purchasers pursuant to SECTION 2 of the September 2014 Securities Purchase Agreement, or effect any stock split or combination, reclassification or similar event with respect to the Series A-1 Preferred Stock;

(iii) incur, or permit any Subsidiary to incur, any Indebtedness not otherwise issued in compliance with the participation rights contained in SECTION 5.4 of the September 2014 Securities Purchase Agreement; or

(iv) agree to do, directly or indirectly, any of the foregoing actions set forth in clauses (i) through (iii), unless such agreement expressly provides that the Company's obligation to undertake any of the foregoing is subject to the prior approval of the Series A-1 Requisite Holders.

(d) Notwithstanding anything to the contrary contained in this SECTION 4, the Company may not, directly or indirectly, take any action otherwise approved pursuant to Section 4(b) if such action would have a materially adverse and disproportionate effect on the powers, preferences, rights, limitations, qualifications and restrictions or privileges of any Holder with respect to any shares of Series A-1 Preferred Stock held by any Holder, without the prior approval of such Holder.

(e) Written Consent. Any action as to which a class vote of the holders of Preferred Stock, or the holders of Preferred Stock and Common Stock voting together, is required pursuant to the terms of this Certificate of Designation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be 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 and shall be delivered to the Company.

SECTION 5. Conversion. Each Preferred Share is convertible into shares of Common Stock (or Reference Property, to the extent applicable) as provided in this SECTION 5.

(a) Conversion at the Option of Holders of Series A-1 Preferred Stock. Subject to SECTION 5(b) hereof, each Holder is entitled to convert, at any time and from time to time, at the option and election of such Holder, any or all outstanding Preferred Shares held by such Holder and receive therefor the property described in SECTION 5(d) upon such conversion. In order to convert Preferred Shares into shares of Common Stock (or Reference Property, to the extent applicable), the Holder must surrender the certificates representing such Preferred Shares at the office of the Company's transfer agent for the Series A-1 Preferred Stock (or at the principal office of the Company, if the Company serves as its own transfer agent), together with (x) written notice that such Holder elects to convert all or part of the Preferred Shares represented by such certificates as specified therein, (y) a written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the transfer agent or the Company, as applicable (if reasonably required by the transfer agent or the Company, as applicable), and (z) funds for any stock transfer, documentary, stamp or similar taxes, if payable by the Holder pursuant to SECTION 5(f)(i). Except as provided in SECTION 5(b) and in SECTION 5(c), the date the transfer agent or the Company, as applicable, receives such certificates, together with such notice and any other documents and amounts required to be paid by the Holder pursuant to this SECTION 5, will be the date of conversion (the "Conversion Date").

(b) Conversion at the Option of the Company. Beginning on the third (3rd) anniversary of the Original Issue Date, the Company shall have the right, at its option, to cause all shares of Series A-1 Preferred Stock to be automatically converted (without any further action by the Holder and whether or not the certificates representing the Preferred Shares are surrendered), in whole but not in part, into the property described in SECTION 5(d) within five (5) Business Days of any day (the "Forced Conversion Trigger Date") on which all of the Company Conversion Conditions are satisfied from time to time. The Company may exercise its option under this SECTION 5(b) by providing the Holders with a written notice, which notice shall specify that the Company is exercising the option contemplated by this SECTION 5(b), the Forced Conversion Trigger Date and the Conversion Date on which the conversion shall occur (which Conversion Date shall be not less than ten (10) Business Days following the date such notice is provided to the Holders); *provided* that, once delivered, such notice shall be irrevocable, unless the Company obtains the written consent of the Series A-1 Requisite Holders. For the avoidance of doubt, (x) the Holders shall continue to have the right to convert their Preferred Shares pursuant to SECTION 5(a) until and through the Conversion Date contemplated in this SECTION 5(b) and (y) if any Preferred Shares are converted pursuant to SECTION 5(a), such Preferred Shares shall no longer be converted pursuant to this SECTION 5(b) and the Company's notice delivered to the Holders pursuant to this SECTION 5(b) shall automatically terminate with respect to such Preferred Shares. Notwithstanding the foregoing, any notice delivered by the Company under this SECTION 5(b) in accordance with SECTION 11(g) shall be conclusively presumed to have been duly given at the time set forth therein, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such

notice shall affect the validity of the proceedings for the conversion of the Preferred Shares as set forth in this SECTION 5(b). The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following any date on which the Company provides notice to Holders pursuant to this SECTION 5(b) announcing the Company's election to convert Preferred Shares pursuant to this SECTION 5(b).

(c) Automatic Conversion on Maturity Date. In the event that any Holder has not elected to have its Preferred Shares redeemed by the Company on the Maturity Date (as defined herein) pursuant to SECTION 6(a), then such Holder's Preferred Shares shall be automatically converted (without any further action by the Holder and whether or not the certificates representing the Preferred Shares are surrendered), in whole and not in part, into the property described in SECTION 5(d), effective as of the Maturity Date, which shall be deemed to be the "Conversion Date" for purposes of this SECTION 5(c). As promptly as practicable (but in no event more than five (5) Business Days) following the Maturity Date, the Company shall deliver a notice to any Holder whose Preferred Shares have been converted by the Company pursuant to this SECTION 5(c), informing such Holder of the number of shares of Common Stock into which such Preferred Shares have been converted, together with certificates evidencing such shares of Common Stock. Notwithstanding the foregoing, any notice delivered by the Company in compliance with this SECTION 5(c) shall be conclusively presumed to have been duly given, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such notice shall affect the validity of the proceedings for the conversion of the Preferred Shares as set forth in this SECTION 5(c). The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following the Maturity Date announcing the aggregate number of Preferred Shares being converted pursuant to this SECTION 5(c) and the number of shares of Common Stock issuable in connection therewith, as well as the aggregate number of Preferred Shares redeemed on the Maturity Date and the purchase price paid by the Company therefor.

(d) Amounts Received Upon Conversion. Upon a conversion of Preferred Shares pursuant to SECTION 5(a), (b) or (c), the Holder of such converted Preferred Shares shall receive in respect of each Preferred Share:

(i) a number of shares of Common Stock (or Reference Property, to the extent applicable) equal to the amount (the "Conversion Amount") determined by dividing (A) the Accrued Value for the Preferred Share to be converted by (B) the Conversion Price in effect at the time of conversion; *provided that*, notwithstanding the foregoing, if the Company has elected to convert all Preferred Shares pursuant to SECTION 5(b) and the Public Float Hurdle is not met on the Forced Conversion Trigger Date, then each Holder may elect, by delivery of a notice to the Company no later than the close of business on the Business Day immediately prior to the Conversion Date, to receive, in lieu of Common Stock (or Reference Property, to the extent applicable), cash equal to the Conversion Amount multiplied by the Thirty

Day VWAP as of the close of business on the Business Day immediately preceding the Conversion Date, which cash amount shall be delivered to the electing Holders within forty-five (45) calendar days of the date that the last Holder electing to receive cash pursuant to this SECTION 5(d)(i) has provided the Company with notice thereof;

(ii) cash in an amount equal to the amount of any accrued but unpaid Cash Dividends and Participating Cash Dividends (to the extent not included in the Accrued Value) on the Preferred Shares being converted; *provided* that, to the extent the Company is prohibited by law or by contract from paying such amount, then the Company shall provide written notice to the applicable Holder of such inability to pay, and at the written election of the Holder (which written election shall be delivered to the Company within five (5) Business Days of receipt of such written notice from the Company), the Company shall either pay such amount as soon as payment is no longer so prohibited or issue Common Stock (or Reference Property, to the extent applicable) in the manner specified in SECTION 5(d)(i) as if the amount of such accrued but unpaid Cash Dividends and Participating Cash Dividends were added to the Accrued Value (it being understood that any such Cash Dividends that are not timely paid upon conversion as a result of this proviso will be deemed to be overdue and delinquent for purposes of calculating Cash Accretion Dividends pursuant to SECTION 2(a) hereunder until paid in full in cash);

(iii) a number of shares of Common Stock (or Reference Property, to the extent applicable) equal to the amount determined by dividing (A) the amount of any accrued but unpaid Accreting Dividends (to the extent not included in the Accrued Value) on the Preferred Shares being converted by (B) the Conversion Price in effect at the time of Conversion; and

(iv) any accrued and unpaid In-Kind Participating Dividends.

Notwithstanding the foregoing, in the event any Holder would be required to file any Notification and Report Form pursuant to the HSR Act as a result of the conversion of any Preferred Shares into the property described above in this Section 5(d), at the option of such Holder upon written notice to the Company, the effectiveness of such conversion shall be delayed (only to the extent necessary to avoid a violation of the HSR Act), until such Holder shall have made such filing under the HSR Act and the applicable waiting period shall have expired or been terminated; provided, however, that in such circumstances such Holder shall use commercially reasonable efforts to make such filing and obtain the expiration or termination of such waiting period as promptly as reasonably practical and the Company shall make all required filings and reasonably cooperate with and assist such Holder in connection with the making of such filing and obtaining the expiration or termination of such waiting period and shall be reimbursed by such Holder for any reasonable and documented out-of-pocket costs incurred by the Company in connection with such filings and cooperation. Notwithstanding the foregoing, if the conversion of any Preferred Share is delayed pursuant to the preceding sentence at (x) a time when the Company desires to exercise its right to convert shares of Series A-1 Preferred Stock pursuant to SECTION 5(b) or (y) the Maturity Date in connection with the automatic conversion of the shares of Series A-1 Preferred Stock pursuant to SECTION 5(c), from and after the date of the conversions contemplated by SECTIONS 5(b) or 5(c), as applicable, such Preferred Share not then converted shall have no rights, powers, preferences or privileges other than the rights

provided by this paragraph and the right to (i) convert into Common Stock if and when such Holder shall have made such filing under the HSR Act and the waiting period in connection with such filing under the HSR Act shall have expired or been terminated and (ii) receive dividends and distributions pursuant to SECTIONS 2(c) and 2(d).

(e) Fractional Shares. No fractional shares of Common Stock (or fractional shares in respect of Reference Property, to the extent applicable) will be issued upon conversion of the Series A-1 Preferred Stock. In lieu of fractional shares, the Company shall pay cash in respect of each fractional share equal to such fractional amount multiplied by the Thirty Day VWAP as of the closing of business on the Business Day immediately preceding the Conversion Date (or the Fair Market Value thereof in respect of any Reference Property). If more than one Preferred Share is being converted at one time by the same Holder, then the number of full shares issuable upon conversion will be calculated on the basis of the aggregate number of Preferred Shares converted by such Holder at such time.

(f) Mechanics of Conversion.

(i) As soon as reasonably practicable after the Conversion Date (and in any event within four (4) Business Days after such date), the Company shall issue and deliver to the applicable Holder one or more certificates for the number of shares of Common Stock (or Reference Property, to the extent applicable) to which such Holder is entitled, together with, at the option of the Holder, a check or wire transfer of immediately available funds for payment of fractional shares and any payment required by SECTION 5(d)(ii) in exchange for the certificates representing the converted Preferred Shares. Such conversion will be deemed to have been made on the Conversion Date, and the Person entitled to receive the shares of Common Stock (or Reference Property, to the extent applicable) issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock (or Reference Property, to the extent applicable) on such date. The delivery of the Common Stock upon conversion of Preferred Shares shall be made, at the option of the applicable Holder, in certificated form or by book-entry. Any such certificate or certificates shall be delivered by the Company to the appropriate Holder on a book-entry basis or by mailing certificates evidencing the shares to such Holder at its address as set forth in the conversion notice. In cases where fewer than all the Preferred Shares represented by any such certificate are to be converted, a new certificate shall be issued representing the unconverted Preferred Shares. The Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of Common Stock (or Reference Property, to the extent applicable) upon conversion or due upon the issuance of a new certificate for any Preferred Shares not converted to the converting Holder; provided that the Company shall not be required to pay any such amounts, and any such amounts shall be paid by the converting Holder, in the event that such Common Stock or Preferred Shares are issued in a name other than the name of the converting Holder.

(ii) For the purpose of effecting the conversion of Preferred Shares, the Company shall: (A) at all times reserve and keep available, free from any preemptive rights, out of its treasury or authorized but unissued shares of Common Stock (or Reference Property, to the extent applicable) the full number of shares of Common Stock (or Reference Property, to the extent applicable) deliverable upon the conversion of all outstanding Preferred Shares after

taking into account any adjustments to the Conversion Price from time to time pursuant to the terms of this SECTION 5 and any increases to the Accrued Value from time to time and assuming for the purposes of this calculation that all outstanding Preferred Shares are held by one holder) and (B) without prejudice to any other remedy at law or in equity any Holder may have as a result of such default, take all actions reasonably required to amend its Certificate of Incorporation, as expeditiously as reasonably practicable, to increase the authorized and available amount of Common Stock (or Reference Property, to the extent applicable) if at any time such amendment is necessary in order for the Company to be able to satisfy its obligations under this SECTION 5. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock (or Reference Property, to the extent applicable) issuable upon conversion of the Series A-1 Preferred Stock, the Company will take any corporate action which may be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock (or Reference Property, to the extent applicable) upon the conversion of all outstanding Preferred Shares at such adjusted Conversion Price.

(iii) From and after the Conversion Date, the Preferred Shares converted on such date, will no longer be deemed to be outstanding and all rights of the Holder thereof including the right to receive Dividends, but excluding the right to receive from the Company the Common Stock (or Reference Property, to the extent applicable) or any cash payment upon conversion, and except for any rights of Holders (including any voting rights) pursuant to this Certificate of Designation which by their express terms continue following conversion or, for the avoidance of doubt, rights which by their express terms continue following conversion pursuant to any of the other Transaction Agreements (as defined in the September 2014 Securities Purchase Agreement) shall immediately and automatically cease and terminate with respect to such Preferred Shares; *provided* that, in the event that a Preferred Share is not converted due to a default by the Company or because the Company is otherwise unable to issue the requisite shares of Common Stock (or Reference Property, to the extent applicable), such Preferred Share will, without prejudice to any other remedy at law or in equity any Holder may have as a result of such default, remain outstanding and will continue be entitled to all of the rights attendant to such Preferred Share as provided herein.

(iv) The Company shall comply with all federal and state laws, rules and regulations and applicable rules and regulations of the Exchange on which shares of the Common Stock (or Reference Property, to the extent applicable) are then listed. If any shares of Common Stock (or Reference Property, to the extent applicable) to be reserved for the purpose of conversion of Preferred Shares require registration with or approval of any Person or group (as such term is defined in Section 13(d)(3) of the Exchange Act) under any federal or state law or the rules and regulations of the Exchange on which shares of the Common Stock (or Reference Property, to the extent applicable) are then listed before such shares may be validly issued or delivered upon conversion, then the Company will, as expeditiously as reasonably practicable, use commercially reasonable efforts to secure such registration or approval, as the case may be. So long as any Common Stock (or Reference Property, to the extent applicable) into which the Preferred Shares are then convertible is then listed on an Exchange, the Company will list and keep listed on any such Exchange, upon official notice of issuance, all shares of such Common Stock (or Reference Property, to the extent applicable) issuable upon conversion.

(v) All shares of Common Stock (or Reference Property, to the extent applicable) issued upon conversion of the Preferred Shares will, upon issuance by the Company, be duly and validly issued, fully paid and nonassessable, not issued in violation of any preemptive or similar rights arising under law or contract and free from all taxes, liens and charges with respect to the issuance thereof, and the Company shall take no action which will cause a contrary result.

(g) Adjustments to Conversion Price.

(i) The Conversion Price shall be subject to the following adjustments:

(A) *Common Stock Dividends or Distributions.* If the Company issues shares of Common Stock as a dividend or distribution on shares of Common Stock, or if the Company effects a share split or share combination with respect to shares of Common Stock, the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0}{OS_1}$$

where,

CP_0 = the Conversion Price in effect immediately prior to the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be;

CP_1 = the Conversion Price in effect immediately after the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be; and

OS_1 = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or such share split or share combination, as the case may be.

Any adjustment made under this SECTION 5(g)(i)(A) shall become effective immediately after the open of business on the Ex-Date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination. If any dividend or distribution of the type described in this SECTION 5(g)(i)(A) is declared but not so paid or made, or any share split or combination of the type described in this SECTION 5(g)(i)(A) is announced but the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Price shall be immediately readjusted, effective as of the date the Board determines not to pay such dividend or distribution, or not to split or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Price that would then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

(B) *Rights, Options or Warrants on Common Stock*. If the Company distributes to all or substantially all holders of its Common Stock any rights, options or warrants entitling them, for a period expiring not more than sixty (60) days immediately following the record date of such distribution, to purchase or subscribe for shares of Common Stock at a price per share less than the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution, the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CP₀ = the Conversion Price in effect immediately prior to the open of business on the Ex-Date for such distribution;

CP₁ = the Conversion Price in effect immediately after the open of business on the Ex-Date for such distribution;

OS₀ = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Date for such distribution;

X = the number of shares of Common Stock equal to the aggregate price payable to exercise all such rights, options or warrants divided by the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution; and

Y = the total number of shares of Common Stock issuable pursuant to all such rights, options or warrants.

Any adjustment made under this SECTION 5(g)(i)(B) will be made successively whenever any such rights, options or warrants are distributed and shall become effective immediately after the open of business on the Ex-Date for such distribution. To the extent that shares of Common Stock are not delivered prior to the expiration of such rights, options or warrants, the Conversion Price shall be readjusted following the expiration of such rights to the Conversion Price that would then be in effect had the decrease in the Conversion Price with respect to the distribution of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so distributed, the Conversion Price shall be immediately readjusted, effective as of the date the Board determines not to make such distribution, to the Conversion Price that would then be in effect if such distribution had not occurred.

In determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such average of the Daily VWAP for the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution, and in determining the aggregate offering price of such shares of the Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the fair market value of such consideration, if other than cash, to be reasonably determined by the Board in good faith.

(C) *Tender Offer or Exchange Offer Payments.* If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for Common Stock, if the aggregate value of all cash and any other consideration included in the payment per share of Common Stock (as reasonably determined in good faith by the Board) exceeds the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date on which such tender offer or exchange offer expires, the Conversion Price will be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 \times SP_1}{AC + (SP_1 \times OS_1)}$$

where,

CP_1 = the Conversion Price in effect immediately after the close of business on the last Trading Day of the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

CP_0 = the Conversion Price in effect immediately prior to the close of business on the last Trading Day of the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires;

SP_1 = the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as reasonably determined in good faith by the Board) paid or payable for shares purchased in such tender or exchange offer; and

OS_1 = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to such tender offer or exchange offer and excluding fractional shares).

The adjustment to the Conversion Price under this SECTION 5(g)(i)(C) will occur at the close of business on the tenth (10th) Trading Day immediately following, but excluding, the date such tender or exchange offer expires; *provided* that, for purposes of determining the Conversion Price, in respect of any conversion during the ten (10) Trading Days immediately following, but excluding, the date that any such tender or exchange offer expires, references within this SECTION 5(g)(i)(C) to ten (10) consecutive Trading Days shall be deemed replaced with such lesser number of consecutive Trading Days as have elapsed between the date such tender or exchange offer expires and the relevant conversion date.

(D) *Common Stock Issued at Less than Conversion Price.* If, after the Original Issue Date, the Company issues or sells any Common Stock (or Option Securities or Convertible Securities, to the extent set forth in this SECTION 5(g)(i)(D)), other than Excluded Stock, for no consideration or for consideration per share less than the Conversion Price in effect as of the date of such issuance or sale, the Conversion Price in effect immediately prior to each such issuance or sale will (except as provided below) be adjusted at the time of such issuance or sale based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CP₁ = the Conversion Price in effect immediately following such issuance or sale;

CP₀ = the Conversion Price in effect immediately prior to such issuance or sale;

OS₀ = the number of shares of Common Stock outstanding immediately prior to such issuance or sale (treating for this purpose as outstanding all shares of Common Stock issuable upon the conversion or exchange of (x) all Preferred Shares issued on the Second Issue Date and all Series A Preferred Shares issued on the Original Issue Date and (y) all convertible, exchangeable or exercisable Equity Securities of the Company not listed in (x) if the conversion price, exercise price or exchange price applicable to such Equity Securities of the Company is below Market Value on the determination date);

X = the number of shares of Common Stock that the aggregate consideration received by the Company for the number of shares of Common Stock so issued or sold would purchase at a price per share equal to CP₀; and

Y = the number of additional shares of Common Stock so issued.

For the purposes of any adjustment of the Conversion Price pursuant to this SECTION 5(g)(i)(D), the following provisions shall be applicable:

(1) In the case of the issuance of Common Stock for cash, the amount of the consideration received by the Company shall be deemed to be the amount of the cash proceeds received by the Company for such Common Stock after deducting therefrom any discounts or commissions allowed, paid or incurred by the Company for any underwriting or otherwise in connection with the issuance and sale thereof

(2) In the case of the issuance of Common Stock (otherwise than upon the conversion of shares of Capital Stock or other securities of the Company) for a consideration in whole or in part other than cash, including securities acquired in exchange therefor (other than securities by their terms so exchangeable), the consideration other than cash shall be deemed to be the fair market value thereof as reasonably determined by the Board in good faith.

(3) In the case of (A) the issuance of Option Securities (whether or not at the time exercisable) or (B) the issuance of Convertible Securities (whether or not at the time so convertible or exchangeable):

i) the issuance of Option Securities shall be deemed the issuance of all shares of Common Stock deliverable upon the exercise of such Option Securities;

ii) such Option Securities shall be deemed to be issued for a consideration equal to the value of the consideration (determined in the manner provided in SECTION 5(g)(i)(D)(1) and (2)), if any, received by the Company for such Option Securities, plus the exercise price, strike price or purchase price provided in such Option Securities for the Common Stock covered thereby;

iii) the issuance of Convertible Securities shall be deemed the issuance of all shares of Common Stock deliverable upon conversion of, or in exchange for, such Convertible Securities;

iv) such Convertible Securities shall be deemed to be issued for a consideration equal to the value of the consideration (determined in the manner provided in SECTION 5(g)(i)(D)(1) and (2) and excluding any cash received on account of accrued interest or accrued dividends), if any, received by the Company for such Convertible Securities, plus the value of the additional consideration (determined in the manner provided in SECTION 5(g)(i)(D)(1) and (2)) to be received by the Company upon the conversion or exchange of such Convertible Securities, if any;

v) upon any change in the number of shares of Common Stock deliverable upon exercise of any Option Securities or Convertible Securities or upon any change in the consideration to be received by the Company upon the exercise, conversion or exchange of such securities, the Conversion Price then in effect shall be readjusted to such Conversion Price as would have been in effect had such change been in effect, with respect to any Option Securities or Convertible Securities outstanding at the time of the change, at the time such Option Securities or Convertible Securities originally were issued;

vi) upon the expiration or cancellation of Option Securities (without exercise), or the termination of the conversion or exchange rights of Convertible Securities (without conversion or exchange), if the Conversion Price shall have been

adjusted upon the issuance of such expiring, canceled or terminated securities, the Conversion Price shall be readjusted to such Conversion Price as would have been obtained if, at the time of the original issuance of such Option Securities or Convertible Securities, the expired, canceled or terminated Option Securities or Convertible Securities, as applicable, had not been issued;

vii) if the Conversion Price shall have been fully adjusted upon the issuance of any such options, warrants, rights or convertible or exchangeable securities, no further adjustment of the Conversion Price shall be made for the actual issuance of Common Stock upon the exercise, conversion or exchange thereof; and

viii) if any issuance of Common Stock, Option Securities or Convertible Securities would also require an adjustment pursuant to any other adjustment provision of this SECTION 5(g)(i), then only the adjustment most favorable to the Holders shall be made.

(ii) If the Company issues rights, options or warrants that are only exercisable upon the occurrence of certain triggering events (each, a "Trigger Event"), then the Conversion Price will not be adjusted pursuant to SECTION 5(g)(i)(B) until the earliest Trigger Event occurs, and the Conversion Price shall be readjusted to the extent any of these rights, options or warrants are not exercised before they expire (provided, however, that, for the avoidance of doubt, if such Trigger Event would require an adjustment pursuant to SECTION 5(g)(i)(D), such adjustment pursuant to SECTION 5(g)(i)(D) shall be made at the time of issuance of such rights, options or warrants in accordance with such Section).

(iii) Notwithstanding anything in this SECTION 5(g) to the contrary, if a Conversion Price adjustment becomes effective pursuant to any of clauses (A), (B) or (C) of this SECTION 5(g)(i) on any Ex-Date as described above, and a Holder that converts its Preferred Shares on or after such Ex-Date and on or prior to the related record date would be treated as the record holder of shares of Common Stock as of the related Conversion Date based on an adjusted Conversion Price for such Ex-Date and participate on an adjusted basis in the related dividend, distribution or other event giving rise to such adjustment, then, notwithstanding the foregoing Conversion Price adjustment provisions, the Conversion Price adjustment relating to such Ex-Date will not be made for such converting Holder. Instead, such Holder will be treated as if such Holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

Notwithstanding anything in this SECTION 5(g) to the contrary, no adjustment under SECTION 5(g)(i) need be made to the Conversion Price unless such adjustment would require a decrease of at least 1% of the Conversion Price then in effect. Any lesser adjustment shall be carried forward and shall be made at the time of and together with the next subsequent adjustment, if any, which, together with any adjustment or adjustments so carried forward, shall amount to a decrease of at least 1% of such Conversion Price; *provided* that, on the date of any conversion of the Preferred Shares pursuant to SECTION 5, adjustments to the Conversion Price will be made with respect to any such adjustment carried forward that has not been taken into account before such date. In addition, at the end of each year, beginning with the year ending December 31, 2014, the Conversion Price shall be adjusted to give effect to any adjustment or adjustments so carried forward, and such adjustments will no longer be carried forward and taken into account in any subsequent adjustment.

(iv) Adjustments Below Par Value. The Company shall not take any action that would require an adjustment to the Conversion Price such that the Conversion Price, as adjusted to give effect to such action, would be less than the then-applicable par value per share of the Common Stock, except that the Company may undertake a share split or similar event if such share split results in a corresponding reduction in the par value per share of the Common Stock such that the as-adjusted new Conversion Price per share would not be below the new as-adjusted par value per share of the Common Stock following such share split or similar transaction and the Conversion Price is adjusted as provided under SECTION 5(g)(i)(A) and any other applicable provision of SECTION 5(g).

(v) Reference Property. In the case of any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision, combination or reclassification described in SECTION 5(g)(i)(A)), a consolidation, merger or combination involving the Company, a sale, lease or other transfer to a third party of all or substantially all of the assets of the Company (or the Company and its Subsidiaries on a consolidated basis), or any statutory share exchange, in each case as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any of the foregoing, a "Transaction"), then, at the effective time of the Transaction, the right to convert each Preferred Share will be changed into a right to convert such Preferred Share into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) (the "Reference Property") that a Holder would have received in respect of the Common Stock issuable upon conversion of such Preferred Shares immediately prior to such Transaction. In the event that holders of Common Stock have the opportunity to elect the form of consideration to be received in the Transaction, the Company shall make adequate provision whereby the Holders of the Preferred Shares shall have a reasonable opportunity to determine the form of consideration into which all of the Preferred Shares, treated as a single class, shall be convertible from and after the effective date of the Transaction. Any such election shall be made by the Series A-1 Requisite Holders. Any such determination by the Holders shall be subject to any limitations to which all holders of Common Stock are subject, such as pro rata reductions applicable to any portion of the consideration payable in the Transaction, and shall be conducted in such a manner as to be completed at approximately the same time as the time elections are made by holders of Common Stock. The provisions of this SECTION 5(g)(v) and any equivalent thereof in any such securities similarly shall apply to successive Transactions. The Company shall not become a party to any Transaction unless its terms are in compliance with the foregoing.

(vi) Rules of Calculation; Treasury Stock. All calculations will be made to the nearest one-hundredth of a cent or to the nearest one-ten thousandth of a share. Except as explicitly provided herein, the number of shares of Common Stock (or Reference Property, to the extent applicable) outstanding will be calculated on the basis of the number of issued and outstanding shares of Common Stock (or Reference Property, to the extent applicable), not including shares held in the treasury of the Company. The Company shall not pay any dividend on or make any distribution to shares of Common Stock (or Reference Property, to the extent applicable) held in treasury.

(vii) No Duplication. If any action would require adjustment of the Conversion Price pursuant to more than one of the provisions described in this SECTION 5 in a manner such that such adjustments are duplicative, only one adjustment (which shall be the adjustment most favorable to the Holders of Preferred Stock) shall be made.

(viii) Notice of Record Date. In the event of:

- (A) any event described in SECTION 5(f)(i)(A), (B), (C) or (D);
- (B) any Transaction to which SECTION 5(f)(v) applies;
- (C) the dissolution, liquidation or winding-up of the Company; or
- (D) any other event constituting a Change of Control;

then the Company shall mail to the Holders of Preferred Stock at their last addresses as shown on the records of the Company, at least twenty (20) days prior to the record date specified in (A) below or twenty (20) days prior to the date specified in (B) below, as applicable, a notice stating:

(A) the record date for the dividend, other distribution, stock split or combination or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, other distribution, stock split or combination; or

(B) the date on which such reclassification, change, dissolution, liquidation, winding-up or other event constituting a Transaction or Change of Control, or any transaction which would result in an adjustment pursuant to SECTION 5(g)(i)(D), is estimated to become effective or otherwise occur, and the date as of which it is expected that holders of Common Stock of record will be entitled to exchange their shares of Common Stock for Reference Property, other securities or other property deliverable upon such reclassification, change, liquidation, dissolution, winding-up, Transaction or Change of Control or that such issuance of Common Stock, Option Securities or Convertible Securities is anticipated to occur.

(ix) Certificate of Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this SECTION 5, the Company at its expense shall as promptly as reasonably practicable compute such adjustment or readjustment in accordance with the terms hereof and furnish to each Holder of Preferred Stock a certificate, signed by an officer of the Company (in his or her capacity as such and not in an individual capacity), setting forth (A) the calculation of such adjustments and readjustments in reasonable detail, (B) the facts upon which such adjustment or readjustment is based, (C) the Conversion Price then in effect, and (D) the number of shares of Common Stock (or Reference Property, to the extent applicable) and the amount, if any, of Capital Stock, other securities or other property (including but not limited to cash and evidences of indebtedness) which then would be received upon the conversion of a Preferred Share.

(x) No Upward Revisions to Conversion Price. For the avoidance of doubt, except in the case of a reverse share split or share combination resulting in an adjustment under SECTION 5(g)(i)(A) effected with the approvals, if any, required pursuant to SECTION 4(b), in no event shall any adjustment be made pursuant to this SECTION 5 that results in an increase in the Conversion Price.

SECTION 6. Redemption.

(a) Redemption at Maturity. Each Holder shall have the right to require the Company to redeem such Holder's Preferred Shares, in whole or in part, on the seventh (7th) anniversary of the Original Issue Date (the "Maturity Date") at a price per share payable, subject to SECTION 6(e), in cash and equal to the Redemption Price. At any time during the period beginning on the thirtieth (30th) calendar day prior to the Maturity Date (the "Holder Redemption Notice Period"), each Holder may deliver written notice to the Company notifying the Company of such Holder's election to require the Company to redeem all or a portion of such Holder's Preferred Shares on the Maturity Date (the "Election Notice"). No later than thirty (30) calendar days prior to the commencement of the Holder Redemption Notice Period, the Company shall deliver a notice to each Holder of Preferred Stock including the following information: (A) informing the Holder of the Maturity Date and such Holder's right to elect to have all or a portion of its Preferred Shares redeemed by Company on the Maturity Date, (B) the Redemption Price payable with respect to each share of Series A-1 Preferred Stock on the Maturity Date in connection with any such redemption (to the extent the Redemption Price is known or can be calculated, and to the extent not capable of being calculated, the manner in which such price will be determined); (C) that any certificates representing Preferred Shares which a Holder elects to have redeemed must be surrendered for payment of the Redemption Price at the office of the Company or any redemption agent located in New York City selected by the Company therefor together with any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable (if reasonably required by the redemption agent or the Company, as applicable); (D) that, upon a Holder's compliance with clause (C), payment of the Redemption Price with respect to any Preferred Shares to be made on the Maturity Date will be made to the Holder within five (5) Business Days of the Maturity Date to the account specified in such Holder's redemption election notice; (E) that any Holder may withdraw its Election Notice with respect to all or a portion of its Preferred Shares at any time prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding the Maturity Date; and (F) the number of shares of Common Stock (or, if applicable, the amount of Reference Property) and the amount of cash, if any, that a Holder would receive upon conversion of a Preferred Share if a Holder does not elect to have its Preferred Shares redeemed. The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following any date on which the Company provides notice to Holders pursuant to this SECTION 6(a) disclosing the right of Holders to have the Company redeem Preferred Shares pursuant to this SECTION 6(a).

(b) Optional Redemption by the Company. On and after the third (3rd) anniversary of the Original Issue Date, the Company may, at its option, redeem all (but not less than all) of the outstanding Preferred Shares for cash equal to the Redemption Price. If the Company elects to redeem the Preferred Shares pursuant to this SECTION 6(b), the Company shall deliver a notice of redemption to the Holders of Preferred Stock not less than thirty (30) or more than sixty (60) calendar days prior to the date specified for redemption

(the “Optional Redemption Date”), which notice shall include: (A) the Optional Redemption Date; (B) the Redemption Price; (C) that on the Optional Redemption Date, if the Holder has not previously elected to convert Preferred Shares into Common Stock, each Preferred Share shall automatically and without further action by the Holder thereof (and whether or not the certificates representing such Preferred Shares are surrendered) be redeemed for the Redemption Price; (D) that payment of the Redemption Price will be made to the Holder within five (5) Business Days of the Redemption Date to the account specified by such Holder to the Company in writing; (E) that the Holder’s right to elect to convert its Preferred Shares will end at 5:00 p.m. (New York City time) on the Business Day immediately preceding the Optional Redemption Date; and (F) the number of shares of Common Stock (or, if applicable, the amount of Reference Property) and the amount of cash, if any, that a Holder would receive upon conversion of a Preferred Share if a Holder elect to convert its Preferred Shares prior to the Optional Redemption Date. Notwithstanding the foregoing, any notice delivered by the Company under this SECTION 6(b) in accordance with SECTION 11(g) shall be conclusively presumed to have been duly given at the time set forth therein, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such notice shall affect the validity of the proceedings for the redemption of the Preferred Shares as set forth herein. The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following any date on which the Company provides notice to Holders pursuant to this SECTION 6(b) announcing the Company’s election to redeem Preferred Shares pursuant to this SECTION 6(b).

(c) Redemption at Option of the Holder upon a Change of Control.

(i) If a Change of Control occurs, each Holder shall have the right to require the Company to redeem its Preferred Shares pursuant to a Change of Control Offer, which Change of Control Offer shall be made by the Company in accordance with Section 6(c)(ii). In such Change of Control Offer, the Company will offer a payment (such payment, a “Change of Control Payment”) in cash per Preferred Share equal to the greater of: (i) the sum of (A) the Specified Percentage of the Accrued Value, plus (B) all accrued and unpaid Dividends (including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on such share to the extent not included in the Accrued Value and (ii) an amount equal to the amount the Holder of such Preferred Share would have received in connection with such Change of Control had such Holder converted such Preferred Share into Common Stock (or Reference Property, to the extent applicable) immediately prior thereto (such greater amount, the “Change of Control Payment Amount”).

(ii) Within thirty (30) days following any Change of Control, the Company will mail a notice (a “Change of Control Offer”) to each Holder describing the transaction or transactions that constituted such Change of Control and offering to redeem the Preferred Shares on the date specified in such notice (the “Change of Control Payment Date”), which date shall be no earlier than thirty (30) days and no later than sixty-one (61) days from the

date such notice is mailed. In addition, such Change of Control Offer shall further state: (A) the amount of the Change of Control Payment; (B) that the Holder may elect to have all or any portion of its Preferred Shares redeemed pursuant to the Change of Control Offer, (C) that any Preferred Shares to be redeemed must be surrendered for payment of the Change of Control Payment at the office of the Company or any redemption agent selected by the Company therefor together with any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable (if reasonably required by the redemption agent or the Company, as applicable); (D) that, upon a Holder's compliance with clause (C), payment of the Change of Control Payment will be made to the Holder on the Change of Control Payment Date to the account specified by such Holder to the Company in writing; (E) the date and time by which the Holder must make its election, (F) that any Holder may withdraw its election notice with respect to all or a portion of their Preferred Shares at any time prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding the Change of Control Payment Date; and (G) the amount and type of property that the Holder would receive in connection with such Change of Control if the Holder elects to convert its Preferred Shares in connection with the Change of Control. The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following any date on which the Company provides notice to Holders pursuant to this SECTION 6(c) disclosing the right of Holders to have the Company redeem Preferred Shares pursuant to this SECTION 6(c).

(iii) On the Change of Control Payment Date, the Company will, to the extent lawful: (A) accept for payment all Preferred Shares validly tendered pursuant to the Change of Control Offer; and (B) make a Change of Control Payment to each Holder that validly tendered Preferred Shares pursuant to the Change of Control Offer.

(iv) If at any time prior to consummation of a transaction that would constitute a Change of Control, the Company has publicly announced (whether by press release, SEC filing or otherwise) such transaction or prospective transaction or the entry by the Company into any definitive agreement with respect thereto, the Company shall, within five (5) Business Days of the issuance of such public announcement, deliver a written notice to each Holder notifying them of the same and the anticipated date of consummation of such transaction.

(v) The Company will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer and makes the Change of Control Payment in the manner, at the times and otherwise in compliance with the requirements set forth herein applicable to a Change of Control Offer made by the Company and purchases all Preferred Shares validly tendered under such Change of Control Offer.

(vi) A Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(d) Notwithstanding anything in this SECTION 6 to the contrary, each Holder shall retain the right to elect to convert any Preferred Shares to be redeemed at any

time prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding any Redemption Date. Any Preferred Shares that a Holder elects to convert prior to the Redemption Date shall not be redeemed pursuant to this SECTION 6.

(e) Insufficient Funds. Any redemption of the Preferred Shares pursuant to this SECTION 6 shall be payable out of any cash legally available therefor, provided, however, that, other than in respect of a redemption pursuant to SECTION 6(b) (which the Company may only effectuate to the extent it has sufficient cash legally available therefor), if there is not a sufficient amount of cash legally available to pay the Redemption Price in full in cash, then the Company may pay that portion of the Redemption Price with respect to which it does not have cash legally available therefor out of the remaining assets of the Company legally available therefor (valued at the fair market value thereof on the date of payment, as reasonably determined in good faith by the Board). If the Company anticipates not having sufficient cash legally available for a redemption pursuant to SECTION 6(a) or SECTION 6(c), the redemption notice delivered to Holders shall so specify, and indicate the nature of the other assets expected to be distributed and the fair market value of the same as reasonably determined by the Board as aforesaid. At the time of any redemption pursuant to this SECTION 6, the Company shall take all actions required or permitted under Delaware law to permit the redemption of the Preferred Shares, including, without limitation, through the revaluation of its assets in accordance with Delaware law, to make cash funds (and to the extent cash funds are insufficient, other assets) legally available for such redemption. In connection with any redemption pursuant to SECTION 6(c), to the extent that Holders elect to have their Preferred Shares redeemed and the Company has insufficient funds to redeem such Preferred Shares (after taking into account the amount of any repurchase obligations the Company has or expects to have under any Indebtedness ranking senior to the Series A-1 Preferred Stock), Senior Securities or any Parity Securities resulting from the same facts and circumstances as the Change of Control hereunder), the Company shall use any available funds to redeem a portion of such Preferred Shares and Parity Securities (if any are being redeemed) ratably in proportion to the full respective amounts to which they are entitled; *provided, however*, that the failure for any reason to redeem all Preferred Shares required to be redeemed under SECTION 6(c) when required shall constitute a Specified Breach Event.

(f) Mechanics of Redemption.

(i) The Company (or a redemption agent on behalf of the Company, as applicable) shall pay the applicable Redemption Price on the Redemption Date or the required payment date therefor upon surrender of the certificates representing the Preferred Shares to be redeemed and receipt of any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable, to the extent required by SECTIONS 6(a), 6(b) and 6(c); *provided* that, if such certificates are lost, stolen or destroyed, the Company may require an affidavit certifying to such effect and, if requested, an agreement indemnifying the Company from any losses incurred in connection therewith, in each case, in form and substance reasonably satisfactory to the Company, from such Holder prior to paying such amounts.

(ii) Following any redemption of Preferred Shares on any Redemption Date, the Preferred Shares so redeemed will no longer be deemed to be outstanding and all rights of the Holder thereof shall cease, including the right to receive Dividends; *provided, however*, that any rights of Holders pursuant to this Certificate of Designation that by their terms survive redemption of the Preferred Shares and, for the avoidance of doubt, any rights that survive pursuant to any of the other Transaction Agreements (as defined in the September 2014 Securities Purchase Agreement), shall survive in accordance with their terms. The foregoing notwithstanding, in the event that a Preferred Share is not redeemed by the Company when required, such Preferred Share will remain outstanding and will continue to be entitled to all of the powers, designations, preferences and other rights (including but not limited to the accrual and payment of dividends and the conversion rights) as provided herein.

SECTION 7. Director Election Rights.

For so long as the Preferred Elected Director Condition continues to be satisfied, the Holders, voting or consenting, as the case may be, separately as a single class to the exclusion of all other classes of the Company's Voting Stock, by vote of the Requisite Holders, shall be entitled to elect a number of directors to the Board equal to the Preferred Director Number (the "Preferred Elected Director(s)"). As of the Second Issue Date, the Preferred Director Number is one and a Preferred Elected Director will commence service on the Board within ten (10) days of the date hereof. Subject to applicable law, one Preferred Elected Director (as designated by the Requisite Holders if there is more than one Preferred Elected Director) shall be entitled to be a member of each committee of the Board, including the compensation committee, the audit committee and the nominating and corporate governance committee of the Board; *provided*, that notwithstanding anything to the contrary herein, membership on any such committee will be dependent upon such director meeting the qualification, and if applicable, independence criteria deemed necessary to so comply in accordance with any listing requirements of the Exchange on which the Company's capital stock is then listed. The Preferred Elected Director(s) shall be elected as set forth in this SECTION 7; *provided* that as a condition precedent to the election of any such Preferred Elected Director, the individual(s) to be elected by the Requisite Holders shall be required to provide to the Company a duly executed and delivered written resignation of such Person to be elected as a Preferred Elected Director, providing that effective immediately and automatically (without any further action by any Person) upon the expiration of the Requisite Holders' right to elect such individual to the Board as provided herein, such Preferred Elected Director shall resign from the Board. For the avoidance of doubt, no Preferred Elected Director shall be elected to the Board unless the written resignation referred to in the preceding sentence is delivered to the Company prior thereto. The Preferred Elected Directors shall be elected, at the option of the Requisite Holders, (i) by the written consent of the Requisite Holders or (ii) at annual or special meetings of stockholders of the Company at which directors are to be elected. If there is a vacancy in the office of a Preferred Elected Director, then the vacancy may only be filled by a nominee of the Requisite Holders. Each Preferred Elected Director will be entitled to one (1) vote on any matter with respect to which the Board votes and any Preferred Elected Director may be removed at any time with or without cause by, and shall not be removed otherwise than by, the written consent or vote of the Requisite Holders. The Company shall take all such action as may be reasonably requested by the Requisite Holders to effect Section 7 (including nominating and recommending the Preferred Elected Director for election, if applicable).

SECTION 8. Specified Breach Events.

(a) The following events shall constitute “Specified Breach Events”:

(i) the Company fails to declare and pay any Cash Dividends or Accreting Dividends due on any two consecutive Dividend Payment Dates; *provided* that, any such Specified Breach Event shall cease to exist once all such Cash Dividends and Accreting Dividends in arrears through the end of the most recently completed Dividend Period have been declared and paid in full; and

(ii) the Company defaults in the performance of, or breaches the covenants contained in, the following sections of this Certificate of Designation and such default or breach, if curable, is not cured within ninety (90) days: SECTION 2(c) (Participating Cash Dividends); SECTION 2(d) (In-Kind Participating Dividends); the proviso contained in SECTION 5(d)(i) (Amounts Received Upon Conversion); SECTION 6(a) (Redemption at Maturity) or SECTION 6(c) (Redemption at Option of Holder Upon a Change of Control)). Any such Specified Breach Event specified in this clause (ii) shall cease to exist once the underlying default or breach has been waived or cured.

(b) Subject to applicable law and compliance with the rules of any Exchange on which the Common Stock is then listed, if the Preferred Director Number is increased as a result of any Specified Breach Event (as provided in the definition of Preferred Director Number), then unless the Requisite Holders otherwise consent in writing, the Company shall, notwithstanding any other provision of this Certificate of Designation, increase the size of the Board as necessary to accommodate such number of additional directors as provided in the definition of Preferred Director Number (each a “Specified Breach Director”) and such Specified Breach Director(s) shall be elected as set forth in this section; provided that as a condition precedent to the election of any such Specified Breach Director, the individual to be elected by the Requisite Holders shall be required to provide to the Company a duly executed and delivered written resignation of such Person to be elected as a Specified Breach Director, providing that effective immediately and automatically (without any further action by any Person) upon the expiration of the applicable Breach Period (as defined below), such Specified Breach Director shall resign from the Board. For the avoidance of doubt, no Specified Breach Director shall be elected to the Board unless the written resignation referred to in the preceding sentence is delivered to the Company prior thereto. A Specified Breach Director need not be an “independent director” of the Board pursuant to the rules of the Exchange on which the Company’s Common Stock is then traded. The Specified Breach Directors shall be elected (i) by the written consent of the Requisite Holders or (ii) at a special meeting of the Holders (which shall be called by the Secretary of the Company at the request of any Holder) to be held within thirty (30) days of the occurrence of the Specified Breach Event, or, if the Specified Breach Event occurs less than sixty (60) days before the date fixed for the next annual meeting of the Company’s stockholders, at such annual meeting. At any meeting at which the Specified Breach Director(s) will be elected, the Specified Breach Director(s) shall be elected by the Requisite

Holders. The Specified Breach Director(s) will serve until there ceases to be any Preferred Shares outstanding or until no Specified Breach Event exists or is continuing, whichever occurs earliest (the "Breach Period") and, upon the expiration of an applicable Breach Period, the director seat(s) held by the Specified Breach Director(s) shall be automatically eliminated and the size of the Board shall be reduced accordingly. If there is a vacancy in the office of a Specified Breach Director during a Breach Period, then the vacancy may only be filled by a nominee of the Requisite Holders. Each Specified Breach Director will be entitled to one (1) vote on any matter with respect to which the Board votes. During the Breach Period, any Specified Breach Director may be removed at any time with or without cause by, and shall not be removed otherwise than by, the written consent or vote of the Requisite Holders. If after the appointment of a Specified Breach Director the applicable Breach Period expires, if so requested by the Company, the Holders shall promptly cause to resign, and take all other action reasonably necessary, or reasonably requested by the Company, to cause the prompt removal of, such Specified Breach Director.

SECTION 9. Covenants.

(a) Restriction on the Issuance of Additional Indebtedness. From and after the Original Issue Date, the Company has not and from and after the Second Issue Date, the Company shall not, and shall not permit any Subsidiary to, borrow or otherwise incur any Indebtedness if, after giving effect to such borrowing or other incurrence, (1) the sum of the total Indebtedness of the Company plus the sum of the total Indebtedness of each of the Company's Subsidiaries divided by (2) the Net Asset Value (the "Debt/NAV Ratio") would be greater than 0.75; *provided*, that (A) the Regular Liquidation Preference of the Preferred Shares (with the references to "150%" contained in such definition being changed to "100%") and the actual liquidation preference of any outstanding Senior Securities and Parity Securities shall count as Indebtedness for such purposes, (B) 100% of the Indebtedness of the Company's wholly-owned and, after taking into account the Company's ownership percentage therein, non-wholly owned subsidiaries (as well as the liquidation preference of any preferred security ranking senior to the Company's investment in such entities) shall be taken into account for purposes of determining Indebtedness but not taken into account (*i.e.*, added back) for purposes of determining Net Asset Value, and (C) the provisions of this SECTION 9(a) shall not apply to (i) a refinancing of the Indebtedness incurred under the Loan Agreement or (ii) a refinancing of any other Indebtedness of the Company or any of its Subsidiaries (x) within six (6) months of the respective maturity date of such Indebtedness or (y) on economic terms more favorable to the Company or such Subsidiary, as applicable, in any such case of (i) or (ii), so long as the amount of such Indebtedness does not result in an increase in the Company's total Indebtedness or the Debt/NAV Ratio (in each case, excluding the impact of the capitalization of customary and reasonable premiums, fees and expenses incurred in connection with such refinancing).

(b) Restriction on the Issuance of Parity Securities. From and after the Second Issue Date, the Company may issue Parity Securities provided that (i) the aggregate purchase price (and initial liquidation preference) of all such Parity Securities may not exceed \$14,000,000, (ii) the conversion price applicable to such Parity Securities may not be less than \$4.75 (as adjusted for stock splits, stock dividends, stock combinations and similar events) and (iii) the Company complies with the September 2014 Purchasers' rights of first

offer with respect to such issuance as provided for in SECTION 5.5 of the September 2014 Securities Purchase Agreement. Any Parity Securities issued after the Second Issue Date pursuant to this SECTION 9(b) (are referred to herein as the "Additional Preferred Securities").

(c) Certificates. The Company shall promptly, and in no event later than 30 days after the last day of any calendar quarter, furnish to each Holder a certificate of an officer of the Company setting forth, as of the end of such calendar quarter the Debt/NAV Ratio and the calculation of the same (provided that the Company shall not be obligated to provide the information required by this sentence from and after such time as the covenant in SECTION 9(a) ceases to be applicable).

(i) The Company shall promptly, and in no event later than the 30th day after the first day of a Dividend Period for which the Accreting Dividend rate has been adjusted pursuant to SECTION 2(b), furnish to each Holder of Preferred Stock a certificate of an officer of the Company setting forth, as of the end of the prior Dividend Period the Net Asset Value as of the end of such prior Dividend Period and the calculation of the same.

(ii) If the Company takes any action, which pursuant to this Certificate of Designation requires the Public Float Hurdle to be met, the Company shall promptly, and in no event later than five (5) days after the date of such action, furnish to each Holder of Preferred Stock a certificate of an officer of the Company setting forth the date of such action and an analysis of the Public Float Hurdle as of the date of such action.

SECTION 10. Additional Definitions. For purposes of these resolutions, the following terms shall have the following meanings:

(a) "Accrued Value" means \$1,000 per share, as the same may be increased pursuant to SECTION 2.

(b) "Actively Traded Security" means, as of any date of determination, a Security of an entity with \$2,000,000 average daily trading volume during the preceding 60-day period.

(c) "Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person.

(d) "Base Original Issue Date NAV" means the final amount thereof as agreed between the Company and the Series A Requisite Holders (as defined in the Series A Certificate of Designation) pursuant to Section 12.16 of the May 2014 Securities Purchase Agreement.

(e) "Beneficial Owner" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" shall be deemed to have beneficial ownership of all securities

that such “person” has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The terms “Beneficially Owns” and “Beneficially Owned” shall have a corresponding meaning.

(f) “Business Day” means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or obligated to close.

(g) “Capital Stock” means, with respect to any Person, any and all shares of stock of a corporation, partnership interests or other equivalent interests (however designated, whether voting or non-voting) in such Person’s equity, entitling the holder to receive a share of the profits and losses, and a distribution of assets, after liabilities, of such Person.

(h) “Cash Equivalents” means: (i) United States dollars, or money in other currencies received in the ordinary course of business; (ii) U.S. Government Obligations or certificates representing an ownership interest in U.S. Government Obligations with maturities not exceeding one year from the date of acquisition; (iii) (A) demand deposits, (B) time deposits and certificates of deposit with maturities of one year or less from the date of acquisition, (C) banker’s acceptances with maturities not exceeding one year from the date of acquisition, and (D) overnight bank deposits, in each case with any bank or trust company organized or licensed under the laws of the United States or any state thereof having capital, surplus and undivided profits in excess of \$500 million whose short-term debt is rated “A-2” or higher by S&P or “P-2” or higher by Moody’s; (iv) repurchase obligations with a term of not more than seven (7) days for underlying securities of the type described in clauses (ii) and (iii) above entered into with any financial institution meeting the qualifications specified in clause (iii) above; (v) commercial paper rated at least P-1 by Moody’s or A-1 by S&P and maturing within six (6) months after the date of acquisition; and (vi) money market funds at least 95% of the assets of which consist of investments of the type described in clauses (i) through (v) above.

(i) “Certificate of Designation” means this certificate of designation for the Series A-1 Preferred Stock, as such shall be amended from time to time.

(j) “Change of Control” means (i) a sale of all or substantially all of the consolidated assets of the Company (including by way of any reorganization, merger, consolidation or other similar transaction or a sale of Equity Securities issued by Subsidiaries of the Company), (ii) a direct or indirect acquisition of Beneficial Ownership of Voting Power of the Company by any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) by means of any transaction or series of transactions (including any reorganization, merger, consolidation, joint venture, share transfer, share exchange, share issuance, reclassification or other similar transaction), pursuant to which the stockholders of the Company immediately preceding such transaction or transactions collectively own, following the consummation of such transaction or transactions, less than fifty percent (50%) of the Voting Power of the Company or other surviving entity (or parent thereof), as the case may be, (iii) the obtaining by any Person or “group” (within the

meaning of Rules 13d-3 and 13d-5 under the Exchange Act) of the power (whether or not exercised), other than pursuant to a revocable proxy in favor of the Company's proposed slate of directors in respect of an annual meeting or other meeting related to the election of directors, to elect a majority of the members of the Board or more than fifty percent (50% of the Voting Power of the Company; provided, that this clause (iii) will not trigger a Change of Control as a result of the HRG Affiliates or any person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) in which the HRG Affiliates own a majority of the voting power (the "HRG Change of Control Group") obtaining Beneficial Ownership of more than fifty percent (50%) of the Voting Power of the Company if and only if the Public Float Hurdle is satisfied at all times during which the HRG Change of Control Group has the power to elect a majority of the Board or Beneficial Ownership of more than fifty percent (50%) of the Voting Power of the Company, or (iv) the first day on which a majority of the members of the Board are not Continuing Directors; *provided*, that, for the avoidance of doubt, change in the ownership of HRG (without the occurrence of the events listed in (i) through (iv) above) shall not constitute, in and of itself, a Change of Control.

(k) "Common Stock" means the shares of common stock, par value \$0.01 per share, of the Company or any other Capital Stock of the Company into which such Common Stock shall be reclassified or changed.

(l) "Company Conversion Conditions" means the following: (i) the Thirty Day VWAP exceeds 150% of the then applicable Conversion Price; and (ii) the Daily VWAP exceeded 150% of the then applicable Conversion Price for at least twenty (20) Trading Days out of the thirty (30) Trading Days used to calculate the Thirty Day VWAP in clause (i) of this definition.

(m) "Compensation Committee" means the compensation committee of the Board which shall consist solely of Independent Directors and, at all times that there is a Preferred Elected Director, not less than one Preferred Elected Director.

(n) "Continuing Directors" means, as of any date of determination, (x) any member of the Board who (1) was a member of such Board on the Original Issue Date or (2) was nominated for election or elected to the Board by any HRG Affiliates, or with the approval of either the Holders or a majority of those members of the Board that were both "Continuing Directors" and Independent Directors at the time of such nomination or election or (y) any Preferred Elected Director.

(o) "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with") with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

(p) "Conversion Price" means initially \$4.25, as adjusted from time to time as provided in SECTION 5.

(q) “Convertible Securities” means securities by their terms convertible into or exchangeable for Common Stock or options, warrants or rights to purchase such convertible or exchangeable securities.

(r) “Daily VWAP” means the volume-weighted average price per share of Common Stock (or per minimum denomination or unit size in the case of any security other than Common Stock) as displayed under the heading “Bloomberg VWAP” on the Bloomberg page for the “<equity> AQR” page corresponding to the “ticker” for such Common Stock or unit (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of such Common Stock (or per minimum denomination or unit size in the case of any security other than Common Stock) on such Trading Day. The “volume weighted average price” shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

(s) “Dividend Payment Date” means January 15, April 15, July 15 and October 15 of each year, commencing on July 15, 2014; *provided* that, if any such Dividend Payment Date would otherwise occur on a day that is not a Business Day, such Dividend Payment Date shall instead be the immediately succeeding Business Day.

(t) “Dividend Rate” means for any Dividend Period, 7.50% plus the applicable Accreting Dividend Rate for such Dividend Period.

(u) “Equity Securities” means, with respect to any Person, (i) shares of Capital Stock of, or other equity or voting interest in, such Person, (ii) any securities convertible into or exchangeable for shares of Capital Stock of, or other equity or voting interest in, such Person, (iii) options, warrants, rights or other commitments or agreements to acquire from such Person, or that obligates such Person to issue, any Capital Stock of, or other equity or voting interest in, or any securities convertible into or exchangeable for shares of Capital Stock of, or other equity or voting interest in, such Person, (iv) obligations of such Person to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment relating to any Capital Stock of, or other equity or voting interest (including any voting debt) in, such Person and (v) the Capital Stock of such Person.

(v) “Exchange” means the NASDAQ Global Market, the NASDAQ Global Select Market, The New York Stock Exchange, the NYSE MKT LLC or any of their respective successors.

(w) “Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(x) “Excluded Stock” means: (i) shares of Common Stock issued by the Company in an event subject to, and for which the Conversion Price is subject to adjustment pursuant to, SECTION 5(f)(i)(A); (ii) Option Securities or shares of Common Stock (including upon exercise of Option Securities) issued to Philip Falcone pursuant to the

Option agreement (the “Falcone Option Agreement”) dated May 21, 2014, by and between Mr. Falcone and the Company (as in effect on the Original Issue Date) or otherwise to any director, officer or employee pursuant to compensation arrangements approved by the Compensation Committee of the Board in good faith and otherwise permitted to be issued, or not prohibited, by any other provision of this Certificate of Designation; (iii) the issuance of shares of Common Stock upon conversion of the Preferred Shares or upon the exercise or conversion of Option Securities and Convertible Securities of the Company outstanding on the Original Issue Date or otherwise permitted to be issued, or not prohibited, by any other provision of this Certificate of Designation (including, for the avoidance of doubt, pursuant to the Falcone Option Agreement (as in effect on the Original Issue Date)); (iv) Common Stock that becomes issuable in connection with, or as a result of, accretions to the face amount of, or payments in kind with respect to, Preferred Shares, Option Securities and Convertible Securities of the Company outstanding on the Original Issue Date or otherwise permitted to be issued, or not prohibited, by any other provision of this Certificate of Designation (including, for the avoidance of doubt, pursuant to the Falcone Option Agreement (as in effect on the Original Issue Date) and shares of Series A Preferred Stock issued on the Original Issue Date); (v) Option Securities (or Shares of Common Stock upon exercise of such Option Securities) issued to Robert M. Pons or Keith Hladek as referenced in the Company’s 8-K filed on May 23, 2014 and (vi) shares of Common Stock issued by the Company pursuant to the May 2014 Securities Purchase Agreement.

(y) “Ex-Date” means the first date on which the Common Stock trades on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question from the Company or, if applicable, from the seller of the Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

(z) “Fair Market Value” means: (i) in the case of any Security that is either (a) listed on an Exchange or (b) an Actively Traded Security in the over-the-counter-market that represents equity in a Person with a market capitalization of at least \$250,000,000 on each Trading Day in the preceding 60 day period prior to such date, the product of (a) (i) the sum of the Daily VWAP of a single unit of such Security for each of the 20 consecutive Trading Days immediately prior to such date, divided by (ii) 20, multiplied by (b) the number of units of such Security being valued, (ii) in the case of any Security that is not so listed or not an Actively Traded Security or any other property or asset (other than Cash Equivalents), the fair market value thereof (defined as the price that would be negotiated in an arms’ length transaction for cash between a willing buyer and willing seller, neither of which is acting under compulsion), as determined by a written opinion of a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by the Company in good faith (provided that the Requisite Holders may object in writing to any such determination of Fair Market Value by such valuation expert once every four (4) Testing Periods and if the Requisite Holders object in writing to any such determination of Fair Market Value by such valuation expert an alternative binding valuation shall be performed by a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by the Company and the Requisite Holders jointly,

or if the Company and such Requisite Holders cannot jointly select such an alternative valuation expert within ten (10) Business Days of the Requisite Holders delivering to the Company a written notice objecting to the initial valuation, by a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by one such valuation expert proposed by the Company and a second such valuation expert proposed by the Requisite Holders (it being understood that the Company shall be solely responsible for the payment of all of the fees and expenses of such alternative valuation expert) and (iii) in the case of Cash Equivalents, the face value thereof; *provided* that with respect to any Security of the type referred to in clause (ii) above, in no event shall the Fair Market Value thereof exceed the Company's cost basis in such Security (taking into account adjustments made in respect of follow-on capital contributions and other similar investments) plus fifty percent (50%) of any appreciation as determined pursuant to the valuation provisions set forth above.

(aa) "Governmental Entity" shall mean any United States or non-United States federal, state or local government, or any agency, bureau, board, commission, department, tribunal or instrumentality thereof or any court, tribunal, or arbitral or judicial body.

(bb) "hereof"; "herein" and "hereunder" and words of similar import refer to this Certificate of Designation as a whole and not merely to any particular clause, provision, section or subsection.

(cc) "Holdings" means the holders of outstanding Preferred Shares and, except where expressly otherwise indicated, shares of Series A Preferred Stock as they appear in the records of the Company.

(dd) "HRG Affiliates" means (a) Philip A. Falcone, (b) Harbinger Group, Inc. or any of its subsidiaries, (c) Harbinger Capital Partners LLC, Harbinger Capital Partners II LP or any limited partnership, limited liability company, corporation or other entity that controls, is controlled by, or is under common control with Harbinger Capital Partners LLC, Harbinger Capital Partners II LP or Philip A. Falcone.

(ee) "HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the regulations promulgated thereunder.

(ff) "Indebtedness" shall have the meaning set forth in the Loan Agreement (as in effect on the date hereof); *provided, however*, that Indebtedness shall not include:

(i) Hedging obligations entered into in the ordinary course of business and not for speculative purposes or taking a "market view";

(ii) Indebtedness in respect of bid, performance or surety bonds issued in the ordinary course of business, including guarantees or obligations with respect to letters of credit supporting such bid, performance or surety obligations (in each case other than for an obligation for money borrowed and only so long as such bonds or letters of credit remain undrawn);

(iii) Guarantees in respect of Indebtedness already taken into account for purposes hereof;

(iv) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is extinguished within five Business Days of incurrence;

(v) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;

(vi) Indebtedness for advances of trade accounts payable received in the ordinary course of business on normal trade terms and not overdue by more than 60 days;

(vii) Indebtedness incurred from and after the Second Issue Date not in excess of \$750,000, in the aggregate;

(viii) Purchase Money Obligations (as defined in the Loan Agreement (as in effect on the date hereof));

(ix) interest and other fees and expenses accrued in the ordinary course on Indebtedness that is issued and outstanding on the Second Issue Date (including pursuant to the Loan Agreement) and any interest and other fees accrued on any refinancing of such Indebtedness (including reasonable premiums, fees and expenses incurred in connection with such refinancing) in accordance with SECTION 9(a); or

(x) any Contingent Obligations (as defined in the Loan Agreement (as in effect on the date hereof)) of the Company in respect of Indebtedness referred to in the foregoing clauses (i) through (ix).

(gg) “Independent Director” means any director on the Board that is “independent” as defined in the applicable rules of the Exchange on which the Common Stock is listed (or if the Common Stock is not listed on an Exchange, as defined in NASDAQ Marketplace Rule 4200(a)(15)), and in all cases, other than any director that is employed by or an officer, director or manager of a Harbinger Affiliate.

(hh) “Investment” means, with respect to any Person, (1) any direct or indirect advance, loan or other extension of credit to another Person, (2) any capital contribution to another Person, by means of any transfer of cash or other property or in any other form, (3) any purchase or acquisition of Equity Interests, bonds, notes or other Indebtedness, or other instruments or securities issued by another Person, including the receipt of any of the above as consideration for the disposition of assets or rendering of services, or (4) any Guarantee of any obligation of another Person.

(ii) "Issue Date" means, with respect to a Preferred Share, the date on which such share is first issued by the Company.

(jj) "Liquidation Event" means (i) the voluntary or involuntary liquidation, dissolution or winding-up of the Company, (ii) the commencement by the Company of any case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, (iii) the consent to entry of an order for relief in an involuntary case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, and (iv) the consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or similar official of the Company, or any general assignment for the benefit of creditors.

(kk) "Loan Agreement" means the Credit Agreement, dated as of September 22, 2014, among the Company, the Subsidiary Guarantors (as defined therein), the Lenders (as defined therein) and Jefferies Finance LLC, as arranger, as bookmanager and as documentation agent, syndication agent and administrative agent for the Lenders and as collateral agent for the Secured Parties.

(ll) "Market Disruption Event" means the occurrence or existence for more than one half hour period in the aggregate on any scheduled Trading Day for the Common Stock (or Reference Property, to the extent applicable) of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the applicable Exchange or otherwise) in the Common Stock (or Reference Property, to the extent applicable) or in any options, contracts or future contracts relating to the Common Stock (or Reference Property, to the extent applicable), and such suspension or limitation occurs or exists at any time before 4:00 p.m. (New York City time) on such day.

(mm) "May 2014 Purchasers" means the several "Purchasers" named in and party to the May 2014 Securities Purchase Agreement.

(nn) "May 2014 Securities Purchase Agreement" means that certain Securities Purchase Agreement, dated May 29, 2014, by and among the Company and the May 2014 Purchasers, as amended, supplemented or modified in accordance with its terms.

(oo) "NAV Escrow Adjustment" means the total amount of any escrow proceeds actually received by the Company with respect to the existing escrow amounts of: BID \$19,500,000, NAT tax liability \$4,800,000, NAT PTI Sale \$3,000,000 and NAT indemnification \$6,450,000.

(pp) "Net Asset Value" means, without duplication, the amount, valued twice per annum at June 30 and December 31 of each fiscal year (each a "Testing Period") beginning December 31, 2014, equal to (A) the sum of (1) the cash and Cash Equivalents of the Company plus (2) the Fair Market Value of all Securities (other than Cash Equivalents) owned by the Company, including Securities issued by Subsidiaries of the Company (after taking into account the Company's ownership percentage therein, the impact on such Fair Market Value of the cash, Cash Equivalents, preferred liquidation preferences, liabilities and

indebtedness of such entities and the relative rights, preferences and privileges of the Company's Securities and the other outstanding securities issued by such entities), less (B) all Indebtedness and other liabilities of the Company determined in accordance with GAAP, including those related to the Company's investments to the extent not taken into account in the calculation of the Fair Market Value of such investments under clause (A)(2) above; *provided* that for such purposes, (i) the derivative attributable to the conversion feature in any series of preferred stock will not be considered a liability and (ii) the Accrued Value (as well as any accrued Dividends not yet added to the Accrued Value) of the Preferred Shares and the preference amount (including the accrued value and all accrued but unpaid dividends thereon not included in the accrued value) of any other Senior Securities or Parity Securities will be considered a liability of the Company; *provided, further* that, solely for purposes of determining the Debt/NAV Ratio, the Indebtedness of the Company's wholly-owned and, after taking into account the Company's ownership percentage therein, Non-Wholly Owned Subsidiaries (as well as the liquidation preference of any preferred security ranking senior to the Company's investment) shall be taken into account for purposes of determining "Debt" (*i.e.*, the numerator) but not taken into account (*i.e.*, added back) for purposes of determining Net Asset Value (*i.e.*, the denominator).

(qq) "Non-Wholly Owned Subsidiary" means any Subsidiary of the Company other than any Wholly Owned Subsidiary.

(rr) "Option Securities" means options, warrants or other rights to purchase or acquire Common Stock, as well as stock appreciation rights, phantom stock units and similar rights whose value is derived from the value of the Common Stock.

(ss) "Organizational Documents" means, with respect to any Person (other than an individual), (a) the certificate or articles of incorporation or organization and any joint venture, limited liability company, operating or partnership agreement and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (b) all by-laws, voting agreements and similar documents, instruments or agreements relating to the organization or governance of such Person, in each case, as amended, supplemented or modified in accordance with its terms.

(tt) "Original Issue Date" means May 29, 2014, the first issue date of shares of Series A Preferred Stock.

(uu) "Original Issue Date NAV" means the Base Original Issue Date NAV, as may be increased from time to time by the NAV Escrow Adjustment.

(vv) "Permitted Payment" means any of the following:

(i) The repurchase, redemption or other acquisition of any shares of Common Stock or Junior Securities solely out of the net proceeds of the issuance of, or in exchange for the issuance of, Common Stock;

(ii) Restricted Payments not otherwise permitted hereby in an aggregate amount not to exceed \$750,000;

(iii) (a) repurchase of Equity Securities deemed to occur upon the exercise of stock options or warrants or upon the conversion or exchange of Equity Securities if the Equity Securities represent all or a portion of the exercise price thereof (or related withholding taxes) and (b) Restricted Payments to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Equity Securities in an aggregate amount under this clause (b) not to exceed \$25,000.

(ww) "Permitted Related Party Transactions" means any of the following:

(i) the payment, by the Company or a Subsidiary, of reasonable and customary regular fees and compensation to, and reasonable and customary indemnification arrangements and similar payments to or on behalf of, directors of the Company or directors of such Subsidiary, respectively, who are not employees of the Company or such Subsidiary, respectively, and qualify as Independent Directors;

(ii) any Permitted Payments or any Restricted Payments if permitted under Section 4(b);

(iii) transactions or payments, including the issuance of Equity Securities pursuant to any employee, officer or director compensation or benefit plans or arrangements by the Company or a Subsidiary existing on the Original Issue Date and listed on the Disclosure Schedule to the September 2014 Securities Purchase Agreement, or approved by the Compensation Committee, by the Board of Directors (or any committee thereof) of such Subsidiary, after the Original Issue Date, respectively;

(iv) the issuance of common stock or junior Equity Securities of the Company or any Subsidiary via a rights offering or otherwise to all stockholders of the Company or such Subsidiary after the Original Issue Date and to which the adjustment provision of SECTION 5(g) apply;

(v) the entering into of any tax sharing agreement or arrangement or any other transactions with any Subsidiaries of the Company or among any Subsidiaries of the Company undertaken in good faith for the sole purpose of improving the tax efficiency of the Company and its Subsidiaries;

(vi) the entering into of any information-sharing agreement or arrangement or any other transactions undertaken in good faith for the sole purpose of the preparation of financial statements and related financial information of the HRG Affiliates, the Company and its Subsidiaries.

(xx) "Person" means any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government, any agency or political subdivisions thereof or other "Person" as contemplated by Section 13(d) of the Exchange Act.

(yy) “Preferred Director Number” means one (1); *provided* that (A) for so long as the Preferred Elected Director Condition continues to be satisfied, the percentage obtained by dividing the Preferred Director Number by the total number of directors on the Board shall be no more than 5% below such aggregate ownership percentage of the May 2014 Purchasers and their Affiliates and the September 2014 Purchasers and their Affiliates (e.g., if the May 2014 Purchasers and their Affiliates and the September 2014 Purchasers and their Affiliates own, in the aggregate, at least twenty percent (20%) of the outstanding Common Stock on an as converted basis (i.e. assuming conversion of the Preferred Shares, shares of Series A Preferred Stock and including through the ownership of Preferred Shares, Series A Preferred Stock or Common Stock), the Preferred Director Number would be the lowest whole number that is equal to or in excess of 15% of the total number of directors on the Board) and (B) at any time following the occurrence and during the continuance of a Specified Breach Event, the Preferred Director Number shall be increased, if necessary, in order that the Preferred Director Number plus the number of Independent Directors on the Board shall equal more than 50% of the total number of directors on the Board.

(zz) “Preferred Elected Director Condition” means that the May 2014 Purchasers (and/or any of their Affiliates) and the September 2014 Purchasers (and/or any of their Affiliates) own, in the aggregate, at least (A) fifteen percent (15%) of the outstanding Common Stock on an as converted basis (i.e. assuming conversion of the Preferred Shares and shares of Series A Preferred Stock and including through the ownership of Preferred Shares, Series A Preferred Stock or Common Stock) and (B) eighty percent (80%) of the sum of (x) the aggregate number of Shares (as defined in the May 2014 Securities Purchase Agreement) issued to the May 2014 Purchasers on the Original Issue Date (determined on an as-converted to Common Stock basis) plus (y) (x) the aggregate number of Preferred Shares issued to the September 2014 Purchasers on the Second Issue Date (determined on an as-converted to Common Stock basis).

(aaa) “Preferred Shares” means the shares of Series A-1 Preferred Stock but shall exclude, for the avoidance of doubt, shares of Series A Preferred Stock.

(bbb) “Public Float Hurdle” means, as of any relevant measurement date, that (i) the Common Stock is registered under the Exchange Act, (ii) the Common Stock is listed on an Exchange, (iii) the aggregate value of all outstanding Common Stock (based on the Thirty Day VWAP) is not less than \$200,000,000 and (iv) the Public Market Capitalization is greater than 1.00x the aggregate value of the Common Stock issuable upon conversion of the Preferred Shares and any then outstanding Senior Securities or Parity Securities or “in-the-money” securities of the Company of the type described in clauses (ii) and (iii) of the definition of “Equity Securities” (calculated using the Thirty Day VWAP and the applicable conversion and exercise prices at such time).

(ccc) “Public Market Capitalization” means, as of any relevant measurement date, all issued and outstanding shares of Common Stock, other than Common Stock being held or Beneficially Owned by (A) the HRG Affiliates, (B) the directors and executive officers of the Company or (C) any other Affiliate of the Company.

(ddd) “Redemption Date” means the Maturity Date, any Optional Redemption Date or any Change of Control Payment Date, as applicable.

(eee) “Redemption Price” means with respect to each Preferred Share: (i) in connection with a redemption pursuant to SECTION 6(a), the Accrued Value plus all accrued and unpaid Dividends (to the extent not included in the Accrued Value, including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on each Preferred Share to be redeemed, (ii) in connection with a redemption pursuant to SECTION 6(b), the sum of 150% of the Accrued Value plus all accrued and unpaid Dividends (to the extent not included in the Accrued Value, including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on each Preferred Share to be redeemed (the “Standard Call Price”) (provided that if the Public Float Hurdle is not satisfied as of the Optional Redemption Date, the Redemption Price for such redemption pursuant to SECTION 6(b) shall equal the greater of (X) such Standard Call Price and (Y) the Thirty Day VWAP as of the date the Company gives the applicable notice of optional redemption under SECTION 6(b) multiplied by the number of shares of Common Stock into which the Preferred Share is convertible as of such date at the applicable Conversion Price) or (iii) in connection with a Change of Control, the Change of Control Payment Amount.

(fff) “Related Party Transaction” any transaction (or series of related transactions), arrangement or contract entered into, consummated, renewed, amended or extended between the Company or any Subsidiary of the Company, on the one hand, and any HRG Affiliate or other Affiliate of the Company (other than Subsidiaries of the Company), on the other hand, if such transaction, arrangement or contract involves payments or consideration in excess of \$500,000 in the aggregate; *provided* that (i) the execution of a joinder to the Registration Rights Agreement (as defined in the September 2014 Securities Purchase Agreement) by HRG Affiliates, (ii) the agreement granting information and access rights to the Company by Schuff International, Inc. substantially in the form previously provided to the Holders or (iii) the agreement granting information and access rights to HRG Affiliates by the Company substantially in the form previously provided to the holders shall not constitute a “Related Party Transaction”.

(ggg) “Requisite Holders” means Holders (other than the Company, its employees, its Subsidiaries or any Harbinger Affiliates) owning more than 75% of the Regular Liquidation Preference of the issued and outstanding Preferred Shares and shares of Series A Preferred Stock, taken as a whole; *provided* that, for purposes of such calculation, the Preferred Shares and shares of Series A Preferred Stock held by the Company, its employees, its Subsidiaries or any Harbinger Affiliate shall be treated as not outstanding.

(hhh) “Restricted Payment” means (A) any dividend, distribution or other payment in respect of the Common Stock or any other Junior Securities (other than dividends or distributions referred to in SECTIONS 5(g)(i)(A) and 5(g)(i)(B)) or Equity Securities of a Subsidiary or the repurchase, redemption or other acquisition of any shares of Common Stock or any other Junior Securities (or setting aside funds for such purposes) or Equity Securities of a Subsidiary or (B) any dividend, distribution or other payment in

respect of Parity Securities or the repurchase, redemption or other acquisition of any Parity Securities (or setting aside funds for such purposes) unless such dividend, distribution, payment, repurchase, redemption or other acquisition is made on a pro rata basis among the Preferred Shares and the Parity Securities in proportion to the amounts to which they are entitled.

(iii) "Second Issue Date" means September 22, 2014, the first issue date of Preferred Shares.

(jjj) "Securities" with respect to a Person means debt or equity securities issued by such Person or similar obligations of, or participations in, such Person.

(kkk) "September 2014 Purchasers" means the several "Purchasers" named in and party to the September 2014 Securities Purchase Agreement.

(lll) "September 2014 Securities Purchase Agreement" means that certain Securities Purchase Agreement, dated September 22, 2014, by and among the Company and the September 2014 Purchasers, as amended, supplemented or modified in accordance with its terms.

(mmm) "Series A Certificate of Designation" means the Certificate of Designation of the Series A Preferred Stock, as amended.

(nnn) "Series A Preferred Stock" means the Series A Convertible Participating Preferred Stock of the Company, par value \$0.001 per share.

(ooo) "Series A-1 Requisite Holders" means holders of Preferred Shares (other than the Company, its employees, its Subsidiaries or any Harbinger Affiliates) owning more than 75% of the Regular Liquidation Preference of the issued and outstanding Preferred Shares; *provided* that, for purposes of such calculation, the Preferred Shares held by the Company, its employees, its Subsidiaries or any Harbinger Affiliate shall be treated as not outstanding.

(ppp) "Specified Percentage" means, until the third (3rd) anniversary of the Original Issue Date, 150%, and 100% thereafter.

(qqq) "Subsidiary" means with respect to any Person, any corporation, association or other business entity of which more than 50% of the outstanding Voting Stock is owned, directly or indirectly, by, or of which more than 50% of the economic value accrues to, or, in the case of a partnership, the sole general partner or the managing partner or the only general partners of which are, such Person and one or more Subsidiaries of such Person (or a combination thereof). Unless otherwise specified, "Subsidiary" means a Subsidiary of the Company.

(rrr) "Thirty Day VWAP" means, with respect to a security, the average of the Daily VWAP of such security for each day during a thirty (30) consecutive Trading Day period ending immediately prior to the date of determination. Unless otherwise specified, "Thirty Day VWAP" means the Thirty Day VWAP of the Common Stock.

(sss) "Trading Day" means any day on which (i) there is no Market Disruption Event and (ii) the Exchange on which the Common Stock (or Reference Property, to the extent applicable) is listed and is open for trading or, if the Common Stock (or Reference Property, to the extent applicable) is not so listed, admitted for trading or quoted, any Business Day. A Trading Day only includes those days that have a scheduled closing time of 4:00 p.m. (New York City time) or the then standard closing time for regular trading on the relevant exchange or trading system.

(ttt) "U.S. Government Obligations" means obligations issued or directly and fully guaranteed or insured by the United States of America or by any agent or instrumentality thereof, *provided* that the full faith and credit of the United States of America is pledged in support thereof.

(uuu) "Voting Power" means either (a) the power to elect, designate or nominate directors to the Board, or (b) vote (as Common Stock or together with Common Stock) on matters to be voted on or consented to by the Common Stock through the ownership of Voting Stock, by contract or otherwise.

(vvv) "Voting Stock" means, with respect to any Person, Capital Stock of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

(www) "Wholly Owned Subsidiary" means any Subsidiary of a Person of which such Person owns, either directly or indirectly, 100% of the common stock or other common equity interests of such Subsidiary (excluding qualifying shares held by directors).

SECTION 11. Miscellaneous. For purposes of this Certificate of Designation, the following provisions shall apply:

(a) Share Certificates. If any certificates representing Preferred Shares shall be mutilated, lost, stolen or destroyed, the Company shall issue, in exchange and in substitution for and upon cancellation of the mutilated certificate, or in lieu of and substitution for the lost, stolen or destroyed certificate, a new Preferred Share certificate of like tenor and representing an equivalent number of Preferred Shares, but only upon receipt of evidence of such loss, theft or destruction of such certificate and indemnity by the holder thereof, if requested, reasonably satisfactory to the Company.

(b) Status of Cancelled Shares. Preferred Shares which have been converted, redeemed, repurchased or otherwise cancelled shall be retired and, following the filing of any certificate required by the DGCL, have the status of authorized and unissued shares of Preferred Stock, without designation as to series, until such shares are once more designated by the Board as part of a particular series of Preferred Stock of the Company.

(c) Severability. If any right, preference or limitation of the Series A-1 Preferred Stock set forth in this Certificate of Designation is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this Certificate of Designation which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

(d) Remedies.

(i) The Company acknowledges that the obligations imposed on it in this Certificate of Designation are special, unique and of an extraordinary character, and irreparable damages, for which money damages, even if available, would be an inadequate remedy, would occur in the event that the Company does not perform the provisions of this Certificate of Designation in accordance with its specified terms or otherwise breaches such provisions. The Holders of Preferred Stock shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Certificate of Designation and to seek to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled, at law or in equity, including without limitation money damages.

(e) Renunciation under DGCL Section 122(17). Pursuant to Section 122(17) of the Delaware General Corporation Law, the Company renounces any interest or expectancy of the Company in, or being offered an opportunity to participate in, business opportunities that are presented to one or more of the Preferred Elected Directors, in each case other than any business opportunities that are presented to any such Preferred Elected Director solely in his or her capacity as a director of the Company.

(f) Headings. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(g) Notices. All notices or communications in respect of Preferred Stock shall be in writing and shall be deemed delivered (a) one (1) Business Day after being sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, (b) on the date of delivery if delivered personally, or (c) if by facsimile, upon written confirmation of receipt by facsimile. Notwithstanding the foregoing, if Preferred Stock is issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the beneficial holders of Preferred Stock in any manner permitted by such facility.

(h) Other Rights. The shares of Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation or as provided by applicable law and regulation.

(i) Series A-1 Requisite Holders; Requisite Holders. Notwithstanding anything to the contrary contained herein, any consent, waiver, vote, decision, election or action required or permitted to be taken hereunder by (i) the holders of the Preferred Shares as a group (i.e., as opposed to by a specified Holder) shall require the approval or action, as applicable, of the Series A-1 Requisite Holders and (ii) the Holders of the Preferred Shares and shares of Series A Preferred Stock as a group shall require the approval or action, as applicable, of the Requisite Holders and, in each case, after such approval or action, shall be binding on all such Holders.

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IN WITNESS WHEREOF, the Company has caused this Certificate of Designation to be executed by a duly authorized officer of the Company as of September 22, 2014.

HC2 HOLDINGS, INC.

By: /s/ Mesfin Demise

Name: Mesfin Demise

Title: Chief Financial Officer

[SIGNATURE PAGE TO CERTIFICATE OF DESIGNATION]

**CERTIFICATE OF AMENDMENT TO THE CERTIFICATE OF DESIGNATION
OF
SERIES A CONVERTIBLE PARTICIPATING PREFERRED STOCK
OF
HC2 HOLDINGS, INC.**

The undersigned, Mesfin Demise, the Chief Financial Officer of HC2 Holdings, Inc. (including any successor in interest, the "Company"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "DGCL"), does hereby certify, in accordance with Sections 103, 141 and 242 of the DGCL as follows:

- A. The Company's Second Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation"), authorizes 20,000,000 shares of preferred stock, par value \$0.001 per share (the "Preferred Stock"), issuable from time to time in one or more series.
- B. The Certificate of Incorporation authorizes the Board of Directors (the "Board") to provide by resolution for the issuance of the shares of Preferred Stock in one or more series, the number of shares in each series, the voting powers, if any, and such designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions thereof.
- C. The Board, pursuant to its authority as aforesaid, designated a series of Preferred Stock, par value \$0.001 per share, as the Series A Convertible Participating Preferred Stock, by resolution dated May 29, 2014.
- D. The Company, in accordance with Sections 103 and 151 of the DGCL, filed a certificate of designation on May 29, 2014 with the Secretary of State of the State of Delaware to set the number of shares constituting the Series A Convertible Participating Preferred Stock, and the voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions thereof (the "May 2014 Certificate of Designation").
- E. 30,000 shares of the Company's Series A Convertible Participating Preferred Stock are issued and outstanding as of the date hereof.
- F. This Certificate of Amendment to the Certificate of Designation of Series A Convertible Participating Preferred Stock has been duly adopted and approved by the Board in accordance with the provisions of Sections 141 and 242 of the DGCL.
- G. This Certificate of Amendment to the Certificate of Designation of Series A Convertible Participating Preferred Stock has been duly adopted and approved by the Requisite Holders (under and as defined in the May 2014 Certificate of Designation).

H. The text of the May 2014 Certificate of Designation is hereby amended and restated to read as set forth herein in full:

SECTION 1. Number; Designation; Rank.

(a) This series of convertible participating preferred stock is designated as the "Series A Convertible Participating Preferred Stock" (the "Series A Preferred Stock"). The number of shares constituting the Series A Preferred Stock is 30,000 shares, par value \$0.001 per share.

(b) The Series A Preferred Stock ranks, with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company or otherwise:

(i) senior in preference and priority to the Common Stock and each other class or series of Capital Stock of the Company, except for (x) any class or series of Capital Stock hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank senior to or on parity, without preference or priority, with the Series A Preferred Stock with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company, or otherwise (collectively with the Common Stock, the "Junior Securities") and (y) the shares of Series A-1 Preferred Stock;

(ii) on parity, without preference and priority, with the Series A-1 Preferred Stock and each other class or series of Capital Stock of the Company hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank on parity, without preference or priority, with the Series A Preferred Stock with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company, or otherwise (collectively, the "Parity Securities"); and

(iii) junior in preference and priority to each other class or series of Preferred Stock or any other Capital Stock of the Company hereafter issued in compliance with the terms hereof and the terms of which expressly provide that it will rank senior in preference or priority to the Series A Preferred Stock with respect to the payment of dividends, redemption payments, rights (including as to the distribution of assets) upon liquidation, dissolution or winding-up of the Company or otherwise (collectively, "Senior Securities").

SECTION 2. Dividends.

(a) Cash Dividends. Holders shall be entitled to receive, out of funds legally available for the payment of dividends to the Company's stockholders under Delaware law, on each Preferred Share, cumulative cash dividends which accrue daily at a per annum rate of 7.50% on the Accrued Value of such Preferred Share ("Cash Dividends"). Such Cash Dividends shall begin to accrue and be cumulative from the Issue Date. Cash Dividends shall be payable quarterly with respect to each Dividend Period in arrears on the first Dividend Payment Date after such Dividend Period. If and to the extent that the Company does not for any reason (including because there are insufficient funds legally available for the payment of dividends) pay the entire Cash Dividend payable for a particular Dividend Period in cash on the applicable Dividend Payment Date for such period

(whether or not there are funds of the Company legally available for the payment of dividends to the Company's stockholders under Delaware law or such dividends are declared by the Board), during the period in which such Cash Dividend remains unpaid, an additional accreting dividend (the "Cash Accretion Dividends") shall accrue and be payable at an annual rate equal to the Dividend Rate on the amount of the unpaid Cash Dividend through the daily addition of such Cash Accretion Dividends to the Accrued Value (whether or not such Cash Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company's stockholders under Delaware law).

(b) Accreting Dividends. In addition to the Cash Dividend, for each Dividend Period beginning on or after the Issue Date, the Holders shall be entitled to receive on each Preferred Share additional dividends at the per annum rates set forth in this SECTION 2(b) (the "Basic Accreting Dividends" and, together with the Cash Accretion Dividends, the Participating Accretion Dividends and the In-Kind Participating Dividends, the "Accreting Dividends"; the Accreting Dividends, together with the Cash Dividend and the Participating Dividends, the "Dividends"). Basic Accreting Dividends shall accrue and be cumulative from the Issue Date. Basic Accreting Dividends shall be payable quarterly with respect to each Dividend Period in arrears on the first Dividend Payment Date after such Dividend Period by the addition of such amount to the Accrued Value, whether or not declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company's stockholders under Delaware law. Such Basic Accreting Dividend for any Dividend Period shall be at a per annum rate (the "Accreting Dividend Rate") determined as follows:

(i) If Net Asset Value as of the last day of any Dividend Period is less than 120% of Original Issue Date NAV, a per annum rate of 4.00% of the Accrued Value for the next succeeding Dividend Period;

(ii) If Net Asset Value as of the last day of any Dividend Period is equal to or greater than 120% and less than or equal to 140% of Original Issue Date NAV, a per annum rate of 2.00% of the Accrued Value for the next succeeding Dividend Period; and

(iii) If Net Asset Value as of the last day of any Dividend Period is greater than 140% of Original Issue Date NAV, no additional per annum rate for the next succeeding Dividend Period;

provided, however, that (1) the Accreting Dividend Rate with respect to the period from the Original Issue Date through June 30, 2014 shall be 4.00% of the Accrued Value and (2) notwithstanding anything to the contrary contained herein, the Accreting Dividend Rate shall be 7.25% of the Accrued Value during any portion of any Dividend Period during which any of the following is true: (w) the Daily VWAP for the immediately preceding trading day was less than \$1.00 (as adjusted for stock splits, stock dividends, stock combinations and similar events), (x) the Common Stock is not registered under Section 12(b) of the Exchange Act, (y) the Common Stock is not listed on an Exchange or (z) the Company is delinquent in the payment of any Cash Dividends; *provided*, that the Company's failure to comply with requirements (y) and (z) above will not trigger the increased Accreting Dividend Rate during the first year after the Original Issue Date.

(c) Participating Cash Dividends. If the Company declares, makes or pays any cash dividend or distribution in respect of the Common Stock (a "Common Dividend"), each Holder shall receive a dividend (in addition to the Dividends provided for by SECTION 2(a) and SECTION 2(b)) in respect of each Preferred Share held thereby, in an amount equal to the product of (x) the amount of such Common Dividend paid per share of Common Stock, multiplied by (y) the number of shares of Common Stock issuable if such Preferred Share had been converted into shares of Common Stock immediately prior to the record date for such Common Dividend (such amount per share of Preferred Stock, the "Participating Cash Dividend"). Participating Cash Dividends shall be payable to Holders on the record date for such Common Dividend at the same time and in the same manner as the Common Dividend triggering such Participating Cash Dividend is paid. If and to the extent that the Company does not for any reason pay the entire Participating Cash Dividend when the Common Dividend is paid to the holders of Common Stock, during the period in which such Participating Cash Dividend remains unpaid, an additional accreting dividend (the "Participating Accretion Dividends") shall accrue and be payable at an annual rate equal to the Dividend Rate on the amount of the unpaid Participating Cash Dividend through the daily addition of such Participating Accretion Dividends to the Accrued Value (whether or not such Participating Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company's stockholders under Delaware law).

(d) In-Kind Participating Dividends. If the Company distributes shares of its Capital Stock, evidences of its indebtedness or other assets, securities or property, in respect of the Common Stock (an "In-Kind Common Dividend"), including without limitation any spin-off of one or more subsidiaries or businesses of the Company but excluding: (I) dividends or distributions referred to in SECTIONS 5(g)(i)(A) and 5(g)(i)(B); and (II) cash dividends with respect to which Holders are entitled to Participating Cash Dividends, then the Holders shall receive in such distribution or other transaction, at the same time and in the same manner as holders of Common Stock, the same type and amount of consideration (the "In-Kind Participating Dividend" and, collectively with the Participating Cash Dividend, the "Participating Dividends") as Holders would have received if, immediately prior to the record date of such In-Kind Common Dividend, they had held the number of shares of Common Stock issuable upon conversion of the Preferred Shares. To the extent that the Company establishes or adopts a stockholder rights plan or agreement (i.e., a "poison pill"), the Company shall ensure that the Holders will receive, as an In-Kind Participating Dividend, rights under the stockholder rights plan or agreement with respect to any shares of Common Stock that at the time of such distribution would be issuable upon conversion of the Preferred Shares. If and to the extent that the Company does not for any reason pay the entire In-Kind Participating Dividend when the In-Kind Common Dividend is paid to the holders of Common Stock, during the period in which such In-Kind Participating Dividend remains unpaid, an additional accreting dividend (the "In-Kind Accretion Dividends") shall accrue and be payable at an annual rate equal to the Dividend Rate on the amount of the unpaid In-Kind Participating Dividend through the daily addition

of such In-Kind Accretion Dividends to the Accrued Value (whether or not such In-Kind Accretion Dividends are declared by the Board and whether or not there are funds legally available for the payment of dividends to the Company's stockholders under Delaware law).

(e) Dividends (other than Participating Dividends) payable on the Series A Preferred Stock in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of Dividends (other than Participating Dividends) payable on the Series A Preferred Stock on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

(f) Cash Dividends and Accreting Dividends that are payable on Series A Preferred Stock on any Dividend Payment Date will be payable to Holders of record on the applicable record date, which shall be the fifteenth (15th) calendar day before the applicable Dividend Payment Date, or, with respect to any Cash Dividends not paid on the scheduled Dividend Payment Date therefor, such record date fixed by the Board (or a duly authorized committee of the Board) that is not more than sixty (60) nor less than ten (10) days prior to such date on which such accrued and unpaid Cash Dividends are to be paid (each such record date, a "Dividend Record Date"). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

(g) The quarterly dividend periods with respect to Cash Dividends and Accreting Dividends shall commence on and include January 1, April 1, July 1 and October 1 (other than the initial Dividend Period, which shall commence on and include the Issue Date) and shall end on and include the last calendar day of the calendar quarter ending March 31, June 30, September 30 and December 31 preceding the next Dividend Payment Date (a "Dividend Period").

SECTION 3. Liquidation Preference.

(a) Upon any Liquidation Event, each Preferred Share entitles the Holder thereof to receive and to be paid out of the assets of the Company legally available for distribution to the Company's stockholders, before any distribution or payment may be made to a holder of any Junior Securities, an amount in cash per share equal to the greater of: (i) the sum of (A) the Specified Percentage of the Accrued Value, plus (B) all accrued and unpaid Dividends (including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on such share to the extent not included in the Accrued Value (such sum, after the Specified Percentage multiplier and as adjusted, the "Regular Liquidation Preference") and (ii) an amount equal to the amount the Holder of such share would have received upon such Liquidation Event had such Holder converted such Preferred Share into Common Stock (or Reference Property, to the extent applicable) immediately prior thereto (such greater amount, the "Liquidation Preference").

(b) If upon any such Liquidation Event, the assets of the Company legally available for distribution to the Company's stockholders are insufficient to pay the

Holders the full Liquidation Preference and the holders of all Parity Securities the full liquidation preferences to which they are entitled, the Holders and the holders of such Parity Securities will share ratably in any such distribution of the assets of the Company in proportion to the full respective amounts to which they are entitled.

(c) After payment to the Holders of the full Liquidation Preference to which they are entitled, the Holders as such will have no right or claim to any of the assets of the Company.

(d) The value of any property not consisting of cash that is distributed by the Company to the Holders will equal the Fair Market Value thereof on the date of distribution.

(e) No holder of Junior Securities shall receive any cash upon a Liquidation Event unless the entire Liquidation Preference in respect of the Preferred Shares has been paid in cash. To the extent that there is insufficient cash available to pay the entire Liquidation Preference in respect of the Preferred Shares and any liquidation preference in respect of Parity Securities in full in cash upon a Liquidation Event, the Holders and the holders of such Parity Securities will share ratably in any cash available for distribution in proportion to the full respective amounts to which they are entitled upon such Liquidation Event.

SECTION 4. As-Converted Voting Rights; Certain Consent Rights.

(a) The Holders are entitled to vote on all matters on which the holders of shares of Common Stock are entitled to vote and, except as otherwise provided herein (including under SECTION 7 below) or by law, the Holders shall vote together with the holders of shares of Common Stock as a single class. As of any record date or other determination date, each Holder shall be entitled to the number of votes such Holder would have had if all Preferred Shares held by such Holder on such date had been converted into shares of Common Stock immediately prior thereto, except that, in the event that any Holder would be required to file any Notification and Report Form pursuant to the HSR Act as a result of the receipt of any Accreting Dividends by such Holder, the voting rights of such Holder pursuant to this Section 4(a) shall not be increased as a result of such Holder's receipt of such Accreting Dividends unless and until such Holder and the Company shall have made their respective filings under the HSR Act and the applicable waiting period shall have expired or been terminated in connection with such filings. The Company shall make all required filings and reasonably cooperate with and assist such Holder in connection with the making of such filing and obtaining the expiration or termination of such waiting period and shall be reimbursed by such Holder for any reasonable and documented out-of-pocket costs incurred by the Company in connection with such filings and cooperation.

(b) In addition to the voting rights provided for by SECTION 4(a) and SECTION 7 and any voting rights to which the Holders may be entitled to under law, for so long as any Preferred Shares or shares of Series A-1 Preferred Stock are outstanding, the Company may not, directly or indirectly, take any of the following actions (including by means of merger, consolidation, reorganization, recapitalization or otherwise) without the prior written consent of the Requisite Holders:

(i) amend the Certificate of Incorporation (excluding for this purpose this Certificate of Designation) or the By-Laws of the Company (including by means of merger, consolidation, reorganization, recapitalization or otherwise), in each case, in a manner adverse to the Holders;

(ii) authorize, create or issue any (x) Senior Securities or any debt securities convertible into or exchangeable for Equity Securities; (y) except as permitted under and in compliance with SECTION 9(b) and otherwise by this Certificate of Designation, Parity Securities or (z) any voting securities providing the holders thereof voting or board designation or appointment rights that are disproportionate to such holders' fully diluted ownership of the Common Stock;

(iii) (a) authorize or effect the commencement by the Company of any case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, (b) consent to entry of an order for relief in an involuntary case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, or (c) consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or similar official of the Company, or any general assignment for the benefit of creditors;

(iv) incur, or permit any Subsidiary to incur, any Indebtedness not otherwise permitted by the terms of SECTION 9(a);

(v) enter into, consummate, adopt, approve, establish or amend any Related Party Transaction (including any agreements or arrangements with HRG Affiliates relating to corporate opportunities and including all amendments, waivers and consents relating to any agreements and arrangements subject to this clause (vi)) (other than a Permitted Related Party Transaction, in either case, that has not been approved by a committee of the Board consisting solely of Independent Directors and, at all times that there is a Preferred Elected Director, not less than one Preferred Elected Director);

(vi) make, or permit any of its Subsidiaries to make, any Restricted Payments other than (A) the purchase of Equity Securities held by officers, directors, employees, consultants or independent contractors or former officers, directors, employees, consultants or independent contractors (or their estates or beneficiaries under their estates), upon death, disability, retirement, severance or other termination of employment provided that the aggregate cash consideration paid therefor in any twelve-month period after the Original Issue Date does not exceed an aggregate amount of (I) \$250,000 with respect to the Company and its Wholly Owned Subsidiaries, taken together, and (II) \$250,000 with respect to any Non-Wholly Owned Subsidiary of the Company, taken together with all Wholly Owned Subsidiaries of such Non-Wholly Owned Subsidiary, (B) dividends and distributions by Non-Wholly owned Subsidiaries made in accordance with the Organizational Documents of such Non-Wholly Owned Subsidiaries, (C) dividends and distributions to the Company or its Wholly Owned Subsidiaries and (D) Permitted Payments;

(vii) create a new Subsidiary of the Company not in existence on the Original Issue Date for the primary purpose of issuing Equity Securities of such Subsidiary or incurring Debt the proceeds of which will, directly or indirectly, be used to make dividends or other distributions or payments of cash to holders of the Company's Capital Stock other than the Holders; provided, that for the avoidance of doubt, the foregoing shall not prohibit dividends or other distributions to the Company;

(viii) effect any voluntary deregistration under the Exchange Act or voluntary delisting with any Exchange in respect to the Common Stock other than in connection with a Change of Control transaction pursuant to which the Company satisfies in full (in cash with respect to payment obligations) all of its obligations under SECTION 6(c); or

(ix) agree to do, directly or indirectly, any of the foregoing actions set forth in clauses (i) through (viii), unless such agreement expressly provides that the Company's obligation to undertake any of the foregoing is subject to the prior approval of the Requisite Holders.

(c) In addition to the voting rights provided for by SECTION 4(a), SECTION 4(b) and SECTION 7 and any voting rights to which the Holders may be entitled to under law, for so long as any Preferred Shares are outstanding, the Company may not, directly or indirectly, take any of the following actions (including by means of merger, consolidation, reorganization, recapitalization or otherwise) without the prior written consent of the Series A Requisite Holders:

(i) amend, repeal, alter or add, delete or otherwise change the powers, preferences, rights or privileges of the Series A Preferred Stock;

(ii) authorize or issue any shares of Series A Preferred Stock other than to the May 2014 Purchasers pursuant to SECTION 2 of the May 2014 Securities Purchase Agreement, or effect any stock split or combination, reclassification or similar event with respect to the Series A Preferred Stock;

(iii) incur, or permit any Subsidiary to incur, any Indebtedness not otherwise issued in compliance with the participation rights contained in SECTION 5.4 of the May 2014 Securities Purchase Agreement; or

(iv) agree to do, directly or indirectly, any of the foregoing actions set forth in clauses (i) through (iii), unless such agreement expressly provides that the Company's obligation to undertake any of the foregoing is subject to the prior approval of the Series A Requisite Holders.

(d) Notwithstanding anything to the contrary contained in this SECTION 4, the Company may not, directly or indirectly, take any action otherwise approved pursuant

to Section 4(b) if such action would have a materially adverse and disproportionate effect on the powers, preferences, rights, limitations, qualifications and restrictions or privileges of any Holder with respect to any shares of Series A Preferred Stock held by any Holder, without the prior approval of such Holder.

(e) Written Consent. Any action as to which a class vote of the holders of Preferred Stock, or the holders of Preferred Stock and Common Stock voting together, is required pursuant to the terms of this Certificate of Designation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be 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 and shall be delivered to the Company.

SECTION 5. Conversion. Each Preferred Share is convertible into shares of Common Stock (or Reference Property, to the extent applicable) as provided in this SECTION 5.

(a) Conversion at the Option of Holders of Series A Preferred Stock. Subject to SECTION 5(b) hereof, each Holder is entitled to convert, at any time and from time to time, at the option and election of such Holder, any or all outstanding Preferred Shares held by such Holder and receive therefor the property described in SECTION 5(d) upon such conversion. In order to convert Preferred Shares into shares of Common Stock (or Reference Property, to the extent applicable), the Holder must surrender the certificates representing such Preferred Shares at the office of the Company's transfer agent for the Series A Preferred Stock (or at the principal office of the Company, if the Company serves as its own transfer agent), together with (x) written notice that such Holder elects to convert all or part of the Preferred Shares represented by such certificates as specified therein, (y) a written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the transfer agent or the Company, as applicable (if reasonably required by the transfer agent or the Company, as applicable), and (z) funds for any stock transfer, documentary, stamp or similar taxes, if payable by the Holder pursuant to SECTION 5(f)(i). Except as provided in SECTION 5(b) and in SECTION 5(c), the date the transfer agent or the Company, as applicable, receives such certificates, together with such notice and any other documents and amounts required to be paid by the Holder pursuant to this SECTION 5, will be the date of conversion (the "Conversion Date").

(b) Conversion at the Option of the Company. Beginning on the third (3rd) anniversary of the Original Issue Date, the Company shall have the right, at its option, to cause all shares of Series A Preferred Stock to be automatically converted (without any further action by the Holder and whether or not the certificates representing the Preferred Shares are surrendered), in whole but not in part, into the property described in SECTION 5(d) within five (5) Business Days of any day (the "Forced Conversion Trigger Date") on which all of the Company Conversion Conditions are satisfied from time to time. The Company may exercise its option under this SECTION 5(b) by providing the Holders with a written notice, which notice shall specify that the Company is exercising the option contemplated by this SECTION 5(b), the Forced Conversion Trigger Date and the Conversion Date on which the conversion shall occur (which Conversion Date shall be not

less than ten (10) Business Days following the date such notice is provided to the Holders); *provided* that, once delivered, such notice shall be irrevocable, unless the Company obtains the written consent of the Series A Requisite Holders. For the avoidance of doubt, (x) the Holders shall continue to have the right to convert their Preferred Shares pursuant to SECTION 5(a) until and through the Conversion Date contemplated in this SECTION 5(b) and (y) if any Preferred Shares are converted pursuant to SECTION 5(a), such Preferred Shares shall no longer be converted pursuant to this SECTION 5(b) and the Company's notice delivered to the Holders pursuant to this SECTION 5(b) shall automatically terminate with respect to such Preferred Shares. Notwithstanding the foregoing, any notice delivered by the Company under this SECTION 5(b) in accordance with SECTION 11(g) shall be conclusively presumed to have been duly given at the time set forth therein, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such notice shall affect the validity of the proceedings for the conversion of the Preferred Shares as set forth in this SECTION 5(b). The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following any date on which the Company provides notice to Holders pursuant to this SECTION 5(b) announcing the Company's election to convert Preferred Shares pursuant to this SECTION 5(b).

(c) Automatic Conversion on Maturity Date. In the event that any Holder has not elected to have its Preferred Shares redeemed by the Company on the Maturity Date (as defined herein) pursuant to SECTION 6(a), then such Holder's Preferred Shares shall be automatically converted (without any further action by the Holder and whether or not the certificates representing the Preferred Shares are surrendered), in whole and not in part, into the property described in SECTION 5(d), effective as of the Maturity Date, which shall be deemed to be the "Conversion Date" for purposes of this SECTION 5(c). As promptly as practicable (but in no event more than five (5) Business Days) following the Maturity Date, the Company shall deliver a notice to any Holder whose Preferred Shares have been converted by the Company pursuant to this SECTION 5(c), informing such Holder of the number of shares of Common Stock into which such Preferred Shares have been converted, together with certificates evidencing such shares of Common Stock. Notwithstanding the foregoing, any notice delivered by the Company in compliance with this SECTION 5(c) shall be conclusively presumed to have been duly given, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such notice shall affect the validity of the proceedings for the conversion of the Preferred Shares as set forth in this SECTION 5(c). The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following the Maturity Date announcing the aggregate number of Preferred Shares being converted pursuant to this SECTION 5(c) and the number of shares of Common Stock issuable in connection therewith, as well as the aggregate number of Preferred Shares redeemed on the Maturity Date and the purchase price paid by the Company therefor.

(d) Amounts Received Upon Conversion. Upon a conversion of Preferred Shares pursuant to SECTION 5(a), (b) or (c), the Holder of such converted Preferred Shares shall receive in respect of each Preferred Share:

(i) a number of shares of Common Stock (or Reference Property, to the extent applicable) equal to the amount (the "Conversion Amount") determined by dividing (A) the Accrued Value for the Preferred Share to be converted by (B) the Conversion Price in effect at the time of conversion; *provided* that, notwithstanding the foregoing, if the Company has elected to convert all Preferred Shares pursuant to SECTION 5(b) and the Public Float Hurdle is not met on the Forced Conversion Trigger Date, then each Holder may elect, by delivery of a notice to the Company no later than the close of business on the Business Day immediately prior to the Conversion Date, to receive, in lieu of Common Stock (or Reference Property, to the extent applicable), cash equal to the Conversion Amount multiplied by the Thirty Day VWAP as of the close of business on the Business Day immediately preceding the Conversion Date, which cash amount shall be delivered to the electing Holders within forty-five (45) calendar days of the date that the last Holder electing to receive cash pursuant to this SECTION 5(d)(i) has provided the Company with notice thereof;

(ii) cash in an amount equal to the amount of any accrued but unpaid Cash Dividends and Participating Cash Dividends (to the extent not included in the Accrued Value) on the Preferred Shares being converted; *provided* that, to the extent the Company is prohibited by law or by contract from paying such amount, then the Company shall provide written notice to the applicable Holder of such inability to pay, and at the written election of the Holder (which written election shall be delivered to the Company within five (5) Business Days of receipt of such written notice from the Company), the Company shall either pay such amount as soon as payment is no longer so prohibited or issue Common Stock (or Reference Property, to the extent applicable) in the manner specified in SECTION 5(d)(i) as if the amount of such accrued but unpaid Cash Dividends and Participating Cash Dividends were added to the Accrued Value (it being understood that any such Cash Dividends that are not timely paid upon conversion as a result of this proviso will be deemed to be overdue and delinquent for purposes of calculating Cash Accretion Dividends pursuant to SECTION 2(a) hereunder until paid in full in cash);

(iii) a number of shares of Common Stock (or Reference Property, to the extent applicable) equal to the amount determined by dividing (A) the amount of any accrued but unpaid Accreting Dividends (to the extent not included in the Accrued Value) on the Preferred Shares being converted by (B) the Conversion Price in effect at the time of Conversion; and

(iv) any accrued and unpaid In-Kind Participating Dividends.

Notwithstanding the foregoing, in the event any Holder would be required to file any Notification and Report Form pursuant to the HSR Act as a result of the conversion of any Preferred Shares into the property described above in this Section 5(d), at the option of such Holder upon written notice to the Company, the effectiveness of such conversion shall be delayed (only to the extent necessary to avoid a violation of the HSR Act), until such Holder shall have made such filing under the HSR Act and the applicable waiting period shall have

expired or been terminated; provided, however, that in such circumstances such Holder shall use commercially reasonable efforts to make such filing and obtain the expiration or termination of such waiting period as promptly as reasonably practical and the Company shall make all required filings and reasonably cooperate with and assist such Holder in connection with the making of such filing and obtaining the expiration or termination of such waiting period and shall be reimbursed by such Holder for any reasonable and documented out-of-pocket costs incurred by the Company in connection with such filings and cooperation. Notwithstanding the foregoing, if the conversion of any Preferred Share is delayed pursuant to the preceding sentence at (x) a time when the Company desires to exercise its right to convert shares of Series A Preferred Stock pursuant to SECTION 5(b) or (y) the Maturity Date in connection with the automatic conversion of the shares of Series A Preferred Stock pursuant to SECTION 5(c), from and after the date of the conversions contemplated by SECTIONS 5(b) or 5(c), as applicable, such Preferred Share not then converted shall have no rights, powers, preferences or privileges other than the rights provided by this paragraph and the right to (i) convert into Common Stock if and when such Holder shall have made such filing under the HSR Act and the waiting period in connection with such filing under the HSR Act shall have expired or been terminated and (ii) receive dividends and distributions pursuant to SECTIONS 2(c) and 2(d).

(e) Fractional Shares. No fractional shares of Common Stock (or fractional shares in respect of Reference Property, to the extent applicable) will be issued upon conversion of the Series A Preferred Stock. In lieu of fractional shares, the Company shall pay cash in respect of each fractional share equal to such fractional amount multiplied by the Thirty Day VWAP as of the closing of business on the Business Day immediately preceding the Conversion Date (or the Fair Market Value thereof in respect of any Reference Property). If more than one Preferred Share is being converted at one time by the same Holder, then the number of full shares issuable upon conversion will be calculated on the basis of the aggregate number of Preferred Shares converted by such Holder at such time.

(f) Mechanics of Conversion.

(i) As soon as reasonably practicable after the Conversion Date (and in any event within four (4) Business Days after such date), the Company shall issue and deliver to the applicable Holder one or more certificates for the number of shares of Common Stock (or Reference Property, to the extent applicable) to which such Holder is entitled, together with, at the option of the Holder, a check or wire transfer of immediately available funds for payment of fractional shares and any payment required by SECTION 5(d)(ii) in exchange for the certificates representing the converted Preferred Shares. Such conversion will be deemed to have been made on the Conversion Date, and the Person entitled to receive the shares of Common Stock (or Reference Property, to the extent applicable) issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock (or Reference Property, to the extent applicable) on such date. The delivery of the Common Stock upon conversion of Preferred Shares shall be made, at the option of the applicable Holder, in certificated form or by book-entry. Any such certificate or certificates shall be delivered by the Company to the appropriate Holder on a book-entry basis or by mailing certificates evidencing the shares to such Holder at its address as set forth in the conversion notice. In cases where fewer than all the Preferred Shares represented by any such certificate are to be converted, a new certificate shall

be issued representing the unconverted Preferred Shares. The Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of Common Stock (or Reference Property, to the extent applicable) upon conversion or due upon the issuance of a new certificate for any Preferred Shares not converted to the converting Holder; provided that the Company shall not be required to pay any such amounts, and any such amounts shall be paid by the converting Holder, in the event that such Common Stock or Preferred Shares are issued in a name other than the name of the converting Holder.

(ii) For the purpose of effecting the conversion of Preferred Shares, the Company shall: (A) at all times reserve and keep available, free from any preemptive rights, out of its treasury or authorized but unissued shares of Common Stock (or Reference Property, to the extent applicable) the full number of shares of Common Stock (or Reference Property, to the extent applicable) deliverable upon the conversion of all outstanding Preferred Shares after taking into account any adjustments to the Conversion Price from time to time pursuant to the terms of this SECTION 5 and any increases to the Accrued Value from time to time and assuming for the purposes of this calculation that all outstanding Preferred Shares are held by one holder) and (B) without prejudice to any other remedy at law or in equity any Holder may have as a result of such default, take all actions reasonably required to amend its Certificate of Incorporation, as expeditiously as reasonably practicable, to increase the authorized and available amount of Common Stock (or Reference Property, to the extent applicable) if at any time such amendment is necessary in order for the Company to be able to satisfy its obligations under this SECTION 5. Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock (or Reference Property, to the extent applicable) issuable upon conversion of the Series A Preferred Stock, the Company will take any corporate action which may be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock (or Reference Property, to the extent applicable) upon the conversion of all outstanding Preferred Shares at such adjusted Conversion Price.

(iii) From and after the Conversion Date, the Preferred Shares converted on such date, will no longer be deemed to be outstanding and all rights of the Holder thereof including the right to receive Dividends, but excluding the right to receive from the Company the Common Stock (or Reference Property, to the extent applicable) or any cash payment upon conversion, and except for any rights of Holders (including any voting rights) pursuant to this Certificate of Designation which by their express terms continue following conversion or, for the avoidance of doubt, rights which by their express terms continue following conversion pursuant to any of the other Transaction Agreements (as defined in the May 2014 Securities Purchase Agreement) shall immediately and automatically cease and terminate with respect to such Preferred Shares; *provided* that, in the event that a Preferred Share is not converted due to a default by the Company or because the Company is otherwise unable to issue the requisite shares of Common Stock (or Reference Property, to the extent applicable), such Preferred Share will, without prejudice to any other remedy at law or in equity any Holder may have as a result of such default, remain outstanding and will continue be entitled to all of the rights attendant to such Preferred Share as provided herein.

(iv) The Company shall comply with all federal and state laws, rules and regulations and applicable rules and regulations of the Exchange on which shares of the

Common Stock (or Reference Property, to the extent applicable) are then listed. If any shares of Common Stock (or Reference Property, to the extent applicable) to be reserved for the purpose of conversion of Preferred Shares require registration with or approval of any Person or group (as such term is defined in Section 13(d)(3) of the Exchange Act) under any federal or state law or the rules and regulations of the Exchange on which shares of the Common Stock (or Reference Property, to the extent applicable) are then listed before such shares may be validly issued or delivered upon conversion, then the Company will, as expeditiously as reasonably practicable, use commercially reasonable efforts to secure such registration or approval, as the case may be. So long as any Common Stock (or Reference Property, to the extent applicable) into which the Preferred Shares are then convertible is then listed on an Exchange, the Company will list and keep listed on any such Exchange, upon official notice of issuance, all shares of such Common Stock (or Reference Property, to the extent applicable) issuable upon conversion.

(v) All shares of Common Stock (or Reference Property, to the extent applicable) issued upon conversion of the Preferred Shares will, upon issuance by the Company, be duly and validly issued, fully paid and nonassessable, not issued in violation of any preemptive or similar rights arising under law or contract and free from all taxes, liens and charges with respect to the issuance thereof, and the Company shall take no action which will cause a contrary result.

(g) Adjustments to Conversion Price.

(i) The Conversion Price shall be subject to the following adjustments:

(A) *Common Stock Dividends or Distributions.* If the Company issues shares of Common Stock as a dividend or distribution on shares of Common Stock, or if the Company effects a share split or share combination with respect to shares of Common Stock, the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0}{OS_1}$$

where,

CP_0 = the Conversion Price in effect immediately prior to the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be;

CP_1 = the Conversion Price in effect immediately after the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be; and

OS_1 = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or such share split or share combination, as the case may be.

Any adjustment made under this SECTION 5(g)(i)(A) shall become effective immediately after the open of business on the Ex-Date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination. If any dividend or distribution of the type described in this SECTION 5(g)(i)(A) is declared but not so paid or made, or any share split or combination of the type described in this SECTION 5(g)(i)(A) is announced but the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Price shall be immediately readjusted, effective as of the date the Board determines not to pay such dividend or distribution, or not to split or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Price that would then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

(B) *Rights, Options or Warrants on Common Stock.* If the Company distributes to all or substantially all holders of its Common Stock any rights, options or warrants entitling them, for a period expiring not more than sixty (60) days immediately following the record date of such distribution, to purchase or subscribe for shares of Common Stock at a price per share less than the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution, the Conversion Price will be adjusted based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CP₀ = the Conversion Price in effect immediately prior to the open of business on the Ex-Date for such distribution;

CP₁ = the Conversion Price in effect immediately after the open of business on the Ex-Date for such distribution;

OS₀ = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Date for such distribution;

X = the number of shares of Common Stock equal to the aggregate price payable to exercise all such rights, options or warrants divided by the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution; and

Y = the total number of shares of Common Stock issuable pursuant to all such rights, options or warrants.

Any adjustment made under this SECTION 5(g)(i)(B) will be made successively whenever any such rights, options or warrants are distributed and shall become effective immediately after the open of business on the Ex-Date for such distribution. To the extent that shares of Common Stock are not delivered prior to the expiration of such rights, options or warrants, the Conversion Price shall be readjusted following the expiration of such rights to the Conversion Price that would then be in effect had the decrease in the Conversion Price with respect to the distribution of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so distributed, the Conversion Price shall be immediately readjusted, effective as of the date the Board determines not to make such distribution, to the Conversion Price that would then be in effect if such distribution had not occurred.

In determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such average of the Daily VWAP for the ten (10) consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Date for such distribution, and in determining the aggregate offering price of such shares of the Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the fair market value of such consideration, if other than cash, to be reasonably determined by the Board in good faith.

(C) *Tender Offer or Exchange Offer Payments.* If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for Common Stock, if the aggregate value of all cash and any other consideration included in the payment per share of Common Stock (as reasonably determined in good faith by the Board) exceeds the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date on which such tender offer or exchange offer expires, the Conversion Price will be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 \times SP_1}{AC + (SP_1 \times OS_1)}$$

where,

CP_1 = the Conversion Price in effect immediately after the close of business on the last Trading Day of the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

CP_0 = the Conversion Price in effect immediately prior to the close of business on the last Trading Day of the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires;

SP₁ = the average of the Daily VWAP of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as reasonably determined in good faith by the Board) paid or payable for shares purchased in such tender or exchange offer; and

OS₁ = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to such tender offer or exchange offer and excluding fractional shares).

The adjustment to the Conversion Price under this SECTION 5(g)(i)(C) will occur at the close of business on the tenth (10th) Trading Day immediately following, but excluding, the date such tender or exchange offer expires; *provided* that, for purposes of determining the Conversion Price, in respect of any conversion during the ten (10) Trading Days immediately following, but excluding, the date that any such tender or exchange offer expires, references within this SECTION 5(g)(i)(C) to ten (10) consecutive Trading Days shall be deemed replaced with such lesser number of consecutive Trading Days as have elapsed between the date such tender or exchange offer expires and the relevant conversion date.

(D) *Common Stock Issued at Less than Conversion Price.* If, after the Original Issue Date, the Company issues or sells any Common Stock (or Option Securities or Convertible Securities, to the extent set forth in this SECTION 5(g)(i)(D)), other than Excluded Stock, for no consideration or for consideration per share less than the Conversion Price in effect as of the date of such issuance or sale, the Conversion Price in effect immediately prior to each such issuance or sale will (except as provided below) be adjusted at the time of such issuance or sale based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CP₁ = the Conversion Price in effect immediately following such issuance or sale;

CP₀ = the Conversion Price in effect immediately prior to such issuance or sale;

OS₀ = the number of shares of Common Stock outstanding immediately prior to such issuance or sale (treating for this purpose as outstanding all shares of Common Stock issuable upon the conversion or exchange of (x) all Preferred Shares issued on the Original Issue Date and all shares of Series A-1 Preferred Stock issued on the Second Issue Date and (y) all convertible, exchangeable or exercisable Equity Securities of the Company not listed in (x) if the conversion price, exercise price or exchange price applicable to such Equity Securities of the Company is below Market Value on the determination date);

X = the number of shares of Common Stock that the aggregate consideration received by the Company for the number of shares of Common Stock so issued or sold would purchase at a price per share equal to CP_0 ; and

Y = the number of additional shares of Common Stock so issued.

For the purposes of any adjustment of the Conversion Price pursuant to this SECTION 5(g)(i)(D), the following provisions shall be applicable:

(1) In the case of the issuance of Common Stock for cash, the amount of the consideration received by the Company shall be deemed to be the amount of the cash proceeds received by the Company for such Common Stock after deducting therefrom any discounts or commissions allowed, paid or incurred by the Company for any underwriting or otherwise in connection with the issuance and sale thereof

(2) In the case of the issuance of Common Stock (otherwise than upon the conversion of shares of Capital Stock or other securities of the Company) for a consideration in whole or in part other than cash, including securities acquired in exchange therefor (other than securities by their terms so exchangeable), the consideration other than cash shall be deemed to be the fair market value thereof as reasonably determined by the Board in good faith.

(3) In the case of (A) the issuance of Option Securities (whether or not at the time exercisable) or (B) the issuance of Convertible Securities (whether or not at the time so convertible or exchangeable):

i) the issuance of Option Securities shall be deemed the issuance of all shares of Common Stock deliverable upon the exercise of such Option Securities;

ii) such Option Securities shall be deemed to be issued for a consideration equal to the value of the consideration (determined in the manner provided in SECTION 5(g)(i)(D)(1) and (2)), if any, received by the Company for such Option Securities, plus the exercise price, strike price or purchase price provided in such Option Securities for the Common Stock covered thereby;

iii) the issuance of Convertible Securities shall be deemed the issuance of all shares of Common Stock deliverable upon conversion of, or in exchange for, such Convertible Securities;

iv) such Convertible Securities shall be deemed to be issued for a consideration equal to the value of the consideration (determined in the manner provided in SECTION 5(g)(i)(D)(1) and (2) and excluding any cash received on account of accrued interest or accrued dividends), if any, received by the Company for such Convertible Securities, plus the value of the additional consideration (determined in the manner provided in SECTION 5(g)(i)(D)(1) and (2)) to be received by the Company upon the conversion or exchange of such Convertible Securities, if any;

v) upon any change in the number of shares of Common Stock deliverable upon exercise of any Option Securities or Convertible Securities or upon any change in the consideration to be received by the Company upon the exercise, conversion or exchange of such securities, the Conversion Price then in effect shall be readjusted to such Conversion Price as would have been in effect had such change been in effect, with respect to any Option Securities or Convertible Securities outstanding at the time of the change, at the time such Option Securities or Convertible Securities originally were issued;

vi) upon the expiration or cancellation of Option Securities (without exercise), or the termination of the conversion or exchange rights of Convertible Securities (without conversion or exchange), if the Conversion Price shall have been adjusted upon the issuance of such expiring, canceled or terminated securities, the Conversion Price shall be readjusted to such Conversion Price as would have been obtained if, at the time of the original issuance of such Option Securities or Convertible Securities, the expired, canceled or terminated Option Securities or Convertible Securities, as applicable, had not been issued;

vii) if the Conversion Price shall have been fully adjusted upon the issuance of any such options, warrants, rights or convertible or exchangeable securities, no further adjustment of the Conversion Price shall be made for the actual issuance of Common Stock upon the exercise, conversion or exchange thereof; and

viii) if any issuance of Common Stock, Option Securities or Convertible Securities would also require an adjustment pursuant to any other adjustment provision of this SECTION 5(g)(i), then only the adjustment most favorable to the Holders shall be made.

(ii) If the Company issues rights, options or warrants that are only exercisable upon the occurrence of certain triggering events (each, a "Trigger Event"), then the Conversion Price will not be adjusted pursuant to SECTION 5(g)(i)(B) until the earliest Trigger Event occurs, and the Conversion Price shall be readjusted to the extent any of these rights, options or warrants are not exercised before they expire (provided, however, that, for the avoidance of doubt, if such Trigger Event would require an adjustment pursuant to SECTION 5(g)(i)(D), such adjustment pursuant to SECTION 5(g)(i)(D) shall be made at the time of issuance of such rights, options or warrants in accordance with such Section).

(iii) Notwithstanding anything in this SECTION 5(g) to the contrary, if a Conversion Price adjustment becomes effective pursuant to any of clauses (A), (B) or (C) of this SECTION 5(g)(i) on any Ex-Date as described above, and a Holder that converts its Preferred Shares on or after such Ex-Date and on or prior to the related record date would be treated as the record holder of shares of Common Stock as of the related Conversion Date based on an adjusted Conversion Price for such Ex-Date and participate on an adjusted basis in the related dividend, distribution or other event giving rise to such adjustment, then, notwithstanding the foregoing Conversion Price adjustment provisions, the Conversion Price adjustment relating to such Ex-Date will not be made for such converting Holder. Instead, such Holder will be treated as if such Holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

Notwithstanding anything in this SECTION 5(g) to the contrary, no adjustment under SECTION 5(g)(i) need be made to the Conversion Price unless such adjustment would require a decrease of at least 1% of the Conversion Price then in effect. Any lesser adjustment shall be carried forward and shall be made at the time of and together with the next subsequent adjustment, if any, which, together with any adjustment or adjustments so carried forward, shall amount to a decrease of at least 1% of such Conversion Price; *provided* that, on the date of any conversion of the Preferred Shares pursuant to SECTION 5, adjustments to the Conversion Price will be made with respect to any such adjustment carried forward that has not been taken into account before such date. In addition, at the end of each year, beginning with the year ending December 31, 2014, the Conversion Price shall be adjusted to give effect to any adjustment or adjustments so carried forward, and such adjustments will no longer be carried forward and taken into account in any subsequent adjustment.

(iv) Adjustments Below Par Value. The Company shall not take any action that would require an adjustment to the Conversion Price such that the Conversion Price, as adjusted to give effect to such action, would be less than the then-applicable par value per share of the Common Stock, except that the Company may undertake a share split or similar event if such share split results in a corresponding reduction in the par value per share of the Common Stock such that the as-adjusted new Conversion Price per share would not be below the new as-adjusted par value per share of the Common Stock following such share split or similar transaction and the Conversion Price is adjusted as provided under SECTION 5(g)(i)(A) and any other applicable provision of SECTION 5(g).

(v) Reference Property. In the case of any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision, combination or reclassification described in SECTION 5(g)(i)(A)), a consolidation, merger or combination involving the Company, a sale, lease or other transfer to a third party of all or substantially all of the assets of the Company (or the Company and its Subsidiaries on a consolidated basis), or any statutory share exchange, in each case as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any of the foregoing, a "Transaction"), then, at the effective time of the Transaction, the right to convert each Preferred Share will be changed into a right to convert such Preferred Share into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) (the "Reference Property") that a Holder would have received in respect of the Common Stock issuable upon conversion of such Preferred Shares immediately prior to such Transaction. In the event that holders of Common Stock have the opportunity to elect the form of consideration to be received in the Transaction, the Company shall make adequate provision whereby the Holders of the Preferred Shares shall have a reasonable opportunity to determine the form of consideration into which all of the Preferred Shares, treated as a single class, shall be convertible from and after the effective date of the Transaction. Any such election shall be made by the Series A Requisite Holders. Any such determination by the Holders shall be subject to any limitations to which all holders of Common Stock are subject, such as pro rata reductions applicable to any portion of the consideration payable in the Transaction, and shall be conducted in such a manner as to be completed at approximately the same time as the time elections are made by holders of Common Stock. The provisions of this SECTION 5(g)(v) and any equivalent thereof in any such securities similarly shall apply to successive Transactions. The Company shall not become a party to any Transaction unless its terms are in compliance with the foregoing.

(vi) Rules of Calculation; Treasury Stock. All calculations will be made to the nearest one-hundredth of a cent or to the nearest one-ten thousandth of a share. Except as explicitly provided herein, the number of shares of Common Stock (or Reference Property, to the extent applicable) outstanding will be calculated on the basis of the number of issued and outstanding shares of Common Stock (or Reference Property, to the extent applicable), not including shares held in the treasury of the Company. The Company shall not pay any dividend on or make any distribution to shares of Common Stock (or Reference Property, to the extent applicable) held in treasury.

(vii) No Duplication. If any action would require adjustment of the Conversion Price pursuant to more than one of the provisions described in this SECTION 5 in a manner such that such adjustments are duplicative, only one adjustment (which shall be the adjustment most favorable to the Holders of Preferred Stock) shall be made.

(viii) Notice of Record Date. In the event of:

(A) any event described in SECTION 5(f)(i)(A), (B), (C) or (D);

(B) any Transaction to which SECTION 5(f)(v) applies;

(C) the dissolution, liquidation or winding-up of the Company; or

(D) any other event constituting a Change of Control;

then the Company shall mail to the Holders of Preferred Stock at their last addresses as shown on the records of the Company, at least twenty (20) days prior to the record date specified in (A) below or twenty (20) days prior to the date specified in (B) below, as applicable, a notice stating:

(A) the record date for the dividend, other distribution, stock split or combination or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, other distribution, stock split or combination; or

(B) the date on which such reclassification, change, dissolution, liquidation, winding-up or other event constituting a Transaction or Change of Control, or any transaction which would result in an adjustment pursuant to SECTION 5(g)(i)(D), is estimated to become effective or otherwise occur, and the date as of which it is expected that holders of Common Stock of record will be entitled to exchange their shares of Common Stock for Reference Property, other securities or other property deliverable upon such reclassification, change, liquidation, dissolution, winding-up, Transaction or Change of Control or that such issuance of Common Stock, Option Securities or Convertible Securities is anticipated to occur.

(ix) Certificate of Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this SECTION 5, the Company at its expense shall as promptly as reasonably practicable compute such adjustment or readjustment in accordance with the terms hereof and furnish to each Holder of Preferred Stock a certificate, signed by an officer of the Company (in his or her capacity as such and not in an individual capacity), setting forth (A) the calculation of such adjustments and readjustments in reasonable detail, (B) the facts upon which such adjustment or readjustment is based, (C) the Conversion Price then in effect, and (D) the number of shares of Common Stock (or Reference Property, to the extent applicable) and the amount, if any, of Capital Stock, other securities or other property (including but not limited to cash and evidences of indebtedness) which then would be received upon the conversion of a Preferred Share.

(x) No Upward Revisions to Conversion Price. For the avoidance of doubt, except in the case of a reverse share split or share combination resulting in an adjustment under SECTION 5(g)(i)(A) effected with the approvals, if any, required pursuant to SECTION 4(b), in no event shall any adjustment be made pursuant to this SECTION 5 that results in an increase in the Conversion Price.

SECTION 6. Redemption.

(a) Redemption at Maturity. Each Holder shall have the right to require the Company to redeem such Holder's Preferred Shares, in whole or in part, on the seventh (7th) anniversary of the Original Issue Date (the "Maturity Date") at a price per share payable, subject to SECTION 6(e), in cash and equal to the Redemption Price. At any time during the period beginning on the thirtieth (30th) calendar day prior to the Maturity Date (the "Holder Redemption Notice Period"), each Holder may deliver written notice to the Company notifying the Company of such Holder's election to require the Company to redeem all or a portion of such Holder's Preferred Shares on the Maturity Date (the "Election Notice"). No later than thirty (30) calendar days prior to the commencement of the Holder Redemption Notice Period, the Company shall deliver a notice to each Holder of Preferred Stock including the following information: (A) informing the Holder of the Maturity Date and such Holder's right to elect to have all or a portion of its Preferred Shares redeemed by Company on the Maturity Date, (B) the Redemption Price payable with respect to each share of Series A Preferred Stock on the Maturity Date in connection with any such redemption (to the extent the Redemption Price is known or can be calculated, and to the extent not capable of being calculated, the manner in which such price will be determined); (C) that any certificates representing Preferred Shares which a Holder elects to have redeemed must be surrendered for payment of the Redemption Price at the office of the Company or any redemption agent located in New York City selected by the Company therefor together with any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable (if reasonably required by the redemption agent or the Company, as applicable); (D) that, upon a Holder's compliance with clause (C), payment of the Redemption Price with respect to any Preferred Shares to be made on the Maturity Date will be made to the Holder within five (5) Business Days of the Maturity Date to the account specified in such Holder's redemption election notice; (E) that any Holder may withdraw its Election Notice with respect to all or a portion of its Preferred Shares at any time prior to 5:00 p.m. (New

York City time) on the Business Day immediately preceding the Maturity Date; and (F) the number of shares of Common Stock (or, if applicable, the amount of Reference Property) and the amount of cash, if any, that a Holder would receive upon conversion of a Preferred Share if a Holder does not elect to have its Preferred Shares redeemed. The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following any date on which the Company provides notice to Holders pursuant to this SECTION 6(a) disclosing the right of Holders to have the Company redeem Preferred Shares pursuant to this SECTION 6(a).

(b) Optional Redemption by the Company. On and after the third (3rd) anniversary of the Original Issue Date, the Company may, at its option, redeem all (but not less than all) of the outstanding Preferred Shares for cash equal to the Redemption Price. If the Company elects to redeem the Preferred Shares pursuant to this SECTION 6(b), the Company shall deliver a notice of redemption to the Holders of Preferred Stock not less than thirty (30) or more than sixty (60) calendar days prior to the date specified for redemption (the “Optional Redemption Date”), which notice shall include: (A) the Optional Redemption Date; (B) the Redemption Price; (C) that on the Optional Redemption Date, if the Holder has not previously elected to convert Preferred Shares into Common Stock, each Preferred Share shall automatically and without further action by the Holder thereof (and whether or not the certificates representing such Preferred Shares are surrendered) be redeemed for the Redemption Price; (D) that payment of the Redemption Price will be made to the Holder within five (5) Business Days of the Redemption Date to the account specified by such Holder to the Company in writing; (E) that the Holder’s right to elect to convert its Preferred Shares will end at 5:00 p.m. (New York City time) on the Business Day immediately preceding the Optional Redemption Date; and (F) the number of shares of Common Stock (or, if applicable, the amount of Reference Property) and the amount of cash, if any, that a Holder would receive upon conversion of a Preferred Share if a Holder elect to convert its Preferred Shares prior to the Optional Redemption Date. Notwithstanding the foregoing, any notice delivered by the Company under this SECTION 6(b) in accordance with SECTION 11(g) shall be conclusively presumed to have been duly given at the time set forth therein, whether or not such Holder of Preferred Shares actually receives such notice, and neither the failure of a Holder to actually receive such notice given as aforesaid nor any immaterial defect in such notice shall affect the validity of the proceedings for the redemption of the Preferred Shares as set forth herein. The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following any date on which the Company provides notice to Holders pursuant to this SECTION 6(b) announcing the Company’s election to redeem Preferred Shares pursuant to this SECTION 6(b).

(c) Redemption at Option of the Holder upon a Change of Control.

(i) If a Change of Control occurs, each Holder shall have the right to require the Company to redeem its Preferred Shares pursuant to a Change of Control Offer,

which Change of Control Offer shall be made by the Company in accordance with Section 6(c)(ii). In such Change of Control Offer, the Company will offer a payment (such payment, a “Change of Control Payment”) in cash per Preferred Share equal to the greater of: (i) the sum of (A) the Specified Percentage of the Accrued Value, plus (B) all accrued and unpaid Dividends (including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on such share to the extent not included in the Accrued Value and (ii) an amount equal to the amount the Holder of such Preferred Share would have received in connection with such Change of Control had such Holder converted such Preferred Share into Common Stock (or Reference Property, to the extent applicable) immediately prior thereto (such greater amount, the “Change of Control Payment Amount”).

(ii) Within thirty (30) days following any Change of Control, the Company will mail a notice (a “Change of Control Offer”) to each Holder describing the transaction or transactions that constituted such Change of Control and offering to redeem the Preferred Shares on the date specified in such notice (the “Change of Control Payment Date”), which date shall be no earlier than thirty (30) days and no later than sixty-one (61) days from the date such notice is mailed. In addition, such Change of Control Offer shall further state: (A) the amount of the Change of Control Payment; (B) that the Holder may elect to have all or any portion of its Preferred Shares redeemed pursuant to the Change of Control Offer, (C) that any Preferred Shares to be redeemed must be surrendered for payment of the Change of Control Payment at the office of the Company or any redemption agent selected by the Company therefor together with any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable (if reasonably required by the redemption agent or the Company, as applicable); (D) that, upon a Holder’s compliance with clause (C), payment of the Change of Control Payment will be made to the Holder on the Change of Control Payment Date to the account specified by such Holder to the Company in writing; (E) the date and time by which the Holder must make its election, (F) that any Holder may withdraw its election notice with respect to all or a portion of their Preferred Shares at any time prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding the Change of Control Payment Date; and (G) the amount and type of property that the Holder would receive in connection with such Change of Control if the Holder elects to convert its Preferred Shares in connection with the Change of Control. The Company shall issue a press release for publication on the Dow Jones News Service or Bloomberg Business News (or if either such service is not available, another broadly disseminated news or press release service selected by the Company) prior to the opening of business on the first Business Day following any date on which the Company provides notice to Holders pursuant to this SECTION 6(c) disclosing the right of Holders to have the Company redeem Preferred Shares pursuant to this SECTION 6(c).

(iii) On the Change of Control Payment Date, the Company will, to the extent lawful: (A) accept for payment all Preferred Shares validly tendered pursuant to the Change of Control Offer; and (B) make a Change of Control Payment to each Holder that validly tendered Preferred Shares pursuant to the Change of Control Offer.

(iv) If at any time prior to consummation of a transaction that would constitute a Change of Control, the Company has publicly announced (whether by press release,

SEC filing or otherwise) such transaction or prospective transaction or the entry by the Company into any definitive agreement with respect thereto, the Company shall, within five (5) Business Days of the issuance of such public announcement, deliver a written notice to each Holder notifying them of the same and the anticipated date of consummation of such transaction.

(v) The Company will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer and makes the Change of Control Payment in the manner, at the times and otherwise in compliance with the requirements set forth herein applicable to a Change of Control Offer made by the Company and purchases all Preferred Shares validly tendered under such Change of Control Offer.

(vi) A Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(d) Notwithstanding anything in this SECTION 6 to the contrary, each Holder shall retain the right to elect to convert any Preferred Shares to be redeemed at any time prior to 5:00 p.m. (New York City time) on the Business Day immediately preceding any Redemption Date. Any Preferred Shares that a Holder elects to convert prior to the Redemption Date shall not be redeemed pursuant to this SECTION 6.

(e) Insufficient Funds. Any redemption of the Preferred Shares pursuant to this SECTION 6 shall be payable out of any cash legally available therefor, provided, however, that, other than in respect of a redemption pursuant to SECTION 6(b) (which the Company may only effectuate to the extent it has sufficient cash legally available therefor), if there is not a sufficient amount of cash legally available to pay the Redemption Price in full in cash, then the Company may pay that portion of the Redemption Price with respect to which it does not have cash legally available therefor out of the remaining assets of the Company legally available therefor (valued at the fair market value thereof on the date of payment, as reasonably determined in good faith by the Board). If the Company anticipates not having sufficient cash legally available for a redemption pursuant to SECTION 6(a) or SECTION 6(c), the redemption notice delivered to Holders shall so specify, and indicate the nature of the other assets expected to be distributed and the fair market value of the same as reasonably determined by the Board as aforesaid. At the time of any redemption pursuant to this SECTION 6, the Company shall take all actions required or permitted under Delaware law to permit the redemption of the Preferred Shares, including, without limitation, through the revaluation of its assets in accordance with Delaware law, to make cash funds (and to the extent cash funds are insufficient, other assets) legally available for such redemption. In connection with any redemption pursuant to SECTION 6(c), to the extent that Holders elect to have their Preferred Shares redeemed and the Company has insufficient funds to redeem such Preferred Shares (after taking into account the amount of any repurchase obligations the Company has or expects to have under any Indebtedness ranking senior to the Series A Preferred Stock), Senior Securities or any Parity Securities resulting from the same facts and circumstances as the Change of Control hereunder), the Company shall use any available funds to redeem a portion of such Preferred Shares and Parity Securities (if any are being redeemed) ratably in proportion to the full respective amounts to which they are entitled; *provided, however*, that the failure for any reason to redeem all Preferred Shares required to be redeemed under SECTION 6(c) when required shall constitute a Specified Breach Event.

(f) Mechanics of Redemption.

(i) The Company (or a redemption agent on behalf of the Company, as applicable) shall pay the applicable Redemption Price on the Redemption Date or the required payment date therefor upon surrender of the certificates representing the Preferred Shares to be redeemed and receipt of any written instrument or instructions of transfer or other documents and endorsements reasonably acceptable to the redemption agent or the Company, as applicable, to the extent required by SECTIONS 6(a), 6(b) and 6(c); *provided* that, if such certificates are lost, stolen or destroyed, the Company may require an affidavit certifying to such effect and, if requested, an agreement indemnifying the Company from any losses incurred in connection therewith, in each case, in form and substance reasonably satisfactory to the Company, from such Holder prior to paying such amounts.

(ii) Following any redemption of Preferred Shares on any Redemption Date, the Preferred Shares so redeemed will no longer be deemed to be outstanding and all rights of the Holder thereof shall cease, including the right to receive Dividends; *provided, however*, that any rights of Holders pursuant to this Certificate of Designation that by their terms survive redemption of the Preferred Shares and, for the avoidance of doubt, any rights that survive pursuant to any of the other Transaction Agreements (as defined in the May 2014 Securities Purchase Agreement), shall survive in accordance with their terms. The foregoing notwithstanding, in the event that a Preferred Share is not redeemed by the Company when required, such Preferred Share will remain outstanding and will continue to be entitled to all of the powers, designations, preferences and other rights (including but not limited to the accrual and payment of dividends and the conversion rights) as provided herein.

SECTION 7. Director Election Rights.

For so long as the Preferred Elected Director Condition continues to be satisfied, the Holders, voting or consenting, as the case may be, separately as a single class to the exclusion of all other classes of the Company's Voting Stock, by vote of the Requisite Holders, shall be entitled to elect a number of directors to the Board equal to the Preferred Director Number (the "Preferred Elected Director(s)"). As of the Second Issue Date, the Preferred Director Number is one and a Preferred Elected Director will commence service on the Board within ten (10) days of the date hereof. Subject to applicable law, one Preferred Elected Director (as designated by the Requisite Holders if there is more than one Preferred Elected Director) shall be entitled to be a member of each committee of the Board, including the compensation committee, the audit committee and the nominating and corporate governance committee of the Board; *provided*, that notwithstanding anything to the contrary herein, membership on any such committee will be dependent upon such director meeting the qualification, and if applicable, independence criteria deemed necessary to so comply in accordance with any listing requirements of the Exchange on which the Company's capital stock is then listed. The Preferred Elected Director(s) shall be elected as set forth in this SECTION 7; *provided* that as a condition precedent to the election of any such Preferred Elected Director, the individual(s) to be elected by the Requisite Holders shall be required to provide to the Company a duly executed and delivered written resignation of

such Person to be elected as a Preferred Elected Director, providing that effective immediately and automatically (without any further action by any Person) upon the expiration of the Requisite Holders' right to elect such individual to the Board as provided herein, such Preferred Elected Director shall resign from the Board. For the avoidance of doubt, no Preferred Elected Director shall be elected to the Board unless the written resignation referred to in the preceding sentence is delivered to the Company prior thereto. The Preferred Elected Directors shall be elected, at the option of the Requisite Holders, (i) by the written consent of the Requisite Holders or (ii) at annual or special meetings of stockholders of the Company at which directors are to be elected. If there is a vacancy in the office of a Preferred Elected Director, then the vacancy may only be filled by a nominee of the Requisite Holders. Each Preferred Elected Director will be entitled to one (1) vote on any matter with respect to which the Board votes and any Preferred Elected Director may be removed at any time with or without cause by, and shall not be removed otherwise than by, the written consent or vote of the Requisite Holders. The Company shall take all such action as may be reasonably requested by the Requisite Holders to effect Section 7 (including nominating and recommending the Preferred Elected Director for election, if applicable).

SECTION 8. Specified Breach Events.

(a) The following events shall constitute "Specified Breach Events":

(i) the Company fails to declare and pay any Cash Dividends or Accreting Dividends due on any two consecutive Dividend Payment Dates; *provided* that, any such Specified Breach Event shall cease to exist once all such Cash Dividends and Accreting Dividends in arrears through the end of the most recently completed Dividend Period have been declared and paid in full; and

(ii) the Company defaults in the performance of, or breaches the covenants contained in, the following sections of this Certificate of Designation and such default or breach, if curable, is not cured within ninety (90) days: SECTION 2(c) (Participating Cash Dividends); SECTION 2(d) (In-Kind Participating Dividends); the proviso contained in SECTION 5(d)(i) (Amounts Received Upon Conversion); SECTION 6(a) (Redemption at Maturity) or SECTION 6(c) (Redemption at Option of Holder Upon a Change of Control)). Any such Specified Breach Event specified in this clause (ii) shall cease to exist once the underlying default or breach has been waived or cured.

(b) Subject to applicable law and compliance with the rules of any Exchange on which the Common Stock is then listed, if the Preferred Director Number is increased as a result of any Specified Breach Event (as provided in the definition of Preferred Director Number), then unless the Requisite Holders otherwise consent in writing, the Company shall, notwithstanding any other provision of this Certificate of Designation, increase the size of the Board as necessary to accommodate such number of additional directors as provided in the definition of Preferred Director Number (each a "Specified Breach Director") and such Specified Breach Director(s) shall be elected as set forth in this section; *provided* that as a condition precedent to the election of any such Specified Breach Director, the individual to be elected by the Requisite Holders shall be required to provide to the Company a duly executed and delivered written resignation of such Person to be elected

as a Specified Breach Director, providing that effective immediately and automatically (without any further action by any Person) upon the expiration of the applicable Breach Period (as defined below), such Specified Breach Director shall resign from the Board. For the avoidance of doubt, no Specified Breach Director shall be elected to the Board unless the written resignation referred to in the preceding sentence is delivered to the Company prior thereto. A Specified Breach Director need not be an “independent director” of the Board pursuant to the rules of the Exchange on which the Company’s Common Stock is then traded. The Specified Breach Directors shall be elected (i) by the written consent of the Requisite Holders or (ii) at a special meeting of the Holders (which shall be called by the Secretary of the Company at the request of any Holder) to be held within thirty (30) days of the occurrence of the Specified Breach Event, or, if the Specified Breach Event occurs less than sixty (60) days before the date fixed for the next annual meeting of the Company’s stockholders, at such annual meeting. At any meeting at which the Specified Breach Director(s) will be elected, the Specified Breach Director(s) shall be elected by the Requisite Holders. The Specified Breach Director(s) will serve until there ceases to be any Preferred Shares outstanding or until no Specified Breach Event exists or is continuing, whichever occurs earliest (the “Breach Period”) and, upon the expiration of an applicable Breach Period, the director seat(s) held by the Specified Breach Director(s) shall be automatically eliminated and the size of the Board shall be reduced accordingly. If there is a vacancy in the office of a Specified Breach Director during a Breach Period, then the vacancy may only be filled by a nominee of the Requisite Holders. Each Specified Breach Director will be entitled to one (1) vote on any matter with respect to which the Board votes. During the Breach Period, any Specified Breach Director may be removed at any time with or without cause by, and shall not be removed otherwise than by, the written consent or vote of the Requisite Holders. If after the appointment of a Specified Breach Director the applicable Breach Period expires, if so requested by the Company, the Holders shall promptly cause to resign, and take all other action reasonably necessary, or reasonably requested by the Company, to cause the prompt removal of, such Specified Breach Director.

SECTION 9. Covenants.

(a) Restriction on the Issuance of Additional Indebtedness. From and after the Original Issue Date, the Company has not and from and after the Second Issue Date, the Company shall not, and shall not permit any Subsidiary to, borrow or otherwise incur any Indebtedness if, after giving effect to such borrowing or other incurrence, (1) the sum of the total Indebtedness of the Company plus the sum of the total Indebtedness of each of the Company’s Subsidiaries divided by (2) the Net Asset Value (the “Debt/NAV Ratio”) would be greater than 0.75; *provided*, that (A) the Regular Liquidation Preference of the Preferred Shares (with the references to “150%” contained in such definition being changed to “100%”) and the actual liquidation preference of any outstanding Senior Securities and Parity Securities shall count as Indebtedness for such purposes, (B) 100% of the Indebtedness of the Company’s wholly-owned and, after taking into account the Company’s ownership percentage therein, non-wholly owned subsidiaries (as well as the liquidation preference of any preferred security ranking senior to the Company’s investment in such entities) shall be taken into account for purposes of determining Indebtedness but not taken into account (*i.e.*, added back) for purposes of determining Net Asset Value, and (C) the

provisions of this SECTION 9(a) shall not apply to (i) a refinancing of the Indebtedness incurred under the Loan Agreement or (ii) a refinancing of any other Indebtedness of the Company or any of its Subsidiaries (x) within six (6) months of the respective maturity date of such Indebtedness or (y) on economic terms more favorable to the Company or such Subsidiary, as applicable, in any such case of (i) or (ii), so long as the amount of such Indebtedness does not result in an increase in the Company's total Indebtedness or the Debt/NAV Ratio (in each case, excluding the impact of the capitalization of customary and reasonable premiums, fees and expenses incurred in connection with such refinancing).

(b) Restriction on the Issuance of Parity Securities. From and after the Second Issue Date, the Company may issue Parity Securities provided that (i) the aggregate purchase price (and initial liquidation preference) of all such Parity Securities may not exceed \$14,000,000, (ii) the conversion price applicable to such Parity Securities may not be less than \$4.75 (as adjusted for stock splits, stock dividends, stock combinations and similar events) and (iii) the Company complies with the May 2014 Purchasers' rights of first offer with respect to such issuance as provided for in SECTION 5.5 of the May 2014 Securities Purchase Agreement. Any Parity Securities issued after the Original Issue Date pursuant to this SECTION 9(b) (are referred to herein as the "Additional Preferred Securities"), it being understood and agreed that the Series A-1 Preferred Stock issued on the Second Issue Date shall not constitute "Additional Preferred Securities".

(c) Certificates. The Company shall promptly, and in no event later than 30 days after the last day of any calendar quarter, furnish to each Holder a certificate of an officer of the Company setting forth, as of the end of such calendar quarter the Debt/NAV Ratio and the calculation of the same (provided that the Company shall not be obligated to provide the information required by this sentence from and after such time as the covenant in SECTION 9(a) ceases to be applicable).

(i) The Company shall promptly, and in no event later than the 30th day after the first day of a Dividend Period for which the Accreting Dividend rate has been adjusted pursuant to SECTION 2(b), furnish to each Holder of Preferred Stock a certificate of an officer of the Company setting forth, as of the end of the prior Dividend Period the Net Asset Value as of the end of such prior Dividend Period and the calculation of the same.

(ii) If the Company takes any action, which pursuant to this Certificate of Designation requires the Public Float Hurdle to be met, the Company shall promptly, and in no event later than five (5) days after the date of such action, furnish to each Holder of Preferred Stock a certificate of an officer of the Company setting forth the date of such action and an analysis of the Public Float Hurdle as of the date of such action.

SECTION 10. Additional Definitions. For purposes of these resolutions, the following terms shall have the following meanings:

(a) "Accrued Value" means \$1,000 per share, as the same may be increased pursuant to SECTION 2.

(b) “Actively Traded Security” means, as of any date of determination, a Security of an entity with \$2,000,000 average daily trading volume during the preceding 60-day period.

(c) “Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person.

(d) “Base Original Issue Date NAV” means the final amount thereof as agreed between the Company and the Series A Requisite Holders pursuant to Section 12.16 of the May 2014 Securities Purchase Agreement.

(e) “Beneficial Owner” has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person” (as that term is used in Section 13(d)(3) of the Exchange Act), such “person” shall be deemed to have beneficial ownership of all securities that such “person” has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The terms “Beneficially Owns” and “Beneficially Owned” shall have a corresponding meaning.

(f) “Business Day” means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or obligated to close.

(g) “Capital Stock” means, with respect to any Person, any and all shares of stock of a corporation, partnership interests or other equivalent interests (however designated, whether voting or non-voting) in such Person’s equity, entitling the holder to receive a share of the profits and losses, and a distribution of assets, after liabilities, of such Person.

(h) “Cash Equivalents” means: (i) United States dollars, or money in other currencies received in the ordinary course of business; (ii) U.S. Government Obligations or certificates representing an ownership interest in U.S. Government Obligations with maturities not exceeding one year from the date of acquisition; (iii) (A) demand deposits, (B) time deposits and certificates of deposit with maturities of one year or less from the date of acquisition, (C) banker’s acceptances with maturities not exceeding one year from the date of acquisition, and (D) overnight bank deposits, in each case with any bank or trust company organized or licensed under the laws of the United States or any state thereof having capital, surplus and undivided profits in excess of \$500 million whose short-term debt is rated “A-2” or higher by S&P or “P-2” or higher by Moody’s; (iv) repurchase obligations with a term of not more than seven (7) days for underlying securities of the type described in clauses (ii) and (iii) above entered into with any financial institution meeting the qualifications specified in clause (iii) above; (v) commercial paper rated at least P-1 by Moody’s or A-1 by S&P and maturing within six (6) months after the date of acquisition; and (vi) money market funds at least 95% of the assets of which consist of investments of the type described in clauses (i) through (v) above.

(i) “Certificate of Designation” means this certificate of designation, as such shall be amended from time to time, including pursuant to the Certificate of Amendment to this certificate of designation, dated September 22, 2014.

(j) “Change of Control” means (i) a sale of all or substantially all of the consolidated assets of the Company (including by way of any reorganization, merger, consolidation or other similar transaction or a sale of Equity Securities issued by Subsidiaries of the Company), (ii) a direct or indirect acquisition of Beneficial Ownership of Voting Power of the Company by any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) by means of any transaction or series of transactions (including any reorganization, merger, consolidation, joint venture, share transfer, share exchange, share issuance, reclassification or other similar transaction), pursuant to which the stockholders of the Company immediately preceding such transaction or transactions collectively own, following the consummation of such transaction or transactions, less than fifty percent (50%) of the Voting Power of the Company or other surviving entity (or parent thereof), as the case may be, (iii) the obtaining by any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) of the power (whether or not exercised), other than pursuant to a revocable proxy in favor of the Company’s proposed slate of directors in respect of an annual meeting or other meeting related to the election of directors, to elect a majority of the members of the Board or more than fifty percent (50%) of the Voting Power of the Company; provided, that this clause (iii) will not trigger a Change of Control as a result of the HRG Affiliates or any person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) in which the HRG Affiliates own a majority of the voting power (the “HRG Change of Control Group”) obtaining Beneficial Ownership of more than fifty percent (50%) of the Voting Power of the Company if and only if the Public Float Hurdle is satisfied at all times during which the HRG Change of Control Group has the power to elect a majority of the Board or Beneficial Ownership of more than fifty percent (50%) of the Voting Power of the Company, or (iv) the first day on which a majority of the members of the Board are not Continuing Directors; *provided*, that, for the avoidance of doubt, change in the ownership of HRG (without the occurrence of the events listed in (i) through (iv) above) shall not constitute, in and of itself, a Change of Control.

(k) “Common Stock” means the shares of common stock, par value \$0.01 per share, of the Company or any other Capital Stock of the Company into which such Common Stock shall be reclassified or changed.

(l) “Company Conversion Conditions” means the following: (i) the Thirty Day VWAP exceeds 150% of the then applicable Conversion Price; and (ii) the Daily VWAP exceeded 150% of the then applicable Conversion Price for at least twenty (20) Trading Days out of the thirty (30) Trading Days used to calculate the Thirty Day VWAP in clause (i) of this definition.

(m) “Compensation Committee” means the compensation committee of the Board which shall consist solely of Independent Directors and, at all times that there is a Preferred Elected Director, not less than one Preferred Elected Director.

(n) “Continuing Directors” means, as of any date of determination, (x) any member of the Board who (1) was a member of such Board on the Original Issue Date or (2) was nominated for election or elected to the Board by any HRG Affiliates, or with the approval of either the Holders or a majority of those members of the Board that were both “Continuing Directors” and Independent Directors at the time of such nomination or election or (y) any Preferred Elected Director.

(o) “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”) with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

(p) “Conversion Price” means initially \$4.00, as adjusted from time to time as provided in SECTION 5.

(q) “Convertible Securities” means securities by their terms convertible into or exchangeable for Common Stock or options, warrants or rights to purchase such convertible or exchangeable securities.

(r) “Daily VWAP” means the volume-weighted average price per share of Common Stock (or per minimum denomination or unit size in the case of any security other than Common Stock) as displayed under the heading “Bloomberg VWAP” on the Bloomberg page for the “<equity> AQR” page corresponding to the “ticker” for such Common Stock or unit (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of such Common Stock (or per minimum denomination or unit size in the case of any security other than Common Stock) on such Trading Day. The “volume weighted average price” shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

(s) “Dividend Payment Date” means January 15, April 15, July 15 and October 15 of each year, commencing on July 15, 2014; *provided* that, if any such Dividend Payment Date would otherwise occur on a day that is not a Business Day, such Dividend Payment Date shall instead be the immediately succeeding Business Day.

(t) “Dividend Rate” means for any Dividend Period, 7.50% plus the applicable Accreting Dividend Rate for such Dividend Period.

(u) “Equity Securities” means, with respect to any Person, (i) shares of Capital Stock of, or other equity or voting interest in, such Person, (ii) any securities convertible into or exchangeable for shares of Capital Stock of, or other equity or voting interest in, such Person, (iii) options, warrants, rights or other commitments or agreements to acquire from such Person, or that obligates such Person to issue, any Capital Stock of, or other equity or voting interest in, or any securities convertible into or exchangeable for shares of Capital Stock of, or other equity or voting interest in, such Person, (iv) obligations

of such Person to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment relating to any Capital Stock of, or other equity or voting interest (including any voting debt) in, such Person and (v) the Capital Stock of such Person.

(v) “Exchange” means the NASDAQ Global Market, the NASDAQ Global Select Market, The New York Stock Exchange, the NYSE MKT LLC or any of their respective successors.

(w) “Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(x) “Excluded Stock” means: (i) shares of Common Stock issued by the Company in an event subject to, and for which the Conversion Price is subject to adjustment pursuant to, SECTION 5(f)(i)(A); (ii) Option Securities or shares of Common Stock (including upon exercise of Option Securities) issued to Philip Falcone pursuant to the Option agreement (the “Falcone Option Agreement”) dated May 21, 2014, by and between Mr. Falcone and the Company (as in effect on the Original Issue Date) or otherwise to any director, officer or employee pursuant to compensation arrangements approved by the Compensation Committee of the Board in good faith and otherwise permitted to be issued, or not prohibited, by any other provision of this Certificate of Designation; (iii) the issuance of shares of Common Stock upon conversion of the Preferred Shares or upon the exercise or conversion of Option Securities and Convertible Securities of the Company outstanding on the Original Issue Date or otherwise permitted to be issued, or not prohibited, by any other provision of this Certificate of Designation (including, for the avoidance of doubt, pursuant to the Falcone Option Agreement (as in effect on the Original Issue Date)); (iv) Common Stock that becomes issuable in connection with, or as a result of, accretions to the face amount of, or payments in kind with respect to, Preferred Shares, Option Securities and Convertible Securities of the Company outstanding on the Original Issue Date or otherwise permitted to be issued, or not prohibited, by any other provision of this Certificate of Designation (including, for the avoidance of doubt, pursuant to the Falcone Option Agreement (as in effect on the Original Issue Date) and shares of Series A-1 Preferred Stock issued on the Second Issue Date); (v) Option Securities (or Shares of Common Stock upon exercise of such Option Securities) issued to Robert M. Pons or Keith Hladek as referenced in the Company’s 8-K filed on May 23, 2014 and (vi) shares of Common Stock issued by the Company pursuant to the May 2014 Securities Purchase Agreement.

(y) “Ex-Date” means the first date on which the Common Stock trades on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question from the Company or, if applicable, from the seller of the Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

(z) “Fair Market Value” means: (i) in the case of any Security that is either (a) listed on an Exchange or (b) an Actively Traded Security in the over-the-counter-market that represents equity in a Person with a market capitalization of at least \$250,000,000 on each Trading Day in the preceding 60 day period prior to such date, the

product of (a) (i) the sum of the Daily VWAP of a single unit of such Security for each of the 20 consecutive Trading Days immediately prior to such date, divided by (ii) 20, multiplied by (b) the number of units of such Security being valued, (ii) in the case of any Security that is not so listed or not an Actively Traded Security or any other property or asset (other than Cash Equivalents), the fair market value thereof (defined as the price that would be negotiated in an arms' length transaction for cash between a willing buyer and willing seller, neither of which is acting under compulsion), as determined by a written opinion of a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by the Company in good faith (provided that the Requisite Holders may object in writing to any such determination of Fair Market Value by such valuation expert once every four (4) Testing Periods and if the Requisite Holders object in writing to any such determination of Fair Market Value by such valuation expert an alternative binding valuation shall be performed by a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by the Company and the Requisite Holders jointly, or if the Company and such Requisite Holders cannot jointly select such an alternative valuation expert within ten (10) Business Days of the Requisite Holders delivering to the Company a written notice objecting to the initial valuation, by a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company and is selected by one such valuation expert proposed by the Company and a second such valuation expert proposed by the Requisite Holders (it being understood that the Company shall be solely responsible for the payment of all of the fees and expenses of such alternative valuation expert) and (iii) in the case of Cash Equivalents, the face value thereof; *provided* that with respect to any Security of the type referred to in clause (ii) above, in no event shall the Fair Market Value thereof exceed the Company's cost basis in such Security (taking into account adjustments made in respect of follow-on capital contributions and other similar investments) plus fifty percent (50%) of any appreciation as determined pursuant to the valuation provisions set forth above.

(aa) "Governmental Entity" shall mean any United States or non-United States federal, state or local government, or any agency, bureau, board, commission, department, tribunal or instrumentality thereof or any court, tribunal, or arbitral or judicial body.

(bb) "hereof"; "herein" and "hereunder" and words of similar import refer to this Certificate of Designation as a whole and not merely to any particular clause, provision, section or subsection.

(cc) "Holdings" means the holders of outstanding Preferred Shares and, except where expressly otherwise indicated, shares of Series A-1 Preferred Stock as they appear in the records of the Company.

(dd) "HRG Affiliates" means (a) Philip A. Falcone, (b) Harbinger Group, Inc. or any of its subsidiaries, (c) Harbinger Capital Partners LLC, Harbinger Capital Partners II LP or any limited partnership, limited liability company, corporation or other entity that controls, is controlled by, or is under common control with Harbinger Capital Partners LLC, Harbinger Capital Partners II LP or Philip A. Falcone.

(ee) “HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the regulations promulgated thereunder.

(ff) “Indebtedness” shall have the meaning set forth in the Loan Agreement (as in effect on the date hereof); *provided, however*, that Indebtedness shall not include:

(i) Hedging obligations entered into in the ordinary course of business and not for speculative purposes or taking a “market view”;

(ii) Indebtedness in respect of bid, performance or surety bonds issued in the ordinary course of business, including guarantees or obligations with respect to letters of credit supporting such bid, performance or surety obligations (in each case other than for an obligation for money borrowed and only so long as such bonds or letters of credit remain undrawn);

(iii) Guarantees in respect of Indebtedness already taken into account for purposes hereof;

(iv) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is extinguished within five Business Days of incurrence;

(v) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;

(vi) Indebtedness for advances of trade accounts payable received in the ordinary course of business on normal trade terms and not overdue by more than 60 days;

(vii) Indebtedness incurred from and after the Second Issue Date not in excess of \$750,000, in the aggregate;

(viii) Purchase Money Obligations (as defined in the Loan Agreement (as in effect on the date hereof));

(ix) interest and other fees and expenses accrued in the ordinary course on Indebtedness that is issued and outstanding on the Second Issue Date (including pursuant to the Loan Agreement) and any interest and other fees accrued on any refinancing of such Indebtedness (including reasonable premiums, fees and expenses incurred in connection with such refinancing) in accordance with SECTION 9(a); or

(x) any Contingent Obligations (as defined in the Loan Agreement (as in effect on the date hereof)) of the Company in respect of Indebtedness referred to in the foregoing clauses (i) through (ix).

(gg) “Independent Director” means any director on the Board that is “independent” as defined in the applicable rules of the Exchange on which the Common Stock is listed (or if the Common Stock is not listed on an Exchange, as defined in NASDAQ Marketplace Rule 4200(a) (15)), and in all cases, other than any director that is employed by or an officer, director or manager of a Harbinger Affiliate.

(hh) “Investment” means, with respect to any Person, (1) any direct or indirect advance, loan or other extension of credit to another Person, (2) any capital contribution to another Person, by means of any transfer of cash or other property or in any other form, (3) any purchase or acquisition of Equity Interests, bonds, notes or other Indebtedness, or other instruments or securities issued by another Person, including the receipt of any of the above as consideration for the disposition of assets or rendering of services, or (4) any Guarantee of any obligation of another Person.

(ii) “Issue Date” means, with respect to a Preferred Share, the date on which such share is first issued by the Company.

(jj) “Liquidation Event” means (i) the voluntary or involuntary liquidation, dissolution or winding-up of the Company, (ii) the commencement by the Company of any case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, (iii) the consent to entry of an order for relief in an involuntary case under applicable bankruptcy, insolvency or other similar laws now or hereafter in effect, including pursuant to Chapter 11 of the U.S. Bankruptcy Code, and (iv) the consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or similar official of the Company, or any general assignment for the benefit of creditors.

(kk) “Loan Agreement” means the Credit Agreement, dated as of September 22, 2014, among the Company, the Subsidiary Guarantors (as defined therein), the Lenders (as defined therein), and Jefferies Finance LLC, as arranger, as book manager and as documentation agent, syndication agent and administrative agent for the Lenders and as collateral agent for the Secured Parties.

(ll) “Market Disruption Event” means the occurrence or existence for more than one half hour period in the aggregate on any scheduled Trading Day for the Common Stock (or Reference Property, to the extent applicable) of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the applicable Exchange or otherwise) in the Common Stock (or Reference Property, to the extent applicable) or in any options, contracts or future contracts relating to the Common Stock (or Reference Property, to the extent applicable), and such suspension or limitation occurs or exists at any time before 4:00 p.m. (New York City time) on such day.

(mm) “May 2014 Purchasers” means the several “Purchasers” named in and party to the May 2014 Securities Purchase Agreement.

(nn) "May 2014 Securities Purchase Agreement" means that certain Securities Purchase Agreement, dated May 29, 2014, by and among the Company and the May 2014 Purchasers, as amended, supplemented or modified in accordance with its terms.

(oo) "NAV Escrow Adjustment" means the total amount of any escrow proceeds actually received by the Company with respect to the existing escrow amounts of: BID \$19,500,000, NAT tax liability \$4,800,000, NAT PTI Sale \$3,000,000 and NAT indemnification \$6,450,000.

(pp) "Net Asset Value" means, without duplication, the amount, valued twice per annum at June 30 and December 31 of each fiscal year (each a "Testing Period") beginning December 31, 2014, equal to (A) the sum of (1) the cash and Cash Equivalents of the Company plus (2) the Fair Market Value of all Securities (other than Cash Equivalents) owned by the Company, including Securities issued by Subsidiaries of the Company (after taking into account the Company's ownership percentage therein, the impact on such Fair Market Value of the cash, Cash Equivalents, preferred liquidation preferences, liabilities and indebtedness of such entities and the relative rights, preferences and privileges of the Company's Securities and the other outstanding securities issued by such entities), less (B) all Indebtedness and other liabilities of the Company determined in accordance with GAAP, including those related to the Company's investments to the extent not taken into account in the calculation of the Fair Market Value of such investments under clause (A)(2) above; *provided* that for such purposes, (i) the derivative attributable to the conversion feature in any series of preferred stock will not be considered a liability and (ii) the Accrued Value (as well as any accrued Dividends not yet added to the Accrued Value) of the Preferred Shares and the preference amount (including the accrued value and all accrued but unpaid dividends thereon not included in the accrued value) of any other Senior Securities or Parity Securities will be considered a liability of the Company; *provided, further* that, solely for purposes of determining the Debt/NAV Ratio, the Indebtedness of the Company's wholly-owned and, after taking into account the Company's ownership percentage therein, Non-Wholly Owned Subsidiaries (as well as the liquidation preference of any preferred security ranking senior to the Company's investment) shall be taken into account for purposes of determining "Debt" (*i.e.*, the numerator) but not taken into account (*i.e.*, added back) for purposes of determining Net Asset Value (*i.e.*, the denominator).

(qq) "Non-Wholly Owned Subsidiary" means any Subsidiary of the Company other than any Wholly Owned Subsidiary.

(rr) "Option Securities" means options, warrants or other rights to purchase or acquire Common Stock, as well as stock appreciation rights, phantom stock units and similar rights whose value is derived from the value of the Common Stock.

(ss) "Organizational Documents" means, with respect to any Person (other than an individual), (a) the certificate or articles of incorporation or organization and any joint venture, limited liability company, operating or partnership agreement and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (b) all by-laws, voting agreements and similar documents, instruments or agreements relating to the organization or governance of such Person, in each case, as amended, supplemented or modified in accordance with its terms.

(tt) "Original Issue Date" means May 29, 2014, the first issue date of Preferred Shares.

(uu) "Original Issue Date NAV" means the Base Original Issue Date NAV, as may be increased from time to time by the NAV Escrow Adjustment.

(vv) "Permitted Payment" means any of the following:

(i) The repurchase, redemption or other acquisition of any shares of Common Stock or Junior Securities solely out of the net proceeds of the issuance of, or in exchange for the issuance of, Common Stock;

(ii) Restricted Payments not otherwise permitted hereby in an aggregate amount not to exceed \$750,000;

(iii) (a) repurchase of Equity Securities deemed to occur upon the exercise of stock options or warrants or upon the conversion or exchange of Equity Securities if the Equity Securities represent all or a portion of the exercise price thereof (or related withholding taxes) and (b) Restricted Payments to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Equity Securities in an aggregate amount under this clause (b) not to exceed \$25,000.

(ww) "Permitted Related Party Transactions" means any of the following:

(i) the payment, by the Company or a Subsidiary, of reasonable and customary regular fees and compensation to, and reasonable and customary indemnification arrangements and similar payments to or on behalf of, directors of the Company or directors of such Subsidiary, respectively, who are not employees of the Company or such Subsidiary, respectively, and qualify as Independent Directors;

(ii) any Permitted Payments or any Restricted Payments if permitted under Section 4(b);

(iii) transactions or payments, including the issuance of Equity Securities pursuant to any employee, officer or director compensation or benefit plans or arrangements by the Company or a Subsidiary existing on the Original Issue Date and listed on the Disclosure Schedule to the May 2014 Securities Purchase Agreement, or approved by the Compensation Committee, by the Board of Directors (or any committee thereof) of such Subsidiary, after the Original Issue Date, respectively;

(iv) the issuance of common stock or junior Equity Securities of the Company or any Subsidiary via a rights offering or otherwise to all stockholders of the Company or such Subsidiary after the Original Issue Date and to which the adjustment provision of SECTION 5(g) apply;

(v) the entering into of any tax sharing agreement or arrangement or any other transactions with any Subsidiaries of the Company or among any Subsidiaries of the Company undertaken in good faith for the sole purpose of improving the tax efficiency of the Company and its Subsidiaries;

(vi) the entering into of any information-sharing agreement or arrangement or any other transactions undertaken in good faith for the sole purpose of the preparation of financial statements and related financial information of the HRG Affiliates, the Company and its Subsidiaries.

(xx) “Person” means any individual, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government, any agency or political subdivisions thereof or other “Person” as contemplated by Section 13(d) of the Exchange Act.

(yy) “Preferred Director Number” means one (1); *provided* that (A) for so long as the Preferred Elected Director Condition continues to be satisfied, the percentage obtained by dividing the Preferred Director Number by the total number of directors on the Board shall be no more than 5% below such aggregate ownership percentage of the May 2014 Purchasers and their Affiliates and the September 2014 Purchasers and their Affiliates (*e.g.*, if the May 2014 Purchasers and their Affiliates and the September 2014 Purchasers and their Affiliates own, in the aggregate, at least twenty percent (20%) of the outstanding Common Stock on an as converted basis (*i.e.* assuming conversion of the Preferred Shares, shares of Series A-1 Preferred Stock and including through the ownership of Preferred Shares, Series A-1 Preferred Stock or Common Stock), the Preferred Director Number would be the lowest whole number that is equal to or in excess of 15% of the total number of directors on the Board) and (B) at any time following the occurrence and during the continuance of a Specified Breach Event, the Preferred Director Number shall be increased, if necessary, in order that the Preferred Director Number plus the number of Independent Directors on the Board shall equal more than 50% of the total number of directors on the Board.

(zz) “Preferred Elected Director Condition” means that the May 2014 Purchasers (and/or any of their Affiliates) and the September 2014 Purchasers (and/or any of their Affiliates) own, in the aggregate, at least (A) fifteen percent (15%) of the outstanding Common Stock on an as converted basis (*i.e.* assuming conversion of the Preferred Shares and shares of Series A-1 Preferred Stock and including through the ownership of Preferred Shares, Series A-1 Preferred Stock or Common Stock) and (B) eighty percent (80%) of the sum of (x) the aggregate number of Shares (as defined in the May 2014 Securities Purchase Agreement) issued to the May 2014 Purchasers on the Original Issue Date (determined on an as-converted to Common Stock basis) plus (y) (x) the aggregate number of shares of Series A-1 Preferred Stock issued to the September 2014 Purchasers on the Second Issue Date (determined on an as-converted to Common Stock basis).

(aaa) “Preferred Shares” means the shares of Series A Preferred Stock but shall exclude, for the avoidance of doubt, shares of Series A-1 Preferred Stock.

(bbb) “Public Float Hurdle” means, as of any relevant measurement date, that (i) the Common Stock is registered under the Exchange Act, (ii) the Common Stock is listed on an Exchange, (iii) the aggregate value of all outstanding Common Stock (based on the Thirty Day VWAP) is not less than \$200,000,000 and (iv) the Public Market Capitalization is greater than 1.00x the aggregate value of the Common Stock issuable upon conversion of the Preferred Shares and any then outstanding Senior Securities or Parity Securities or “in-the-money” securities of the Company of the type described in clauses (ii) and (iii) of the definition of “Equity Securities” (calculated using the Thirty Day VWAP and the applicable conversion and exercise prices at such time).

(ccc) “Public Market Capitalization” means, as of any relevant measurement date, all issued and outstanding shares of Common Stock, other than Common Stock being held or Beneficially Owned by (A) the HRG Affiliates, (B) the directors and executive officers of the Company or (C) any other Affiliate of the Company.

(ddd) “Redemption Date” means the Maturity Date, any Optional Redemption Date or any Change of Control Payment Date, as applicable.

(eee) “Redemption Price” means with respect to each Preferred Share: (i) in connection with a redemption pursuant to SECTION 6(a), the Accrued Value plus all accrued and unpaid Dividends (to the extent not included in the Accrued Value, including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on each Preferred Share to be redeemed, (ii) in connection with a redemption pursuant to SECTION 6(b), the sum of 150% of the Accrued Value plus all accrued and unpaid Dividends (to the extent not included in the Accrued Value, including, without limitation, accrued and unpaid Cash Dividends and accrued and unpaid Accreting Dividends for the then current Dividend Period), if any, on each Preferred Share to be redeemed (the “Standard Call Price”) (provided that if the Public Float Hurdle is not satisfied as of the Optional Redemption Date, the Redemption Price for such redemption pursuant to SECTION 6(b) shall equal the greater of (X) such Standard Call Price and (Y) the Thirty Day VWAP as of the date the Company gives the applicable notice of optional redemption under SECTION 6(b) multiplied by the number of shares of Common Stock into which the Preferred Share is convertible as of such date at the applicable Conversion Price) or (iii) in connection with a Change of Control, the Change of Control Payment Amount.

(fff) “Related Party Transaction” any transaction (or series of related transactions), arrangement or contract entered into, consummated, renewed, amended or extended between the Company or any Subsidiary of the Company, on the one hand, and any HRG Affiliate or other Affiliate of the Company (other than Subsidiaries of the Company), on the other hand, if such transaction, arrangement or contract involves payments or consideration in excess of \$500,000 in the aggregate; *provided* that (i) the execution of a joinder to the Registration Rights Agreement (as defined in the September 2014 Securities Purchase Agreement) by HRG Affiliates, (ii) the agreement granting information and access rights to the Company by Schuff International, Inc. substantially in the form previously provided to the Holders or (iii) the agreement granting information and access rights to HRG Affiliates by the Company substantially in the form previously provided to the holders shall not constitute a “Related Party Transaction”.

(ggg) “Requisite Holders” means Holders (other than the Company, its employees, its Subsidiaries or any Harbinger Affiliates) owning more than 75% of the Regular Liquidation Preference of the issued and outstanding Preferred Shares and shares of Series A-1 Preferred Stock, taken as a whole; *provided* that, for purposes of such calculation, the Preferred Shares and shares of Series A-1 Preferred Stock held by the Company, its employees, its Subsidiaries or any Harbinger Affiliate shall be treated as not outstanding.

(hhh) “Restricted Payment” means (A) any dividend, distribution or other payment in respect of the Common Stock or any other Junior Securities (other than dividends or distributions referred to in SECTIONS 5(g)(i)(A) and 5(g)(i)(B)) or Equity Securities of a Subsidiary or the repurchase, redemption or other acquisition of any shares of Common Stock or any other Junior Securities (or setting aside funds for such purposes) or Equity Securities of a Subsidiary or (B) any dividend, distribution or other payment in respect of Parity Securities or the repurchase, redemption or other acquisition of any Parity Securities (or setting aside funds for such purposes) unless such dividend, distribution, payment, repurchase, redemption or other acquisition is made on a pro rata basis among the Preferred Shares and the Parity Securities in proportion to the amounts to which they are entitled.

(iii) “Second Issue Date” means September 22, 2014, the first issue date of shares of Series A-1 Preferred Stock.

(jjj) “Securities” with respect to a Person means debt or equity securities issued by such Person or similar obligations of, or participations in, such Person.

(kkk) “September 2014 Purchasers” means the several “Purchasers” named in and party to the September 2014 Securities Purchase Agreement.

(lll) “September 2014 Securities Purchase Agreement” means that certain Securities Purchase Agreement, dated September 22, 2014, by and among the Company and the September 2014 Purchasers, as amended, supplemented or modified in accordance with its terms.

(mmm) “Series A Requisite Holders” means holders of Preferred Shares (other than the Company, its employees, its Subsidiaries or any Harbinger Affiliates) owning more than 75% of the Regular Liquidation Preference of the issued and outstanding Preferred Shares; *provided* that, for purposes of such calculation, the Preferred Shares held by the Company, its employees, its Subsidiaries or any Harbinger Affiliate shall be treated as not outstanding.

(nnn) “Series A-1 Preferred Stock” means the Series A-1 Convertible Participating Preferred Stock of the Company, par value \$0.001 per share.

(ooo) “Specified Percentage” means, until the third (3rd) anniversary of the Original Issue Date, 150%, and 100% thereafter.

(ppp) “Subsidiary” means with respect to any Person, any corporation, association or other business entity of which more than 50% of the outstanding Voting Stock is owned, directly or indirectly, by, or of which more than 50% of the economic value accrues to, or, in the case of a partnership, the sole general partner or the managing partner or the only general partners of which are, such Person and one or more Subsidiaries of such Person (or a combination thereof). Unless otherwise specified, “Subsidiary” means a Subsidiary of the Company.

(qqq) “Thirty Day VWAP” means, with respect to a security, the average of the Daily VWAP of such security for each day during a thirty (30) consecutive Trading Day period ending immediately prior to the date of determination. Unless otherwise specified, “Thirty Day VWAP” means the Thirty Day VWAP of the Common Stock.

(rrr) “Trading Day” means any day on which (i) there is no Market Disruption Event and (ii) the Exchange on which the Common Stock (or Reference Property, to the extent applicable) is listed and is open for trading or, if the Common Stock (or Reference Property, to the extent applicable) is not so listed, admitted for trading or quoted, any Business Day. A Trading Day only includes those days that have a scheduled closing time of 4:00 p.m. (New York City time) or the then standard closing time for regular trading on the relevant exchange or trading system.

(sss) “U.S. Government Obligations” means obligations issued or directly and fully guaranteed or insured by the United States of America or by any agent or instrumentality thereof, *provided* that the full faith and credit of the United States of America is pledged in support thereof.

(ttt) “Voting Power” means either (a) the power to elect, designate or nominate directors to the Board, or (b) vote (as Common Stock or together with Common Stock) on matters to be voted on or consented to by the Common Stock through the ownership of Voting Stock, by contract or otherwise.

(uuu) “Voting Stock” means, with respect to any Person, Capital Stock of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

(vvv) “Wholly Owned Subsidiary” means any Subsidiary of a Person of which such Person owns, either directly or indirectly, 100% of the common stock or other common equity interests of such Subsidiary (excluding qualifying shares held by directors).

SECTION 11. Miscellaneous. For purposes of this Certificate of Designation, the following provisions shall apply:

(a) Share Certificates. If any certificates representing Preferred Shares shall be mutilated, lost, stolen or destroyed, the Company shall issue, in exchange and in substitution for and upon cancellation of the mutilated certificate, or in lieu of and substitution for the lost, stolen or destroyed certificate, a new Preferred Share certificate of like tenor and representing an equivalent number of Preferred Shares, but only upon receipt of evidence of such loss, theft or destruction of such certificate and indemnity by the holder thereof, if requested, reasonably satisfactory to the Company.

(b) Status of Cancelled Shares. Preferred Shares which have been converted, redeemed, repurchased or otherwise cancelled shall be retired and, following the filing of any certificate required by the DGCL, have the status of authorized and unissued shares of Preferred Stock, without designation as to series, until such shares are once more designated by the Board as part of a particular series of Preferred Stock of the Company.

(c) Severability. If any right, preference or limitation of the Series A Preferred Stock set forth in this Certificate of Designation is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth in this Certificate of Designation which can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

(d) Remedies.

(i) The Company acknowledges that the obligations imposed on it in this Certificate of Designation are special, unique and of an extraordinary character, and irreparable damages, for which money damages, even if available, would be an inadequate remedy, would occur in the event that the Company does not perform the provisions of this Certificate of Designation in accordance with its specified terms or otherwise breaches such provisions. The Holders of Preferred Stock shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Certificate of Designation and to seek to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled, at law or in equity, including without limitation money damages.

(e) Renunciation under DGCL Section 122(17). Pursuant to Section 122(17) of the Delaware General Corporation Law, the Company renounces any interest or expectancy of the Company in, or being offered an opportunity to participate in, business opportunities that are presented to one or more of the Preferred Elected Directors, in each case other than any business opportunities that are presented to any such Preferred Elected Director solely in his or her capacity as a director of the Company.

(f) Headings. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(g) Notices. All notices or communications in respect of Preferred Stock shall be in writing and shall be deemed delivered (a) one (1) Business Day after being sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, (b) on the date of delivery if delivered personally, or (c) if by facsimile, upon written confirmation of receipt by facsimile. Notwithstanding the foregoing, if Preferred Stock is issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the beneficial holders of Preferred Stock in any manner permitted by such facility.

(h) Other Rights. The shares of Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation or as provided by applicable law and regulation.

(i) Series A Requisite Holders; Requisite Holders. Notwithstanding anything to the contrary contained herein, any consent, waiver, vote, decision, election or action required or permitted to be taken hereunder by (i) the holders of the Preferred Shares as a group (i.e., as opposed to by a specified Holder) shall require the approval or action, as applicable, of the Series A Requisite Holders and (ii) the Holders of the Preferred Shares and shares of Series A-1 Preferred Stock as a group shall require the approval or action, as applicable, of the Requisite Holders and, in each case, after such approval or action, shall be binding on all such Holders.

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IN WITNESS WHEREOF, the Company has caused this Certificate of Amendment to the Certificate of Designation to be executed by a duly authorized officer of the Company as of September 22, 2014.

HC2 HOLDINGS, INC.

By: /s/ Mesfin Demise

Name: Mesfin Demise

Title: Chief Financial Officer

[SIGNATURE PAGE TO CERTIFICATE OF AMENDMENT TO CERTIFICATE OF DESIGNATION]

CREDIT AGREEMENT
dated as of September 22, 2014,
among
HC2 HOLDINGS, INC.,
as Borrower,
and
THE GUARANTORS PARTY HERETO,
as Guarantors,
THE LENDERS PARTY HERETO
and
JEFFERIES FINANCE LLC,
as Arranger, Book Manager, Documentation Agent and Syndication Agent

and
JEFFERIES FINANCE LLC,
Administrative Agent and Collateral Agent

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CREDIT AGREEMENT

This CREDIT AGREEMENT (this “**Agreement**”) dated as of September 22, 2014, among HC2 Holdings, Inc., a Delaware corporation (“**Borrower**”), the Subsidiary Guarantors (such term and each other capitalized term used but not defined herein having the meaning given to it in Article I), the Lenders, Jefferies Finance LLC, as lead arranger (in such capacity, the “**Arranger**”), as book manager (in such capacity, the “**Book Manager**”), as documentation agent for the Lenders (in such capacity, the “**Documentation Agent**”) and as syndication agent for the Lenders (in such capacity, the “**Syndication Agent**”), and Jefferies Finance LLC, as administrative agent for the Lenders (in such capacity, the “**Administrative Agent**”) and as collateral agent for the Secured Parties (in such capacity, the “**Collateral Agent**”).

WITNESSETH:

WHEREAS, Borrower has requested the Lenders to extend credit in the form of (a) term loans on the Closing Date, in an aggregate principal amount not in excess of \$214,000,000 (the “**Initial Interim Term Loans**”), the proceeds of which will be used solely to (x) repay in full all Existing Indebtedness, accrued interest thereon and fees related thereto, (y) pay the cash consideration for the acquisition (the “**Closing Date Acquisition**”) of approximately 95% of the equity interests in Bridgehouse Marine Limited, a private limited liability company organized under the laws of the United Kingdom with registered number 04352407 (“**Bridgehouse Marine**”), pursuant to that certain Sale and Purchase Agreement (the “**Closing Date Acquisition Agreement**”), dated September 22, 2014 between the parties named on Schedule I thereto and Global Marine Holdings, LLC (“**Newco**”) and (z) pay fees, costs and expenses related to the Transactions contemplated by this Agreement and the other Loan Documents, and (b) delayed interim term loans on or prior to the Delayed Draw Expiration Date at the request of Borrower in an aggregate principal amount of up to \$36,000,000 (the “**Delayed Draw Interim Term Loans**”), the proceeds of which will be used solely pay the cash consideration (and fees and expenses relating thereto) for the acquisition of up to 30% of the equity interests in Schuff International, Inc., a Delaware corporation (“**Schuff**”), pursuant to either a tender offer therefor in accordance with the Offer to Purchase dated August 21, 2014 and any related short-form merger or any other acquisition (including by way of merger, subsequent tender offer or private or open market purchases) at or below the price set forth in the Offer to Purchase related thereto (the “**Delayed Draw Tender Offer**”).

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

Accordingly, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

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

“**ABR**,” when used in reference to any Loan or Borrowing, is used when such Loan comprising such Borrowing is, or the Loans comprising such Borrowing are, bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

“**ABR Borrowing**” shall mean a Borrowing comprised of ABR Loans.

“**ABR Loan**” shall mean any Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

“**Adjusted LIBOR Rate**” shall mean, with respect to any Eurodollar Borrowing for any Interest Period, the greater of (a) (x) an interest rate per annum (rounded upward, if necessary, to the next 1/100th of 1%) determined by the Administrative Agent to be equal to the LIBOR Rate for such Eurodollar Borrowing in effect for such Interest Period divided by (y) 1 *minus* the Statutory Reserves (if any) for such Eurodollar Borrowing for such Interest Period and (b) 1.00% per annum.

“**Administrative Agent**” shall have the meaning assigned to such term in the preamble hereto and includes each other person appointed as the successor administrative agent pursuant to Article IX.

“**Administrative Agent Fees**” shall have the meaning assigned to such term in Section 2.05(a).

“**Administrative Questionnaire**” shall mean an Administrative Questionnaire in the form supplied from time to time by the Administrative Agent.

“**Advisors**” shall mean legal counsel (including local, foreign and in-house counsel), auditors, accountants, consultants, appraisers, engineers or other advisors.

“**Affiliate**” shall mean, when used with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the person specified; *provided, however*, that, (x) for purposes of Section 6.09, the term “Affiliate” shall also include (i) any person that directly or indirectly owns more than 10% of any class of Equity Interests of the person specified or (ii) any person that is an officer or director of the person specified, (y) for purposes of this Agreement, each of LightSquared Inc., Harbinger Group Inc. and Harbinger Capital Partners LLC shall be deemed to be an “Affiliate” of Borrower and (z) for purposes of this Agreement, Jefferies LLC and its Affiliates shall be deemed to be “Affiliates” of Jefferies Finance LLC. Jefferies LLC and its Affiliates (including Jefferies Finance LLC) are not, and shall not be deemed to be, “Affiliates” of Borrower.

“Affiliated Debt Fund” shall mean any Affiliate of Borrower (other than Borrower or any of its Subsidiaries) 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, is not organized for the purpose of making equity investments, and with respect to which (i) any such Affiliated Debt Fund has in place customary information barriers between it and Borrower and any other Affiliate of Borrower that is not primarily engaged in the investing activities described above, (ii) its managers have fiduciary duties to the investors thereof independent of and in addition to their duties to such Affiliate of Borrower, and (iii) investment vehicles managed or advised by such Affiliate of Borrower 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, either directly or indirectly, make investment decisions for such entity.

“Affiliated Lender” shall mean a Lender that is an Affiliate of Borrower (other than Borrower or any of its Subsidiaries).

“Affiliated Lender Assignment and Assumption” shall mean an assignment and assumption entered into by a Lender and an Affiliated Lender (with the consent of any party whose consent is required pursuant to Section 11.04(j)) and accepted by the Administrative Agent pursuant to the terms thereof, in a form as shall be approved by the Administrative Agent (including electronic documentation generated by ClearPar, Markitclear or other electronic platform). To the extent approved by the Administrative Agent, an Affiliated Lender Assignment and Assumption may be electronically executed and delivered to the Administrative Agent via an electronic settlement system then acceptable to the Administrative Agent.

“Agents” shall mean the Arranger, the Documentation Agent, the Syndication Agent, the Administrative Agent, the Collateral Agent and the Book Manager; and **“Agent”** shall mean any of them as the context requires.

“Agreement” shall have the meaning assigned to such term in the preamble hereto.

“Alternate Base Rate” shall mean, for any day, a rate per annum (rounded upward, if necessary, to the next 1/100th of 1%) equal to the greater of (a) the Base Rate in effect on such day, (b) 2.00%, (c) the Federal Funds Effective Rate in effect on such day *plus* 0.50% and (d) except during the Eurodollar Unavailability Period, the Adjusted LIBOR Rate for a Eurodollar Loan with a one-month interest period (or if such day is not a Business Day, the immediately preceding Business Day) *plus* 1.00%. 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 LIBOR 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 thereof, the Alternate Base Rate shall be determined without regard to clause (c) or (d), 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 Base Rate, the Federal Funds Effective Rate or the then applicable or the Adjusted LIBOR Rate shall be effective on the effective date of such change in the Base Rate, the Federal Funds Effective Rate or the then applicable Adjusted LIBOR Rate, respectively.

“**Anti-Terrorism Laws**” shall have the meaning assigned to such term in Section 3.21.

“**Applicable Margin**” shall mean, for any day (i) on and after the Closing Date and prior to December 22, 2014, with respect to any Loan that is an ABR Loan, 7.50% per annum and any Loan that is a Eurodollar Loan, 8.50% per annum, (ii) on and after December 22, 2014 and prior to March 22, 2015, with respect to any Loan that is an ABR Loan, 8.50% per annum per annum and any Loan that is a Eurodollar Loan, 9.50% per annum, (iii) on and after March 22, 2015 and prior to June 22, 2015, with respect to any Loan that is an ABR Loan, 9.50% per annum and any Loan that is a Eurodollar Loan, 10.50% per annum, (iv) on and after June 22, 2015, with respect to any Loan that is an ABR Loan, 10.50% per annum and any Loan that is a Eurodollar Loan, 11.50% per annum per annum.

“**Approved Electronic Communications**” shall mean any notice, demand, communication, information, document or other material that any Loan Party provides to the Administrative Agent pursuant to any Loan Document or the transactions contemplated therein which is distributed to the Agents or the Lenders by means of electronic communications pursuant to Section 11.01(b).

“**Approved Fund**” shall mean any person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or investing in bank and other commercial loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“**Arranger**” shall have the meaning assigned to such term in the preamble hereto.

“**Asset Sale**” shall mean (a) any disposition of any property, by any Company and (b) any issuance or sale of any Equity Interests of any Subsidiary of Borrower, in each case, to any person other than a Loan Party. Notwithstanding the foregoing, none of the following shall constitute “Asset Sales”: (i) any disposition of assets permitted by, or expressly referred to in, Section 6.03(a), 6.04(c), 6.05(a), or Section 6.06 (other than Section 6.06(b)) and (ii) solely for purposes of clause (a) above, any other disposition of any property, by any Company for Fair Market Value resulting in not more than \$250,000 in Net Cash Proceeds per asset sale (or series of related asset sales) and not more than \$500,000 in Net Cash Proceeds in any fiscal year.

“**Assignment and Assumption**” shall mean an assignment and acceptance entered into by a Lender and an assignee (with the consent of any party whose consent is required pursuant to Section 11.04(b)), and accepted by the Administrative Agent, substantially in the form of Exhibit A, or such other form as shall be approved by the Administrative Agent (including electronic documentation generated by ClearPar, Markitclear or other electronic platform).

“**Bailee Letter**” shall have the meaning assigned to such term in the Security Agreement.

“**Base Rate**” shall mean, for any day, the prime rate published in *The Wall Street Journal* for such day; *provided* that if *The Wall Street Journal* ceases to publish for any reason such rate of interest, “**Base Rate**” shall mean the prime lending rate as set forth on the Bloomberg page PRIMBB Index (or successor page) for such day (or such other service as determined by the Administrative Agent from time to time for purposes of providing quotations of prime lending interest rates); each change in the Base Rate shall be effective on the date such change is effective. The prime rate is not necessarily the lowest rate charged by any financial institution to its customers.

“**Blackiron Equity Purchase Agreement**” shall mean that certain Equity Purchase Agreement, dated as of April 17, 2013, among Rogers Communications Inc., Borrower (f/k/a Primus Telecommunications Group, Incorporated) and Primus Telecommunications Canada Inc.

“**Board**” shall mean the Board of Governors of the Federal Reserve System of the United States.

“**Board of Directors**” shall mean, with respect to any person, (i) in the case of any corporation, the board of directors of such person, (ii) in the case of any limited liability company, the board of managers or board of directors, as applicable, of such person, or if such limited liability company does not have a board of managers or board of directors, the functional equivalent of the foregoing, (iii) in the case of any partnership, the board of directors or board of managers, as applicable, of the general partner of such person and (iv) in any other case, the functional equivalent of the foregoing.

“**Book Manager**” shall have the meaning assigned to such term in the preamble hereto.

“**Borrower**” shall have the meaning assigned to such term in the preamble hereto.

“**Borrowing**” shall mean an Initial Interim Term Loan Borrowing or a Delayed Draw Interim Term Loan Borrowing, as the case may be.

“**Borrowing Request**” shall mean a request by Borrower in accordance with the terms of Section 2.03 and substantially in the form of Exhibit B, or such other form as shall be approved by the Administrative Agent.

“**Bridgehouse Marine**” shall have the meaning assigned to such term in the first recital hereto.

“**Business Day**” shall mean any day other than a Saturday, Sunday or other day on which banks in New York City are authorized or required by law or other governmental action to close; *provided, however*, that when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in Dollar deposits in the London interbank market.

“**Cap Rate**” shall mean 13.5% per annum.

“**Capital Expenditures**” shall mean, without duplication, (a) any expenditure or commitment to expend money for any purchase or other acquisition of any asset including capitalized leasehold improvements, which would be classified as a fixed or capital asset on a consolidated balance sheet of Borrower and its Subsidiaries, Schuff and its Subsidiaries or Bridgehouse Marine and its Subsidiaries, as the case may be, in each case prepared in accordance with GAAP, and (b) Capital Lease Obligations and Synthetic Lease Obligations, but excluding (i) expenditures made in connection with the replacement, substitution or restoration of property pursuant to Section 2.10(g), (ii) the purchase price of equipment that is purchased substantially contemporaneously with the trade-in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time and (iii) Permitted Acquisitions.

“**Capital Lease**” shall mean, with respect to any person, any lease of, or other arrangement conveying the right to use, any property by such person as lessee that has been or should be accounted for as a capital lease on a balance sheet of such person prepared in accordance with GAAP.

“**Capital Lease Obligations**” of any person shall mean the obligations of such person to pay rent or other amounts under any Capital Lease, any lease entered into as part of any Sale and Leaseback Transaction or any Synthetic Lease, or a combination thereof, which obligations are (or would be, if such Synthetic Lease or other lease were accounted for as a Capital Lease) required to be classified and accounted for as Capital Leases on a balance sheet of such person under GAAP, and the amount of such obligations shall be the capitalized amount thereof (or the amount that would be capitalized, if such Synthetic Lease or other lease were accounted for as a Capital Lease) determined in accordance with GAAP.

“**Capital Requirements**” shall mean, as to any person, any matter, directly or indirectly, (i) regarding capital adequacy, capital ratios, capital requirements, the calculation of such person’s capital or similar matters, or (ii) affecting the amount of capital required to be obtained or maintained by such person or any person controlling such person (including any direct or indirect holding company), or the manner in which such person or any person controlling such person (including any direct or indirect holding company), allocates capital to any of its contingent liabilities (including letters of credit), advances, acceptances, commitments, assets or liabilities.

“Cash Equivalents” shall mean, as of any date of termination and as to any person, any of the following (a) marketable securities issued, or directly, unconditionally and fully guaranteed or insured, by the United States or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition by such person, (b) time deposits and certificates of deposit of any Lender or any commercial bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia having, capital and surplus aggregating in excess of \$500,000,000 and a rating of “A” (or such other similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) with maturities of not more than one year from the date of acquisition by such person, (c) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a) above entered into with any person meeting the qualifications specified in clause (b) above, which repurchase obligations are secured by a valid perfected security interest in the underlying securities, (d) commercial paper issued by any person incorporated in the United States rated at least A-1 or the equivalent thereof by Standard & Poor’s Rating Service or at least P-1 or the equivalent thereof by Moody’s Investors Service Inc., and in each case maturing not more than one year after the date of acquisition by such person, (e) investments in money market funds at least 95% of whose assets are comprised of securities of the types described in clauses (a) through (d) above, (f) in the case of any Foreign Subsidiary only, direct obligations of the sovereign nation (or any agency thereof) in which such Foreign Subsidiary is organized and is conducting business or in obligations fully and unconditionally guaranteed by such sovereign nation (or any agency thereof), (g) instruments equivalent to those referred to in clauses (c) and (d) above denominated in Singapore Dollars, HK Dollars, Yuan, and GB pounds comparable in credit quality and customarily used by multinational companies with operations in Singapore, Hong Kong, the People’s Republic of China and Great Britain, respectively, for cash management purposes, (h) short-term investments denominated in Singapore Dollars, HK Dollars, Yuan, and GB pounds approved by the Administrative Agent in its reasonable discretion and (i) demand or time deposits, certificates of deposit or money market mutual funds issued by (x) any commercial bank having, or which is the principal banking subsidiary of a bank holding company having capital, surplus and undivided profits aggregating in excess of \$500,000,000 or (y) any bank or other institution that is reasonably acceptable to the Administrative Agent.

“Casualty Event” shall mean any loss of title (other than through a consensual disposition of such property in accordance with this Agreement) or any loss of or damage to or any destruction of, or any condemnation or other taking (including by any Governmental Authority) of, any property of any Company. “Casualty Event” shall include any taking of all or any part of any Real Property of any person or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any Legal Requirement, or by reason of the temporary requisition of the use or occupancy of all or any part of any Real Property of any person or any part thereof by any Governmental Authority, or any settlement in lieu thereof.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*

“CFC” shall mean a “controlled foreign corporation” within the meaning of Section 957 of the Code.

A “**Change in Control**” shall mean the occurrence of any of the following:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or group or its respective subsidiaries, and any person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), other than one or more Permitted Holders, is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that for purposes of this clause such person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “**option right**”), directly or indirectly, of Voting Stock of Borrower representing a greater percentage than the percentage “beneficially owned” by the Permitted Holders of the total outstanding Voting Stock of Borrower (and taking into account all such securities that such person or group has the right to acquire (whether pursuant to an option right or otherwise)), (ii) Borrower ceases to own, directly or indirectly, (x) prior to the consummation of the Delayed Draw Tender Offer, Equity Interests representing at least 70% of the total economic interests of the Equity Interests of Schuff and (y) after the consummation of the Delayed Draw Tender Offer, Equity Interests representing at least the percentage of the total economic interests of the Equity Interests of Schuff owned by Borrower upon the consummation of the Delayed Draw Tender Offer (less, in the case of clause (x) and (y) Equity Interests issued pursuant to Section 6.13(b)) or (iii) Borrower ceases to own, directly or indirectly, Equity Interests representing at least 93.5% of the total economic interests of the Equity Interests of Bridgehouse Marine (less Equity Interests issued pursuant to Section 6.13(b)); or

(e) during any period of 12 consecutive months, a majority of the members of the Board of Directors of Borrower cease to be composed of individuals (i) who were members of that Board of Directors at the commencement of such period, (ii) whose election or nomination to that Board of Directors was approved by individuals referred to in preceding clause (i) constituting at the time of such election or nomination at least a majority of that Board of Directors or by the Permitted Holders or (iii) whose election or nomination to that Board of Directors was approved by individuals referred to in preceding clauses (i) and (ii) constituting at the time of such election or nomination at least a majority of that Board of Directors (excluding, in the case of both preceding clauses (i) and (ii), any individual whose initial nomination for, or assumption of office as, a member of that Board of Directors occurs as a result of an actual (or threatened) solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the Board of Directors).

“**Change in Law**” shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation, policy, or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“**Charges**” shall have the meaning assigned to such term in Section 11.13.

“**Claims**” shall have the meaning assigned to such term in Section 11.03(b).

“**Closing Date**” shall mean the date of the initial Credit Extension of Initial Interim Term Loans hereunder.

“**Closing Date Acquisition**” shall have the meaning assigned to such term in the first recital hereto.

“**Closing Date Acquisition Agreement**” shall have the meaning assigned to such term in the first recital hereto.

“**Closing Date Acquisition Documents**” shall mean the collective reference to the Closing Date Acquisition Agreement and the other documents listed or required to be listed on Schedule 1.01(a).

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

“**Collateral**” shall mean, collectively, all of the Security Agreement Collateral, the Mortgaged Property and all other property of whatever kind and nature, whether now existing or hereafter acquired, pledged or purported to be pledged as collateral or otherwise subject to a security interest or purported to be subject to a security interest under any Security Document.

“**Collateral Agent**” shall have the meaning assigned to such term in the preamble hereto.

“**Collateral Coverage Ratio**” shall mean, as of any date of determination, the ratio of the Loan Collateral to Consolidated Secured Debt.

“**Commitment**” shall mean an Initial Interim Term Loan Commitment or a Delayed Draw Interim Term Loan Commitment, as the context may require.

“**Commodity Exchange Act**” shall mean the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“**Communications**” shall have the meaning assigned to such term in Section 11.01(b).

“**Companies**” shall mean Borrower and its Subsidiaries; and “**Company**” shall mean any one of them.

“**Compliance Certificate**” shall mean a certificate of a Financial Officer of Borrower substantially in the form of Exhibit C or such other form as may be approved by the Administrative Agent and Borrower.

“**Consolidated Amortization Expense**” shall mean, for any period, the amortization expense of Borrower and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

“**Consolidated Depreciation Expense**” shall mean, for any period, the depreciation expense of Borrower and its Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

“**Consolidated EBITDA**” shall mean, for any period, Consolidated Net Income for such period, adjusted by (x) *adding thereto*, without duplication, in each case only to the extent (and in the same proportion) deducted in determining such Consolidated Net Income (and with respect to the portion of Consolidated Net Income attributable to any Subsidiary of Borrower (other than Schuff and Bridgehouse Marine) only if a corresponding amount of cash would be permitted to be distributed to Borrower by such Subsidiary by operation of the terms of its Organizational Documents and all agreements, instruments, Orders and other Legal Requirements applicable to such Subsidiary or its equityholders during such period):

(a) Consolidated Interest Expense for such period;

(b) Consolidated Amortization Expense for such period;

(c) Consolidated Depreciation Expense for such period;

(d) Consolidated Tax Expense for such period;

(e) the aggregate amount of all other non-cash charges reducing Consolidated Net Income (excluding any non-cash charge that results in an accrual of a reserve for cash charges in any future period or the amortization of a prepaid cash item that was paid in a prior period or any write-down or writeoff of assets for such period); and

(f) increases in any change in LIFO reserves for such period determined on a consolidated basis in accordance with GAAP; and

(y) *subtracting therefrom* the aggregate amount of all non-cash charges increasing Consolidated Net Income (other than the accrual of revenue or recording of receivables in the ordinary course of business) for such period.

“**Consolidated Interest Expense**” shall mean, for any period, the total consolidated interest expense of Borrower and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP *plus*, without duplication:

- (a) imputed interest on Capital Lease Obligations and Attributable Indebtedness of Borrower or any of its Subsidiaries for such period;
- (b) commissions, discounts and other fees and charges owed by Borrower or any of its Subsidiaries with respect to letters of credit securing financial obligations, bankers’ acceptance financing, receivables financings and similar credit transactions for such period;
- (c) amortization of debt issuance costs, debt discount or premium and other financing fees and expenses incurred by Borrower or any of its Subsidiaries for such period;
- (d) cash contributions to any employee stock ownership plan or similar trust made by Borrower or any of its Subsidiaries to the extent such contributions are used by such plan or trust to pay interest or fees to any person (other than Borrower or any of its Wholly Owned Subsidiaries) in connection with Indebtedness incurred by such plan or trust for such period;
- (e) all interest paid or payable with respect to discontinued operations of Borrower or any of its Subsidiaries for such period;
- (f) the interest portion of any payment obligations of Borrower or any of its Subsidiaries for such period deferred for payment at any future time, whether or not such future payment is subject to the occurrence of any contingency, and includes any and all payments representing the purchase price and any assumptions of Indebtedness and/or Contingent Obligations, “earn-outs” and other agreements to make any payment the amount of which is, or the terms of payment of which are, in any respect subject to or contingent upon the revenues, income, cash flow or profits (or the like) of any person or business; and

(g) all interest on any Indebtedness of Borrower or any of its Subsidiaries of the type described in clause (e) or (j) of the definition of “Indebtedness” for such period;

provided that Consolidated Interest Expense shall be calculated after giving effect to Hedging Agreements (including associated costs) intended to protect against fluctuations in interest rates, but excluding unrealized gains and losses with respect to any such Hedging Agreements.

“**Consolidated Net Income**” shall mean, for any period, the consolidated net income (or loss) of Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP; *provided* that there shall be excluded from such net income (to the extent otherwise included therein), without duplication:

(a) the net income (or loss) of any person (other than a Subsidiary of Borrower) in which any person other than Borrower or any of its Subsidiaries has an ownership interest, except to the extent that cash in an amount equal to any such income has actually been received by Borrower or (subject to clause (b) below) any of its Wholly Owned Subsidiaries from such person during such period;

(b) the net income of any Subsidiary of Borrower (other than Schuff or Bridgehouse Marine or their respective Subsidiaries) during such period to the extent that the declaration and/or payment of dividends or similar distributions by such Subsidiary of that income is not permitted by operation of the terms of its Organizational Documents or any agreement, instrument, Order or other Legal Requirement applicable to that Subsidiary or its equityholders during such period, except that Borrower’s equity in net gain or loss of any such Subsidiary for such period shall be included in determining Consolidated Net Income;

(c) earnings resulting from any reappraisal, revaluation or write-up of assets;

(d) any gains or losses attributable to the sale or other disposition of any Equity Interests by a Loan Party; and

(e) any extraordinary noncash gain (or extraordinary noncash loss), together with any related provision for taxes on any such noncash gain (or the tax effect of any such noncash loss), recorded or recognized by Borrower or any of its Subsidiaries during such period.

“**Consolidated Secured Debt**” shall mean, as at any date of determination, the aggregate stated balance sheet amount of all Indebtedness of Borrower and its Subsidiaries (other than Schuff, Bridgehouse Marine and their respective Subsidiaries) determined on a consolidated basis in accordance with GAAP and is secured by a Lien on any property of Borrower and its Subsidiaries (other than Schuff, Bridgehouse Marine and their respective Subsidiaries).

“**Consolidated Tax Expense**” shall mean, for any period, the tax expense (including federal, state, local and foreign income taxes) of Borrower and its Subsidiaries, for such period, determined on a consolidated basis in accordance with GAAP.

“Contingent Obligation” shall mean, as to any person, any obligation, agreement, understanding or arrangement of such person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other monetary obligations (**“primary obligations”**) of any other person (the **“primary obligor”**) in any manner, whether directly or indirectly, including any obligation, agreement, understanding or arrangement of such person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth, net equity, liquidity, level of income, cash flow or solvency of the primary obligor, (c) to purchase or lease property, securities or services primarily for the purpose of assuring the primary obligor of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (d) with respect to bankers’ acceptances, letters of credit and similar credit arrangements, until a reimbursement or equivalent obligation arises (which reimbursement obligation shall constitute a primary obligation), or (e) otherwise to assure or hold harmless the primary obligor of any such primary obligation against loss (in whole or in part) in respect thereof; *provided, however*, that the term **“Contingent Obligation”** shall not include endorsements of instruments for deposit or collection in the ordinary course of business or any product warranties given in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation, or portion thereof, in respect of which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such person may be liable, whether singly or jointly, pursuant to the terms of the instrument, agreements or other documents or, if applicable, unwritten agreement, evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such person is required to perform thereunder) as determined by such person in good faith.

“Contribution Notice” shall have the meaning set forth in Section 38 or Section 47 of the UK Pensions Act 2004.

“Control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise, and the terms **“Controlling”** and **“Controlled”** shall have meanings correlative thereto.

“Control Agreement” shall have the meaning assigned to such term in the Security Agreement.

“Conversion Date” shall mean the first anniversary of the Closing Date or, if such day is not a Business Day, the immediately succeeding Business Day.

“Conversion Fee” means a fee specified in the Fee Letter.

“**Convertible Preferred Stock**” shall mean, collectively, (x) the Series A Convertible Participating Preferred Stock and (b) Series A-1 Convertible Participating Preferred Stock, in each case outstanding as of the Closing Date.

“**Convertible Preferred Stock Documents**” shall mean, collectively, (x) that certain Securities Purchase Agreement relating to Borrower’s Series A Convertible Participating Preferred Stock, by and among Borrower and the Purchasers party thereto, dated as of May 29, 2014 and (y) that certain Securities Purchase Agreement relating to Borrower’s Series A-1 Convertible Participating Preferred Stock, by and among Borrower and the Purchasers party thereto, dated as of September 22, 2014 and, in each case the other documents entered into in connection therewith.

“**Credit Extension**” shall mean the making of a Loan by a Lender.

“**Credit Facility**” shall mean term loan facilities provided for hereunder.

“**Debt Issuance**” shall mean the incurrence by any Company of any Indebtedness after the Closing Date (including any Indebtedness permitted by Section 6.01(l) but excluding any other Indebtedness permitted by Section 6.01).

“**Debtor Relief Laws**” shall mean the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

“**Default**” shall mean any event, occurrence or condition which is, or upon notice, lapse of time or both would constitute, an Event of Default.

“**Default Excess**” shall mean, with respect to any Defaulting Lender, the excess, if any, of such Defaulting Lender’s pro rata percentage of the aggregate outstanding principal amount of Loans of all Lenders (calculated as if all Defaulting Lenders (including such Defaulting Lender) had funded all of their respective Defaulted Loans) over the aggregate outstanding principal amount of Loans of such Defaulting Lender.

“**Default Rate**” shall have the meaning assigned to such term in Section 2.06(c).

“**Defaulted Loan**” shall have the meaning assigned to such term in Section 2.16(c).

“**Defaulting Lender**” shall mean any Lender that has (a) failed to pay over to Borrower, the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due (unless the subject of a good faith dispute), or (b) (i) been adjudicated as, or determined by any Governmental Authority having regulatory authority over such person or its Properties or assets to be, insolvent or (ii) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar person charged with reorganization

or liquidation of its business or custodian, appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment, unless, in the case of any Lender referred to in this clause (b), Borrower and the Administrative Agent shall be satisfied that such Lender intends, and has all approvals required to enable it, to continue to perform its obligations as a Lender hereunder. For the avoidance of doubt, a Lender shall not be deemed to be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in such Lender or its parent by a Governmental Authority; *provided* that, as of any date of determination, the determination of whether any Lender is a Defaulting Lender hereunder shall not take into account, and shall not otherwise impair, any amounts funded by such Lender which have been assigned by such Lender to an SPC pursuant to Section 11.04(h). Any determination by the Administrative Agent that a Lender is a Defaulting Lender shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination by the Administrative Agent to Borrower and each other Lender.

“Delayed Draw Expiration Date” shall mean the earliest to occur of (x) December 22, 2014, (y) the date that Delayed Draw Interim Term Loans are made to Borrower under Section 2.01(b), and (z) the date that the Delayed Draw Interim Term Loan Commitments are terminated in accordance with Section 2.07 or Section 8.02.

“Delayed Draw Interim Term Loan Borrowing” shall mean a borrowing consisting of simultaneous Delayed Draw Interim Term Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Delayed Draw Interim Term Loan Lenders pursuant to Section 2.01(b).

“Delayed Draw Interim Term Loan Commitment” shall mean, as to each Delayed Draw Interim Term Loan Lender, its obligation, if any, to make Delayed Draw Interim Term Loans to Borrower pursuant to Section 2.01(b) in an aggregate principal amount not to exceed the amount set forth opposite such Lender’s name on Annex I to this Agreement or on Schedule 1 to the Assignment and Assumption or an Affiliated Lender Assignment and Assumption pursuant to which such Lender assumed its Commitment, as applicable, as the same may be reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 11.04. The aggregate amount of the Delayed Draw Interim Term Loan Commitments as of the Closing Date is \$36,000,000.

“Delayed Draw Interim Term Loan Lender” shall mean a Lender with a Delayed Draw Interim Term Loan Commitment or an outstanding Delayed Draw Interim Term Loan.

“Delayed Draw Interim Term Loan” shall have the meaning assigned to such term in the first recital hereto.

“Delayed Draw Tender Offer” shall have the meaning assigned to such term in the first recital hereto.

“Delayed Draw Tender Offer Documents” shall mean the collective reference to the Offer to Purchase dated August 21, 2014 and the related tender offer documents listed or required to be listed on Schedule 1.01(a).

“Demand Failure Event” shall mean Borrower’s failure to comply with (i) the terms set forth in a Permanent Securities Notice within five business days from the date of delivery or (ii) the terms of the documentation related to the Permanent Securities Notice including, without limitation, Borrower’s obligation to deliver on or prior to October 26, 2014 certain information required by Jefferies LLC to consummate an offering of the Permanent Securities, including an offering memorandum or offering circular in form and substance reasonably satisfactory to Jefferies LLC as set forth in the Fee Letter.

“Disposition” shall mean, with respect to any property, any conveyance, sale, lease, sublease, license, assignment, transfer or other disposition of such property (including (i) by way of merger or consolidation, (ii) any Sale and Leaseback Transaction and (iii) any Synthetic Lease).

“Disqualified Capital Stock” shall mean any Equity Interest which, by its terms (or by the terms of any security or instrument into which it is convertible or for which it is exchangeable or exercisable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the first anniversary of the Extended Term Loan Maturity Date, (b) is convertible into or exchangeable or exercisable (unless at the sole option of the issuer thereof) for (i) debt securities or other indebtedness or (ii) any Equity Interests referred to in (a) above, in each case at any time on or prior to the first anniversary of the Extended Term Loan Maturity Date, or (c) contains any repurchase or payment obligation which may come into effect prior to the first anniversary of the Extended Term Loan Maturity Date.

“Disqualified Lenders” shall mean those banks, financial institutions and other institutional lenders and investors that have been separately identified in writing to the Administrative Agent prior to the Closing Date and in form and substance reasonably satisfactory to the Administrative Agent.

“Dividend” shall mean, with respect to any person, that such person has paid a dividend or returned any equity capital to the holders of its Equity Interests or made any other distribution, payment or delivery of property (other than Qualified Capital Stock of such person) or cash to the holders of its Equity Interests as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for consideration any of its Equity Interests outstanding (or any options or warrants issued by such person with respect to its Equity Interests), or set aside or otherwise reserved, directly or indirectly, any funds for any of the foregoing purposes, or shall have permitted any of its Subsidiaries to purchase or otherwise acquire for consideration any of the outstanding Equity Interests of such person (or any options or warrants issued by such person

with respect to its Equity Interests). Without limiting the foregoing, “**Dividends**” with respect to any person shall also include all payments made or required to be made by such person with respect to any stock appreciation rights, plans, equity incentive or achievement plans or any similar plans or setting aside of or otherwise reserving any funds for the foregoing purposes.

“**Documentation Agent**” shall have the meaning assigned to such term in the preamble hereto.

“**Dollars**” or “**\$**” shall mean lawful money of the United States.

“**Domestic Subsidiary**” shall mean any Subsidiary other than a Foreign Subsidiary.

“**DTC**” means The Depository Trust Company.

“**Eligible Assignee**” shall mean (a) any person that meets the requirements to be an assignee under Section 11.04(b) (subject to such consents, if any, as may be required under Section 11.04(b)), (b) an Affiliated Lender solely to the extent permitted under Section 11.04(j) and (c) Borrower solely to the extent permitted under Section 11.04(j), other than, in each case, (i) a natural person, (ii) a Defaulting Lender or (iii) a Disqualified Lender.

“**Embargoed Person**” shall have the meaning assigned to such term in Section 6.19.

“**Employee Benefit Plan**” shall mean any “employee benefit plan” as defined in Section 3(3) of ERISA which is or was maintained or contributed to by any Company.

“**Environment**” shall mean any surface or subsurface physical medium or natural resource, including air, land, soil, surface waters, ground waters, stream and river sediments, biota and any indoor area, surface or physical medium.

“**Environmental Claim**” shall mean any claim, notice, demand, Order, action, suit, proceeding, or other communication alleging or asserting liability or obligations under Environmental Law, including liability or obligation for investigation, assessment, remediation, removal, cleanup, response, corrective action, monitoring, post-remedial or post-closure studies, investigations, operations and maintenance, injury, damage, destruction or loss to natural resources, personal injury, wrongful death, property damage, fines, penalties or other costs resulting from, related to or arising out of (i) the presence, Release or threatened Release of Hazardous Material in, on, into or from the Environment at any location or (ii) any violation of or non-compliance with Environmental Law, and shall include any claim, notice, demand, Order, action, suit or proceeding seeking damages (including the costs of remediation), contribution, indemnification, cost recovery, penalties, fines, indemnities, compensation or injunctive relief resulting from, related to or arising out of the presence, Release or threatened Release of Hazardous Material or alleged injury or threat of injury to human health (to the extent resulting from exposure to Hazardous Materials) or the Environment.

“Environmental Law” shall mean any and all applicable current and future Legal Requirements relating to human health (as it relates to exposure to Hazardous Materials) or the Environment, the Release or threatened Release of Hazardous Material, natural resources or natural resource damages, or occupational safety or health (as it relates to exposure to Hazardous Materials).

“Environmental Liability” shall mean any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permit” shall mean any permit, license, approval, consent, registration, notification, exemption or other authorization required by or from a Governmental Authority under any Environmental Law.

“Equity Interest” shall mean, with respect to any person, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such person, including, if such person is a partnership, partnership interests (whether general or limited), or if such person is a limited liability company, membership interests and any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of property of, such partnership, whether outstanding on the date hereof or issued on or after the Closing Date, but excluding debt securities convertible or exchangeable into such equity.

“Equity Issuance” shall mean, without duplication, (i) any issuance or sale by Borrower after the Closing Date of any Equity Interests in Borrower (including any Equity Interests issued upon exercise of any warrant or option or equity-based derivative) or any warrants or options or equity-based derivatives to purchase Equity Interests in Borrower or (ii) any contribution to the capital of Borrower; *provided, however*, that an Equity Issuance shall not include (x) any Preferred Stock Issuance or Debt Issuance and (y) any such sale or issuance by Borrower of not more than an aggregate amount of 10.0% of its Equity Interests (including its Equity Interests issued upon exercise of any warrant or option or warrants or options to purchase its Equity Interests but excluding Disqualified Capital Stock), in each case, to directors, officers or employees of any Company.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” shall mean, with respect to any person, any trade or business (whether or not incorporated) that, together with such person, is treated as a single employer under Section 414(b) or (c) of the Code, or solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code. Any former ERISA Affiliate of a person or any of its Subsidiaries shall continue to be considered an ERISA Affiliate of such person or such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of such person or such Subsidiary and with respect to liabilities arising after such period for which such person or such Subsidiary could reasonably be expected to be liable under the Code or ERISA, but in no event for more than six years after such period if no such liability has been asserted against such person or such Subsidiary; *provided, however*, that such person or such Subsidiary shall continue to be an ERISA Affiliate of such person or such Subsidiary after the expiration of the six-year period solely with respect to any liability asserted against such person or such Subsidiary prior to the expiration of such six-year period.

“ERISA Event” shall mean (i) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan; (ii) the failure to meet the minimum funding standard of Section 412 of the Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(d) of the Code) or the failure to make by its due date a required installment under Section 412(m) of the Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by any Company or any of its ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability on any Company or any of its ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of any Company or any of its ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by any Company or any of its ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Code) to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Code; (ix) the imposition of a Lien pursuant to Section 401(a)(29) or 412(n) of the Code or pursuant to ERISA with respect to any Pension Plan; (x) the occurrence of a non-exempt prohibited transaction (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could reasonably be expected to result in liability to any Company or any of its ERISA Affiliates; or (xi) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan, or the assets thereof, or against the Company in connection with any Employee Benefit Plan.

“**Escrow Agreements**” shall mean the NA Telecom Escrow Agreement.

“**Escrow Accounts**” shall have the meaning assigned to such term in the Escrow Agreements.

“**Escrowed Amounts**” shall mean any amount received by any Company pursuant to the Escrow Agreements.

“**Eurodollar Borrowing**” shall mean a Borrowing comprised of Eurodollar Loans.

“**Eurodollar Loan**” shall mean any Loan bearing interest at a rate determined by reference to the Adjusted LIBOR Rate.

“**Event of Default**” shall have the meaning assigned to such term in Article VIII, and shall include any Default.

“**Exchange**” shall have the meaning assigned to such term in Section 10.02(a).

“**Exchange Act**” shall mean the Securities Exchange Act of 1934.

“**Exchange Date**” shall have the meaning assigned to such term in Section 10.03(a).

“**Exchange Note**” and “**Exchange Notes**” shall have the meaning assigned to such term in Section 10.2(a).

“**Exchange Notes Documents**” shall mean the Exchange Notes Indenture, the Exchange Notes, and each other instrument or agreement executed in connection with the Exchange Notes and any instrument or agreement executed in connection with any refinancings and replacements thereof to the extent permitted under Section 6.01, as each such material instrument or agreement may be amended, restated, supplemented, replaced or otherwise modified from time to time in accordance with Section 11.02.

“**Exchange Notes Indebtedness**” shall mean the Indebtedness of Borrower and the other Loan Parties incurred pursuant to or evidenced by the Exchange Notes Documents.

“**Exchange Notes Indenture**” shall mean an indenture containing such terms, conditions and covenants and intercreditor provisions as are necessary or appropriate in light of then- prevailing market conditions, all as determined by Jefferies LLC in its reasonable discretion (it being agreed that (x) the optional prepayment provisions of the Exchange Notes shall be subject to the redemption premiums set forth on Schedule 1.01(f) and (y) any provision in the Exchange Notes governing the payment of Dividends in accordance with the Convertible Preferred Stock Documents shall be no more restrictive to the Borrower than the corresponding provision set

forth herein), to be entered into by Borrower, the Guarantors, the trustee thereunder and Collateral Agent governing and pursuant to which the Exchange Notes are issued, as the same may be amended, restated, supplemented, replaced, refinanced or otherwise modified from time to time (with such changes as the Exchange Notes Trustee or the Administrative Agent may request to effect the provisions of this Agreement and to comply with any applicable Requirement of Law, regulations or trustee procedures or policies, including such changes as are reasonably necessary to cause the Exchange Notes to become eligible for deposit at the DTC, provided that no such changes shall be adverse in any material respect to the interests of Borrower or the Lenders or would be adverse in any material respect to a holder of Exchange Notes upon issuance) to be entered into in connection with the initial issuance of the Exchange Notes.

“**Exchange Notes Trustee**” shall have the meaning assigned to such term in Section 10.03(c).

“**Exchange Request**” shall have the meaning assigned to such term in Section 10.02(a).

“**Excluded S-X Information**” shall have the meaning assigned to such term in Section 10.01(e).

“**Excluded Swap Obligation**” shall mean, with respect to any Subsidiary Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Subsidiary Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

“**Excluded Taxes**” shall mean, 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 Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by the United States, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) in the case of a Foreign Lender, any United States federal withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (other than pursuant to a request by Borrower under [Section 2.16](#)) or designates a new lending office, except, in each case, to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts with respect to such withholding tax pursuant to Section 2.15(a), (c) Taxes attributable to such recipient’s failure to comply with Sections 2.15(f) and (g) and (d) any United States federal withholding tax imposed as a result of FATCA.

“**Executive Order**” shall have the meaning assigned to such term in Section 3.21.

“**Existing Indebtedness**” means, collectively, Indebtedness of Borrower outstanding immediately before the occurrence of the Closing Date under each of (x) that certain Credit Agreement, dated as of May 29, 2014 (as amended from time to time prior to the date hereof), by and among Borrower, the subsidiary guarantors from time to time party thereto, the lenders from time to time party thereto and Jefferies Finance LLC, as administrative agent and (y) that certain Credit Agreement, dated as of September 8, 2014, by and among Borrower, the subsidiary guarantors from time to time party thereto, the lenders from time to time party thereto and Jefferies Finance LLC, as administrative agent.

“**Existing Lien**” shall have the meaning assigned to such term in Section 6.02(c).

“**Extended Term Loan**” shall mean an extension of credit by the Lenders to Borrower pursuant to Section 2.01(c).

“**Extended Term Loan Maturity Date**” shall mean September 22, 2016, the date which is one year after the Interim Term Loan Maturity Date or, if such date is not a Business Day, the first Business Day thereafter.

“**Extraordinary Receipts**” shall mean any cash received by or paid to or for the account of any person not in the ordinary course of business, including tax refunds, pension plan reversions, proceeds of insurance, judgments, settlements, condemnation awards (and payments in lieu thereof), indemnity payments, and any purchase price adjustments; *provided*, that, for the avoidance of doubt, the following shall not be Extraordinary Receipts: (i) the receipt by Borrower of amounts pursuant to Section 2.15(h), (ii) the receipt by Borrower from a third-party that is not an Affiliate of any Company of cash in exchange for the issuance of Qualified Capital Stock, and (iii) the receipt of insurance proceeds, condemnation awards and other compensation received in respect of any Casualty Events.

“**Fair Market Value**” shall mean, (a) in the case of any Collateral or other Equity Interests that (i) is listed on a national securities exchange or (ii) is actively traded in the over-the-counter-market and represents equity in a Person with a market capitalization of at least \$500,000,000 on each trading day in the preceding 60 day period prior to such date, the product of (x) (i) the sum of the volume weighted average prices of a unit of such Collateral for each of the 20 consecutive trading days immediately prior to such date, divided by (ii) 20, multiplied by (y) the number of units pledged as Collateral, (b) in the case of any Collateral or other Equity Interests that is not so listed or actively traded (other than Cash Equivalents), the fair market value thereof (defined as the price that would be negotiated in an arms'-length transaction for cash between a willing buyer and willing seller, neither of which is acting under compulsion), (x) with respect to any such Collateral or Equity Interest with a value (as determined by Borrower)

in excess of \$10,000,000 individually or \$25,000,000 in the aggregate of all such Collateral or Equity Interests, as determined by a written opinion of a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of Borrower (provided that (i) such written opinion may be based on a desktop appraisal conducted by such banking, appraisal, accounting or valuation firm for any date of determination that is not the end of the fiscal year for Borrower and (ii) the fair market value thereof determined by such written opinion may be determined as of a date as early as 30 days prior to the end of the applicable Test Period) and (y) with respect to any such Collateral or Equity Interest with a value (as determined by Borrower) equal to or less than \$10,000,000 individually or \$25,000,000 in the aggregate of all such Collateral or Equity Interests, as determined in good faith by the Board of Directors or, pursuant to a specific delegation of authority by such Board of Directors or a designated senior executive officer of Borrower, or the Subsidiary of Borrower selling such assets and (c) in the case of Cash Equivalents, the face value thereof.

The “volume weighted average price” means the per share of common stock (or per minimum denomination or unit size in the case of any security other than common stock) volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page for the “<equity> AQR” page corresponding to the “ticker” for such common stock or unit (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such trading day (or if such volume-weighted average price is unavailable, the market value of one share of such common stock (or per minimum denomination or unit size in the case of any security other than common stock) on such trading day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the trustee). The “volume weighted average price” will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours. In the case of any assets referenced in clause (ii) above tested on a date of determination other than in connection with a Test Date, for purposes of calculating compliance with a covenant, Borrower will be permitted to rely on the value as determined by the written opinion given for the most recently completed Test Date.

For the avoidance of doubt:

(i) if Borrower will be in compliance with an applicable covenant at a Test Date even if an asset constituting Collateral had no value, it shall not be required to obtain an appraisal of such Collateral (in which case such Collateral shall be assumed to have no value for such purpose); and

(ii) if Borrower will be in compliance with an applicable covenant at a Test Date if an asset constituting Collateral has a minimum specified value, an appraisal establishing that such Collateral is worth at least such minimum specified value shall be sufficient (in which case such Collateral shall be assumed to have such minimum specified value for such purpose).

“**FATCA**” shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

“**Federal Funds Effective Rate**” shall mean, for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System of the United States arranged by federal funds brokers, 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 (rounded upwards, if necessary to the next 1/100th of 1%) of the quotations for the day for such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it.

“**Fee Letter**” shall mean the confidential Fee Letter, dated September 22, 2014, between Borrower and Jefferies Finance LLC.

“**Fees**” shall mean the Administrative Agent Fee and the other fees referred to in [Section 2.05](#).

“**Financial Officer**” of any person shall mean the chief financial officer, principal accounting officer, treasurer or controller of such person.

“**Financial Support Direction**” shall have the meaning set forth in Section 43 of the UK Pensions Act 2004.

“**FIRREA**” shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

“**Foreign Lender**” shall mean any Lender that is not, for United States federal income tax purposes, (i) a citizen or resident of the United States, (ii) a corporation or entity treated as a corporation created or organized in or under the laws of the United States, any state thereof or the District of Columbia, (iii) an estate whose income is subject to U.S. federal income taxation regardless of its source or (iv) a trust if a court within the United States is able to exercise primary supervision over the administration of such trust and one or more United States persons have the authority to control all substantial decisions of such trust.

“**Foreign Plan**” shall mean any employee benefit plan, program, policy, arrangement or agreement maintained or contributed to by any Company with respect to employees, officers or directors employed, or otherwise engaged, outside the United States.

“**Foreign Subsidiary**” shall mean a Subsidiary that is organized under the laws of a jurisdiction other than the United States or any state thereof or the District of Columbia.

“**Funding Default**” shall have the meaning assigned to such term in [Section 2.16\(c\)](#).

“GAAP” shall mean generally accepted accounting principles in the United States applied on a consistent basis.

“Governmental Authority” shall mean any federal, state, local or foreign (whether civil, criminal, military or otherwise) court, central bank or governmental agency, tribunal, authority, instrumentality or regulatory body or any subdivision thereof or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers of or pertaining any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government (including any supra-national bodies such as the European Union or the European Central Bank).

“Governmental Real Property Disclosure Requirements” shall mean any Legal Requirement of any Governmental Authority requiring notification of the buyer, lessee, mortgagee, assignee or other transferee of any Real Property, facility, establishment or business, or any notification, registration or filing to or with any Governmental Authority, in connection with the disposition (including any transfer of control) of any Real Property, facility, establishment or business, as may be required under any applicable Environmental Law or of any actual or threatened presence or Release in, on, into or from the Environment, or the use, disposal or handling of Hazardous Material on, at, under, from or near the Real Property, facility, establishment or business to be sold, acquired, leased, mortgaged, assigned or transferred.

“Granting Lender” shall have the meaning assigned to such term in Section 11.04(h).

“Guaranteed Obligations” shall have the meaning assigned to such term in Section 7.01.

“Guarantees” shall mean the guarantees issued pursuant to Article VII by the Guarantors.

“Guarantors” shall mean the Subsidiary Guarantors.

“Hazardous Materials” shall mean hazardous substances, hazardous wastes, hazardous materials, polychlorinated biphenyls (“PCBs”) or any substance or compound containing PCBs, asbestos or any asbestos-containing materials in any form or condition, lead-based paint, urea formaldehyde, pesticides, radon or any other radioactive materials including any source, special nuclear or by-product material, petroleum, petroleum products, petroleum-derived substances, crude oil or any fraction thereof, underground or aboveground storage tanks, whether empty or containing any substance, any mold, microbial or fungal contamination that could pose a risk to human health or the Environment or would negatively impact the condition of the Real Property or any other pollutants, contaminants, chemicals, wastes, materials, compounds, constituents or substances, defined under, subject to regulation under, or which can give rise to liability or obligations under, any Environmental Laws.

“Hedging Agreement” shall mean (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, currency swap transactions, cross-currency rate swap transactions, currency options, cap transactions, floor transactions, collar transactions, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options or warrants to enter into any of the foregoing), whether or not any such transaction is governed by, or otherwise subject to, any master agreement or any netting agreement, and (b) any and all transactions or arrangements of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement (or similar documentation) published from time to time by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such agreement or documentation, together with any related schedules, a **“Master Agreement”**), including any such obligations or liabilities under any Master Agreement.

“Hedging Obligations” shall mean obligations under or with respect to Hedging Agreements.

“Hedging Termination Value” shall mean, in respect of any one or more Hedging Agreements, after taking into account the effect of any netting agreements relating to such Hedging Agreements (to the extent, and only to the extent, such netting agreements are legally enforceable in Insolvency Proceedings against the applicable counterparty obligor thereunder), (i) for any date on or after the date such Hedging Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (ii) for any date prior to the date referenced in preceding clause (i), the amount(s) determined as the mark-to-market value(s) for such Hedging Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedging Agreements (which may include a Lender or any Affiliate of a Lender).

“Immaterial Subsidiaries” shall mean, as of any date, any Subsidiary that Borrower designates as an “Immaterial Subsidiary” provided that (a) such designated Subsidiary does not have total assets in excess of \$1,000,000 and (b) taken together with all Immaterial Subsidiaries as of such date, the designated Immaterial Subsidiaries do not have total assets in excess of \$2,500,000. Each Immaterial Subsidiary as of the Closing Date shall be set forth in Schedule 1.01(e), and Borrower shall update such Schedule from time to time after the Closing Date as necessary to reflect all Immaterial Subsidiaries at such time (the selection of Subsidiaries to be added to or removed from such Schedule to be made as Borrower may determine subject to the terms set forth in this definition). In the event a Subsidiary designated as an Immaterial Subsidiary no longer satisfies the requirements of Immaterial Subsidiaries as set forth in this definition or Borrower otherwise ceases to designate such Subsidiary as an Immaterial Subsidiary, such Subsidiary shall become a Subsidiary Guarantor to the extent required pursuant to and in accordance with Section 5.11.

“Indebtedness” of any person shall mean, without duplication, (a) all obligations of such person for borrowed money or advances; (b) all obligations of such person evidenced by bonds, debentures, notes, loan agreements or similar instruments; (c) all obligations of such person under conditional sale or other title retention agreements relating to property purchased by such person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (d) all obligations of such person issued or assumed as part of the deferred purchase price of property or services (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business on normal trade terms and not overdue by more than 60 days); (e) all Indebtedness secured by any Lien on property owned or acquired by such person (including indebtedness arising under conditional sales or other title retention agreements), whether or not the obligations secured thereby have been assumed, but limited to the lower of (i) the Fair Market Value of such property and (ii) the amount of the Indebtedness secured; (f) all Capital Lease Obligations, Purchase Money Obligations and Synthetic Lease Obligations of such person; (g) all obligations of such person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any Equity Interests of such person, valued, in the case of a redeemable preferred Equity Interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (h) for purposes of Section 8.01(f), all Hedging Obligations, valued at the Hedging Termination Value thereof; (i) all non-contingent obligations of such person for the reimbursement of any obligor in respect of letters of credit, letters of guaranty, bankers’ acceptances and similar credit transactions; and (j) all Contingent Obligations of such person in respect of Indebtedness or obligations of others of the kinds referred to in clauses (a) through (i) above. 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 that terms of such Indebtedness expressly provide that such person is not liable therefor.

“Indemnified Taxes” shall mean 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.

“Indemnitee” shall have the meaning assigned to such term in [Section 11.03\(b\)](#).

“Information” shall have the meaning assigned to such term in [Section 11.12](#).

“Initial Interim Term Loan Borrowing” shall mean a borrowing consisting of simultaneous Initial Interim Term Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Initial Interim Term Loan Lenders pursuant to [Section 2.01\(a\)](#).

“Initial Interim Term Loan Commitment” shall mean, as to each Initial Interim Term Loan Lender, its obligation, if any, to make (i) Initial Interim Term Loans to Borrower pursuant to Section 2.01(a) in an aggregate principal amount not to exceed the amount set forth opposite such Lender’s name on Annex I to this Agreement or on Schedule 1 to the Assignment and Assumption or an Affiliated Lender Assignment and Assumption pursuant to which such Lender assumed its Commitment, as applicable, as the same may be reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 11.04. The aggregate amount of the Initial Interim Term Loan Commitments as of the Closing Date is \$214,000,000.

“Initial Interim Term Loan Lender” shall mean a Lender with an Initial Interim Term Loan Commitment or an outstanding Initial Interim Term Loan.

“Initial Interim Term Loan” shall have the meaning assigned to such term in the first recital hereto.

“Insolvency Laws” shall mean the Bankruptcy Code of the United States, and all other insolvency, bankruptcy, receivership, liquidation, conservatorship, assignment for the benefit of creditors, moratorium, rearrangement, reorganization, or similar Legal Requirements of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Insolvency Proceeding” shall mean (i) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (ii) any general assignment for the benefit of creditors, formal or informal moratorium, composition, marshaling of assets for creditors or other, similar arrangement in respect of its creditors generally or any substantial portion of its creditors, in each case, undertaken under United States federal or state or non-United States Legal Requirements, including the Bankruptcy Code of the United States.

“Insurance Policies” shall mean the insurance policies and coverages required to be maintained by each Loan Party that is an owner of Mortgaged Property with respect to the applicable Mortgaged Property pursuant to Section 5.04 and all renewals and extensions thereof.

“Insurance Requirements” shall mean, collectively, all provisions of the Insurance Policies, all requirements of the issuer of any of the Insurance Policies and all Orders, rules, regulations and any other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) binding upon any Loan Party that is an owner of Mortgaged Property and applicable to the Mortgaged Property or any use or condition thereof.

“Intellectual Property” shall have the meaning assigned to such term in Section 3.06.

“Intercompany Note” shall mean the intercompany demand promissory note substantially in the form of Exhibit D.

“Interest Election Request” shall mean a request by Borrower to convert or continue a Borrowing in accordance with Section 2.08(b), substantially in the form of Exhibit E.

“Interest Payment Date” shall mean (a) with respect to any ABR Loan, the last Business Day of each March, June, September and December to occur during any period in which such Loan is outstanding, (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Loan with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period and (c) after the Conversion Date, each March 31 and September 30 thereafter, commencing the first September 30 occurring after the Conversion Date and prior to the Extended Term Loan Maturity Date.

“Interest Period” shall mean, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months (or, if each affected Lender so agrees, nine or twelve months) thereafter, as 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, and (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 of such Interest Period. 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.

“Interim Term Loans” shall mean an extension of credit by the Lenders to Borrower pursuant to Section 2.01(a) in the form of an Initial Interim Term Loan and/or Section 2.01(b) in the form of a Delayed Draw Interim Term Loan, as the context may require.

“Interim Term Loan Maturity Date” shall mean September 22, 2015, the date which is twelve months after the Closing Date or, if such date is not a Business Day, the first Business Day thereafter.

“Investments” shall have the meaning assigned to such term in Section 6.04.

“IRS” shall mean the U.S. Internal Revenue Service.

“Joinder Agreement” shall mean a joinder agreement substantially in the form of Exhibit 3 to the Security Agreement.

“Landlord Access Agreement” shall mean a Landlord Access Agreement in form and substance reasonably be acceptable to the Administrative Agent.

“**Leases**” shall mean any and all leases, subleases, tenancies, options, concession agreements, rental agreements, occupancy agreements, franchise agreements, access agreements and any other agreements (including all amendments, extensions, replacements, renewals, modifications and/or guarantees thereof), whether or not of record and whether now in existence or hereafter entered into, affecting the use or occupancy of all or any portion of any Real Property.

“**Legal Requirements**” shall mean, as to any person, the Organizational Documents of such person, and any treaty, law (including the common law), statute, ordinance, code, rule, regulation, guidelines, license, permit requirement, judgment, decree, verdict, order, consent order, consent decree, writ, declaration or injunction or determination of an arbitrator or a court or other Governmental Authority, and the interpretation or administration thereof, 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, in each case whether or not having the force of law. For purposes of Section 2.15, the term “applicable Legal Requirements” shall include FATCA.

“**Lenders**” shall mean (a) the financial institutions and other persons party hereto as “Lenders” on the date hereof, and (b) each financial institution or other person that becomes a party hereto pursuant to an Assignment and Assumption or an Affiliated Lender Assignment and Assumption, other than, in each case, any such financial institution or person that has ceased to be a party hereto pursuant to an Assignment and Assumption or an Affiliated Lender Assignment and Assumption.

“**LIBOR Rate**” shall mean, with respect to any Eurodollar Borrowing for any Interest Period therefor, the rate per annum equal to the arithmetic mean (rounded to the nearest 1/100th of 1%) of the offered rates for deposits in Dollars with a term comparable to such Interest Period that appears on Reuters Screen LIBOR01 Page (or such other page as may replace such page on such service for the purpose of displaying the rates at which Dollar deposits are offered by leading banks in the London interbank deposit market as designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London, England time, on the second full Business Day preceding the first day of such Interest Period; *provided, however*, that (i) if no comparable term for an Interest Period is available, the LIBOR Rate shall be determined using the weighted average of the offered rates for the two terms most nearly corresponding to such Interest Period and (ii) if Reuters Screen LIBOR01 Page shall at any time no longer exist, “**LIBOR Rate**” shall mean, with respect to each day during each Interest Period pertaining to Eurodollar Borrowings comprising part of the same Borrowing, the rate per annum equal to the rate at which the Administrative Agent is offered deposits in Dollars at approximately 11:00 a.m., London, England time, two Business Days prior to the first day of such Interest Period in the London interbank market for delivery on the first day of such Interest Period for the number of days comprised therein and in an amount comparable to its portion of the amount of such Eurodollar Borrowing to be outstanding during such Interest Period. “**Reuters Screen LIBOR01 Page**” shall mean the display designated on the Reuters 3000 Xtra Page (or such other page as may replace such page on such service for the purpose of displaying the rates at which Dollar deposits are offered by leading banks in the London interbank deposit market).

“Lien” shall mean, with respect to any property, (a) any mortgage, deed of trust, lien (statutory or other), judgment liens, pledge, encumbrance, claim, charge, assignment, hypothecation, deposit arrangement, security interest or encumbrance of any kind or any arrangement to provide priority or preference or any filing of any financing statement under the UCC or any other similar notice of Lien under any similar notice or recording statute of any Governmental Authority, including any easement, servitude, right-of-way or other encumbrance on title to Real Property, in each of the foregoing cases whether voluntary or imposed or arising by operation of law, and any agreement to give any of the foregoing, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement and any lease in the nature thereof and any option, call, trust, contractual, statutory, UCC (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such property, and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Loans” shall mean an Interim Term Loan, and/or an Extended Term Loan, as the context may require.

“Loan Collateral” shall mean, an amount equal to the sum of, without duplication, (i) (A) prior to the first anniversary after the Closing Date, an amount equal to the sum of (x) the per share purchase price and/or tender consideration paid by Borrower for the Equity Interests of Schuff held by Borrower multiplied by the number of shares held, directly or indirectly, by Borrower, and (y) the purchase price paid by Newco for the Equity Interests in Bridgehouse Marine held by Newco and (B) thereafter, the Fair Market Value of the Equity Interests of Schuff and Bridgehouse Marine directly and/or indirectly held by Borrower, (ii) with respect to assets other than assets described in clause (i), the Fair Market Value of the Collateral (other than cash and Cash Equivalents) subject to a Lien in favor of the Collateral Agent pursuant to the Security Agreement, (iii) the Fair Market Value of the Equity Interests held by a Subsidiary Guarantor constituting Excluded Assets (as defined in the Security Agreement) pursuant to clauses (e) or (f) of the definition thereof, (iv) the amount of cash and Cash Equivalents in excess of the aggregate amount of unrestricted cash and Cash Equivalents of the Loan Parties then required pursuant to Section 6.10(c) (other than Borrower’s obligation to pay cash interest on the Convertible Preferred Stock) that is (x) shown on the most recent financial statements of Borrower delivered pursuant to Section 5.01(a) or (b) and (y) subject to a Lien in favor of the Collateral Agent pursuant to the Security Agreement and deposited in accounts over which the Collateral Agent has Control, (v) Borrower’s rights, title or interests in any amounts to be received in accordance with the Escrow Agreements other than (x) the Indemnity Escrow Amount (as defined in the NA Telecom Escrow Agreement), (y) 50% of the Second Closing Escrow Amount (as defined in the NA Telecom Escrow Agreement and (z) 50% of the ETA Escrow Amount (as defined in the NA Telecom Escrow Agreement), and (vi) after-acquired properties subject to a security interest under any Security Document or future acquisitions of subsidiaries that become Loan Parties as shall be agreed by the Administrative Agent from time to time in its sole discretion.

“Loan Documents” shall mean this Agreement, the Notes (if any), the Security Documents, each Joinder Agreement, any other agreements, documents and instruments providing for or evidencing any other Obligations, and any other document or instrument executed or delivered at any time in connection with any Obligations, including any intercreditor or joinder agreement among holders of Obligations, to the extent such are effective at the relevant time, as each may be amended, restated, supplemented, modified, renewed or extended from time to time, and, except for purposes of Section 11.02(b), the Fee Letter and the Engagement Letter.

“Loan Parties” shall mean Borrower and the Subsidiary Guarantors.

“Margin Stock” shall have the meaning assigned to such term in Regulation U.

“Material Adverse Effect” shall mean (a) a material adverse effect on, or material adverse change in, the condition (financial or otherwise), results of operations, assets, liabilities (contingent or otherwise), properties, solvency, business or value of the Companies, taken as a whole, or the Loan Parties, taken as a whole, (b) material impairment of the ability of the Loan Parties to fully and timely perform any of their obligations under any Loan Document, (c) a material impairment of the rights of or benefits or remedies available to the Lenders or any Agent under any Loan Document, or (d) a material adverse effect on the Collateral (or any portion thereof) or the Liens in favor of the Collateral Agent (for its benefit and for the benefit of the other Secured Parties) on the Collateral or the validity, enforceability, perfection or priority of such Liens.

“Material Agreement” shall mean any agreement, contract or instrument to which any Company is a party or by which any Company or any of its properties is bound (i) pursuant to which any Company is required to make payments or other consideration, or will receive payments or other consideration, in excess of \$10,000,000 in any twelve month period, (ii) governing, creating, evidencing or relating to Material Indebtedness of any Company, or (iii) the termination or suspension of which, or the failure of any party thereto to perform its obligations thereunder, could reasonably be expected to have a Material Adverse Effect.

“Material Indebtedness” shall mean any Indebtedness or Hedging Obligations of any Company in an aggregate outstanding principal amount exceeding \$10,000,000. For purposes of determining Material Indebtedness, the “principal amount” in respect of any Hedging Obligations of any Company at any time shall be the Hedging Termination Value thereof at such time.

“Maturity Date” shall mean the Interim Term Loan Maturity Date and/or the Extended Term Loan Maturity Date, as the context may require.

“**Maximum Rate**” shall have the meaning assigned to such term in Section 11.13.

“**Mortgage**” shall mean an agreement, including a mortgage, deed of trust or any other document, creating and evidencing a first priority Lien (subject to Permitted Collateral Liens) on a Mortgaged Property, which in the case of Real Property owned in fee, shall in form and substance reasonably satisfactory to the Collateral Agent, in each case, with such schedules and including such provisions as shall be necessary to conform such document to applicable local or foreign law or as shall be customary under applicable local or foreign Legal Requirements.

“**Mortgaged Property**” shall mean (a) each Real Property identified on Schedule 1.01(b) hereto and (b) each Real Property, if any, which shall be subject to a Mortgage delivered after the Closing Date pursuant to Section 5.11(d).

“**Multiemployer Plan**” shall mean a multiemployer plan within the meaning of Section 4001(a)(3) or Section 3(37) of ERISA, (a) to which any Company or any of its ERISA Affiliates is then making or accruing an obligation to make contributions, (b) to which any Company or any of its ERISA Affiliates has within the preceding six plan years made or been obligated to make contributions, or (c) with respect to which any Company could incur liability, whether absolute or contingent.

“**NA Telecom Escrow Agreement**” shall mean that certain Escrow Agreement, dated as of July 31, 2014, among PTUS, Inc., PTCAN, Inc., Borrower (f/k/a Primus Telecommunications Group, Incorporated) and JPMorgan Chase Bank, N.A.

“**NA Telecom Purchase Agreement**” shall mean that certain Equity Purchase Agreement, dated as of May 10, 2013, among PTUS, Inc., PTCAN, Inc., Borrower (f/k/a Primus Telecommunications Group, Incorporated), Primus Telecommunications Holding, Inc., Primus Telecommunications International, Inc. and Lingo Holdings, Inc.

“**Newco**” shall have the meaning assigned to such term in the first recital hereto.

“**Net Cash Proceeds**” shall mean:

(a) with respect to any Asset Sale (other than any issuance or sale of Equity Interests), the proceeds thereof in the form of cash, cash equivalents and marketable securities (including any such proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable, or by the sale, transfer or other disposition of any non-cash consideration received in connection therewith or otherwise, but only as and when received) received by any Company (including cash proceeds subsequently received (as and when received by any Company) in respect of non-cash consideration initially received) net of (i) reasonable and customary selling expenses (including reasonable brokers’ fees or commissions, legal, accounting and other professional and transactional fees, transfer and similar taxes and Borrower’s good faith estimate of income taxes paid or payable in connection with

such sale (after taking into account any available tax credits or deductions and any tax sharing arrangements)), (ii) amounts provided as a reserve, in accordance with GAAP, against (x) any liabilities under any indemnification obligations associated with such Asset Sale or (y) any other liabilities retained by any Company associated with the properties sold in such Asset Sale (*provided* that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds), and (iii) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness for borrowed money that is secured by a Lien on the properties sold in such Asset Sale (so long as such Lien was permitted to encumber such properties under the Loan Documents at the time of such sale) and which is repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such properties);

(b) with respect to any (i) Debt Issuance, (ii) Equity Issuance (iii) other issuance or sale of Equity Interests by Borrower or any of its Subsidiaries, or (iv) any Extraordinary Receipts, the cash proceeds thereof received by any Company, net of reasonable and customary fees, commissions, costs and other expenses incurred in connection therewith; and

(c) with respect to any Casualty Event, the cash insurance proceeds, condemnation awards and other compensation received by any Company in respect thereof, net of all reasonable costs and expenses incurred in connection with the collection of such proceeds, awards or other compensation in respect of such Casualty Event.

“**Non-Public Information**” shall mean material non-public information (within the meaning of United States federal, state or other applicable securities laws) with respect to Borrower and its Subsidiaries or their securities.

“**Notes**” shall mean any notes evidencing the Loans issued pursuant to Section 2.04(e), if any, substantially in the form of Exhibit I.

“**Obligations**” shall mean (a) all obligations of Borrower and the other Loan Parties from time to time arising under or in respect of the due and punctual payment of (i) the principal of and premium, if any, and interest (including interest accruing during the pendency of any Insolvency Proceeding, regardless of whether allowed or allowable in such Insolvency Proceeding) on the Loans, 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, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any Insolvency Proceeding, regardless of whether allowed or allowable in such Insolvency Proceeding), of Borrower and the other Loan Parties under this Agreement and the other Loan Documents, and (b) the due and punctual performance of all covenants, agreements, obligations and liabilities of Borrower and the other Loan Parties under or pursuant to this Agreement and the other Loan Documents, in each case, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising.

“**OFAC**” shall have the meaning assigned to such term in [Section 3.21\(b\)](#).

“**Officers’ Certificate**” shall mean a certificate executed by a Responsible Officer in his or her official (and not individual) capacity.

“**Order**” shall mean any judgment, decree, verdict, order, consent order, consent decree, writ, declaration or injunction.

“**Organizational Documents**” shall mean, with respect to any person, (i) in the case of any corporation, the certificate of incorporation, articles of incorporation or deed of incorporation and by-laws (or similar documents) of such person, (ii) in the case of any limited liability company, the certificate or articles of formation or organization and operating agreement or memorandum and articles of association (or similar constituent documents) of such person, (iii) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar constituent documents) of such person (and, where applicable, the equityholders or shareholders registry of such person), (iv) in the case of any general partnership, the partnership agreement (or similar constituent document) of such person, (v) in any other case, the functional equivalent of the foregoing, and (vi) any shareholder, voting trust or similar agreement between or among any holders of Equity Interests of such person.

“**Other List**” shall have the meaning assigned to such term in [Section 6.19](#).

“**Other Taxes**” shall mean any and all present or future stamp, documentary, intangible, recording, filing or similar Taxes (including interest, fines, penalties and additions with respect to any of the foregoing) arising from any payment made or required to be made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

“**Participant**” shall have the meaning assigned to such term in [Section 11.04\(e\)](#).

“**Participant Register**” shall have the meaning assigned to such term in [Section 11.04\(e\)](#).

“**Patriot Act**” shall have the meaning assigned to such term in [Section 3.21\(a\)](#).

“**PBGC**” shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

“**Pension Plan**” shall mean any “employee pension benefit plan” as 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 maintained or contributed to by any Company or any of its ERISA Affiliates or with respect to which any Company could incur liability, whether absolute or contingent (including under Section 4069 of ERISA).

“Pensions Regulator” shall mean the body corporate known as the Pensions Regulator and established under Part 1 of the UK Pensions Act 2004.

“Perfection Certificate” shall mean a perfection certificate in the form of Exhibit J-1 or any other form approved by the Collateral Agent, as the same shall be supplemented from time to time by a Perfection Certificate Supplement or otherwise.

“Perfection Certificate Supplement” shall mean a perfection certificate supplement in the form of Exhibit J-2 or any other form approved by the Collateral Agent.

“Permanent Notes” means any debt securities issued in to refinance the Loans or pursuant to a Permanent Securities Notice and purchased or placed by Jefferies LLC.

“Permanent Notes Documents” means the Permanent Notes Indenture, the Permanent Notes, and each other instrument or agreement executed in connection with the Permanent Notes and any instrument or agreement executed in connection with any refinancings and replacements thereof to the extent permitted under Section 6.01, as each such material instrument or agreement may be amended, restated, supplemented, replaced or otherwise modified from time to time.

“Permanent Notes Indebtedness” means the Indebtedness of Borrower and the other Loan Parties incurred pursuant to or evidenced by the Permanent Notes Documents.

“Permanent Notes Indenture” means an indenture to be entered into by Borrower, the Guarantors, the trustee thereunder and a collateral trustee or agent governing and pursuant to which the Permanent Notes are issued, as the same may be amended, restated, supplemented, replaced, refinanced or otherwise modified from time to time.

“Permanent Securities Notice” means the notice by Jefferies Finance LLC, which may be given on or after October 31, 2014 and prior to the first anniversary of the Closing Date, pursuant to which Borrower will issue and sell Permanent Notes.

“Permitted Acquisition” shall mean any transaction or series of related transactions for the direct or indirect (a) acquisition of all or substantially all of the property of any person, or of any business or division of any person, (b) acquisition of a majority of the Equity Interests of any person, and otherwise causing such person to become a Subsidiary of such person, or (c) merger or consolidation or any other combination with any person, if each of the following conditions is met:

- (i) no Default or Event of Default then exists or would result therefrom;

(ii) after giving effect to such transaction on a Pro Forma Basis, unless expressly approved by the Administrative Agent in its sole discretion, the person or business to be acquired shall have generated positive cash flow for the Test Period most recently ended prior to the date of consummation of such acquisition;

(iii) after giving effect to such transaction on a Pro Forma Basis, the aggregate amount of all unrestricted cash and Cash Equivalents of the Loan Parties shall be at least the sum of (x) the aggregate amount of unrestricted cash and Cash Equivalents of the Loan Parties then required pursuant to Section 6.10(c) plus (y) \$2,500,000;

(iv) no Company shall, in connection with any such transaction, assume or remain liable with respect to any Indebtedness or Contingent Obligation (including any material tax or ERISA liability) of the related seller or the business, person or properties acquired;

(v) the property acquired in connection with any such transaction shall be made subject to the Lien of the Security Documents in accordance with Section 5.11 and shall be free and clear of any Liens, other than Permitted Collateral Liens;

(vi) the Board of Directors of the person to be acquired shall not have indicated its opposition to the consummation of such acquisition (which opposition has not been publicly withdrawn);

(vii) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable Legal Requirements;

(viii) Borrower shall have provided the Administrative Agent and the Lenders with (A) historical financial statements for the last three fiscal years (or, if less, the number of years since formation) of the person or business to be acquired (audited if available without undue cost or delay) and unaudited financial statements thereof for the most recent interim period that is available, (B) a reasonably detailed description of all material information relating thereto and copies of all material documentation pertaining to such transaction, and (C) all such other information and data relating to such transaction or the person or business to be acquired as may be reasonably requested by the Administrative Agent;

(ix) such transaction could not reasonably be expected to result in a Material Adverse Effect; and

(x) (a) in the case of an acquisition of all or substantially all of the property of any person, (A) the person making such acquisition is Borrower or a Subsidiary Guarantor, and (B) to the extent required under the Loan Documents, including Section 5.11, upon consummation of the Permitted Acquisition, the person being so acquired becomes a Subsidiary Guarantor, (b) in the case of an acquisition of the Equity Interests

of any person, (A) the person making such acquisition is Borrower or a Subsidiary Guarantor (B) no less than a majority of the Equity Interests of the target person shall be acquired by the person making such acquisition, and (C) to the extent required under the Loan Documents, including Section 5.11, upon consummation of the Permitted Acquisition, the person the Equity Interests of which are being so acquired becomes a Subsidiary Guarantor, and (c) in the case of a merger or consolidation or any other combination with any person, the person surviving such merger, consolidation or other combination (x) is Borrower or a Subsidiary Guarantor or (y) to the extent required under the Loan Documents, including Section 5.11, upon consummation of the Permitted Acquisition becomes a Subsidiary Guarantor.

(xi) in the case of the acquisition of 100% of the Equity Interests of any person (including by way of merger, consolidation or other combination), such person shall own no Equity Interests of any other person (other than de minimis amounts) unless either (x) such person owns 100% of the Equity Interests of such other person or (y) if such person owns Equity Interests in any other person which is not a Wholly Owned Subsidiary of such person, (1) such non-Wholly Owned Subsidiary shall not have been created or established in contemplation of, or for purposes of, the respective Permitted Acquisition, (2) any such non-Wholly Owned Subsidiary of the respective person shall have been a non-Wholly Owned Subsidiary of such person prior to the date of the respective Permitted Acquisition and (3) such person and/or its Wholly-Owned Subsidiaries own at least 95% of the total value of all the assets owned by such person and its Subsidiaries (for purposes of such determination, excluding the value of the Equity Interests of non-Wholly Owned Subsidiaries held by such person and its Wholly Owned Subsidiaries).

(xii) at least three Business Days prior to the proposed date of consummation of each such transaction, Borrower shall have delivered to the Administrative Agent and the Lenders an Officers' Certificate certifying that such transaction and related series of transactions complies with this definition (which Officers' Certificate shall have attached thereto reasonably detailed backup data and calculations showing such compliance).

“Permitted Collateral Liens” shall mean (a) in the case of Collateral other than Mortgaged Property, Permitted Liens and (b) in the case of Mortgaged Property, “Permitted Collateral Liens” shall mean the Liens described in clauses (a), (b), (d), (e), (g) and (n) of Section 6.02; *provided, however*, on the Closing Date or upon the date of delivery of each additional Mortgage under Section 5.11 or 5.12, Permitted Collateral Liens shall mean only those Liens that are (i) identified on a schedule to the applicable Mortgage, (ii) excepted as being prior to the Lien of such Mortgage as set forth in the title insurance policy (or commitment) relating to such Mortgaged Property issued by the applicable Title Company and (iii) otherwise Permitted Liens.

“Permitted Hedging Agreement” shall mean any Hedging Agreement to the extent constituting a swap, cap, collar, forward purchase or similar agreements or arrangements dealing with interest rates, currency exchange rates or commodity prices, either generally or under specific contingencies, in each case entered into in the ordinary course of business and not for speculative purposes or taking a “market view.”

“Permitted Holders” shall mean Harbinger Group, Inc.

“Permitted Liens” shall have the meaning assigned to such term in [Section 6.02](#).

“Person” shall mean any natural person, corporation, business trust, joint venture, trust, association, company (whether limited in liability or otherwise), partnership (whether limited in liability or otherwise) or Governmental Authority, or any other entity, in any case, whether acting in a personal, fiduciary or other capacity.

“Platform” shall mean IntraLinks, SyndTrak or a substantially similar electronic transmission system.

“Pledgor” shall mean each Company listed on [Schedule 1.01\(d\)](#), and each other Subsidiary of any Loan Party that is or becomes a party to this Agreement (in its capacity as a Subsidiary Guarantor) and the Security Documents pursuant to [Section 5.11](#).

“Preferred Stock” shall mean, with respect to any person, any and all preferred or preference Equity Interests (however designated) of such person whether now outstanding or issued after the Closing Date.

“Preferred Stock Issuance” shall mean the issuance or sale by any Company of any Preferred Stock after the Closing Date.

“Premises” shall have the meaning assigned thereto in the applicable Mortgage.

“Pro Forma Basis” shall mean, with respect to compliance with any test or covenant hereunder, compliance with such covenant or test after giving effect to (a) the Acquisition or (b) any Asset Sale, Permitted Acquisition, Investment or Dividend, as if the Asset Sales, Permitted Acquisitions, Investments or Dividends consummated during the applicable period, and any Indebtedness or other liabilities incurred in connection with the Acquisition or Asset Sale, Investment or Dividend had been consummated and incurred at the beginning of such period. For purposes of this definition, if any Indebtedness to be so incurred bears interest at a floating rate and is being given pro forma effect, the interest on such Indebtedness will be calculated as if the rate in effect on the date of incurrence had been the applicable rate for the entire period (taking into account any applicable interest rate Hedging Agreements).

“Projections” shall have the meaning assigned to such term in [Section 3.04\(b\)](#).

“Property” shall mean any right, title or interest in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and including Equity Interests of any person and whether now in existence or owned or hereafter entered into or acquired, including all Real Property, cash, securities, accounts, revenues and contract rights.

“Public Lenders” shall mean Lenders that do not wish to receive Non-Public Information with respect to Borrower or its Subsidiaries.

“Purchase Money Obligation” shall mean, for any person, the obligations of such person in respect of Indebtedness (including Capital Lease Obligations) incurred for the purpose of financing all or any part of the purchase price of any fixed or capital assets (including Equity Interests of any person owning fixed or capital assets) or the cost of installation, construction or improvement of any fixed or capital assets *provided, however*, that (i) such Indebtedness is incurred within 90 days after such acquisition, installation, construction or improvement of such fixed or capital assets (including Equity Interests of any person owning the applicable fixed or capital assets) by such person and (ii) the amount of such Indebtedness does not exceed the lesser of 100% of the Fair Market Value of such fixed or capital asset or the cost of the acquisition, installation, construction or improvement thereof, as the case may be.

“Qualified Capital Stock” of any person shall mean any Equity Interests of such person that are not Disqualified Capital Stock.

“Real Property” shall mean, collectively, all right, title and interest (including any leasehold, fee, mineral or other estate) in and to any and all parcels of or interests in real property owned, leased or operated by any person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“Register” shall have the meaning assigned to such term in [Section 11.04\(c\)](#).

“Regulation D” shall mean Regulation D of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation S-X” shall mean Regulation S-X promulgated under the Securities Act as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation T” shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation U” shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Regulation X” shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

“Related Person” shall mean, with respect to any person, (a) each Affiliate of such person and each of the officers, directors, partners, trustees, employees, affiliates, shareholders, Advisors, agents, attorneys-in-fact and Controlling persons of each of the foregoing, and (b) if such person is an Agent, each other person designated, nominated or otherwise mandated by or assisting such Agent pursuant to Section 9.05 or any comparable provision of any Loan Document.

“Release” shall mean any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, dispersing, emanating or migrating of any Hazardous Materials in, into, onto, from or through the Environment or any Real Property.

“Required Lenders” shall mean, at any date of determination, Lenders having Loans and Commitments representing more than 50% of the sum of all Loans outstanding and Commitments at such time; *provided* that (i) the Loans and Commitments of any Defaulting Lender shall be disregarded in determining Required Lenders at any time and (ii) the portion of any Loans held by Affiliated Debt Funds in the aggregate in excess of 49.9% of the Required Amount of Loans shall be disregarded in determining Required Lenders at any time. For purposes of the foregoing, **“Required Amount of Loans”** means, at any time, the amount of Loans required to be held by Lenders in order for such Lenders to constitute “Required Lenders” (without giving effect to the foregoing clause (ii)).

“Required Offering Document” shall have the meaning assigned to such term in Section 10.03(e).

“Requirement of Law” shall mean as to any person, the governing documents of such person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such person or any of its Real Property or personal property or to which such person or any of its property of any nature is subject.

“Response” shall mean (a) “response” as such term is defined in CERCLA, 42 U.S.C. § 9601(25) or any words of similar import defined under other applicable Environmental Law, or (b) all other actions required by any Governmental Authority or voluntarily undertaken to (i) clean up, remove, treat, remediate, contain, assess, abate, monitor or in any other way address any Hazardous Materials at, in, on, under or from any Real Property, or otherwise in the Environment, (ii) prevent, stop, control or minimize the Release or threat of Release, or minimize the further Release, of any Hazardous Material, or (iii) perform studies, investigations, maintenance or monitoring in connection with, following, or as a precondition to or to determine the necessity of, the actions set forth in clause (i) or (ii) above.

“Responsible Officer” of any person shall mean any executive officer or Financial Officer of such person and any other officer or similar official thereof with significant responsibility for the administration of the obligations of such person in respect of this Agreement.

“**Restricted Indebtedness**” shall mean Indebtedness of any Company, the payment, prepayment, repurchase, defeasance or acquisition for value of which is restricted under Section 6.11.

“**Sale and Leaseback Transaction**” shall have the meaning assigned to such term in Section 6.03.

“**Sarbanes-Oxley Act**” shall mean the United States Sarbanes-Oxley Act of 2002, as amended from time to time and, and any successor statute.

“**Schuff**” shall have the meaning assigned to such term in the first recital hereto.

“**Schuff Credit Facility**” shall mean that certain Second Amended and Restated Credit and Security Agreement, dated as of August 14, 2013, between Schuff, the other Persons party thereto from time to time, and Wells Fargo Credit, Inc., as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“**SDN List**” shall have the meaning assigned to such term in Section 6.19.

“**Secured Obligations**” shall mean (a) the Obligations and (b) the due and punctual payment and performance of all obligations of Borrower and the other Loan Parties under each Permitted Hedging Agreement intended to protect against fluctuations in interest rates entered into with any counterparty that is a Secured Party; *provided, however*, in no event shall “Secured Obligations” include Excluded Swap Obligations.

“**Secured Parties**” shall mean, collectively:

(a) with respect to the Obligations, the Administrative Agent, the Collateral Agent, each other Agent and the Lenders;

(b) with respect to obligations under Permitted Hedging Agreements intended to protect against fluctuations in interest rates, the Administrative Agent, the Collateral Agent, each other Agent, the Lenders and each counterparty to a Permitted Hedging Agreement relating to the Loans if (i) at the date of entering into such Hedging Agreement such counterparty was an Agent, a Lender or an Affiliate of an Agent or Lender, and (ii) such counterparty executes and delivers to the Administrative Agent a letter agreement in form and substance acceptable to the Administrative Agent pursuant to which such counterparty (x) appoints the Administrative Agent and the Collateral Agent as its agents under the applicable Loan Documents and (y) agrees to be bound by the provisions of Sections 9.03, 11.03 and 11.09 as if it were a Lender; and

(c) with respect to overdrafts and related liabilities arising from treasury, depository and cash management services or in connection with any automated clearinghouse transfer of funds, the Administrative Agent, the Collateral Agent, each other Agent, each Lender, and each Affiliate of an Agent or Lender that, in each case, provides treasury, depository and/or cash management services to a Loan Party; *provided* that such Affiliate executes and delivers to the Administrative Agent a letter agreement in form and substance acceptable to the Administrative Agent pursuant to which such Affiliate (x) appoints the Administrative Agent and the Collateral Agent as its agents under the applicable Loan Documents and (y) agrees to be bound by the provisions of Sections 9.03, 11.03 and 11.09 as if it were a Lender.

“**Securities Act**” shall mean the Securities Act of 1933, as amended from time to time and, and any successor statute.

“**Securities Collateral**” shall have the meaning assigned to such term in the Security Agreement.

“**Security Agreement**” shall mean a Security Agreement substantially in the form of Exhibit K among the Loan Parties and the Collateral Agent for the benefit of the Secured Parties, as the same may be amended, restated, supplemented (by one or more Joinder Agreements) or otherwise modified from time to time.

“**Security Agreement Collateral**” shall mean all property pledged or granted as collateral pursuant to the Security Agreement delivered on the Closing Date or thereafter pursuant to Section 5.11.

“**Security Documents**” shall mean the Security Agreement, the Mortgages, each Control Agreement and each other security document or pledge agreement delivered in accordance with applicable local or foreign Legal Requirements to grant a valid, enforceable, perfected security interest (with the priority required under the Loan Documents) in any property as collateral for the Secured Obligations, and all UCC or other financing statements or instruments of perfection required by this Agreement, the Security Agreement, any Mortgage, any Control Agreement or any other such security document or pledge agreement to be filed or registered with respect to the security interests in property created pursuant to the Security Agreement, any Mortgage, any Control Agreement and any other document or instrument utilized to pledge any property as collateral for the Secured Obligations.

“**Solvency Certificate**” shall have the meaning assigned to such term in Section 4.01(h).

“**SPC**” shall have the meaning assigned to such term in Section 11.04(h).

“**Specified Party**” shall have the meaning assigned to such term in Section 2.10(h)(iv).

“**Statutory Reserves**” shall mean, for any day during any Interest Period for any Eurodollar Borrowing, the average maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained, during such Interest Period under regulations issued from time to time (including “Regulation D,” issued by the Board of Governors of the Federal Reserve Bank of the United States (the “**Reserve Regulations**”) by member banks of the United States Federal Reserve System in New York City with deposits exceeding one billion Dollars against Eurocurrency funding liabilities (currently referred to as “Eurocurrency liabilities” (as such term is used in Regulation D)). Eurodollar Borrowings shall be deemed to constitute Eurodollar liabilities and to be subject to such reserve requirements without benefit of or credit for proration, exceptions or offsets which may be available from time to time to any Lender under the Reserve Regulations.

“**Subordinated Indebtedness**” shall mean Indebtedness of any Company that is by its terms subordinated in right of payment to all or any portion of the Secured Obligations.

“**Subsidiary**” shall mean, with respect to any person (the “**parent**”) at any date, (i) any other corporation, association or other business entity of which securities or other ownership interests representing more than 50% of the voting power of all Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Board of Directors thereof are, as of such date, owned, controlled or held by the parent and/or one or more subsidiaries of the parent, (ii) any partnership or limited liability company of which (x) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general and limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such parent or one or more of the other subsidiaries of the parent, whether in the form of membership, general, special or limited partnership interests or otherwise, and (y) such parent or any subsidiary of such parent is a controlling general partner or otherwise controls such entity. Unless the context requires otherwise, “**Subsidiary**” refers to a Subsidiary of Borrower.

“**Subsidiary Guarantor**” shall mean each Subsidiary listed on Schedule 1.01(c), and each other Subsidiary of any Loan Party, other than a Tax Excluded Subsidiary that is or becomes a party to this Agreement and the Security Documents pursuant to Section 5.11.

“**Survey**” shall mean a survey of any Mortgaged Property (and all improvements thereon) which is (a) (i) prepared by a surveyor or engineer licensed to perform surveys in the state where such Mortgaged Property is located, (ii) dated (or redated) not earlier than six months prior to the date of delivery thereof unless there shall have occurred within six months prior to such date of delivery any exterior construction on the site of such Mortgaged Property or any easement, right of way or other interest in the Mortgaged Property has been granted or become effective through operation of applicable Legal Requirements or otherwise with respect to such Mortgaged Property which, in either case, can be depicted on a survey, in which events, as applicable, such survey shall be dated (or redated) after the completion of such construction or if such construction shall not have been completed as of such date of delivery, not earlier than 20 days prior to such date of delivery, or after the grant or effectiveness of any such easement, right of

way or other interest in the Mortgaged Property, (iii) certified by the surveyor (in a manner reasonably acceptable to the Administrative Agent) to the Administrative Agent, the Collateral Agent and the Title Company, (iv) complying in all respects with the minimum detail requirements of the American Land Title Association as such requirements are in effect on the date of preparation of such survey and (v) sufficient for the Title Company to remove all standard survey exceptions from the title insurance policy (or commitment) relating to such Mortgaged Property and issue the endorsements of the type required by Section 4.01(n)(iii), or (b) otherwise reasonably acceptable to the Collateral Agent.

“**Swap Obligation**” shall mean, with respect to any Subsidiary Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“**Syndication Agent**” shall have the meaning assigned to such term in the preamble hereto.

“**Synthetic Lease**” shall mean, as to any person, (a) any lease (including leases that may be terminated by the lessee at any time) of any property (i) that is accounted for as an operating lease under GAAP and (ii) in respect of which the lessee retains or obtains ownership of the property so leased for U.S. federal income tax purposes, other than any such lease under which such person is the lessor or (b)(i) a synthetic, off-balance sheet or tax retention lease, or (ii) an agreement for the use or possession of property (including a Sale and Leaseback Transaction), in each case under this clause (b), creating obligations that do not appear on the balance sheet of such person but which, upon the application of any Insolvency Laws to such person, would be characterized as the indebtedness of such person (without regard to accounting treatment).

“**Synthetic Lease Obligations**” shall mean, as to any person, an amount equal to the capitalized amount of the remaining lease payments under any Synthetic Lease that would appear on a balance sheet of such person in accordance with GAAP if such obligations were accounted for as Capital Lease Obligations.

“**Synthetic Purchase Agreement**” shall mean any swap, derivative or other agreement or combination of agreements pursuant to which any Company is or may become obligated to make (a) any payment in connection with a purchase by any third party from a person other than a Company of any Equity Interest or Restricted Indebtedness or (b) any payment (other than on account of a permitted purchase by it of any Equity Interest or Restricted Indebtedness) the amount of which is determined by reference to the price or value at any time of any Equity Interest or Restricted Indebtedness.

“**Target**” shall mean any person acquired pursuant to Section 6.07(f).

“**Tax Excluded Subsidiary**” shall mean any Subsidiary (a) that is a CFC or (b) that directly holds no material assets other than Equity Interests of CFCs.

“**Tax Returns**” shall mean all returns, statements, filings, attachments and other documents or certifications filed or required to be filed in respect of Taxes.

“**Taxes**” shall mean any and all present or future taxes, duties, levies, imposts, assessments, fees, deductions, withholdings or other similar charges imposed by a Governmental Authority, and any and all interest, fines, penalties or additions with respect to the foregoing.

“**Term Borrowing**” shall mean the Initial Interim Term Loan Borrowing and the Delayed Draw Interim Term Loan Borrowing.

“**Term Commitment**” shall mean the Initial Interim Term Loan Commitment, the Delayed Draw Interim Term Loan Commitment and, as to each Lender, its obligation, if any, to make Initial Interim Term Loans and Delayed Draw Interim Term Loans.

“**Term Lender**” shall mean, at any time, any Lender that has an unused Term Commitment or an outstanding Loan, as applicable, at such time.

“**Test Period**” shall mean, at any time, the four consecutive fiscal quarters of Borrower then last ended (in each case taken as one accounting period) for which financial statements have been or are required to be delivered pursuant to Section 5.01(a) or (b).

“**Title Company**” shall mean any title insurance company as shall be retained by Borrower and reasonably acceptable to the Administrative Agent.

“**Title Policy**” shall have the meaning assigned to such term in Section 4.01(n)(iii).

“**Transaction Documents**” shall mean the Closing Date Acquisition Documents, the Delayed Draw Tender Offer Documents, if any, and the Loan Documents.

“**Transactions**” shall mean, collectively, the transactions to occur pursuant to, or contemplated by, the Transaction Documents, including (a) the consummation of the Closing Date Acquisition, (b) the execution, delivery and performance of the Loan Documents and the initial Credit Extensions hereunder, (c) the consummation of the Delayed Draw Tender Offer, if any and (d) the payment of all fees, costs and expenses to be paid on or prior to the Closing Date owing in connection with the foregoing.

“**Transferred Guarantor**” shall have the meaning assigned to such term in Section 7.09.

“**Type**” shall mean, when used in reference to any Loan or Borrowing, a reference to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined on the basis of Adjusted LIBOR Rate or the Alternate Base Rate.

“**UCC**” shall mean the Uniform Commercial Code as in effect from time to time (except as otherwise specified) in any applicable state or jurisdiction.

“**UK DB Plans**” means the Global Marine Systems Pension Plan, the Global Marine Systems Guernsey Pension Plan and the Merchant Navy Officers Pension Fund insofar as that fund applies to the Company.

“**UK GAAP**” shall mean generally accepted accounting principles in the United Kingdom applied on a consistent basis.

“**Unfunded Pension Liability**” shall mean the excess of a Pension Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan’s assets, determined in accordance with the actuarial assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

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

“**Voting Stock**” shall mean, with respect to any person, any class or classes of Equity Interests pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the Board of Directors of such person.

“**Wholly Owned Subsidiary**” shall mean, with respect to any person, (a) any corporation 100% of whose capital stock (other than directors’ qualifying shares to the extent required under applicable Legal Requirements) is at the time owned by such person and/or one or more Wholly Owned Subsidiaries of such person and (b) any partnership, association, joint venture, limited liability company or other entity in which such person and/or one or more Wholly Owned Subsidiaries of such person have a 100% Equity Interest (other than directors’ qualifying shares to the extent required under applicable Legal Requirements) at such time.

Section 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a “Eurodollar Loan”). Borrowings also may be classified and referred to by type (e.g., a “Eurodollar 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 phrase “Material Adverse Effect” shall be deemed to be followed by the phrase “, individually or in the aggregate”. The words “asset” and “property” shall be construed to have the same meaning and effect. 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 Loan Document, agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in any Loan Document), (b) any reference herein to any person shall be construed to include such person’s successors and assigns, (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, unless otherwise indicated and (e) any reference to any law or regulation shall (i) include all statutory and regulatory provisions consolidating, amending, replacing or interpreting or supplementing such law or regulation, and (ii) unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time. This Section 1.03 shall apply, *mutatis mutandis*, to all Loan Documents.

Section 1.04 Accounting Terms; GAAP. Except as otherwise expressly provided herein, all financial statements to be delivered pursuant to this Agreement shall be prepared in accordance with and all terms of an accounting or financial nature shall be construed and interpreted in accordance with GAAP as in effect from time to time. If at any time any change in GAAP would affect the computation of any financial ratio or compliance with any requirement set forth in any Loan Document, and Borrower or the Required Lenders shall so request, the Administrative Agent and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to approval by the Required Lenders and Borrower); *provided that*, until so amended, such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein, and Borrower shall provide to the Administrative Agent and the Lenders within five days after delivery of each certificate or financial report required hereunder that is affected thereby a written statement of a Financial Officer of Borrower setting forth in reasonable detail the differences (including any differences that would affect any calculations relating to the financial covenants as set forth in Section 6.10) that would have resulted if such financial statements had been prepared without giving effect to such change.

Section 1.05 Pro Forma Calculations. With respect to any applicable period during which the Acquisition, Asset Sale, Permitted Acquisition, Investment or Dividend occurs as permitted pursuant to the terms hereof, the financial covenants set forth in Section 6.10 shall be calculated with respect to such period and the Acquisition, Asset Sale, Permitted Acquisition, Investment or Dividend on a Pro Forma Basis.

Section 1.06 Resolution of Drafting Ambiguities. Each Loan Party acknowledges and agrees that it was represented by counsel in connection with the execution and delivery of the Loan Documents to which it is a party, that it and its counsel reviewed and participated in the preparation and negotiation hereof or thereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation hereof or thereof.

**ARTICLE II
THE CREDITS**

Section 2.01 Commitments. (a) Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Initial Interim Term Loan Lender agrees, severally and not jointly, to make a single loan to Borrower on the Closing Date in the principal amount equal to its Initial Interim Term Loan Commitments. It is understood and agreed that each Initial Term Lender's commitment to make an Initial Term Loan on the Closing Date shall be satisfied by the funding of Initial Interim Term Loans in an aggregate principal amount of 80,943,000 Pounds Sterling and \$74,440,876. The Initial Interim Term Loan shall be repaid in Dollars. Amounts paid or prepaid in respect of Initial Interim Term Loans may not be reborrowed.

(b) Subject to the terms and conditions and relying upon the representations and warranties herein set forth, any time after the Closing Date but on or prior to the date that is 90 days after the Closing Date, each Delayed Draw Interim Term Loan Lender agrees, severally and not jointly, to make a single loan to Borrower in the principal amount equal to its Delayed Draw Interim Term Loan Commitment. The Delayed Draw Interim Term Loan shall be denominated in Dollars and shall be repaid in Dollars. Amounts paid or prepaid in respect of Delayed Term Loans may not be reborrowed.

(c) If on the Interim Term Loan Maturity Date (i) the Interim Term Loans have not been paid in full, (ii) no Default or Event of Default exists, (iii) no order, decree, injunction or judgment enjoining the conversion of Interim Term Loans to Extended Term Loans is in effect, and (iv) the Administrative Agent receives an officers' certificate from Borrower certifying to the foregoing, then, on the Conversion Date, all outstanding Interim Term Loans shall be converted to Extended Term Loans maturing on the Extended Term Loan Maturity Date. The Extended Term Loans shall contain such terms, conditions and covenants and intercreditor provisions substantially similar to the terms, conditions and covenants and intercreditor provisions governing the Exchange Notes with such modifications as determined by Jefferies LLC in its reasonable discretion without the consent of any Lender.

(d) On and after the Conversion Date, the outstanding principal amount of Term Loans may, at each Lender's option, be exchanged into Exchange Notes in accordance with the terms set forth in Article X.

Section 2.02 Loans. (a) Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their applicable Commitments.

(b) Subject to Sections 2.11 and 2.12, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as Borrower may request pursuant to Section 2.03. Each Lender may at its option make any Eurodollar Loan by causing any domestic or foreign branch of such Lender to make such Loan; *provided* that any exercise of such option shall not affect the obligation of the Lender to make such Loan and Borrower to repay such Loan in accordance with the terms of this Agreement. Borrowings of more than one Type may be outstanding at the same time; *provided* that Borrower shall not be entitled to request any Borrowing that, if made, would result in more than five Eurodollar Borrowings in the aggregate outstanding hereunder at any one time. For purposes of the foregoing, Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

(c) Notwithstanding any other provision of this Agreement, Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

Section 2.03 Borrowing Procedure. To request a Borrowing, Borrower shall deliver, by hand delivery or facsimile (or transmit by other electronic transmission, if arrangements for doing so have been approved in writing by the Administrative Agent), a duly completed and executed Borrowing Request to the Administrative Agent (i) in the case of a Eurodollar Borrowing, not later than 1:00 p.m., New York City time, three Business Days before the date of the proposed Borrowing or (ii) in the case of an ABR Borrowing, not later than 1:00 p.m., New York City time, on the date of the proposed Borrowing. Each Borrowing Request for a Loan shall be irrevocable and shall specify the following information:

(a) whether Borrower is requesting an Initial Interim Term Loan Borrowing or a Delayed Draw Interim Term Loan Borrowing;

(b) the aggregate amount of such Borrowing;

(c) the date of such Borrowing, which shall be a Business Day;

(d) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;

(e) 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 "Interest Period";

(f) the location and number of Borrower's account to which funds are to be disbursed; and

(g) that the conditions set forth in Sections 4.02(b)-(c) are satisfied as of the date of the notice.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then Borrower shall be deemed to have selected an Interest Period of one 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 details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

Section 2.04 Evidence of Debt; Repayment of Loans. (a) Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender, the principal amount of each Loan of such Lender as provided in Section 2.09.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(c) The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the 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 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.

(d) The entries made in the accounts maintained pursuant to Sections 2.04(b) and (c) shall be *prima facie* evidence of the existence and amounts of the obligations therein recorded; *provided* that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of Borrower and the other Loan Parties to pay, and perform, the Obligations in accordance with the Loan Documents. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such entries, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(e) Any Lender by written notice to Borrower (with a copy to the Administrative Agent) may request that Loans made by it be evidenced by a promissory note. In such event, Borrower shall promptly (and, in all events, within five Business Days of receipt of such written notice) prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) in the form of Exhibit I. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 11.04) be represented by one or more promissory notes in such form payable to the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

Section 2.05 Fees.

(a) Administrative Agent Fees. Borrower agrees to pay to the Administrative Agent, for its own account, the administrative fees set forth in the Fee Letter and such other fees payable in the amounts and at the times separately agreed upon between Borrower and the Administrative Agent (the "**Administrative Agent Fees**").

(b) **Delayed Draw Interim Term Loan Fee.** Borrower shall pay to the Administrative Agent for the account of each Delayed Draw Interim Term Loan a fee equal to the Applicable Margin on and after the Closing Date, times the actual daily amount of the undrawn Delayed Draw Interim Term Loan Commitments, multiplied by a fraction, the numerator of which is the number of days elapsed from the Closing Date until the Delayed Draw Expiration Date and the denominator of which is 360. The fee shall accrue and be charged at all times on and after the Closing Date through (but not including) the Delayed Draw Expiration Date, and shall be due and payable on the Delayed Draw Expiration Date.

(c) **Other Fees.** Borrower agrees to pay the Agents, for their own account, fees payable in the amounts and at the times separately agreed upon between Borrower and the applicable Agents, including pursuant to the Fee Letter.

(d) **Payment of Fees.** All Fees shall be paid on the dates due, in immediately available funds in Dollars, to the Administrative Agent for distribution, if and as appropriate, among the Lenders, except that Borrower shall pay the Fees provided under Section 2.05(c) directly to the Agents. Once paid, none of the Fees shall be refundable under any circumstances.

Section 2.06 Interest on Loans. (a) Subject to the provisions of Section 2.06(c), the Loans comprising each ABR Borrowing shall bear interest at a rate per annum equal to (i) until the Conversion Date, unless a Demand Failure Event has occurred, the Alternate Base Rate plus the Applicable Margin in effect from time to time and (ii) on and after the earlier of the Conversion Date or the occurrence of a Demand Failure Event, a fixed rate equal to the Cap Rate.

(b) Subject to the provisions of Section 2.06(c), the Loans comprising each Eurodollar Borrowing shall bear interest at a rate per annum equal to (i) until the Conversion Date, unless a Demand Failure Event has occurred, the Adjusted LIBOR Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin in effect from time to time and (ii) on and after the earlier of the Conversion Date or the occurrence of a Demand Failure Event, a fixed rate equal to the Cap Rate.

(c) Notwithstanding the foregoing, during an Event of Default, all Obligations shall be payable upon demand and shall, bear interest, after as well as before judgment, at a per annum rate equal to (i) in the case of principal of or interest on any Loan, 2.0% plus the rate otherwise applicable to such Loan as provided in Sections 2.06(a) and (b) or (ii) in the case of any other Obligation, 2.0% plus the rate applicable to ABR Loans as provided in Section 2.06(a) (in either case, the “**Default Rate**”).

(d) Accrued interest on each Loan shall be payable in cash and in arrears on each Interest Payment Date for such Loan; *provided* that (i) interest accrued pursuant to Section 2.06(c) (including interest on past due interest) and all interest accrued but unpaid on or after the Maturity Date 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, (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 and (iv) in the case of any Loan exchanged for an Exchange Note other than on an Interest Payment Date, on such date of exchange.

(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 the 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); *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.14, bear interest for one day. The applicable Alternate Base Rate or Adjusted LIBOR Rate shall be determined by the Administrative Agent in accordance with the provisions of this Agreement and such determination shall be conclusive absent manifest error. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any Insolvency Proceeding.

Section 2.07 Termination of Commitments. (a) The Initial Interim Term Loan Commitment shall automatically terminate at 5:00 p.m., New York City time, on the Closing Date (after the funding of the Initial Interim Term Loan Borrowing).

(b) The Delayed Draw Interim Term Loan Commitment shall automatically terminate at 5:00 p.m., New York City time, on the earliest of (w) the date that the Delayed Draw Interim Term Loan Borrowing is funded (after such funding of the Delayed Draw Interim Term Loan Borrowing) (x) the date that all transactions contemplated by the Delayed Draw Tender Offer (including any related merger or other acquisition, any subsequent tender offer or any private or open market purchases) are withdrawn or otherwise terminated, (y) the date the Borrower notifies the Administrative Agent that it no longer has any intention to acquire the remaining shares of Schuff and (z) December 22, 2014.

Section 2.08 Interest Elections. (a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, 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 2.08. 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. Notwithstanding anything to the contrary, Borrower shall not be entitled to request any conversion or continuation that, if made, would result in more than five Eurodollar Borrowings outstanding hereunder at any one time.

(b) To make an election pursuant to this Section 2.08, Borrower shall deliver, by hand delivery or facsimile (or transmit by other electronic transmission if arrangements for doing so have been approved in writing by the Administrative Agent), a duly completed and executed Interest Election Request to the Administrative Agent not later than the time that a

Borrowing Request would be required under Section 2.03 if Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each Interest Election Request shall be irrevocable.

(c) Each Interest Election Request shall specify the following information:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, or if outstanding Borrowings are being combined, allocation 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 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 Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If an Interest Election Request with respect to a Eurodollar Borrowing is not timely delivered prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing, the Administrative Agent or the Required Lenders may require, by notice to Borrower, that (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

Section 2.09 Repayment of Loans. (a) Subject to Section 2.01(c), to the extent not previously irrevocably paid in full in cash, all Interim Term Loans shall be due and payable on the Interim Term Loan Maturity Date.

(b) Subject to Section 2.01(d), to the extent not previously irrevocably paid in full in cash, all Extended Term Loans shall be due and payable on the Extended Term Loan Maturity Date.

Section 2.10 Optional and Mandatory Prepayments of Loans.

(a) Optional Prepayments. Borrower shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, subject to the requirements of this Section 2.10; *provided* that each partial prepayment shall be in an amount that is an integral multiple of \$250,000 and not less than \$250,000.

(b) Escrowed Amounts. Not later than one Business Day following the receipt of any Escrowed Amounts by any Company, Borrower shall apply 50% of such Escrowed Amounts to make prepayments in accordance with Sections 2.10(h).

(c) Asset Sales. Not later than one Business Day following the receipt of any Net Cash Proceeds of any Asset Sale by any Company (other than, Asset Sales permitted under Section 6.06(b)(i), but including Asset Sales permitted under Section 6.06(b)(ii) to the extent such Net Cash Proceeds are not reinvested in accordance with such Section), Borrower shall apply 100% of such Net Cash Proceeds to make prepayments in accordance with Sections 2.10(h).

(d) Equity Issuance. Not later than one Business Day following the receipt of any Net Cash Proceeds of any Equity Issuance by any Company, Borrower shall make prepayments in accordance with Section 2.10(h) in an aggregate principal amount equal to 100% of such Net Cash Proceeds of any Equity Issuance (other than any Equity Interests issued upon the exercise of any warrant or option or equity-based derivative not in excess of \$200,000 in the aggregate);

(e) Extraordinary Receipts. Not later than one Business Day following the receipt of any Net Cash Proceeds from an Extraordinary Receipts by any Company (other than (x) Schuff, Bridgehouse Marine and their respective Subsidiaries and (y) any Target and its Subsidiaries), Borrower shall apply an amount equal to 50% of such Net Cash Proceeds to make prepayments in accordance with Section 2.10(h).

(f) Debt Issuance or Preferred Stock Issuance. (i) Not later than one Business Day following the receipt of any Net Cash Proceeds of any Debt Issuance by any Company, Borrower shall make prepayments in accordance with Section 2.10(h) in an aggregate principal amount equal to 100% of such Net Cash Proceeds;

(ii) Not later than one Business Day following the receipt of any Net Cash Proceeds of any Preferred Stock Issuance by any Company (other than any Preferred Stock Issuance not exceeding \$15,000,000 in the aggregate), Borrower shall make prepayments in accordance with Section 2.10(h) in an aggregate principal amount equal to 50% of such Net Cash Proceeds; and

(iii) Not later than one Business Day following the receipt of any Net Cash Proceeds of any Permanent Notes or any sale or issuance of any other Indebtedness issued or borrowed to refinance the Loans pursuant to a Permanent Securities Notice, in each case purchased or placed by Jefferies LLC, Borrower shall make prepayments in accordance with Section 2.10(h) in an aggregate principal amount equal to 100% of such Net Cash Proceeds received by Borrower or any of its Subsidiaries.

(g) Casualty Events. Not later than one Business Day following the receipt of any Net Cash Proceeds from a Casualty Event by any Company (other than (x) Schuff, Bridgehouse Marine and their respective Subsidiaries and (y) any Target and its Subsidiaries), Borrower shall apply an amount equal to 75% of such Net Cash Proceeds to make prepayments in accordance with Section 2.10(h); *provided that*:

(i) so long as no Default shall then exist or arise therefrom, such proceeds shall not be required to be so applied on such date to the extent that Borrower has delivered a certificate of a Responsible Officer of Borrower to the Administrative Agent on or prior to such date setting forth Borrower's intention to repair, replace or restore the property that was the subject of such Casualty Event, no later than 180 days following the date of receipt of such proceeds (the "**Casualty Proceeds Receipt Date**"); *provided that* if the property subject to such Casualty Event constituted Collateral, then all property purchased or otherwise acquired with the Net Cash Proceeds thereof pursuant to this subsection shall be made subject to the first priority perfected Lien (subject to Permitted Liens) of the applicable Security Documents in favor of the Collateral Agent, for its benefit and for the benefit of the other Secured Parties in accordance with Sections 5.11 and 5.12; and

(ii) if all or any portion of such Net Cash Proceeds shall not be so applied within such 180-day period, such unused portion shall be applied on the last day of such period as a mandatory prepayment as provided in this Section 2.10(g).

(h) Application of Prepayments.

(i) Prior to any optional prepayment hereunder, Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to Section 2.10(h)(iii), subject to the provisions of this Section 2.10(h).

(ii) Amounts to be applied pursuant to this Section 2.10 to the prepayment of shall be applied, as applicable, first to reduce outstanding ABR Loans. Any amounts remaining after each such application shall be applied to prepay Eurodollar Loans.

(iii) Notice of Prepayment. Borrower shall notify the Administrative Agent by written notice of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment and (ii) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, on the date of prepayment. Each such notice shall be irrevocable. Each such notice shall specify the prepayment date, 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. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof. Such notice to the Lenders may be by electronic communication. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing and otherwise in accordance with this Section 2.10. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.06.

(iv) Any amount required to be paid pursuant to Sections 2.10(b) through 2.10(f) shall be applied to prepay Loans on a pro rata basis, in accordance with the respective outstanding principal amounts thereof; *provided* that in the case of an issuance of Permanent Notes to any Lender (or any of its affiliates) or any person to whom a Lender participated an interest in the Loans (or any of such participant's affiliates) (such Lenders, participants and affiliates, "**Specified Parties**"), the Net Cash Proceeds received by Borrower and its subsidiaries in respect of such Permanent Notes acquired by such Specified Parties may, at the option of such Specified Party, be applied first to prepay the Loans of such Specified Party prior to being applied to prepay the Loans held by other Lenders on a pro rata basis.

(v) Waiver of Mandatory Prepayments. Notwithstanding the foregoing provisions of this Section 2.10, (i) in the case of any mandatory prepayment of the Loans on or prior to the date that is six months after the Closing Date, Lenders may waive, by written notice to Borrower and the Administrative Agent on or before the date on which such mandatory prepayment would otherwise be required to be made hereunder, the right to receive the amount of such mandatory prepayment of the Loans, (ii) if any Lender or Lenders elect to waive the right to receive the amount of such mandatory prepayment, all of the amount that otherwise would have been applied to mandatorily prepay the Loans of such Lender or Lenders shall be offered by Borrower to the remaining non-waiving Lender or Lenders on a *pro rata* basis, based on the respective principal amounts of their outstanding Loans, (iii) if and to the extent any such non-waiving Lender does not elect by written notice to Borrower and the Administrative Agent within three Business Days following the date on which the offer is made pursuant to clause (ii) above to accept such offer, such Lender shall be deemed to have rejected such offer, and (iv) any amounts not applied to the prepayment of Loans pursuant to clause (ii) or clause (iii) above may be retained by Borrower and used in accordance with the terms herein

Notwithstanding any other provisions of this Section 2.10, (A) to the extent that (v) any of or all the Net Cash Proceeds of any Asset Sale by a Foreign Subsidiary giving rise to a mandatory prepayment pursuant to Section 2.10(c), (w) any of or all the Net Cash Proceeds of any Equity Issuance made by a Foreign Subsidiary giving rise to a mandatory prepayment pursuant to Section 2.10(d), (x) any of or all the Net Cash Proceeds from Extraordinary Receipts received by

a Foreign Subsidiary giving rise to a mandatory prepayment pursuant to Section 2.10(e), (y) any of or all the Net Cash Proceeds of any Debt Issuance by a Foreign Subsidiary giving rise to a mandatory prepayment pursuant to Section 2.10(f) or (z) any of or all the Net Cash Proceeds of any Casualty Event of a Foreign Subsidiary giving rise to a mandatory prepayment pursuant to Section 2.10(g), in each case are prohibited or delayed by applicable local law from being repatriated to the United States, the portion of such Net Cash Proceeds so affected will not be required to be applied to repay Loans at the times provided in this Section 2.10 but may be retained by the applicable Foreign Subsidiary so long as the applicable local law will not permit repatriation to the United States (Borrower hereby agreeing to use commercially reasonable efforts to cause the applicable Foreign Subsidiary to promptly take all actions required by the applicable local law to permit such repatriation), and once such repatriation of such affected Net Cash Proceeds is permitted under the applicable local law, such repatriation will be immediately effected and such repatriated Net Cash Proceeds will be promptly (and in any event not later than five Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof) to the repayment of the Loans pursuant to Section 2.10 and (B) to the extent that Borrower has determined in good faith that repatriation of any or all of the Net Cash Proceeds described in clause (A) above would have a material adverse cash tax consequence to such Foreign Subsidiary or Borrower (directly or indirectly) (Borrower hereby agreeing to use commercially reasonable efforts to cause the applicable Foreign Subsidiary to promptly take all customary actions to eliminate any material adverse cash tax consequence), the Net Cash Proceeds so affected shall not be required to be applied to repay the Loans at the times required by this Section 2.10 and may be retained by the applicable Foreign Subsidiary so long as repatriation would result in a material adverse cash tax consequence with respect to such Net Cash Proceeds.

Section 2.11 Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(i) the Administrative Agent determines (which determination shall be final and conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBOR Rate for such Interest Period; or

(ii) the Administrative Agent is advised in writing by the Required Lenders that the Adjusted LIBOR 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;

then the Administrative Agent shall give written notice thereof to Borrower and the Lenders as promptly as practicable thereafter and, until the Administrative Agent notifies Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) 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 (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

Section 2.12 Increased Costs; Change in Legality. (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 property of, deposits with or for the account of, or credit extended by or participated in by, any Lender (except any such reserve requirement reflected in the Adjusted LIBOR Rate);

(ii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Eurodollar Loans made by such Lender; or

(iii) subjects any Lender or the Administrative Agent to any Taxes (other than (A) Indemnified Taxes indemnified pursuant to Section 2.15 and (B) Excluded Taxes) on its Loans, principal, letters of credit, Commitments, or other Obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to such Lender, by an amount that such Lender reasonably deems to be material, of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by such Lender or the Administrative Agent hereunder (whether of principal, interest or otherwise), then Borrower will pay to such Lender or the Administrative Agent, upon its demand, such additional amount or amounts as will compensate such Lender or the Administrative Agent for such additional costs incurred or reduction suffered, it being understood that, to the extent duplicative of the provisions of Section 2.15, this Section 2.12 shall not apply to Taxes. If any Lender becomes entitled to claim any additional amounts pursuant to this paragraph, it shall promptly notify Borrower (with a copy to the Administrative Agent) of the event by reason of which it has become so entitled. The protection of this Section 2.12 shall be available to each Lender regardless of any possible contention of the invalidity or inapplicability of the Change in Law that shall have occurred or been imposed.

(b) If any Lender determines (in good faith, but in its sole absolute discretion) that any Change in Law regarding Capital Requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, 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 Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company, for any such reduction suffered.

(c) A certificate of a Lender setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in Sections 2.12(a) or (b) shall be delivered to Borrower (with a copy to the Administrative Agent) and shall be conclusive and binding absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within three Business Days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.12 shall not constitute a waiver of such Lender's right to demand such compensation; *provided* that Borrower shall not be required to compensate a Lender for any increased costs or reductions incurred more than 365 days prior to the date that such Lender notifies Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender'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 365-day period referred to above shall be extended to indicate the period of retroactive effect thereof.

(e) Notwithstanding any other provision of this Agreement, if any Change in Law shall make it unlawful for any Lender to make or maintain any Eurodollar Loan or to give effect to its obligations as contemplated hereby with respect to any Eurodollar Loan, then, by written notice to Borrower and to the Administrative Agent:

(i) such Lender may declare that Eurodollar Loans will not thereafter (for the duration of such unlawfulness (as determined in good faith by such Lender)) be made by such Lender hereunder (or be continued for additional Interest Periods and ABR Loans will not thereafter (for such duration) be converted into Eurodollar Loans), whereupon any request for a Eurodollar Loan (or to convert an ABR Loan to a Eurodollar Loan or to continue a Eurodollar Loan for an additional Interest Period) shall, as to such Lender only, be deemed a request for an ABR Loan (or a request to continue an ABR Loan as such for an additional Interest Period or to convert a Eurodollar Loan into an ABR Loan, as the case may be), unless such declaration shall be subsequently withdrawn by such Lender by written notice to Borrower and to the Administrative Agent; and

(ii) such Lender may require that all outstanding Eurodollar Loans made by it be converted to ABR Loans, in which event all such Eurodollar Loans shall be automatically converted to ABR Loans as of the effective date of such notice as provided in Section 2.12(f).

In the event any Lender shall exercise its rights under clause (i) or (ii) above, all payments and prepayments of principal that would otherwise have been applied to repay the Eurodollar Loans that would have been made by such Lender or the converted Eurodollar Loans of such Lender shall instead be applied to repay the ABR Loans made by such Lender in lieu of, or resulting from the conversion of, such Eurodollar Loans.

(f) For purposes of Section 2.12(e), a notice to Borrower by any Lender shall be effective as to each Eurodollar Loan made by such Lender, if lawful, on the last day of the Interest Period then applicable to such Eurodollar Loan; in all other cases such notice shall be effective on the date of receipt by Borrower.

Section 2.13 Breakage Payments. In the event of (a) the payment or prepayment, whether optional or mandatory, of any principal of any Eurodollar Loan earlier than 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 earlier than the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto or (d) the assignment of any Eurodollar Loan earlier than the last day of the Interest Period applicable thereto as a result of a request by Borrower pursuant to Section 2.16, then, in any such event, Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBOR Rate excluding the Applicable Margin that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue a Eurodollar Loan, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for Dollar deposits of a comparable amount and period from other banks in the Eurodollar market. 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 2.13 shall be delivered to Borrower (with a copy to the Administrative Agent) and shall be conclusive and binding absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within three Business Days after receipt thereof.

Section 2.14 Payments Generally; Pro Rata Treatment; Sharing of Setoffs. (a) Borrower shall make each payment required to be made by it hereunder or under any other Loan Document (whether of principal, interest, fees or of amounts payable under Section 2.12, 2.13 or 2.15, or otherwise) on or before the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 1:00 p.m., New York City time), on the date when due, in immediately available funds, without setoff, deduction or counterclaim. 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 to the Administrative Agent, except that payments pursuant to Sections 2.12, 2.13, 2.15 and 11.03 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. If any payment under any Loan Document shall be due on a day that is not a Business Day, unless specified otherwise, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under each Loan Document shall be made in Dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, 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 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 (including pursuant to Section 11.08) or otherwise (including by exercise of its rights under the Security Documents), obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; *provided* that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this Section 2.14(c) shall not be construed to apply to any payment made by Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of its Loans to any Eligible Assignee or participant, other than to any Company or any Affiliates thereof (as to which the provisions of this Section 2.14(c) shall apply). Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Legal Requirements, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation. If under applicable Insolvency Law any Secured Party receives a secured claim in lieu of a setoff or counterclaim to which this Section 2.14(c) applies, such Secured Party shall to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights to which the Secured Party is entitled under this Section 2.14(c) to share in the benefits of the recovery of such secured claim. The provisions of this Section 2.14 shall not be construed to apply to (a) any payment made by Borrower pursuant to and in accordance with the express terms of this Agreement (for the avoidance of doubt, as in effect from time to time) (including the application of funds arising from the existence of a Defaulting Lender), (b) any payment obtained by any Lender as consideration for the assignment or sale of a participation in any of its Loans or other Obligations owed to it, (c) the express provisions of Section 2.10(f)(v) providing for payments to Specified Parties or (d) the express provisions of Article X that permit various Lenders to exchange Loans for Exchange Notes.

(d) Unless the Administrative Agent shall have received written notice from Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that Borrower will not make such payment, the Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if 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 or practices on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to 2.14(d) or 11.03(e), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

Section 2.15 Taxes. (a) Any and all payments by or on account of any obligation of the Loan Parties hereunder or under any other Loan Document shall be made without setoff, counterclaim or other defense and free and clear of and without deduction, reduction or withholding for any and all Indemnified Taxes or Other Taxes; provided that if any Indemnified Taxes or Other Taxes shall be required by applicable Legal Requirements to be deducted or withheld from such payments, then (i) the sum payable by the relevant Loan Party shall be increased as necessary so that after making all such required deductions (including such deductions, reductions or withholdings applicable to additional sums payable under this Section 2.15) the Administrative Agent or any Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions, reductions or withholdings been made, (ii) the relevant Loan Party, if applicable, shall make such deductions, reductions or withholdings and (iii) the relevant Loan Party, if applicable, shall timely pay the full amount so deducted or withheld to the relevant Governmental Authority in accordance with applicable Legal Requirements.

(b) In addition, and without any duplication, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Legal Requirements, or at the option of the Administrative Agent reimburse it for payment of, any Other Taxes.

(c) The Loan Parties shall jointly and severally indemnify the Administrative Agent and each Lender, within three Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other 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 hereunder or under any other Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.15)

and any penalties, interest and reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to a Loan Party by a Lender (in each case, with a copy delivered concurrently to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.04(e) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (d).

(e) As soon as practicable after any payment of Indemnified Taxes or Other Taxes and in any event within 30 days following any such payment being due, by any Loan Party to a Governmental Authority, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the Tax Return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable Legal Requirements, such properly completed and executed documentation prescribed by applicable Legal Requirements or reasonably requested by Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. Without limiting the generality of the foregoing, each Foreign Lender shall (i) furnish to Borrower and the Administrative Agent either (a) two accurate and complete originally executed U.S. Internal Revenue Service Form W-8BEN or W-8BEN-E (or successor form), (b) two accurate and complete originally executed U.S. Internal Revenue Service Form W-8ECI (or successor form) (c) two accurate and complete originally executed U.S. Internal Revenue Service Form W-8EXP (or successor form) or (d) two

accurate and complete originally executed U.S. Internal Revenue Service Form W-8IMY (or successor form) (with any required attachments), certifying, in each case, to such Foreign Lender's legal entitlement to an exemption or reduction from U.S. federal withholding tax with respect to all payments hereunder, and (ii) to the extent it may lawfully do so at such times, upon reasonable request by Borrower or the Administrative Agent, provide a new Form W-8BEN or W-8BEN-E (or successor form), Form W-8ECI (or successor form), Form W-8EXP (or successor form) or Form W8IMY (or successor form) upon the expiration or obsolescence of any previously delivered form to reconfirm any complete exemption from, or any entitlement to a reduction in, U.S. federal withholding tax with respect to any payment hereunder (or shall promptly notify Borrower and the Administrative Agent of its legal inability to provide such form); *provided* that any Foreign Lender (or other beneficial owner of a payment hereunder) that is relying on the so-called "portfolio interest exemption" within the meaning of Section 881(c) of the Code shall also furnish a "U.S. Tax Compliance Certificate" in the form of Exhibit L if it is furnishing a Form W-8BEN or W-8BEN-E. Any Lender that is not a Foreign Lender shall (i) furnish to Borrower and the Administrative Agent two accurate and complete originally executed U.S. Internal Revenue Service Form W-9 (or successor form) certifying its exemption from backup withholding, or shall otherwise establish an exemption from U.S. backup withholding and (ii) upon reasonable request by Borrower or the Administrative Agent, provide a new Form W-9 (or successor form) upon the expiration or obsolescence of any previously delivered form.

(g) If a payment made to a Lender hereunder may be subject to U.S. federal withholding tax under FATCA, such Lender shall deliver to Borrower and the Administrative Agent, at the time or times prescribed by law and at such time or times reasonably requested by Borrower or the Administrative Agent, such documentation prescribed by applicable Legal Requirements and such additional documentation reasonably requested by Borrower or the Administrative Agent to comply with its obligations under FATCA, to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.15(g), the term "FATCA" shall include any amendments to FATCA after the date hereof.

(h) If the Administrative Agent or a Lender (or an assignee) determines in its sole discretion that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by Borrower or with respect to which Borrower has paid additional amounts pursuant to this Section 2.15, it shall pay over such refund to Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by Borrower under this Section 2.15 with respect to the Indemnified Taxes or the Other Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses of the Administrative Agent or such Lender (or assignee) and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided, however*, that if the Administrative Agent or such Lender (or assignee) is required to repay all or a portion of such refund to the relevant Governmental Authority, Borrower, upon the request of the Administrative Agent or such Lender (or assignee), shall repay the amount paid over to Borrower that is required to be repaid (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative

Agent or such Lender (or assignee) within three Business Days after receipt of written notice that the Administrative Agent or such Lender (or assignee) is required to repay such refund (or a portion thereof) to such Governmental Authority. Nothing contained in this Section 2.15(h) shall require the Administrative Agent or any Lender (or assignee) to make available its Tax Returns or any other information which it reasonably deems confidential or privileged to Borrower or any other person. Notwithstanding anything to the contrary, in no event will the Administrative Agent or any Lender (or assignee) be required to pay any amount to Borrower the payment of which would place the Administrative Agent or such Lender (or assignee) in a less favorable net after-tax position than the Administrative Agent or such Lender (or assignee) would have been in if the additional amounts giving rise to such refund of any Indemnified Taxes or Other Taxes had never been paid.

Section 2.16 Mitigation Obligations; Replacement of Lenders.

(a) Mitigation of Obligations. If any Lender requests compensation under Section 2.12(a) or (b), or if Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce materially amounts payable pursuant to Section 2.12(a), 2.12(b) or 2.15, as the case may be, in the future, (ii) would not subject such Lender to any unreimbursed cost or expense, (iii) would not require such Lender to take any action inconsistent with its internal policies or legal or regulatory restrictions, and (iv) would not otherwise be disadvantageous to such Lender. Borrower shall pay all reasonable and documented costs and expenses incurred by any Lender in connection with any such designation or assignment. A certificate setting forth such costs and expenses submitted by such Lender to the Administrative Agent shall be conclusive absent manifest error.

(b) Replacement of Lenders. In the event (i) any Lender delivers a certificate requesting compensation pursuant to Section 2.12(a) or (b), (ii) any Lender delivers a notice described in Section 2.12(e), (iii) Borrower is required to pay any additional amount to any Lender or any Governmental Authority on account of any Lender pursuant to Section 2.15, (iv) any Lender fails to consent to any amendment, waiver or other modification of any Loan Document requested by Borrower that requires the consent of 100% of the Lenders or 100% of all affected Lenders and, which, in each case, has been consented to by all other Lenders or all other affected Lenders, as the case may be, or (v) any Lender defaults in its obligations to make Loans or other extensions of credit hereunder, Borrower may, at its sole expense and effort (including with respect to the processing and recordation fee referred to in Section 11.04(b)), upon notice to such Lender and the Administrative Agent, require such Lender to transfer and assign, without recourse (in accordance with and subject to the restrictions contained in Section 11.04), all of its interests, rights and obligations under this Agreement to an Eligible Assignee which shall assume such assigned obligations (which Eligible Assignee may be another Lender,

if a Lender accepts such assignment); *provided* that (w) no Default shall have occurred and be continuing, (x) such assignment shall not conflict with any applicable Legal Requirement, (y) Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld or delayed, and (z) Borrower or such assignee shall have paid to the affected Lender in immediately available funds an amount equal to the sum of the principal of and interest and any prepayment premium or penalty (if any) accrued to the date of such payment on the outstanding Loans of such Lender affected by such assignment plus all Fees and other amounts owing to or accrued for the account of such Lender (including any amounts under Sections 2.12 and 2.13); *provided further* that, if prior to any such transfer and assignment the circumstances or event that resulted in such Lender's claim for compensation under Section 2.12(a) or (b) or notice under Section 2.12(e) or the amounts paid pursuant to Section 2.15, as the case may be, cease to cause such Lender to suffer increased costs or reductions in amounts received or receivable or reduction in return on capital, or cease to have the consequences specified in Section 2.12(e), or cease to result in amounts being payable under Section 2.15, as the case may be (including as a result of any action taken by such Lender pursuant to Section 2.16(a)), or if such Lender shall waive its right to claim further compensation under Section 2.12(a) or (b) in respect of such circumstances or event or shall withdraw its notice under Section 2.12(e) or shall waive its right to further payments under Section 2.15 in respect of such circumstances or event or shall consent to the proposed amendment, waiver, consent or other modification, as the case may be, then such Lender shall not thereafter be required to make any such transfer and assignment hereunder. Each Lender hereby grants to the Administrative Agent an irrevocable power of attorney (which power is coupled with an interest) to execute and deliver, on behalf of such Lender as assignor, any Assignment and Assumption necessary to effectuate any assignment of such Lender's interests hereunder in the circumstances contemplated by this Section 2.16(b).

(c) Defaulting Lenders. Anything contained herein to the contrary notwithstanding, in the event that any Lender becomes a Defaulting Lender, then (i) during any Default Period (as defined below) with respect to such Defaulting Lender, such Defaulting Lender shall be deemed not to be a "Lender", and the amount of such Defaulting Lender's Commitments and Loans shall be excluded for purposes of voting, and the calculation of voting, on any matters (including the granting of any consents or waivers) with respect to any of the Loan Documents, except that the amount of such Defaulting Lender's Commitments and Loans shall be included for purposes of voting, and the calculation of voting, on the matters set forth in Section 11.02(b)(i)-(ix) (including the granting of any consents or waivers) only to the extent that any such matter disproportionately affects such Defaulting Lender and (ii) to the extent permitted by applicable Legal Requirements, until such time as the Default Excess with respect to such Defaulting Lender shall have been reduced to zero, (A) any voluntary prepayment of the Loans pursuant to Section 2.10(a) shall, if Borrower so directs at the time of making such voluntary prepayment, be applied to the Loans of other Lenders in accordance with Section 2.10(a) as if such Defaulting Lender had no Loans outstanding, and (B) any mandatory prepayment of the Loans pursuant to Section 2.10 shall, if Borrower so directs at the time of making such mandatory prepayment, be applied to the Loans of other Lenders (but not to the

Loans of such Defaulting Lender) in accordance with Section 2.10, it being understood and agreed that Borrower shall be entitled to retain any portion of any mandatory prepayment of the Loans that is not paid to such Defaulting Lender solely as a result of the operation of the provisions of this clause (B).

For purposes of this Agreement, (i) “**Funding Default**” means, with respect to any Defaulting Lender, the occurrence of any of the events set forth in the definition of “Defaulting Lender;” (ii) “**Defaulted Loan**” means the Loans of a Defaulting Lender; (iii) “**Default Period**” means, with respect to any Defaulting Lender, the period commencing on the date of the applicable Funding Default and ending on the earliest of the following dates: (a) the date on which all Commitments are cancelled or terminated and/or the Obligations and the Specified Hedging Agreement Obligations (as defined in the Security Agreement) are declared or become immediately due and payable, (b) with respect to any Funding Default, the date on which (1) such Defaulting Lender shall have delivered to Borrower and the Administrative Agent a written reaffirmation of its intention to honor its obligations under this Agreement with respect to its Commitment(s), and (b) the date on which Borrower, the Administrative Agent and the Required Lenders waive all Funding Defaults of such Defaulting Lender in writing.

ARTICLE III REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to the Administrative Agent, the Collateral Agent and each of the Lenders (with references in this Article III to the Companies being references thereto after giving effect to the Transactions unless otherwise expressly stated) on the Closing Date that:

Section 3.01 Organization; Powers. Each Company (a) is duly incorporated or organized and validly existing under the laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to carry on its business as now conducted and (c) is qualified, licensed and in good standing to do business in every jurisdiction where such qualification is required, except in such jurisdictions where the failure to so qualify, be licensed or be in good standing could not reasonably be expected to result in a Material Adverse Effect.

Section 3.02 Authorization; Enforceability. The Transactions to be entered into by each Loan Party are within such Loan Party’s powers and have been duly authorized by all necessary corporate or other organizational action on the part of each such Loan Party. This Agreement has been duly executed and delivered by each Loan Party 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 such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights generally, regardless of whether considered in a proceeding in equity or at law.

Section 3.03 No Conflicts; No Default. The execution, delivery and performance of this Agreement and the other Loan Documents, the borrowings hereunder and the use of proceeds thereof (a) do not require any consent, exemption, authorization or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) filings necessary to perfect or maintain the perfection or priority of the Liens created by the Security Documents and (iii) consents, approvals, exemptions, authorizations, registrations, filings, permits or actions the failure of which to obtain or perform could not reasonably be expected to result in a Material Adverse Effect, (b) will not violate the Organizational Documents of any Company, (c) will not violate or result in a default or require any consent or approval under (x) any indenture, instrument, agreement, or other document binding upon any Company or its property or to which any Company or its property is subject, or give rise to a right thereunder to require any payment to be made by any Company, except for violations, defaults or the creation of such rights that could not reasonably be expected to result in a Material Adverse Effect or (y) any Organizational Document, (d) will not violate any Legal Requirement in any material respect, and (e) will not result in the creation or imposition of any Lien on any property of any Company, except Liens created by the Security Documents. No Default or Event of Default has occurred and is continuing.

Section 3.04 Financial Statements; Projections. (a) Borrower has heretofore delivered to the Lenders the consolidated balance sheets and related statements of income, stockholders' equity and cash flows of each of Borrower, Schuff and Bridgehouse Marine (i) as of and for the fiscal years ended December 31, 2013, December 31, 2012 and December 31, 2011 audited by and accompanied by the unqualified opinion of, in the case of (x) Borrower BDO USA, LLP, independent public accountants, (b) Schuff, Grant Thornton LLP, independent public accountants and (y) Bridgehouse Marine, BDO Stoy Hayward LLP, independent public accountants, (ii) with respect to Borrower and Schuff, as of and for the six-month period ended June 30, 2014 and for the comparable period of the preceding fiscal year, in each case, certified by the chief financial officer of Borrower and (iii) with respect to Bridgehouse Marine, the most recent internal financial statements. Such financial statements and all financial statements delivered pursuant to Sections 5.01(a), (b) and (c) have been prepared in accordance with GAAP (or, with respect to Bridgehouse Marine, UK GAAP) consistently applied throughout the applicable period covered, respectively, thereby and present fairly and accurately the financial condition and results of operations and cash flows of each of Borrower, Schuff and Bridgehouse Marine as of the dates and for the periods to which they relate (subject to normal year-end audit adjustments and the absence of footnotes). As of the Closing Date, except as set forth in such financial statements, there are no material liabilities of any Company of any kind, whether accrued, contingent, absolute, determined, determinable or otherwise, and there is no existing condition, situation or set of circumstances which could reasonably be expected to result in such a liability.

(b) Borrower has heretofore delivered to the Lenders the forecasts of financial performance of (x) Borrower and its Subsidiaries for the fiscal year 2014, (y) Borrower and its Subsidiaries (other than Schuff, Bridgehouse Marine and their respective Subsidiaries) for each fiscal year 2015 through 2019 and (z) Bridgehouse Marine and its Subsidiaries for each fiscal year 2014 through 2019 (the “**Projections**”). The Projections have been prepared in good faith by the Loan Parties and based upon (i) the assumptions stated therein (which assumptions are believed by the Loan Parties on the date hereof and the Closing Date to be reasonable), (ii) accounting principles consistent with the historical audited financial statements delivered pursuant to Section 3.04(a), above consistently applied throughout the fiscal years covered thereby, and (iii) the best information available to the Loan Parties as of the date hereof and the Closing Date.

(c) Since December 31, 2013, there has been no event, change, circumstance, condition, development or occurrence that has had, or could reasonably be expected to result in, either individually or in the aggregate, a Material Adverse Effect.

Section 3.05 Properties. Each Company has good and marketable title to, or valid leasehold interests in, all its property material to its business, free and clear of all Liens and irregularities, deficiencies and defects in title except for Permitted Liens (or, in the case of Collateral, Permitted Collateral Liens) and minor irregularities, deficiencies and defects in title that, individually or in the aggregate, do not, and could not reasonably be expected to, interfere with its ability to conduct its business as currently conducted or to utilize such property for its intended purpose.

(a) The property of the Companies, taken as a whole, (i) is in good operating order, condition and repair (ordinary wear and tear excepted), and (ii) constitutes all the property which is required for the business and operations of the Companies as presently conducted.

(b) Schedule 3.05(b) contains a true and complete list of each ownership and leasehold interest in Real Property (i) owned by any Company as of the Closing Date and describes the type of interest therein held by such Company and (ii) leased, subleased or otherwise occupied or utilized by any Company, as lessee, sublessee, franchisee or licensee, as of the Closing Date and describes the type of interest therein held by such Company and whether such lease, sublease or other instrument requires the consent of the landlord thereunder or other parties thereto to the Transactions.

(c) No Mortgage encumbers improved Real Property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards within the meaning of the National Flood Insurance Act of 1968 unless flood insurance available under such Act has been obtained in accordance with Section 5.04.

(d) Each Company owns or has rights to use all of its property and all rights with respect to any of the foregoing used in, necessary for or material to each Company’s business as currently conducted. The use by each Company of its property and all such rights with respect to the foregoing do not infringe on the rights or other interests of any person, other than any infringement that could not, individually or in the aggregate, reasonably be expected to

result in a Material Adverse Effect. No claim has been made and remains outstanding that any Company's use of any of its property does or may violate the rights of any third party that, individually or in the aggregate, has had, or could reasonably be expected to result in, a Material Adverse Effect. The Real Property is zoned in all material respects to permit the uses for which such Real Property is currently being used. The present uses of the Real Property and the current operations of each Company's business do not violate in any material respect any provision of any applicable building codes, subdivision regulations, fire regulations, health regulations or building and zoning by-laws.

(e) Except for exceptions to the following that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, there is no pending or threatened condemnation or eminent domain proceeding with respect to, or that could affect any of the Real Property of the Companies.

Each parcel of Real Property is taxed as a separate tax lot and is currently being used in a manner that is consistent with and in compliance in all material respects with the property classification assigned to it for real estate tax assessment purposes.

Section 3.06 Intellectual Property. Each Company owns or is licensed to use, free and clear of all Liens (other than Permitted Liens), all patents and patent applications, trademarks, trade names, service marks, copyrights, domain names and applications for registration thereof, technology, trade secrets, proprietary information, inventions, know-how and processes (the "**Intellectual Property**"), in each case necessary for the conduct of its business as currently conducted, except for those the failure to own or license which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(a) No claim has been asserted and is pending by any person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does any Loan Party know, as of the date hereof, of any valid basis for any such claim, which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. The use of such Intellectual Property by each Company does not infringe the rights of any person, except for such claims and infringements which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Except pursuant to licenses and other user agreements entered into by each Company in the ordinary course of business, no Company has done anything to authorize or enable any other person to use any such Intellectual Property. Each Company has taken commercially reasonable actions that in the exercise of their reasonable business judgment should have been taken to protect the secrecy, confidentiality and value of all trade secrets used in such Company's business.

(b) No Violations or Proceedings. (i) To the knowledge of the Loan Parties, there is no violation by others of any right of any Company with respect to any Intellectual Property, other than such violations that, individually or in the aggregate, could not reasonably

be expected to have a Material Adverse Effect, (ii) no Company is infringing upon or misappropriating any copyright, patent, trademark, trade secret or other intellectual property right of any other person, except as would not reasonably be expected to have a Material Adverse Effect, (iii) no Company is in breach of, or in default under, any license of Intellectual Property by any other person, to such Company, except in any case where such breach or default, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, and (iv) no proceedings have been instituted or are pending against any Company or, to the knowledge of the Loan Parties, threatened, and no claim against any Company has been received by any Company, alleging any such infringement or misappropriation, except to the extent that such proceedings or claims, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(c) No Impairment. Neither the execution, delivery or performance of this Agreement and the other Loan Documents, nor the consummation of the Transactions and the other transactions contemplated hereby and thereby, will alter, impair or otherwise affect or require the consent, approval or other authorization of any other person in respect of any right of any Company in any Intellectual Property, except to the extent that such alteration, impairment, effect, consent, approval or other authorization, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(d) No Agreement or Order Materially Affecting Intellectual Property. No Company is subject to any settlement, covenant not to sue or other instrument, agreement or other document, or any outstanding Order, which may materially affect the validity or enforceability or restrict in any manner such Company's use, licensing or transfer of any of the Intellectual Property.

Section 3.07 Equity Interests and Subsidiaries. (a) Schedule 3.07(a) sets forth a list of (i) each Subsidiary of Borrower and its jurisdiction of incorporation or organization as of the Closing Date and (ii) the number of each class of its Equity Interests authorized, and the number outstanding, on the Closing Date and the number of Equity Interests covered by all outstanding options, warrants, rights of conversion or purchase and similar rights on the Closing Date. All Equity Interests of each Company are duly and validly issued and are fully paid and non-assessable. Each Loan Party is the record and beneficial owner of, and has good and marketable title to, the Equity Interests pledged by (or purporting to be pledged by) it under the Security Documents, free of any and all Liens, rights or claims of other persons, except the security interest created by the Security Documents and any Permitted Liens that arise by operation of applicable Legal Requirements and are not voluntarily granted, and, as of the Closing Date, there are no outstanding warrants, options or other rights (including derivatives) to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any such Equity Interests (or any economic or voting interests therein).

(b) As of the Closing Date, no consent of any person, including any general or limited partner, any other member or manager of a limited liability company, any shareholder, any other trust beneficiary or derivative counterparty, is necessary or reasonably desirable (from the perspective of a secured party) in connection with the creation, perfection or first priority status (or the maintenance thereof) of the security interest of the Collateral Agent in any Equity Interests pledged to the Collateral Agent under the Security Documents or the exercise by the Collateral Agent or any Lender of the voting or other rights provided for in the Security Documents or the exercise of remedies in respect of such Equity Interests.

Section 3.08 Litigation; Compliance with Legal Requirements. (a) There are no actions, suits, claims, disputes or proceedings at law or in equity by or before any Governmental Authority now pending or, to the best of the knowledge of any Loan Party, threatened against or affecting any Company or any business, property or rights of any Company (i) that purport to affect or involve any Loan Document or any of the Transactions or (ii) that have resulted, or could, individually or in the aggregate, reasonably be expected to result, in a Material Adverse Effect.

Section 3.09 Agreements. No Company is a party to any agreement, instrument or other document or subject to any corporate or other constitutional restriction, or any restriction under its Organizational Documents, that has resulted, or could reasonably be expected to result, in a Material Adverse Effect.

Section 3.10 Federal Reserve Regulations. (a) No Company is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing, buying or carrying Margin Stock.

(b) No part of the proceeds of any Credit Extension will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of, or that is inconsistent with, the provisions of the regulations of the Board, including Regulation T, U or X. The pledge of the Securities Collateral pursuant to the Security Agreement does not violate such regulations.

(c) After giving effect to the Closing Date Acquisition, Margin Stock represents less than 25% of the total assets of Borrower and its Subsidiaries on a consolidated basis.

Section 3.11 Investment Company Act, etc. No Company is (a) required to register as an “investment company” or a company “controlled” by a company required to register as an “investment company,” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended, or (b) subject to regulation under any Legal Requirement (other than Regulation X) that limits its ability to incur, create, assume or permit to exist Indebtedness or grant any Contingent Obligation in respect of Indebtedness.

Section 3.12 Use of Proceeds. Borrower will use (a) the proceeds of the Initial Interim Term Loans solely (i) to repay in full all Existing Indebtedness, (ii) pay the cash consideration for the Closing Date Acquisition, (iii) pay fees, costs and expenses related to the Transactions contemplated by this Agreement and the other Loan Documents, (iv) for Investments and Permitted Acquisitions in each case permitted hereunder and (v) for general corporate purposes, and (b) the proceeds of the Delayed Draw Interim Term Loans solely to fund the Delayed Draw Tender Offer and to pay the fees, costs and expenses related to such acquisition.

Section 3.13 Taxes. Each Company has (a) timely filed or caused to be timely filed all federal, state, local and foreign Tax Returns required to have been filed by it and all such Tax Returns are true and correct in all material respects and (b) duly and timely paid or caused to be duly and timely paid all U.S. federal income Taxes and all other material Taxes (whether or not shown on any Tax Return) due and payable by it and all material Tax assessments received by it, except Taxes or Tax assessments that are being contested in good faith by appropriate proceedings and for which such Company has set aside on its books adequate reserves in accordance with GAAP. No Company has received written notice of any threatened tax assessments, deficiencies, audits or other proceedings and no such threatened (or any pending) tax assessments, deficiencies, audits or other proceedings could, individually or in the aggregate, reasonably be expected to result, in a Material Adverse Effect. No Company has ever “participated” in a “listed transaction” within the meaning of Treasury Regulation Section 1.6011-4(b)(2). No Company is party to any tax sharing or similar agreement other than any such agreement among the Companies, except any such agreement that is not primarily concerned with the sharing of Taxes.

Section 3.14 No Material Misstatements. Borrower has disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. Neither any information or similar memorandum nor any of the other reports, financial statements, certificates or other information furnished by or on behalf of Borrower to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

Section 3.15 Labor Matters. There are no strikes, lockouts or slowdowns against any Company pending or, to the best of the knowledge of the Loan Parties, threatened that have resulted in, or could reasonably be expected to result in, a Material Adverse Effect. The hours worked by and payments made to employees of any Company have not been in violation of the Fair Labor Standards Act of 1938, as amended, or any other applicable Legal Requirement dealing with such matters in any manner that has resulted in, or could reasonably be expected to

result in, a Material Adverse Effect. All payments due from any Company, or for which any claim may be made against any Company, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Company except to the extent that the failure to do so has not resulted in, and could not reasonably be expected to result in, a Material Adverse Effect. The consummation of the Transactions will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Company is bound.

Section 3.16 Solvency. Both immediately before and immediately after the consummation of the Transactions to occur on the Closing Date and immediately following the making of each Credit Extension and after giving effect to the application of the proceeds of each Credit Extension, (a) the fair value of the properties of each Loan Party will exceed its debts and liabilities, subordinated, contingent or otherwise, (b) the present fair saleable value of the property of each Loan Party will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (c) each Loan Party will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; (d) each Loan Party will not have unreasonably small capital with which to conduct its business in which it is engaged as such business is now conducted and is proposed, contemplated or about to be conducted following the Closing Date; and (e) each Loan Party is “solvent” within the meaning given to that term and similar terms under any United States federal or state laws relating to fraudulent transfers and conveyances.

Section 3.17 Employee Benefit Plans. (a) Except as would reasonably be expected to result in a Material Adverse Effect, the Company and each of its ERISA Affiliates is in compliance with all applicable Legal Requirements, including all applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder, with respect to all Employee Benefit Plans and Pension Plans. Each Employee Benefit Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination from the Internal Revenue Service for all required amendments and to the Company’s knowledge nothing has occurred which would prevent, or cause the loss of, such qualification.

(b) Except as would reasonably be expected to result in a Material Adverse Effect, no ERISA Event has occurred or is expected to occur and no Pension Plan has any Unfunded Pension Liability. Within the last six years, no Pension Plan has been terminated, whether or not in a “standard termination” as that term is used in Section 4041 of ERISA, nor has any Pension Plan (determined at any time within the last six years) with an Unfunded Pension Liability been transferred outside of the “controlled group” (within the meaning of Section 4001(a)(14) of ERISA) of any Company or any of its ERISA Affiliates. Using actuarial assumptions and computation methods consistent with subpart I of subtitle E of Title IV of ERISA, the aggregate liabilities of any Company or any of its ERISA Affiliates to all Multiemployer Plans in the event of a complete withdrawal therefrom, as of the close of the most recent fiscal year of each such Multiemployer Plan, have not resulted in, and could not reasonably be expected to result in, a Material Adverse Effect.

(c) Except for instances of non-compliance that would not reasonably be expected to result in a Material Adverse Effect, each Foreign Plan has been maintained in substantial compliance with its terms and with the requirements of all Legal Requirements and has been maintained, where required, in good standing with applicable regulatory authorities. Except (i) as set forth on Schedule 3.17(c) and (ii) for obligations that would not reasonably be expected to result in a Material Adverse Effect, no Company has incurred any material obligation in connection with the termination of or withdrawal from any Foreign Plan. Except (i) as set forth on Schedule 3.17(c) or (ii) as would not reasonably be expected to result in a Material Adverse Effect, the present value of the accrued benefit liabilities (whether or not vested) under each Foreign Plan which is funded, determined as of the end of the most recently ended, fiscal year of the respective Company on the basis of actuarial assumptions, each of which is reasonable, did not exceed the current value of the property of such Foreign Plan, and for each Foreign Plan which is not funded, the obligations of such Foreign Plan are properly accrued.

(d) Other than with respect to the UK DB Plans, no Company is and has not at any time been the employer of a UK defined benefit pension plan to or in respect of which it could have any obligation to contribute. No Contribution Notice or Financial Support Direction has been issued or threatened to be issued to any Company (whether in respect of the UK DB Plans or otherwise) and there is no fact or circumstance likely to give rise to any such Contribution Notice or Financial Support Direction which could reasonably be expected to give rise to a Material Adverse Effect.

Section 3.18 Environmental Matters. (a) Except as could not reasonably be expected, individually or in the aggregate, to result in a loss to the condition (financial or otherwise), results of operations, assets, properties, solvency, business or value of the Companies, individually or in the aggregate, in excess of \$5,000,000:

- (i) the Companies and their businesses, operations and Real Property are and have at all times during the Companies' ownership or lease thereof been in compliance with, and the Companies have no liability under, any applicable Environmental Law;
- (ii) the Companies have obtained all Environmental Permits required for the conduct of their businesses and operations, and the ownership, operation and use of their Real Property, under all applicable Environmental Laws. The Companies are in compliance with the terms and conditions of such Environmental Permits, and all such Environmental Permits are valid and in good standing;

- (iii) there has been no Release or threatened Release or any handling, management, generation, treatment, storage or disposal of Hazardous Materials on, at, under or from any Real Property or facility presently or formerly owned, leased or operated by any of the Companies or their predecessors in interest that has resulted in, or is reasonably likely to result in, liability or obligations by any of the Companies under Environmental Law or in an Environmental Claim;
- (iv) there is no Environmental Claim pending or, to the knowledge of the Loan Parties, threatened against any of the Companies, or relating to the Real Property currently or formerly owned, leased or operated by any of the Companies or relating to the operations of the Companies, and, to the knowledge of the Loan Parties, there are no actions, activities, circumstances, conditions, events or incidents that are reasonably likely to form the basis of such an Environmental Claim;
- (v) no Company is obligated to perform any action or otherwise incur any expense under Environmental Law, including pursuant to any Order or agreement by which it is bound or has assumed by contract or agreement, and no Company is conducting or financing any Response pursuant to any Environmental Law with respect to any Real Property or any other location;
- (vi) no Real Property or facility owned, operated or leased by the Companies and, to the knowledge of the Loan Parties, no Real Property or facility formerly owned, operated or leased by any of the Companies or any of their predecessors in interest is (i) listed or proposed for listing on the National Priorities List as defined in and promulgated pursuant to CERCLA or (ii) listed on the Comprehensive Environmental Response, Compensation and Liability Information System promulgated pursuant to CERCLA or (iii) included on any similar list maintained by any Governmental Authority that indicates that any Company has or may have an obligation to undertake investigatory or remediation obligations under applicable Environmental Laws;
- (vii) there are no underground or aboveground storage tanks, whether empty or containing any Hazardous Material, located on any Real Property; and
- (viii) the execution, delivery and performance of this Agreement and the other Loan Documents and the consummation of the Transactions and the other transactions contemplated hereby and thereby will not require any notification, registration, filing, reporting, disclosure, investigation, remediation or cleanup obligations pursuant to any Governmental Real Property Disclosure Requirements or any other Environmental Law.

Section 3.19 Insurance. Schedule 3.19 sets forth a true, complete and accurate description in reasonable detail of all insurance maintained by each Company as of the Closing Date. Each Company has insurance in such amounts and covering such risks and liabilities as are customary for companies of a similar size engaged in similar businesses in similar locations. All insurance maintained by the Companies is in full force and effect, all premiums have been duly paid, no Company has received notice of violation, invalidity or cancellation thereof, the Premises, and the use, occupancy and operation thereof, comply in all material respects with all Insurance Requirements, and there exists no default under any Insurance Requirement.

Section 3.20 Reserved.

Section 3.21 Anti-Terrorism Law; Foreign Corrupt Practices Act. (a) No Company and, to the knowledge of the Loan Parties, none of its Affiliates is in violation of any Legal Requirements relating to terrorism or money laundering (“Anti-Terrorism Laws”), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “Executive Order”), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (the “Patriot Act”).

(b) No Company and to the knowledge of the Loan Parties, no Affiliate or broker or other agent of any Loan Party acting or benefiting in any capacity in connection with the Credit Extensions currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”); and Borrower will not directly or indirectly use the proceeds of the Loans or otherwise make available such proceeds to any Person, for the purpose of financing the activities of any Person currently subject to any U.S. sanctions administered by OFAC.

(c) No Company and, to the knowledge of the Loan Parties, no broker or other agent of any Company acting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in Section 3.22(b), (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(d) No Company nor any director or officer, nor to the knowledge of the Loan Parties, any agent, employee or other person acting, directly or indirectly, on behalf of any Company, has, in the course of its actions for, or on behalf of, any Company, directly or indirectly (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977; or (iv) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment to any foreign or domestic government official or employee.

ARTICLE IV
CONDITIONS TO CREDIT EXTENSIONS

Section 4.01 Conditions to Initial Credit Extension . The obligation of each Lender to fund the initial Credit Extension requested to be made by it shall be subject to the prior or concurrent satisfaction of each of the conditions precedent set forth in this Section 4.01.

(a) Loan Documents. All legal matters incident to this Agreement, the Credit Extensions hereunder and the other Loan Documents shall be reasonably satisfactory to the Lenders and to the Administrative Agent and there shall have been delivered to the Administrative Agent a properly executed counterpart of each of the Loan Documents and the Perfection Certificate.

(b) Corporate Documents. The Administrative Agent shall have received:

(i) a certificate of the secretary or assistant secretary of each Loan Party dated the Closing Date, certifying (A) that attached thereto is a true and complete copy of each Organizational Document of such Loan Party certified (to the extent applicable) as of a recent date by the Secretary of State of the state of its incorporation or organization, as the case may be, (B) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors of such Loan Party authorizing the execution, delivery and performance of the Loan Documents to which such person is a party and, in the case of Borrower, the Credit Extensions hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect and (C) as to the incumbency and specimen signature of each officer executing any Loan Document or any other document delivered in connection herewith on behalf of such Loan Party (together with a certificate of another officer as to the incumbency and specimen signature of the secretary or assistant secretary executing the certificate required by this clause (i));

(ii) a certificate as to the good standing of each Loan Party (in so-called "long-form" if available) as of a recent date, from such Secretary of State; and

(iii) such other documents, instruments or certificates as the Lenders or the Administrative Agent may reasonably request.

(c) Officers' Certificate. The Administrative Agent shall have received a certificate, dated the Closing Date and signed by a Responsible Officer of Borrower, confirming compliance with the conditions precedent set forth in Sections 4.02(b) and (c).

(d) Financings and Other Transactions, Etc. (1) Each of the Transaction Documents shall be in form and substance reasonably satisfactory to the Administrative Agent and the Arranger, and shall be in full force and effect on the Closing Date. The Transactions shall have been consummated or shall be consummated simultaneously on the Closing Date, in each case in accordance with the terms hereof and the terms of the Transaction Documents, without the waiver or amendment of any such terms not approved by the Administrative Agent and the Arranger other than any waiver or amendment thereof that is not materially adverse to the interests of the Lenders.

(2) The Lenders shall be reasonably satisfied with the capitalization, the terms and conditions of any equity arrangements and the corporate or other organizational structure of the Companies.

(3) The proceeds of the Initial Interim Term Loans to be made hereunder on the Closing Date, shall be sufficient to pay in full the cash consideration for the Closing Date Acquisition and all related fees, commissions and expenses.

(e) Financial Statements; Pro Forma Balance Sheet; Projections. The Lenders shall have received and shall be reasonably satisfied with the form and substance of the financial statements described in Section 3.04 and with the forecasts and projections of the financial performance of Borrower and its Subsidiaries (including the Projections).

(f) Indebtedness. After giving effect to the Transactions and the other transactions contemplated hereby, no Company shall have outstanding any Indebtedness other than (i) the Loans and Credit Extensions hereunder, (ii) the Indebtedness in excess of \$100,000 individually and listed on Schedule 6.01(b), (iii) Indebtedness owed to any Loan Party, (iv) Indebtedness of Schuff or any Subsidiary of Schuff owing to Schuff or a Subsidiary of Schuff and (v) Indebtedness of Bridgehouse Marine or any Subsidiary of Bridgehouse Marine owing to Bridgehouse Marine or a Subsidiary of Bridgehouse Marine.

(g) Opinions of Counsel. The Administrative Agent shall have received, on behalf of itself, the other Agents, the Arranger and the Lenders, a favorable written opinion of Paul, Weiss, Rifkind, Wharton & Garrison LLP, special counsel for the Loan Parties, substantially to the effect set forth in Exhibit N (A) dated the Closing Date, (B) addressed to the Agents and the Lenders and (C) covering such matters relating to the Loan Documents and the Transactions as the Administrative Agent shall reasonably request.

(h) Solvency Certificate. The Administrative Agent shall have received a solvency certificate (a “**Solvency Certificate**”) in the form of Exhibit M, dated the Closing Date and signed by the chief financial officer of Borrower.

(i) Legal Requirements. The Lenders shall be reasonably satisfied that each Company, and the Transactions shall be in full compliance with all material Legal Requirements, including Regulations T, U and X of the Board, and shall have received satisfactory evidence of such compliance reasonably requested by them.

(j) Consents. The Lenders shall be reasonably satisfied that all requisite Governmental Authorities, equityholders and third parties shall have approved, authorized or consented to the Transactions, and there shall be no governmental or judicial action, actual or threatened, that has or would have, individually or in the aggregate, a reasonable likelihood of restraining, preventing or imposing burdensome conditions on the Transactions or the other transactions contemplated hereby.

(k) Litigation. There shall not exist any claim, action, suit, investigation, litigation or proceeding pending or threatened by or before any court, or any governmental, administrative or regulatory agency or authority, domestic or foreign, that, in the reasonable opinion of the Administrative Agent or any Lender (a) has had, or could reasonably be expected to result in, a Material Adverse Effect or (b) adversely affects the ability of any Company to perform its obligations under the Loan Documents or the Acquisition Documents to which such Company is a party, or the ability of the parties to consummate the financings contemplated hereby or the other Transactions.

(l) Sources and Uses. The sources and uses of the Credit Extensions shall be as set forth in Section 3.12.

(m) Fees. The Arranger and Administrative Agent shall have received all Fees and other amounts due and payable on or prior to the Closing Date, including, to the extent invoiced, reimbursement or payment of all reasonable documented out-of-pocket expenses (including the survey charges and recording taxes and fees and the legal fees and reasonable expenses of Latham & Watkins LLP, special counsel to the Administrative Agent and Arranger, and the reasonable fees and expenses of any local counsel, foreign counsel, appraisers, consultants and other advisors) required to be reimbursed or paid by the Loan Parties hereunder or under any other Loan Document.

(n) Personal Property Requirements. The Collateral Agent shall have received:

(i) all certificates, agreements or instruments representing or evidencing the Securities Collateral (other than stock certificates representing Equity interests in Primus Telecommunications, Inc.) accompanied by instruments of transfer and stock powers undated and endorsed in blank;

(ii) Reserved.

(iii) all other certificates, agreements or instruments necessary to perfect the Collateral Agent's security interest in all Chattel Paper, all Instruments and all Investment Property of each Loan Party (as each such term is defined in, and to the extent required by, the Security Agreement);

(iv) UCC financing statements in appropriate form for filing under the UCC, short form grants of security interests in U.S. federally registered trademarks and applications therefor (excluding intent-to-use trademark applications unless and until the conditions described in the Security Agreement are met), U.S. federally issued patents and applications therefor, and U.S. federally registered copyrights and applications therefor, substantially in the form attached to the Security Agreement, duly executed by each Company, and such other documents under applicable Legal Requirements in each jurisdiction as may be necessary or appropriate or, in the reasonable opinion of the Collateral Agent, desirable to perfect the Liens created, or purported to be created, by the Security Documents;

(v) certified copies, each as of a recent date, of (x) the UCC searches required by the Perfection Certificate, (y) tax and judgment lien searches, bankruptcy and pending lawsuit searches or equivalent reports or searches listing all effective lien notices or comparable documents that name any Company as debtor and that are filed in the state and county jurisdictions in which any Company is organized or maintains its principal place of business, and (z) such other searches that the Collateral Agent deems necessary or appropriate;

(vi) evidence reasonably acceptable to the Collateral Agent of payment or arrangements for payment by the Loan Parties of all applicable filing or recording taxes, fees, charges, costs and expenses required for the filing or recording of the Security Documents.

(o) Insurance. The Administrative Agent shall have received a copy of, or a certificate as to coverage under, the insurance policies required by Section 5.04 and the applicable provisions of the Security Documents with respect to the Loan Parties, each of which shall be endorsed or otherwise amended to include a “standard” or “New York” lender’s loss payable or mortgagee endorsement (as applicable) and shall name the Collateral Agent, on behalf of the Secured Parties, as additional insured, in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent.

(p) Bank Regulatory Documentation. The Administrative Agent and the Lenders shall have received, in form and substance reasonably satisfactory to them, all documentation and other information required by bank regulatory authorities or reasonably requested by the Administrative Agent or any Lender under or in respect of applicable Anti-Terrorism Laws or “know-your-customer” Legal Requirements, including the Executive Order.

(q) Minimum Liquidity. Immediately after giving effect to the Transactions and the other transactions contemplated hereby, the aggregate amount of all unrestricted cash and Cash Equivalents of the Loan Parties shall not be less than \$17,500,000.

Section 4.02 Conditions to All Credit Extensions. The obligation of each Lender to make any Credit Extension shall be subject to, and to the satisfaction of, each of the conditions precedent set forth below.

(a) **Notice.** The Administrative Agent shall have received a Borrowing Request as required by Section 2.03.

(b) **No Default.** At the time of and immediately after giving effect to such Credit Extension and the application of the proceeds thereof, no Default shall have occurred and be continuing on such date.

(c) **Representations and Warranties.** Each of the representations and warranties made by any Loan Party set forth in Article III or in any other Loan Document shall be true and correct in all material respects on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects on and as of such earlier date); *provided* that any representation and warranty that is qualified as to “materiality”, “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

Borrower shall provide such information (including calculations in reasonable detail of the covenants in Section 6.10) as the Administrative Agent may reasonably request to confirm that the conditions in this Section 4.02 have been satisfied.

Section 4.03 Conditions to Delayed Draw Interim Term Loans. The obligation of each Delayed Draw Interim Term Loan Lender to make a Delayed Draw Interim Term Loan Borrowing is subject to satisfaction, or waiver in writing by Delayed Draw Interim Term Loan Lenders having more than 50% of the aggregate Delayed Draw Interim Term Loan Commitments, of the following condition precedent:

(a) The Borrower shall have notified the Administrative Agent that the Delayed Draw Tender Offer (or a portion thereof) will be consummated substantially simultaneously with the funding of the Delayed Draw Interim Term Loan Borrowing in accordance with applicable law and the applicable acquisition agreement.

ARTICLE V AFFIRMATIVE COVENANTS

Each Loan Party warrants, covenants and agrees with the Administrative Agent, the Collateral Agent and each Lender that so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest and premium (if any) on each Loan, all Fees and all other expenses or amounts payable under any Loan Document shall have been paid in full, each Loan Party will, and will cause each of its Subsidiaries to:

Section 5.01 Financial Statements, Reports, etc. Furnish to the Administrative Agent for distribution to the Lenders:

(a) **Annual Reports.** As soon as available and in any event within 90 days after the end of each fiscal year (but no later than the date on which Borrower is required to file a Form 10K under the Exchange Act pursuant to Sections 15 and 13(d) of the Exchange Act), (i) the audited consolidated balance sheet of each of (x) Borrower and its Subsidiaries and (y) prior to the consummation of the Delayed Draw Tender offer, Schuff and its Subsidiaries, in each case as of the end of such fiscal year and related consolidated statements of income, cash flows and stockholders' equity for such fiscal year, in comparative form with such financial statements as of the end of, and for, the preceding fiscal year, and notes thereto, (including, at any time prior to the consummation of the Delayed Draw Tender offer, a note with a consolidating balance sheet and statements of income and cash flows separating out Borrower and its Subsidiaries and Schuff and its Subsidiaries, as applicable) all prepared in accordance with Regulation S-X (in the case of Borrower and its Subsidiaries only) and GAAP and accompanied by an opinion of BDO USA, LLP, Grant Thornton LLP or other independent public accountants of recognized national standing reasonably satisfactory to the Administrative Agent (which opinion shall not be qualified as to scope or contain any going concern or like qualification or exemption), stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of any of Borrower and its Subsidiaries or Schuff and its Subsidiaries, as applicable, as of the dates and for the periods specified in accordance with Regulation S-X and/or GAAP, as the case may be and (ii) a management's discussion and analysis of the financial condition and results of operations for such fiscal year, as compared to the previous fiscal year and budgeted amounts (including commentary on (x) any material developments or proposals affecting Borrower and its Subsidiaries or Schuff and its Subsidiaries, as the case may be, or their respective businesses and (y) the reasons for any significant variations from the Projections for such period and the figures for the corresponding period in the previous fiscal year) (it being understood that the delivery by Borrower or Schuff of annual reports on Form 10-K of Borrower and its consolidated Subsidiaries or Schuff and its consolidated Subsidiaries, as applicable, shall satisfy the requirements of this Section 5.01(a) to the extent such annual reports include the information specified herein);

(b) **Quarterly Reports.** As soon as available and in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year (but no later than the date on which Borrower is required to file a Form 10Q under the Exchange Act pursuant to Sections 15 and 13(d) of the Exchange Act), (i) the consolidated balance sheet of each of (x) Borrower and its Subsidiaries and (y) prior to the consummation of the Delayed Draw Tender offer, Schuff and its Subsidiaries, in each case as of the end of such fiscal quarter and related consolidated statements of income and cash flows for such fiscal quarter and for the then elapsed portion of the fiscal year, in comparative form with the consolidated statements of income and cash flows for the comparable periods in the previous fiscal year, and notes thereto, (including, at any time prior to the consummation of the Delayed Draw Tender offer, a note with a consolidating balance sheet and statements of income and cash flows separating out Borrower and its

Subsidiaries and Schuff and its Subsidiaries, as applicable), all prepared in accordance with Regulation S-X (in the case of Borrower and its Subsidiaries only) and GAAP and accompanied by a certificate of a Financial Officer stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of Borrower and its Subsidiaries or Schuff and its Subsidiaries, as applicable, as of the date and for the periods specified in accordance with Regulation S-X and/or GAAP, as the case maybe, consistently applied, and on a basis consistent with audited financial statements referred to in clause (a) of this Section 5.01, subject to normal year-end audit adjustments and the absence of footnotes and (ii) a management's discussion and analysis of the financial condition and results of operations for such fiscal quarter and the then elapsed portion of the fiscal year, as compared to the comparable periods in the previous fiscal year and budgeted amounts (including commentary on (x) any material developments or proposals affecting Borrower and its Subsidiaries or Schuff and its Subsidiaries, as the case may be, or their respective businesses and (y) the reasons for any significant variations from the Projections for such period and the figures for the corresponding period in the previous quarter year) (it being understood that the delivery by Borrower or Schuff of quarterly reports on Form 10-Q of Borrower and its consolidated Subsidiaries or Schuff and its consolidated Subsidiaries, as applicable, shall satisfy the requirements of this Section 5.01(b) to the extent such quarterly reports include the information specified herein);

(c) Monthly Reports. Within 45 days after the first fiscal month ended after the Closing Date, and within 30 days after the end of each subsequent fiscal month, (i) the consolidated balance sheet of each of (x) Borrower and its Subsidiaries and (y) Schuff and its Subsidiaries, in each case as of the end of such month and the related consolidated statements of income and cash flows of each of (x) Borrower and its Subsidiaries and (y) prior to the consummation of the Delayed Draw Tender offer, Schuff and its Subsidiaries, in each case for such month and for the then elapsed portion of the fiscal year, in comparative form with the consolidated statements of income and cash flows for the comparable periods in the previous fiscal year, accompanied by a certificate of a Financial Officer stating that such financial statements fairly present, in all material respects, the consolidated financial condition and consolidated results of operations and cash flows of Borrower and its Subsidiaries as of the date and for the periods specified in accordance with Regulation S-X (in the case of Borrower and its Subsidiaries only) and GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes, and (ii) a management report in a form reasonably satisfactory to the Administrative Agent setting forth, on a consolidating basis, the results of operations and cash flows of Borrower and its Subsidiaries or Schuff and its Subsidiaries, as the case may be, for such month and for the then elapsed portion of the fiscal year compared to the comparable periods in the previous fiscal year and budgeted amounts;

(d) Financial Officer's Certificate. (i) Concurrently with any delivery of financial statements under Section 5.01(a), (b) or (c) above, a Compliance Certificate certifying that no Default has occurred since the date of the last certificate delivered pursuant to this clause (i) or, if such a Default has occurred, specifying in reasonable detail the nature and extent thereof

and any corrective action taken or proposed to be taken with respect thereto; (ii) concurrently with any delivery of financial statements under Section 5.01(a) or (b) above, a Compliance Certificate setting forth computations in reasonable detail satisfactory to the Administrative Agent demonstrating compliance with the covenants contained in Section 6.10; (iii) in the case of Section 5.01(a) above, a Compliance Certificate (i) either confirming that there has been no change in such information since the date of the Perfection Certificate delivered on the Closing Date or the date of the most recent Compliance Certificate delivered pursuant to this Section and/or identifying such changes and (iv) in the case of Section 5.01(a) above, if the accounting firm is not restricted from providing such report by its office policies, a report of the accounting firm opining on or certifying such financial statements stating that in the course of its regular audit of the financial statements of Borrower and its Subsidiaries, which audit was conducted in accordance with GAAP, whether such accounting firm obtained knowledge that any Default has occurred or, if in the opinion of such accounting firm such a Default has occurred, specifying in reasonable detail the nature and extent thereof;

(e) Management Letters. Promptly after the receipt thereof by any Company, a copy of any final “management letter” received by any such person from its certified public accountants and the management’s responses thereto;

(f) Certification of Public Information. Borrower and each Lender acknowledge that certain of the Lenders may be Public Lenders and, if documents or notices required to be delivered pursuant to this Section 5.01 or otherwise are being distributed through a Platform, any document or notice that Borrower has indicated contains Non-Public Information shall not be posted on that portion of the Platform designated for such Public Lenders. Borrower agrees to clearly designate all information provided to the Administrative Agent by or on behalf of Borrower which is suitable to make available to Public Lenders. If Borrower has not indicated whether a document or notice delivered pursuant to this Section 5.01 contains Non-Public Information, the Administrative Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Lenders who wish to receive material Non-Public Information with respect to Borrower, its Subsidiaries and their securities; and

(g) Other Information. Promptly, from time to time, such other information regarding the operations, business affairs and financial condition of any Company, or compliance with the terms of any Loan Document, or the environmental condition of any Real Property, as the Administrative Agent may reasonably request. Each Lender acknowledges that the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to in this Section 5.01, and in any event shall have no responsibility to monitor compliance by Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery (from the Administrative Agent) of or maintaining its copies of such documents.

Section 5.02 Litigation and Other Notices. Furnish to the Administrative Agent and each Lender written notice of the following promptly (and, in any event, within three Business Days following the occurrence thereof):

(i) any Default, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto;

(ii) the filing or commencement of, or any threat or notice of intention of any person to file or commence, any action, suit, litigation or proceeding, whether at law or in equity or otherwise by or before any Governmental Authority, (i) against any Company that has had, or could reasonably be expected to result in, a Material Adverse Effect, (ii) with respect to any Loan Document or (iii) with respect to any of the other Transactions;

(iii) any development that has resulted, or could reasonably be expected to result, in a Material Adverse Effect;

(iv) the occurrence of a Casualty Event in excess of \$5,000,000 (whether or not covered by insurance);

(v) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(vi) any investigation or proposed investigation by the Pensions Regulator which could reasonably lead to the issuance of a Contribution Notice or Financial Support Direction to any Company (whether in respect of the UK DB Plans or otherwise), and of the receipt by any Company of a Contribution Notice or Financial Support Direction;

(vii) the receipt by any Company of any notice of any Environmental Claim or violation of or potential liability under, or knowledge by any Company that there exists a condition that has resulted, or could reasonably be expected to result, in an Environmental Claim or a violation of or liability under, any Environmental Law, except for Environmental Claims, violations and liabilities the consequence of which, in the aggregate, have not and could not be reasonably likely to subject the Companies collectively to liabilities exceeding \$5,000,000; and

(viii) (i) the incurrence of any Lien (other than Permitted Collateral Liens) on, or claim asserted against, all or any material portion of the Collateral or (ii) the occurrence of any other event which could reasonably be expected to materially adversely affect the value of the Collateral.

Section 5.03 Existence; Businesses and Properties. (a) Do or cause to be done all things necessary to preserve, renew and maintain in full force and effect its legal existence and all rights and franchises, licenses and permits material to its business, except as otherwise expressly permitted under Section 6.05 or Section 6.06.

(b) Do or cause to be done all things necessary to maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of Borrower and its Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

Section 5.04 Insurance. (a) Keep its insurable property adequately insured at all times by financially sound and reputable insurers; maintain such other insurance, to such extent and against such risks as is customary with companies in the same or similar businesses operating in the same or similar locations, including insurance with respect to Mortgaged Properties and other properties material to the business of the Companies against such casualties and contingencies and of such types and in such amounts with such deductibles as is customary in the case of similar businesses operating in the same or similar locations, including (i) physical hazard insurance on an “all risk” basis, (ii) commercial general liability against claims for bodily injury, death or property damage covering any and all insurable claims, (iii) explosion insurance in respect of any boilers, machinery or similar apparatus constituting Collateral, (iv) business interruption insurance and (v) worker’s compensation insurance and such other insurance as may be required by any Legal Requirement; *provided* that with respect to physical hazard insurance, (x) neither the Collateral Agent nor the applicable Company shall agree to the adjustment of any claim thereunder without the consent of the other (such consent not to be unreasonably conditioned, withheld or delayed), and (y) no consent of any Company shall be required during an Event of Default.

(b) Notify the Administrative Agent and the Collateral Agent immediately whenever any separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Section 5.04 is taken out by any Company; and promptly (and, in any event, within five Business Days) deliver to the Administrative Agent and the Collateral Agent a duplicate original copy of such policy or policies.

(c) With respect to each Mortgaged Property, obtain flood insurance in such total amount as the Administrative Agent or the Required Lenders may from time to time reasonably require, if at any time the area in which any improvements located on any Mortgaged Property is designated a “flood hazard area” in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), and otherwise comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973.

(d) No Loan Party that is an owner of any Mortgaged Property shall take any action that is reasonably likely to be the basis for termination, revocation or denial of any insurance coverage required to be maintained under such Loan Party’s respective Mortgage or that could reasonably be the basis for a defense to any claim under any Insurance Policy maintained in respect of the Premises, and each Loan Party shall otherwise comply in all material respects with all Insurance Requirements in respect of the Premises; provided, however, that

each Loan Party may, at its own expense and after written notice to the Administrative Agent, (i) contest the applicability or enforceability of any such Insurance Requirements by appropriate legal proceedings, the prosecution of which does not constitute a basis for cancellation or revocation of any insurance coverage required under this Section 5.04 or (ii) cause the Insurance Policy containing any such Insurance Requirement to be replaced by a new policy complying with the provisions of this Section 5.04.

Section 5.05 Obligations and Taxes. Pay its Material Indebtedness and other material obligations promptly and in accordance with their terms and pay and discharge promptly when due all Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful claims for labor, services, materials and supplies or otherwise that, if unpaid, might give rise to a Lien other than a Permitted Lien upon such properties or any part thereof; *provided* that such payment and discharge shall not be required with respect to any such Tax, assessment, charge, levy or claim so long as (i) the validity or amount thereof shall be contested in good faith by appropriate proceedings timely instituted and diligently conducted and the applicable Company shall have set aside on its books adequate reserves or other appropriate provisions with respect thereto in accordance with GAAP, and (ii) such contest operates to suspend collection of the contested obligation, Tax, assessment or charge and enforcement of a Lien other than a Permitted Lien.

Section 5.06 Employee Benefits. Comply in all material respects with all applicable Legal Requirements, including the applicable provisions of ERISA and the Code with respect to all Employee Benefit Plans and (b) furnish to the Administrative Agent (x) as soon as possible after, and in any event within five Business Days after any Responsible Officer of any Company or any ERISA Affiliate of any Company knows or has reason to know that, any ERISA Event or other event with respect to an Employee Benefit Plan has occurred that, alone or together with any other ERISA Event could reasonably be expected to result in liability of the Companies or any of their ERISA Affiliates in an aggregate amount exceeding \$5,000,000 or the imposition of a Lien, a statement of a Financial Officer of Borrower setting forth details as to such ERISA Event and the action, if any, that the Companies propose to take with respect thereto, and (y) upon request by the Administrative Agent, copies of (i) annual report (Form 5500 Series) filed by any Company or any of its ERISA Affiliates with the Employee Benefits Security Administration with respect to each Employee Benefit Plan; (ii) the most recent actuarial valuation report for each Pension Plan; and (iii) all notices received by any Company or any of its ERISA Affiliates from a Multiemployer Plan sponsor or any governmental agency concerning an ERISA Event.

Section 5.07 Maintaining Records; Access to Properties and Inspections; Annual Meetings. (a) Keep proper books of record and account in which full, true and correct entries in conformity with GAAP and all Legal Requirements are made of all dealings and transactions in relation to its business and activities. Each Company will permit any representatives designated by the Administrative Agent upon reasonable advance notice and during normal business hours

to visit and inspect the financial records and the property of such Company at reasonable times and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any representatives designated by the Administrative Agent to discuss the affairs, finances, accounts and condition of any Company with the officers and employees thereof and advisors therefor (including independent accountants); *provided* that (x) in the case of any discussion or meeting with the independent accountants, only if Borrower has been given the opportunity to participate in such discussion or meeting and (y) Borrower shall not be required to reimburse the Administrative Agent for the cost of more than one such visit and inspection during any fiscal year unless a Default or Event of Default has occurred and is continuing.

(b) Within 120 days after the close of each fiscal year of the Companies, at the request of the Administrative Agent or Required Lenders, hold a meeting (at a mutually agreeable location and time or, at the option of the Administrative Agent, a conference call) with all Lenders who choose to attend such meeting or conference call at which meeting or conference call shall be reviewed the financial results of the previous fiscal year and the financial condition of the Companies and the budgets presented for the current fiscal year of the Companies.

Section 5.08 Use of Proceeds. Use the proceeds of the Loans only for the purposes set forth in Section 3.12.

Section 5.09 Compliance with Environmental Laws. Comply, and cause all lessees and other Person occupying its properties to comply, in all material respects with all Environmental Laws applicable to its operations and properties; obtain and renew all material environmental permits necessary for its operations and properties; and conduct any remedial action in accordance with Environmental Laws; *provided, however*, that none of Borrower or any Subsidiary shall be required to undertake any remedial action required by Environmental Laws to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

Section 5.10 Margin Stock. Do or cause to be done all things necessary to ensure that Margin Stock represents less than 25% of the total assets of Borrower and its Subsidiaries on a consolidated basis.

Section 5.11 Additional Collateral; Additional Guarantors. (a) Subject to this Section 5.11, with respect to any property acquired after the Closing Date by any Loan Party that is intended to be subject to the Lien created by any of the Security Documents but is not so subject (but, in any event, excluding any Equity Interest of a Tax Excluded Subsidiary not required to be pledged pursuant to the last sentence of Section 5.11(b)), promptly (and in any event within 15 Business Days after the acquisition thereof or such longer time as the Administrative Agent and the Collateral Agent may agree in its sole discretion) (i) execute and deliver to the Administrative Agent and the Collateral Agent such amendments or supplements

to the relevant Security Documents or such other documents as the Administrative Agent or the Collateral Agent shall deem necessary or advisable to grant to the Collateral Agent, for its benefit and for the benefit of the other Secured Parties, a Lien on such property subject to no Liens other than Permitted Collateral Liens and (ii) take all actions necessary to cause such Lien to be duly perfected to the extent required by such Security Documents in accordance with all applicable Legal Requirements, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent or the Collateral Agent. Borrower and the other Loan Parties shall otherwise take such actions and execute and/or deliver to the Collateral Agent such documents as the Administrative Agent or the Collateral Agent shall require to confirm the validity, perfection and priority of the Lien of the Security Documents against such after-acquired properties.

(b) With respect to any person that is or becomes a Subsidiary (other than an Immaterial Subsidiary) of a Loan Party after the Closing Date, promptly (and in any event within 30 days after such person becomes a Subsidiary (or is no longer an Immaterial Subsidiary)) (i) in the case of such Subsidiary directly owned by any Loan Party, subject to the last sentence of this paragraph (b), deliver to the Collateral Agent the certificates, if any, representing all of the Equity Interests of such Subsidiary owned by such Loan Party, together with undated stock powers or other appropriate instruments of transfer executed and delivered in blank by a duly authorized officer of the holder(s) of such Equity Interests, and, in all cases, all intercompany notes owing from such Subsidiary to any Loan Party together with instruments of transfer executed and delivered in blank by a duly authorized officer of such Loan Party and (ii) in the case such Subsidiary is a Wholly-Owned Domestic Subsidiary, cause such Subsidiary (unless it is (x) Schuff or a Subsidiary of Schuff or (y) a Target or a Subsidiary of Target) (A) to execute a Joinder Agreement to become a Subsidiary Guarantor and a Pledgor, (B) to the extent requested by Administrative Agent, deliver opinions of counsel to Borrower in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent, and (C) to take all actions necessary or advisable in the reasonable opinion of the Administrative Agent or the Collateral Agent to cause the Lien created by the applicable Security Document to be duly perfected to the extent required by such Security Document in accordance with all applicable Legal Requirements, including the filing of financing statements (or equivalent registrations) in such jurisdictions as may be reasonably requested by the Administrative Agent or the Collateral Agent. Notwithstanding the foregoing, (1) the Equity Interests required to be delivered to the Collateral Agent pursuant to clause (i) of the preceding sentence shall not include any Equity Interests of a Tax Excluded Subsidiary and (2) no Tax Excluded Subsidiary shall be required to take the actions (or be the subject of such actions) specified in clause (ii) of the preceding sentence, provided that the exception contained in clause (1) shall not apply to (A) Voting Stock of any Tax Excluded Subsidiary (which is not a Subsidiary of another Tax Excluded Subsidiary) representing 65% of the total voting power of all outstanding Voting Stock of such Tax Excluded Subsidiary and (B) 100% of the Equity Interests not constituting Voting Stock of any such Tax Excluded Subsidiary, except that any such Equity Interests constituting "stock entitled to vote" within the meaning of Treasury Regulation Section 1.956-2(c)(2) shall be treated as Voting Stock for purposes of this Section 5.11(b).

(c) With respect to any person that becomes a Subsidiary of a Loan Party after the Closing Date (other than (x) a Subsidiary of Schuff, (y) a Subsidiary of Bridgehouse Marine or (z) a Target or Subsidiary of a Target), promptly (and in any event within 15 Business Days after such person becomes a Subsidiary or such longer time as the Administrative Agent and Collateral Agent may agree in its sole discretion) execute and deliver to the Collateral Agent (i) a counterpart to the Intercompany Note and (ii) if such Subsidiary is a Loan Party, an endorsement to the Intercompany Note (undated and endorsed in blank) in the form attached thereto, endorsed by such Subsidiary.

(d) (A) Promptly grant to the Collateral Agent (and in any event within 90 Business Days of the acquisition thereof or such longer time as the Administrative Agent and Collateral Agent may reasonable agree) a security interest in and Mortgage on each Real Property owned in fee by such Loan Party as is acquired by such Loan Party after the Closing Date and that, together with any improvements thereon, individually has a Fair Market Value of at least \$5,000,000 as additional security for the Secured Obligations (unless the subject property is already mortgaged to a third party to the extent permitted by Section 6.02). Such Mortgages shall be granted pursuant to documentation reasonably satisfactory in form and substance to the Administrative Agent and the Collateral Agent and shall constitute valid and enforceable perfected first priority Liens subject only to Permitted Collateral Liens. Such Loan Party shall promptly, upon reasonable request by the Administrative Agent, deliver to the Collateral Agent (and in any event within 30 days) a Landlord Access Agreement with respect to each leased Real Property subject to this Section 5.11(d) (unless the applicable Loan Party shall have used all commercially reasonable efforts to obtain, but failed to obtain, such Landlord Access Agreements). The Mortgages or instruments related thereto shall be duly recorded or filed in such manner and in such places as are required by applicable Legal Requirements to establish, perfect, preserve and protect the Liens in favor of the Collateral Agent required to be granted pursuant to the Mortgages and all taxes, fees and other charges payable in connection therewith shall be paid in full. Such Loan Party shall otherwise take such actions and execute and/or deliver to the Collateral Agent such documents as the Administrative Agent or the Collateral Agent shall reasonably require to confirm the validity, enforceability, perfection and priority of the Lien of any existing Mortgage or new Mortgage against such after-acquired Real Property (including a Title Policy, a Survey and local counsel opinion (in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent) in respect of such Mortgage).

Section 5.12 Security Interests; Further Assurances. (a) Promptly, upon the reasonable request of the Administrative Agent, the Collateral Agent or any Lender, at the Companies' expense, execute, acknowledge and deliver, or cause the execution, acknowledgment and delivery of, and thereafter register, file or record, or cause to be registered, filed or recorded, in an appropriate governmental office, any document or instrument supplemental to or confirmatory of the Security Documents or otherwise deemed by the Administrative Agent or the Collateral Agent reasonably necessary or desirable for the continued validity, enforceability, perfection and priority of the Liens on the Collateral covered thereby subject to no other Liens except Permitted Liens, or obtain any consents or waivers as may be necessary or appropriate in connection therewith.

(b) Deliver or cause to be delivered to the Administrative Agent and the Collateral Agent from time to time such other documentation, instruments, consents, authorizations, approvals and Orders in form and substance reasonably satisfactory to the Administrative Agent and the Collateral Agent as the Administrative Agent and the Collateral Agent shall reasonably deem necessary or advisable to perfect or maintain the validity, enforceability, perfection and priority of the Liens on the Collateral pursuant to the Security Documents.

Section 5.13 Lenders Conference Call. Host a conference call with representatives of the Administrative Agent and the Lenders once during each fiscal quarter of Borrower upon reasonable prior notice to be held at such time as reasonably designated by Borrower (in consultation with the Administrative Agent), at which conference call shall be discussed the financial results of the previous fiscal quarter and the year-to-date financial condition of the Companies.

Section 5.14 Post-Closing Collateral Matters. Execute and deliver the documents and complete the tasks set forth below in this Section 5.14, in each case within the time limits specified below:

(a) Control Agreements. On or prior to the date that is 60 days after the Closing Date, (or such extended period as agreed to by the Administrative Agent in its sole discretion), use commercially reasonable efforts to cause Bank of America to execute and deliver, to the Administrative Agent a control agreement in a form reasonably acceptable to the Administrative Agent in respect of those certain deposit accounts existing as of the Closing Date and maintained at such financial institutions.

(b) Intercompany Note. On or prior to the date that is 30 days after the Closing Date, (or such extended period as agreed to by the Administrative Agent in its sole discretion), the Intercompany Note executed by and among the Companies (other than Schuff and its Subsidiaries, Bridgehouse Marine and its Subsidiaries and Primus Telecommunications, Inc.), accompanied by an endorsement to the Intercompany Note in the form attached thereto, undated and endorsed in blank by each of the Loan Parties.

(c) Schuff Credit Facility. On or prior to October 26, 2014, (or such extended period as agreed to by the Administrative Agent in its sole discretion), use reasonable best efforts to cause Schuff to amend, refinance or otherwise modify the Schuff Credit Facility to permit dividends to be paid by Schuff to Borrower subject to customary restrictions reasonably satisfactory to the Administrative Agent.

ARTICLE VI
NEGATIVE COVENANTS

Each Loan Party warrants, covenants and agrees with the Administrative Agent, the Collateral Agent and each Lender that, so long as this Agreement shall remain in effect and until the Commitments have been terminated and the principal of and interest and premium (if any) on each Loan, all Fees and all other expenses or amounts payable under any Loan Document have been paid in full, no Loan Party will, nor will they cause or permit any of their Subsidiaries to:

Section 6.01 Indebtedness. Incur, create, assume or permit to exist, directly or indirectly, any Indebtedness, except:

- (a) Indebtedness incurred under this Agreement, the other Loan Documents, Exchange Notes Indebtedness incurred under the Exchange Note Documents and, to the extent constituting Indebtedness, the Convertible Preferred Stock issued pursuant to the Convertible Preferred Stock Documents;
- (b) Indebtedness outstanding on the Closing Date and, with respect to any such Indebtedness in excess of \$100,000, listed on Schedule 6.01(b);
- (c) Indebtedness under Hedging Obligations under Permitted Hedging Agreements, in each case entered into in the ordinary course of business and not for speculative purposes or taking a “market view”;
- (d) Incurrence by (x) Borrower or any Subsidiary Guarantor of intercompany Indebtedness between or among Borrower and the Subsidiary Guarantors; *provided* that such Indebtedness shall be evidenced by the Intercompany Note, (x) Schuff or any of its Subsidiaries of intercompany Indebtedness between or among Schuff and its Subsidiaries, (y) Bridgehouse Marine or any of its Subsidiaries of intercompany indebtedness between or among Bridgehouse Marine and its Subsidiaries and (z) any Target or any of its Subsidiaries of intercompany Indebtedness between or among such Target and its Subsidiaries;
- (e) Indebtedness of Borrower and its Subsidiaries in respect of Purchase Money Obligations and Capital Lease Obligations in an aggregate amount not to exceed \$10,000,000 at any time outstanding; *provided, however*, that, in the case of Purchase Money Obligations, (i) such Indebtedness is incurred within 90 days after such acquisition, installation, construction or improvement of such fixed or capital assets (including Equity Interests of any person owning the applicable fixed or capital assets) by such person and (ii) the amount of such Indebtedness does not exceed the cost of such acquisition, installation, construction or improvement, as the case may be;
- (f) Permanent Notes, the proceeds of which are used to prepay any or all of the Loans in accordance with the terms of this Agreement;

(g) Indebtedness in respect of bid, performance or surety bonds issued for the account of any Company in the ordinary course of business, including guarantees or obligations of any Company with respect to letters of credit supporting such bid, performance or surety obligations (in each case other than for an obligation for money borrowed);

(h) Indebtedness of a Target or any of its Subsidiaries that becomes a Subsidiary on or after the date hereof; *provided* that such Indebtedness (i) exists at the time such person becomes a Subsidiary, (ii) is not created in anticipation or contemplation of such person becoming a Subsidiary and (iii) is not directly or indirectly recourse to any of the Companies or any of their respective assets, other than to the person that becomes a Subsidiary,

(i) Contingent Obligations of any Company in respect of Indebtedness otherwise permitted under this Section 6.01 (other than Section 6.01(b), Section 6.01(i));

(j) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Indebtedness is extinguished within five Business Days of incurrence;

(k) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;

(l) Unsecured Indebtedness of any Company in an aggregate principal amount for all Companies not to exceed \$10,000,000 at any time outstanding (and refinancings thereof); *provided*, that (i) interest on such Indebtedness incurred by Borrower or any of its Subsidiaries (other than Schuff, Bridgehouse Marine and their respective Subsidiaries) under this clause (l) shall not be payable in cash at any time prior to the final maturity date of the Loans and, in lieu of paying cash interest, may be payable-in-kind by capitalizing and adding such interest to the then-outstanding principal amount of such Indebtedness, and (ii)(x) such Indebtedness has a later final maturity and longer weighted average life to maturity than the Loans in each case by at least 90 days and (y) the covenants, events of default and other terms, conditions and provisions thereof (including any guarantees thereof or any security documents in respect thereof) shall be in the aggregate, no less favorable to the Loan Parties than those contained in this Agreement;

(m) Indebtedness which represents (x) a refinancing or renewal of any of the Indebtedness described in clause (b), (e), (l) or (o); *provided* that (A) any such refinancing Indebtedness is in an aggregate principal amount (or aggregate amount, as applicable) not greater than the aggregate principal amount (or aggregate amount, as applicable) of the Indebtedness being renewed or refinanced, *plus* the amount of any reasonable premiums required to be paid thereon and reasonable fees and expenses associated therewith, (B) such refinancing Indebtedness has a later or equal final maturity and longer or equal weighted average life to maturity than the Indebtedness being renewed or refinanced, (C) the covenants, events of default, subordination (including lien subordination) and other terms, conditions and provisions thereof

(including any guarantees thereof or security documents in respect thereof) shall be, in the aggregate, no less favorable to the Administrative Agent, the Collateral Agent and the Lenders than those contained in the Indebtedness being renewed or refinanced, and (D) no Event of Default has occurred and is continuing or would result therefrom and (y) the accrual or accretion of any interest on any Indebtedness permitted under this Section 6.01;

(n) to the extent constituting Indebtedness, the Preferred Stock of Borrower in an aggregate principal amount not to exceed \$40,000,000; and

(o) Indebtedness of Bridgehouse Marine and its Subsidiaries in an aggregate amount of Purchase Money Obligations not to exceed \$35,000,000 at any time outstanding, the proceeds of which are used solely to pay the cash consideration for the acquisition or construction of vessels; *provided, however*, that, (x) no Default or Event of Default shall have occurred or be continuing and (y) the amount of such Indebtedness does not exceed 65% the cost of such acquisition or construction, as the case may be.

Section 6.02 Liens. Create, incur, assume or permit to exist, directly or indirectly, any Lien on any property now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except the following (collectively, the “**Permitted Liens**”):

(a) inchoate Liens for taxes, assessments or governmental charges or levies not yet due and payable or delinquent and Liens for taxes, assessments or governmental charges or levies, which are being contested in good faith by appropriate proceedings promptly initiated and diligently conducted for which adequate reserves have been established in accordance with GAAP, which proceedings (or Orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien;

(b) Liens in respect of property of any Company imposed by law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers’, warehousemen’s, materialmen’s, landlords’, workmen’s, suppliers’, repairmen’s and mechanics’ Liens and other similar Liens arising in the ordinary course of business, and (i) which do not in the aggregate materially detract from the value of the property of the Companies, taken as a whole, or the Loan Parties, taken as a whole, and do not materially impair the use thereof in the operation of the business of the Companies, taken as a whole, or the Loan Parties, taken as a whole, and (ii) which, if they secure obligations that are then due and unpaid, are being contested in good faith by appropriate proceedings promptly initiated and diligently conducted for which adequate reserves have been established in accordance with GAAP, which proceedings (or Orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien;

(c) any Lien in existence on the Closing Date and set forth on Schedule 6.02(c) and any Lien granted as a replacement or substitute therefor; *provided* that any such replacement or substitute Lien (i) except as permitted by Section 6.01(n)(A), does not secure an aggregate amount of Indebtedness or other obligations, if any, greater than that secured on the

Closing Date (*minus* the aggregate amount of any permanent repayments and prepayments thereof since the Closing Date but only to the extent that such repayments and prepayments by their terms cannot be reborrowed or redrawn and do not occur in connection with a refinancing of all or a portion of such Indebtedness) and (ii) does not encumber any property other than the property subject thereto on the Closing Date (any such Lien, an “**Existing Lien**”);

(d) easements, rights-of-way, restrictions (including zoning restrictions), covenants, licenses, encroachments, protrusions, servitudes and other similar charges or encumbrances, and minor title deficiencies, in each case, on or with respect to any Real Property, whether now or hereafter in existence, not (i) securing Indebtedness, (ii) individually or in the aggregate materially impairing the value or marketability of such Real Property or (iii) individually or in the aggregate materially interfering with the ordinary conduct of the business of the Companies at or otherwise with respect to such Real Property;

(e) Liens arising out of judgments, attachments or awards not resulting in a Default and in respect of which such Company shall in good faith be diligently prosecuting an appeal or proceedings for review in respect of which there shall be secured a subsisting stay of execution pending such appeal or proceedings;

(f) Liens (other than any Lien imposed by ERISA) (x) imposed by law or deposits made in connection therewith in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security legislation, (y) incurred in the ordinary course of business to secure the performance of tenders, statutory obligations (other than excise taxes), surety, stay, customs and appeal bonds, statutory bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (in each case, exclusive of obligations for the payment of Indebtedness) or (z) arising by virtue of deposits made in the ordinary course of business to secure liability for premiums to insurance carriers; *provided* that (i) with respect to clauses (x), (y) and (z) of this Section 6.02(f), such Liens are for amounts not yet due and payable or delinquent or, to the extent such amounts are so due and payable, such amounts are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings (or Orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien, and (ii) to the extent such Liens are not imposed by Legal Requirements, such Liens shall in no event encumber any property other than cash and Cash Equivalents;

(g) Leases of the properties of any Company, in each case entered into in the ordinary course of such Company’s business so long as such Leases do not, individually or in the aggregate, (i) interfere in any material respect with the ordinary conduct of the business of any Company or (ii) materially impair the use (for its intended purposes) or the value of the property subject thereto;

- (h) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by any Company in the ordinary course of business in accordance with the past practices of such Company;
- (i) Liens securing Indebtedness incurred pursuant to Section 6.01(e), Section 6.01(l) and Section 6.01(o), *provided* that (i) any such Liens attach only to the property being financed pursuant to such Indebtedness, (ii) do not encumber any other property of any Company and (iii) the principal amount of the Indebtedness secured by any such Lien shall not exceed the lesser of the Fair Market Value or the cost of the property secured by such Lien;
- (j) Liens securing Indebtedness permitted pursuant to Section 6.01(a), Section 6.01(c), 6.01(f) and 6.01(h);
- (k) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by any Company, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; *provided* that, unless such Liens are non-consensual and arise by operation of applicable Legal Requirements, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;
- (l) Liens on property of a person existing at the time such person is acquired or merged with or into or consolidated with any Company to the extent permitted hereunder; *provided* that such Liens (i) do not extend to property not subject to such Liens at the time of such acquisition, merger or consolidation (other than improvements thereon), (ii) are no more favorable to the lienholders than such existing Liens and (iii) are not created in anticipation or contemplation of such acquisition, merger or consolidation;
- (m) Liens granted pursuant to the Security Documents to secure the Secured Obligations;
- (n) licenses or sublicenses of Intellectual Property granted by any Company in the ordinary course of business and not interfering in any material respect with the ordinary conduct of business of the Companies;
- (o) the filing of UCC financing statements solely as a precautionary measure in connection with operating leases or consignment of goods;
- (p) Liens of a collecting bank arising in the ordinary course of business under Section 4208 of the UCC covering only the items being collected upon; and
- (q) Liens granted by a Company in favor of a Loan Party in respect of Indebtedness owed by such Company to such Loan Party; *provided* that such Indebtedness is (i) evidenced by the Intercompany Note and (ii) pledged by such Loan Party as Collateral pursuant to the Security Documents.

Section 6.03 Sale and Leaseback Transactions. Enter into any arrangement, directly or indirectly, with any person whereby it shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred (a “**Sale and Leaseback Transaction**”), except the following shall be permitted:

(a) Sale and Leaseback Transactions entered into by (x) Schuff and its Subsidiaries, (y) Bridgehouse Marine and its Subsidiaries or (z) any Target and its Subsidiaries; provided, that in no event shall (i) any such arrangement be made directly or indirectly with Borrower or any of its Subsidiaries (other than Schuff, Bridgehouse Marine, any Target and their respective Subsidiaries) and (ii) the aggregate amount of such arrangements exceed \$15,000,000 at any time.

Section 6.04 Investments, Loans and Advances. Directly or indirectly, lend money or credit (by way of guarantee, assumption of debt or otherwise) or make advances to any person, or purchase or acquire any stock, bonds, notes, debentures or other obligations or securities of, or any other interest in, or make any capital contribution to, any other person, or purchase or own a futures contract or otherwise become liable for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract (all of the foregoing, collectively, “**Investments**”), except that the following shall be permitted:

(a) the Companies may consummate the Transactions in accordance with the provisions of the Transaction Documents;

(b) Investments outstanding on the Closing Date and identified on Schedule 6.04(b);

(c) the Companies may (i) acquire and hold accounts receivables owing to any of them if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary terms, (ii) invest in, acquire and hold cash and Cash Equivalents, (iii) endorse negotiable instruments held for collection in the ordinary course of business or (iv) make lease, utility and other similar deposits in the ordinary course of business;

(d) Hedging Obligations permitted pursuant to Section 6.01(c);

(e) loans and advances to directors, employees and officers of Borrower and the Subsidiaries for *bona fide* business purposes and to purchase Equity Interests of Borrower, in aggregate amount not to exceed \$2,000,000 at any time outstanding (calculated without regard to write-downs or write-offs thereof); *provided* that, no loans in violation of Section 402 of the Sarbanes-Oxley Act shall be permitted hereunder;

(f) Investments by (i) Borrower in any Subsidiary Guarantor, (ii) any Company in Borrower or any Subsidiary Guarantor, (iii) a Subsidiary of Borrower that is not a Subsidiary Guarantor in any other Subsidiary of Borrower that is not a Subsidiary Guarantor, (iv) Schuff in any of its Subsidiaries and any Subsidiary of Schuff in Schuff or any other Subsidiary of Schuff, (v) Bridgehouse Marine in any of its Subsidiaries and any Subsidiary of Bridgehouse Marine in Schuff and (vi) any Target in any of its Subsidiaries and any Subsidiary of such Target in such Target or any other Subsidiary of Target; *provided* that any Investment by a Loan Party in the form of a loan or advance shall be evidenced by the Intercompany Note and, in the case of a loan or advance by a Loan Party, pledged by such Loan Party as Collateral pursuant to the Security Documents;

(g) Investments in securities of trade creditors or customers in the ordinary course of business and consistent with such Company's past practices that are received in settlement of *bona fide* disputes or pursuant to any plan of reorganization or liquidation or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers;

(h) mergers and consolidations in compliance with Section 6.05;

(i) Investments made by Borrower or any Subsidiary as a result of consideration received in connection with an Asset Sale made in compliance with Section 6.06;

(j) Acquisitions of property in compliance with Section 6.07 (other than Section 6.07(a));

(k) Dividends in compliance with Section 6.08;

(l) Investments consisting of licensing of Intellectual Property made in the ordinary course of business and not interfering in any material respect with the ordinary conduct of business of the Companies;

(m) Investments consisting of licensing or contribution of Intellectual Property;

(n) other Investments in an aggregate amount not to exceed \$5,000,000 on the date such Investments are made;

(o) other Investments by Borrower or any Subsidiary so long as (i) no Default or Event of Default then exists or would result therefrom and (ii) after giving effect to such Investment on a Pro Forma Basis, the aggregate amount of all unrestricted cash and Cash Equivalents of the Loan Parties shall be at least the sum of (x) the aggregate amount of unrestricted cash and Cash Equivalents of the Loan Parties then required pursuant to Section 6.10(c) plus (y) \$2,500,000;

(p) Investments constituting Permitted Acquisitions;

(q) the Delayed Draw Tender Offer; and

(r) repayments of the Loans, Exchange Notes or Permanent Notes.

Section 6.05 Mergers and Consolidations. Wind up, liquidate or dissolve its affairs or enter into any transaction of merger or consolidation, except that the following shall be permitted:

(a) the Transactions as contemplated by, and in compliance with, the Transaction Documents;

(b) dispositions of assets in compliance with Section 6.06 (other than Section 6.06(e) and Section 6.06(f));

(c) Permitted Acquisitions (including any merger, consolidation or amalgamation in order to effect a Permitted Acquisition);

(d) any solvent Company (other than Borrower) may merge or consolidate with or into Borrower or any Subsidiary Guarantor (as long as Borrower or a Subsidiary Guarantor is the surviving person in such merger or consolidation and, in the case of any Subsidiary Guarantor, remains a Wholly Owned Subsidiary of Borrower); *provided* that the Lien on and security interest in such property granted or to be granted in favor of the Collateral Agent under the Security Documents shall be maintained or created in accordance with the provisions of Section 5.11 or Section 5.12, as applicable;

(e) any Subsidiary of Schuff may merge or consolidate with or into Schuff or any of its Subsidiaries;

(f) any Subsidiary of Bridgehouse Marine may merge or consolidate with or into Bridgehouse Marine or any of its Subsidiaries

(g) any Subsidiary of a Target may merge or consolidate with or into such Target or any of its Subsidiaries; and

(h) any Subsidiary may dissolve, liquidate or wind up its affairs at any time if such dissolution, liquidation or winding up is not disadvantageous to any Agent or Lender in any material respect.

To the extent the requisite Lenders under Section 11.02(b) waive the provisions of this Section 6.05 with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 6.05, such Collateral (unless sold to a Company or any Affiliate thereof), but not the proceeds thereof, shall be sold free and clear of the Liens created by the Security Documents, and, so long as Borrower shall have previously provided to the Collateral Agent and the Administrative Agent such certifications or documents as the Collateral Agent and/or the Administrative Agent shall reasonably request in order to demonstrate compliance with this Section 6.05, the Collateral Agent shall take all actions it deems appropriate in order to effect the foregoing.

Section 6.06 Asset Sales. Effect any disposition of any property, or agree to effect any disposition of any property, except that the following shall be permitted:

(a) dispositions of obsolete property by Borrower or any of its Subsidiaries in the ordinary course of business and the abandonment, cancellation or other disposition of property in the ordinary course of business or that is, in the reasonable good faith judgment of Borrower, no longer economically practicable to maintain or material in the conduct of the business of the Companies taken as a whole;

(b) (i) other dispositions of property (other than vessels); *provided* that (x) the aggregate consideration received in respect of all dispositions of property pursuant to this clause (b)(i) shall not exceed \$10,000,000 in any period of 12 consecutive months, but, in any event, shall not exceed \$5,000,000 with respect to any single disposition of property, (y) such dispositions of property are made for Fair Market Value and on an arms-length commercial basis, and (z) at least 80% of the consideration payable in respect of such disposition of property is in the form of cash or Cash Equivalents; and

(ii) the disposition by Bridgehouse Marine or any of its Subsidiaries of one vessel; *provided* that (x) the Net Cash Proceeds of such disposition shall be reinvested in a substantially similar asset used or useful in the business of Bridgehouse Marine within 365 days following the receipt of such Net Cash Proceeds, (y) at least 80% of the consideration payable in respect of such disposition is either (i) in the form of cash or Cash Equivalents or (ii) credit against the purchase price of similar replacement property and (z) such disposition is made for Fair Market Value and on an arms-length commercial basis;

(c) leases of real or personal property in the ordinary course of business and in accordance with the applicable Security Documents;

(d) licenses or sublicenses of Intellectual Property in the ordinary course of business and not interfering in any material respect with the ordinary conduct of business of the Companies;

(e) the Transactions as contemplated by, and in compliance with, the Transaction Documents;

(f) Investments in compliance with [Section 6.04](#);

(g) mergers and consolidations in compliance with [Section 6.05](#);

(h) Dividends in compliance with [Section 6.08](#);

(i) sales of inventory in the ordinary course of business and dispositions of cash and Cash Equivalents in the ordinary course of business;

(j) any disposition of property that constitutes a Casualty Event;

(k) licenses or sublicenses of Intellectual Property in the ordinary course of business;

(l) any disposition of property as contemplated by, and in compliance with, the Blackiron Equity Purchase Agreement or the NA Telecom Purchase Agreement;

(m) any termination of leases by Borrower or any Subsidiary as lessee that is, in the reasonable and good faith judgment of Borrower, no longer commercially practicable to maintain or useful in the conduct of business of the Companies taken as a whole;

(n) any disposition of property (x) by any Subsidiary of Borrower to Borrower or any of its Wholly Owned Subsidiaries; *provided* that if the transferor of such property is a Guarantor, the transferee thereof must be Borrower or a Guarantor, (x) by Schuff to any Subsidiary of Schuff or any Subsidiary of Schuff to Schuff or any other Subsidiary of Schuff, (y) by Bridgehouse Marine to any Subsidiary of Bridgehouse Marine or any Subsidiary of Bridgehouse Marine to Bridgehouse Marine and (z) by a Target to any Subsidiary of such Target or any Subsidiary of such Target to Target or any other Subsidiary of such Target; or

(o) in the case of Bridgehouse Marine, charters and leases of vessels and related property in the ordinary course of business;

To the extent the requisite Lenders under Section 11.02(b) waive the provisions of this Section 6.06, with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 6.06, such Collateral (unless sold to a Company or any Affiliate thereof), but not the proceeds thereof, shall be sold free and clear of the Liens created by the Security Documents, and, so long as Borrower shall have previously provided to the Collateral Agent and the Administrative Agent such certifications or documents as the Collateral Agent and/or the Administrative Agent shall reasonably request in order to demonstrate compliance with this Section 6.06, the Collateral Agent shall take all actions it deems appropriate in order to effect the foregoing.

Section 6.07 Acquisitions. Purchase or otherwise acquire (in one or a series of related transactions) any part of the property of any person (or agree to do any of the foregoing at any time), except that the following shall be permitted:

(a) Investments in compliance with Section 6.04;

(b) Capital Expenditures by Borrower and the Subsidiaries;

(c) purchases and other acquisitions of inventory, materials, equipment and intangible property in the ordinary course of business;

(d) leases or licenses of real or personal property in the ordinary course of business and in accordance with this Agreement and the applicable Security Documents;

(e) the Transactions as contemplated by, and in compliance with, the Transaction Documents;

(f) Permitted Acquisitions;

(g) mergers and consolidations in compliance with Section 6.05; and

(h) Dividends in compliance with Section 6.08;

provided that the Lien on and security interest in such property granted or to be granted in favor of the Collateral Agent under the Security Documents shall be maintained or created in accordance with the provisions of Section 5.11 or Section 5.12, as applicable.

Section 6.08 Dividends. Authorize, declare or pay, directly or indirectly, any Dividends with respect to any Company (including pursuant to any Synthetic Purchase Agreement) or incur any obligation (contingent or otherwise) to do so, except that the following shall be permitted:

(a) Dividends by any Subsidiary of Borrower to the holders of its Equity Interest on a ratable basis;

(b) repurchases or redemptions of Qualified Capital Stock of Borrower held by officers, directors or employees or former officers, directors or employees (or their transferees, estates or beneficiaries under their estates) of any Company, upon their death, disability, retirement, severance or termination of employment or service; *provided* that the aggregate amount of payments to Borrower shall not exceed, in any period of 12 consecutive months, \$2,500,000 and, in the aggregate, \$5,000,000;

(c) Dividends by Borrower in accordance with the Convertible Preferred Stock Documents as in effect on the Closing Date; *provided* that, (x) no Default or Event of Default has occurred and is continuing or would result therefrom and (y) Dividends payable in cash may only be paid with respect to Convertible Preferred Stock outstanding as of the Closing Date;

(d) Any payments made or required to be made by such person with respect to any stock appreciation rights, plans, equity incentive or achievement plans or any similar plans or setting aside of or otherwise reserving any funds for the foregoing purposes; and

(e) the Delayed Draw Tender Offer.

Section 6.09 Transactions with Affiliates. Enter into, directly or indirectly, any transaction or series of related transactions, whether or not in the ordinary course of business, with any Affiliate of any Company (other than between or among (w) Borrower and one or more Subsidiary Guarantors, (x) Schuff and its Subsidiaries, (y) Bridgehouse Marine and its Subsidiaries and (z) any Target and its Subsidiaries), other than on terms and conditions at least as favorable to such Company as would reasonably be obtained by such Company at that time in a comparable arm's-length transaction with a person other than an Affiliate, except that the following shall be permitted:

(a) Dividends permitted by Section 6.08;

(b) Investments permitted by Sections 6.04(e) and (f);

(c) reasonable and customary director, officer and employee compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans) and indemnification arrangements, in each case approved by the Board of Directors of the applicable Company; and

(d) the Transactions as contemplated by, and in accordance with, the Transaction Documents.

(e) agreements and transactions set forth in Schedule 6.09

Section 6.10 Financial Covenants.

(a) Minimum Consolidated EBITDA. Permit the aggregate Consolidated EBITDA, as of the last day of any Test Period ending on the last day of each fiscal quarter of Borrower beginning with the fiscal quarter ending December 31, 2014 to be less than the amount set forth below opposite the last day of such Test Period:

<u>Test Period</u>	<u>Consolidated EBITDA</u>
December 31, 2014 and March 31, 2015	\$ 55,000,000
June 30, 2015	\$ 60,000,000
September 30, 2015	\$ 65,000,000
December 31, 2015 and March 31, 2016	\$ 70,000,000
June 30, 2016	\$ 75,000,000
September 30, 2016	\$ 80,000,000

(b) **Minimum Collateral Coverage Ratio.** Permit the Collateral Coverage Ratio as of the last day of any Test Period ending on the last day of each fiscal quarter of Borrower beginning with the fiscal quarter ending December 31, 2014 to be less than the ratio set forth below opposite the last day of such Test Period:

<u>Test Period</u>	<u>Collateral Coverage Ratio</u>
December 31, 2014, March 31, 2015, June 30, 2015 and September 30, 2015	1.00 to 1.00
December 31, 2015, March 31, 2016, June 30, 2016 and September 30, 2016	1.25 to 1.00

(c) **Minimum Liquidity.** Permit, (x) as of any date prior to the first anniversary of the Closing Date, the aggregate amount of all unrestricted cash and Cash Equivalents of the Loan Parties to be less than Borrower's obligation to pay interest on the Loans and all other Indebtedness (including mandatory cash dividends under the Convertible Preferred Stock) of Borrower and its Subsidiaries for the next six months and (y) on and as of any date after the first anniversary of the Closing Date, the aggregate amount of all unrestricted cash and Cash Equivalents of the Loan Parties to be less than Borrower's obligation to pay interest on the Loans and all other Indebtedness (including mandatory cash dividends under the Convertible Preferred Stock) of Borrower and its Subsidiaries for the next twelve months. In the case any such Indebtedness bears interest at a floating rate, Borrower may assume that the reference interest rate in effect on the applicable date of determination will be in effect for the remainder of such period.

Section 6.11 Prepayments of Other Indebtedness; Modifications of Organizational Documents, Acquisition and Certain Other Documents, etc.
Directly or indirectly:

(a) (including pursuant to any Synthetic Purchase Agreement) make or offer to make (or give any notice in respect thereof) any voluntary or optional payment or prepayment on or redemption, retirement, defeasance, or acquisition for value of, or any prepayment or redemption as a result of any asset sale, change of control or similar event of, any Indebtedness outstanding under any Subordinated Indebtedness;

(b) amend or modify, or permit the amendment or modification of, any provision of any Transaction Document or any Material Indebtedness in any manner that is, or could reasonably be expected to be, adverse in any material respect to the interests of any Agent or Lender; or

(c) terminate, amend, modify (including electing to treat any Pledged Interests (as defined in the Security Agreement) as a “security” under Section 8-103 of the UCC) or change any of its Organizational Documents (including by the filing or modification of any certificate of designation) or any agreement to which it is a party with respect to its Equity Interests (including any stockholders’ agreement), or enter into any new agreement with respect to its Equity Interests, other than any such amendments, modifications or changes or such new agreements which are not, and could not reasonably be expected to be, adverse in any material respect to the interests of any Agent or Lender.

Section 6.12 Limitation on Certain Restrictions on Subsidiaries. Directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance, restriction or condition on the ability of any Subsidiary to (i) pay Dividends or make any other distributions on its Equity Interests or any other interest or participation in its profits owned by any Company, or pay any Indebtedness owed to any Company, (ii) make loans or advances to any Company or (iii) transfer any of its properties to any Company, except for such encumbrances, restrictions or conditions existing under or by reason of:

(a) applicable mandatory Legal Requirements;

(b) this Agreement, the other Loan Documents and the credit documents and other arrangements listed on Schedule 6.01(b);

(c) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of a Subsidiary;

(d) customary provisions restricting assignment of any agreement entered into by a Subsidiary in the ordinary course of business;

(e) customary restrictions and conditions contained in any agreement relating to the sale or other disposition of any property pending the consummation of such sale; provided that (i) such restrictions and conditions apply only to the property to be sold, and (ii) such sale or other disposition is permitted hereunder;

(f) the credit documents evidencing Indebtedness permitted under Section 6.01(h); or

(g) with respect to clause (iii) above, customary encumbrances, restrictions or conditions with respect to the leasing of vessels contained in the credit documents evidencing Indebtedness permitted under Section 6.01(o).

Section 6.13 Limitation on Issuance of Capital Stock. (a) With respect to Borrower, issue any Equity Interest that is Disqualified Capital Stock.

(b) With respect to any Subsidiary, issue any Equity Interest (including by way of sales of treasury stock) or any options or warrants to purchase, or securities convertible into, any Equity Interest, except (i) for stock splits, stock dividends and additional issuances of

Equity Interests which do not decrease the percentage ownership of Borrower or any Subsidiaries in any class of the Equity Interests of such Subsidiary, (ii) stock dividends pursuant to (x) stock plans or other agreements existing on the Closing Date not in excess of, in the case of Schuff, 5.0% of the fully diluted value of the Equity Interests of Schuff and (y) listed on Schedule 6.13 or adopted or agreed to in the ordinary course of business not in excess of 2.5% of the fully diluted value of the Equity Interests of such Subsidiary; and (iii) Subsidiaries of Borrower formed or acquired after the Closing Date in accordance with Section 6.04 may issue Equity Interests to the Company which is to own such Equity Interests. All Equity Interests issued in accordance with this Section 6.13(b) shall, to the extent required by Sections 5.11 and 5.12 or any Security Document, be delivered to the Collateral Agent for pledge pursuant to the applicable Security Document.

Section 6.14 Business. With respect to the Subsidiaries (except for a Subsidiary acquired pursuant to a Permitted Acquisition), engage (directly or indirectly) in any businesses other than those businesses in which the Subsidiaries are engaged on the Closing Date and any business reasonably related, ancillary or complimentary thereto.

Section 6.15 Limitation on Accounting Changes. Make or permit, any change in accounting policies or reporting practices, without the consent of the Required Lenders, which consent shall not be unreasonably withheld, except changes that are required by GAAP or UK GAAP, as applicable (subject in each case to the provisions of Section 1.04).

Section 6.16 Fiscal Periods. Change its fiscal year-end and fiscal quarter-ends to dates other than December 31 and March 31, June 30, September 30, respectively.

Section 6.17 No Further Negative Pledge. Enter into any agreement, instrument, deed or lease which prohibits or limits the ability of any Company to create, incur, assume or suffer to exist any Lien upon any of its properties or revenues, whether now owned or hereafter acquired, or which requires the grant of any security for an obligation if security is granted for another obligation, except the following: (a) this Agreement and the other Loan Documents; (b) covenants in documents creating Liens permitted by Section 6.02 prohibiting further Liens (other than Liens permitted under Section 6.02(n)) on the properties encumbered thereby; (c) agreements evidencing Indebtedness permitted under Section 6.01(h) and Section 6.01(l); and (d) any prohibition or limitation that (i) exists pursuant to applicable Legal Requirements, or (ii) consists of customary restrictions and conditions contained in any agreement relating to the sale of any property pending the consummation of such sale; *provided* that (1) such restrictions apply only to the property to be sold and such sale is permitted hereunder, and (2) such sale is permitted hereunder, or (iii) restricts subletting or assignment of any lease governing a leasehold interest of Borrower or one of its Subsidiaries.

Section 6.18 Anti-Terrorism Law; Anti-Money Laundering. (a) Directly or indirectly, (i) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in Section 3.22, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked

pursuant to the Executive Order or any other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and the Loan Parties shall deliver to the Lenders any certification or other evidence requested from time to time by any Lender in its reasonable discretion, confirming the Companies' compliance with this Section 6.18).

(b) Cause or permit any of the funds of such Loan Party that are used to repay the Credit Extensions to be derived from any unlawful activity with the result that the making of the Credit Extensions would be in violation of Legal Requirements.

Section 6.19 Embargoed Person. Cause or permit (a) any of the funds or properties of the Loan Parties that are used to repay the Loans or other Credit Extensions to constitute property of, or be beneficially owned directly or indirectly by, any person subject to sanctions or trade restrictions under United States law ("**Embargoed Person**" or "**Embargoed Persons**") that is identified on (1) the "List of Specially Designated Nationals and Blocked Persons" (the "**SDN List**") maintained by OFAC and/or on any other similar list ("**Other List**") maintained by OFAC pursuant to any authorizing statute including the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq.*, The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq.*, and any Executive Order or regulation promulgated thereunder, with the result that the investment in the Loan Parties (whether directly or indirectly) is prohibited by applicable Legal Requirements, or the Loans or other Credit Extensions made by the Lenders would be in violation of Legal Requirements, or (2) the Executive Order, any related enabling legislation or any other similar executive orders, or (b) any Embargoed Person to have any direct or indirect interest, of any nature whatsoever in the Loan Parties, with the result that the investment in the Loan Parties (whether directly or indirectly) is prohibited by applicable Legal Requirements or the Credit Extensions are in violation of applicable Legal Requirements.

Section 6.20 UK Pensions. No Company shall, except for the UK DB Plans, be or become at any time the employer of a UK defined benefit pension plan.

ARTICLE VII GUARANTEE

Section 7.01 The Guarantee. The Guarantors hereby, jointly and severally, guarantee, as primary obligors and not as sureties, to each Secured Party and their respective successors and assigns, the prompt payment and performance in full when due (whether at stated maturity, by required prepayment, declaration, demand, by acceleration or otherwise) of the principal of, and premium and interest (including any interest, fees, costs or charges that would accrue but for the provisions of the Title 11 of the United States Code after any bankruptcy or insolvency petition under Title 11 of the United States Code) on the Loans made by the Lenders to, and the Notes held by each Lender of, Borrower, and all other Secured Obligations from time to time owing to the Secured Parties by any Loan Party in each case strictly in accordance with the terms thereof (such obligations being herein collectively called the "**Guaranteed Obligations**"). The

Guarantors hereby jointly and severally agree that if Borrower or other Guarantor(s) shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same in cash, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

Section 7.02 Obligations Unconditional. The obligations of the Guarantors under Section 7.01 shall constitute a guaranty of payment and performance and not of collection and to the fullest extent permitted by applicable Legal Requirements, are absolute, irrevocable and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the Guaranteed Obligations under this Agreement, the Notes, if any, or any other agreement or instrument referred to herein or therein, or any substitution, release or exchange of any other guarantee or security for any of the Guaranteed Obligations, and, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or Guarantor (except for payment in full of the Guaranteed Obligations). Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder which shall remain absolute, irrevocable and unconditional under any and all circumstances as described above:

(i) at any time or from time to time, without notice to the Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of this Agreement, the other Loan Documents or the Notes, if any, or any other agreement or instrument referred to herein or therein shall be done or omitted;

(iii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be amended in any respect, or any right under the Loan Documents or any other agreement or instrument referred to herein or therein shall be amended or waived in any respect or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien or security interest granted to, or in favor of, any Secured Party as security for any of the Guaranteed Obligations shall fail to be valid, perfected or to have the priority required under the Loan Documents; or

(v) the release of any other Guarantor pursuant to Section 7.09.

The Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that any Secured Party exhaust any right, power or remedy or proceed against Borrower or any Guarantor under this Agreement or the Notes, if any, or any other agreement or instrument referred to herein or therein, or against any other person under any other guarantee of, or security for, any of the Guaranteed Obligations. The Guarantors waive any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon this Guarantee or acceptance of this Guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guarantee, and all dealings between Borrower and the Secured Parties shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guarantee. This Guarantee shall be construed as a continuing, absolute, irrevocable and unconditional guarantee of payment and performance without regard to any right of offset with respect to the Guaranteed Obligations at any time or from time to time held by the Secured Parties, and the obligations and liabilities of the Guarantors hereunder shall not be conditioned or contingent upon the pursuit by the Secured Parties or any other person at any time of any right or remedy against Borrower or against any other person which may be or become liable in respect of all or any part of the Guaranteed Obligations or against any collateral security or guarantee therefor or right of offset with respect thereto. This Guarantee shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon the Guarantors and their respective successors and assigns, and shall inure to the benefit of the Secured Parties, and their respective successors and assigns, notwithstanding that from time to time during the term of this Agreement there may be no Guaranteed Obligations outstanding.

Section 7.03 Reinstatement. The obligations of the Guarantors under this Article VII shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of Borrower or other Loan Party in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

Section 7.04 Subrogation; Subordination. Each Guarantor hereby agrees that until the indefeasible payment and satisfaction in full in cash of all Guaranteed Obligations and the expiration and termination of the Commitments of the Lenders under this Agreement it shall waive any claim and shall not exercise any right or remedy, direct or indirect, arising by reason of any performance by it of its guarantee in Section 7.01, whether by subrogation or otherwise, against Borrower or any other Guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations. Any Indebtedness of any Loan Party permitted pursuant to Section 6.04(f) shall be subordinated to such Loan Party's Secured Obligations in the manner set forth in the Intercompany Note evidencing such Indebtedness.

Section 7.05 Remedies. The Guarantors jointly and severally agree that, as between the Guarantors and the Lenders, the obligations of Borrower under this Agreement and other Loan Documents may be declared to be forthwith due and payable as provided in Article VIII

(and shall be deemed to have become automatically due and payable in the circumstances provided in Article VIII) for purposes of Section 7.01, notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 7.01.

Section 7.06 Instrument for the Payment of Money. Each Guarantor hereby acknowledges that the guarantee in this Article VII constitutes an instrument for the payment of money, and consents and agrees that any Lender or Agent, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring a motion-action under New York CPLR Section 3213.

Section 7.07 Continuing Guarantee. The guarantee in this Article VII is a continuing guarantee of payment and performance, and shall apply to all Guaranteed Obligations whenever arising.

Section 7.08 General Limitation on Guarantee Obligations. In any action or proceeding involving any state corporate limited partnership or limited liability company law, or any applicable state, federal or foreign bankruptcy, insolvency, reorganization or other Legal Requirement affecting the rights of creditors generally, if the obligations of any Guarantor under Section 7.01 would otherwise be held or determined to be void, voidable, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 7.01, then, notwithstanding any other provision to the contrary, the amount of such liability shall, without any further action by such Guarantor, any Loan Party or any other person, be automatically limited and reduced to the highest amount (after giving effect to the rights of subrogation and contribution established in Sections 7.04 and 7.10, respectively) that is valid and enforceable, not void or voidable and not subordinated to the claims of other creditors as determined in such action or proceeding.

Section 7.09 Release of Guarantors. If, in compliance with the terms and provisions of the Loan Documents, (i) all of the Equity Interests or (ii) all or substantially all of the property of any Guarantor are sold or otherwise transferred (a "Transferred Guarantor") to a person or persons (other than any Company or any Affiliate thereof), such Transferred Guarantor shall, upon the consummation of such sale or transfer, be released from its obligations under this Agreement (including under Section 11.03) and its obligations to pledge and grant any Collateral owned by it pursuant to any Security Document and, in the case of the sale of all of the Equity Interests of the Transferred Guarantor, the pledge of such Equity Interests to the Collateral Agent pursuant to the Security Documents shall be released, and, so long as Borrower shall have previously provided the Collateral Agent and the Administrative Agent such certifications or documents the Collateral Agent and/or the Administrative Agent as shall reasonably request, the Collateral Agent shall take, and the Lenders hereby irrevocably authorize the Collateral Agent to take, such actions as are necessary to effect each release described in this Section 7.09 in accordance with the relevant provisions of the Security Documents.

Section 7.10 Right of Contribution. Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 7.04. The provisions of this Section 7.10 shall in no respect limit the obligations and liabilities of any Guarantor to the Administrative Agent and the Lenders, and each Guarantor shall remain liable to the Administrative Agent and the Lenders for the full amount guaranteed by such Guarantor hereunder.

ARTICLE VIII EVENTS OF DEFAULT

Section 8.01 Events of Default. Upon the occurrence and during the continuance of any of the following events (each, an "Event of Default"):

(a) default shall be made in the payment of 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 (whether voluntary or mandatory) thereof or by acceleration thereof or otherwise;

(b) default shall be made in the payment of any interest on any Credit Extension or any Fee or any other amount (other than an amount referred to in paragraph (a) above) due under any Loan Document, when and as the same shall become due and payable, whether at the due date thereof (including an Interest Payment Date) or at a date fixed for prepayment (whether voluntary or mandatory) or by acceleration or demand thereof or otherwise, and such default shall continue unremedied for a period of five days;

(c) any representation or warranty made or deemed made in or in connection with any Loan Document or the borrowings of Loans hereunder, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any Loan Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(d) default shall be made in the due observance or performance by any Company of any covenant, condition or agreement contained in Sections 5.01, 5.02, 5.03(a), 5.08, 5.11, 5.14, 10.01(c), 10.03(c), 10.03(e) or in Article VI (other than Section 6.10(c) to the extent described in clause (e) below);

(e) default shall be made in the due observance or performance by any Company of any covenant, condition or agreement contained in any Loan Document (other than those specified in paragraphs (a), (b) or (d) immediately above) and such default shall continue unremedied or shall not be waived for a period of 15 Business Days (or (x) not more than three times prior to the Extended Term Loan Maturity Date, five Business Days in the case of Section 6.10(c), (y) three Business Days in the case of the Fee Letter (other than Section 2 of the Fee Letter) and (z) 10 Business Day in the case of Section 2 of the Fee Letter) after the occurrence thereof;

(f) any Company shall (i) fail to pay any principal or interest, regardless of amount, due in respect of any Indebtedness (other than the Obligations), when and as the same shall become due and payable beyond any applicable grace period, or (ii) fail to observe or perform any other term, covenant, condition or agreement contained in any agreement or instrument evidencing or governing any such Indebtedness if the effect of any failure referred to in this clause (ii) is to cause, or to permit the holder or holders of such Indebtedness or a trustee or other representative on its or their behalf (with or without the giving of notice, the lapse of time or both) to cause, such Indebtedness to become due prior to its stated maturity or become subject to a mandatory offer to purchase by the obligor; *provided* that it shall not constitute an Event of Default pursuant to this paragraph (f) unless the aggregate amount of all such Indebtedness referred to in clauses (i) and (ii) exceeds \$10,000,000 at any one time;

(g) an Insolvency Proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of any Company or of a substantial part of the property of any Company, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar Legal Requirement, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, rehabilitator or similar official for any Company or for a substantial part of the property of any Company, or (iii) the winding-up or liquidation of any Company; and such proceeding or petition shall continue undismissed for 60 days or an Order approving or ordering any of the foregoing shall be entered;

(h) any Company shall (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar Legal Requirement, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any Insolvency Proceeding or the filing of any petition described in clause (g) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator, liquidator, rehabilitator or similar official for any Company or for a substantial part of the property of any Company, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due, (vii) wind up or liquidate, or (viii) take any action for the purpose of effecting any of the foregoing;

(i) one or more Orders for the payment of money in an aggregate amount in excess of \$10,000,000 (that are not covered by insurance from an unaffiliated insurance company with an A.M. Best financial strength rating of at least A-, it being understood that even if such amounts are covered by insurance from such an insurance company, such amounts shall count against such basket if responsibility for such amounts has been denied by such insurance company or such insurance company has not been promptly notified of such amounts or such insurance company is not participating in the defense thereof with customary diligence (as reasonably determined by the Administrative Agent)) shall be rendered against any Company or any combination thereof and the same shall remain undischarged, unvacated or unbonded for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon properties of any Company to enforce any such Order;

(j) (i) except as set forth on Schedule 8.01(j), the occurrence of one or more ERISA Events or noncompliance with respect to Foreign Plans, (ii) the issuance by the Pensions Regulator of a Contribution Notice or Financial Support Direction to any Company or (iii) any Person takes any action to wind-up a UK DB Plan that, in each case in the reasonable opinion of the Required Lenders, when taken together with all other such ERISA Events and noncompliance with respect to UK DB Plans and other Foreign Plans that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(k) any security interest and Lien purported to be created by any Security Document shall cease to be in full force and effect, or shall cease to give the Collateral Agent, for the benefit of the Secured Parties, the Liens, rights, powers and privileges purported to be created and granted under such Security Documents (including a valid, enforceable, perfected first priority security interest in and Lien on, all of the Collateral thereunder (except as otherwise expressly provided in this Agreement or such Security Document)) in favor of the Collateral Agent, or shall be asserted by or on behalf of any Company not to be, a valid, enforceable, perfected, first priority (except as otherwise expressly provided in this Agreement or such Security Document) security interest in or Lien on the Collateral covered thereby; *provided* that it shall not be an Event of Default under this paragraph (k) if the Collateral Agent shall not have, or shall cease to have, a valid, enforceable and perfected first priority security interest in or Lien on any Collateral purported to be covered by the Security Documents that (i) has a Fair Market Value, individually or in the aggregate, of less than \$10,000,000 and (ii) is not material to the operations or the businesses of the Companies, taken as a whole;

(l) any Loan Document or any material provisions thereof shall at any time and for any reason be declared by a court of competent jurisdiction to be null and void, or a proceeding shall be commenced by or on behalf of any Loan Party or any other person, or by any Governmental Authority, seeking to establish the invalidity or unenforceability thereof (exclusive of questions of interpretation of any provision thereof), or any Company (directly or indirectly) shall repudiate, revoke, terminate or rescind (or purport to do any of the foregoing) or deny any portion of its liability or obligation for the Obligations; or

(m) there shall have occurred a Change in Control;

(n) there shall have occurred the termination of, or the receipt by any Company of notice of the termination of, or the occurrence of any event or condition which would, with the passage of time or the giving of notice or both, constitute an event of default under or permit the termination of, any one or more Material Agreements of any Company;

(o) any Company shall be prohibited or otherwise restrained from conducting the business theretofore conducted by it in any manner that has, or could reasonably be expected to result in, a Material Adverse Effect by virtue of any determination, ruling, decision or Order of any court or Governmental Authority of competent jurisdiction; or

(p) the Acquisition shall not have occurred on the Closing Date in accordance with the terms and conditions of the Acquisition Agreement;

then, and in every such event (other than an event with respect to Borrower described in paragraph (g) or (h) above), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to Borrower, take either or both of the following actions, at the same or different times: (i) terminate forthwith the Commitments; (ii) declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Loan Parties accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Loan Parties, anything contained herein or in any other Loan Document or otherwise to the contrary notwithstanding; and (iii) exercise any and all of its other rights and remedies under applicable Legal Requirements, hereunder and under the other Loan Documents; and in any event with respect to Borrower described in paragraph (g) or (h) above, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued Fees and all other liabilities of the Loan Parties accrued hereunder and under any other Loan Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Loan Parties, anything contained herein or in any other Loan Document or otherwise to the contrary notwithstanding.

In addition, without limiting the foregoing, in the event of a foreclosure (or other similar exercise of remedies) by Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Collateral Agent, the Administrative Agent or any Secured Party may be the purchaser of any or all of such Collateral at any such sale or other disposition and, in addition, the Collateral Agent or the Administrative Agent, as agent for and representative of all of Secured Parties (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 sale or other disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by Collateral Agent at such sale.

Section 8.02 Rescission. If at any time after termination of the Commitments or acceleration of the maturity of the Loans, the Loan Parties shall pay all arrears of interest and all payments on account of principal of the Loans owing by them that shall have become due otherwise than by acceleration (with interest on principal and, to the extent permitted by law, on overdue interest, at the rates specified herein) and all Defaults (other than non-payment of principal of and accrued interest on the Loans due and payable solely by virtue of acceleration) shall be remedied or waived pursuant to Section 11.02, then upon the written consent of the Required Lenders (which may be given or withheld in their sole discretion) and written notice to Borrower, the termination of the Commitments or the acceleration and their consequences may be rescinded and annulled; but such action shall not affect any subsequent Default or impair any right or remedy consequent thereon. The provisions of the preceding sentence are intended merely to bind the Lenders and the other Secured Parties to a decision that may be made at the election of the Required Lenders, and such provisions are not intended to benefit Borrower and the other Loan Parties and do not give Borrower and/or any of the Loan Parties the right to require the Lenders to rescind or annul any acceleration hereunder, even if the conditions set forth herein are met.

Section 8.03 Application of Proceeds. The proceeds received by the Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise by the Collateral Agent of its remedies shall be applied, in full or in part, together with any other sums then held by the Collateral Agent pursuant to this Agreement or any other Loan Document, promptly by the Collateral Agent as follows:

(a) *First*, to the indefeasible payment in full in cash of all costs and expenses, fees, commissions and taxes of such sale, collection or other realization (including compensation to the Collateral Agent, the Administrative Agent and their respective agents and counsel, and all expenses, liabilities and advances made or incurred by the Collateral Agent and the Administrative Agent in connection therewith and all amounts for which the Collateral Agent and the Administrative Agent is entitled to indemnification pursuant to the provisions of any Loan Document), together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(b) *Second*, to the indefeasible payment in full in cash of all other reasonable costs and expenses of such sale, collection or other realization (including compensation to the other Secured Parties and their agents and counsel and all costs, liabilities and advances made or incurred by the other Secured Parties in connection therewith), together with interest on each such amount at the highest rate then in effect under this Agreement from and after the date such amount is due, owing or unpaid until paid in full;

(c) *Third*, without duplication of amounts applied pursuant to clauses (a) and (b) above, to the indefeasible payment in full in cash, *pro rata*, of interest and other amounts constituting Obligations in respect of the Credit Facility (other than principal) in each case equally and ratably in accordance with the respective amounts thereof then due and owing (it being agreed that, for purposes of applying this clause (c), all interest and all other amounts described herein will be deemed payable in accordance with this Agreement regardless of whether such claims are allowed in any proceeding described in Section 8.01(g) or (h));

(d) *Fourth*, to the indefeasible payment in full in cash, *pro rata*, of the principal amount of the Obligations in respect of the Credit Facility;

(e) *Fifth*, to the indefeasible payment in full in cash of Secured Obligations of the type specified in clause (b) of the definition of Secured Obligations then due and owing, *pro rata*;

(f) *Sixth*, to the indefeasible payment in full in cash of the remaining Secured Obligations then due and owing, *pro rata*; and

(g) *Seventh*, the balance, if any, to the person lawfully entitled thereto (including the applicable Loan Party or its successors or assigns) or as a court of competent jurisdiction may direct.

In the event that any such proceeds are insufficient to pay in full the items described in clauses (a) through (g) above, the Loan Parties shall remain liable, jointly and severally, for any deficiency.

ARTICLE IX THE ADMINISTRATIVE AGENT AND THE COLLATERAL AGENT

Section 9.01 Appointment. (a) Each Lender hereby irrevocably designates and appoints each of the Administrative Agent and the Collateral Agent as an agent of such Lender under this Agreement and the other Loan Documents. Each Lender irrevocably authorizes each Agent, in such capacity, through its agents or employees, to take such actions on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are delegated to such Agent by the terms of this Agreement and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX are solely for the benefit of the Agents, the Lenders and no Loan Party shall have rights as a third party beneficiary of any such provisions. Without limiting the generality of the foregoing, the Agents are hereby expressly authorized to execute any and all documents (including releases) with respect to the Collateral and any rights of the Secured Parties with respect thereto as contemplated by and in accordance with the provisions of this Agreement and the other Loan Documents. In performing its functions and duties hereunder, each Agent shall act solely as an agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for

Borrower or any of its Subsidiaries. Without limiting the generality of the foregoing, the use of the term “agent” in this Agreement with reference to the Administrative Agent or the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) Each Lender irrevocably appoints each other Lender as its agent and bailee for the purpose of perfecting Liens (whether pursuant to Section 8-301(a)(2) of the UCC or otherwise), for the benefit of the Secured Parties, in assets in which, in accordance with the UCC or any other applicable Legal Requirement a security interest can be perfected by possession or control. Should any Lender (other than the Collateral Agent) obtain possession or control of any such Collateral, such Lender shall notify the Collateral Agent thereof, and, promptly following the Collateral Agent’s request therefor, shall deliver such Collateral to the Collateral Agent or otherwise deal with such Collateral in accordance with the Collateral Agent’s instructions.

Section 9.02 Agent in Its Individual Capacity. Each person serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent, and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the person serving as an Agent hereunder in its individual capacity. Such person and its Affiliates may accept deposits from, lend money to, act as financial advisor or in any other advisory capacity for, and generally engage in any kind of business with, any Company or Affiliate thereof as if it were not an Agent hereunder and without duty to account therefor to the Lenders.

Section 9.03 Exculpatory Provisions. No Agent shall have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) no Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that such Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 11.02); *provided* that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability, if the Agent is not indemnified to its satisfaction, or that is contrary to any Loan Document or applicable Legal Requirements including, for the avoidance of doubt any action that may be in violation of the automatic stay under any Insolvency Law or that may effect a foreclosure, modification or termination of property of a Defaulting Lender under any Debtor Relief Law, and (c) except as expressly set forth in the Loan Documents, no Agent shall have any duty to disclose or shall be liable for the failure to disclose, any information relating to any Company or any of its Affiliates that is communicated to or obtained by the person serving as such Agent or any of its Affiliates in any capacity. No Agent shall be liable for any action

taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as any Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 11.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by a final and nonappealable judgment. No Agent shall be deemed to have knowledge of any Default unless and until written notice thereof describing such default is given to such Agent by Borrower or a Lender, and no Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with any 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 in any Loan Document or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document. Each party to this Agreement acknowledges and agrees that the Administrative Agent may from time to time use one or more outside service providers for the tracking of all UCC financing statements (and/or other collateral related filings and registrations from time to time) required to be filed or recorded pursuant to the Loan Documents and the notification to the Administrative Agent, of, among other things, the upcoming lapse or expiration thereof, and that each of such service providers will be deemed to be acting at the request and on behalf of Borrower and the other Loan Parties. No Agent shall be liable for any action taken or not taken by any such service provider. Neither any Agent nor any of its officers, partners, directors, employees or agents shall be liable to the Lenders for any action taken or omitted by any Agent under or in connection with any of the Loan Documents.

Section 9.04 Reliance by Agent. Each 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 a proper person. Each Agent also may rely upon any statement made to it orally and believed by it to be made by a 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, each Agent may presume that such condition is satisfactory to such Lender unless each Agent shall have received written notice to the contrary from such Lender prior to the making of such Loan. Each Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants and other advisors 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 advisors.

Section 9.05 Delegation of Duties. Each Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Loan Document by or through, or delegate any and all such rights and powers to, any one or more sub-agents appointed by such Agent. Each 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 Affiliates. The exculpatory, indemnification and other provisions of the preceding paragraphs shall apply to any such sub-agent and to the Affiliates of each Agent and any such sub-agent, and shall apply, without limiting the foregoing, to their respective activities in connection with the syndication of the credit facility provided for herein as well as activities as Agent. The Agents shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that such Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

Section 9.06 Successor Agent. Each Agent may resign as such at any time upon at least 10 days' prior notice to the Lenders and Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with Borrower, to appoint a successor Agent from among the Lenders. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 10 days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent, which successor shall be a commercial banking institution organized under the laws of the United States (or any State thereof) or a United States branch or agency of a commercial banking institution, in each case, having combined capital and surplus of at least \$500,000,000; *provided* that if such retiring Agent is unable to find a commercial banking institution that is willing to accept such appointment and which meets the qualifications set forth above, the retiring Agent's resignation shall nevertheless thereupon become effective and the retiring (or retired) Agent shall be discharged from its duties and obligations under the Loan Documents, and the Lenders shall assume and perform all of the duties of the Agent under the Loan Documents until such time, if any, as the Required Lenders appoint a successor Agent.

Upon the acceptance of its appointment as an Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring (or retired) Agent shall be discharged from its duties and obligations under the Loan Documents. The fees payable by Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After an Agent's resignation hereunder, the provisions of this Article IX, Section 11.03 and Sections 11.08 to 11.10 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Affiliates in respect of any actions taken or omitted to be taken by any of them while it was acting as Agent.

Section 9.07 Non-Reliance on Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender or any of their respective Affiliates and based on such documents and information as it has deemed appropriate, conducted its own independent investigation of the financial condition and affairs of the Loan Parties and their Subsidiaries and made its own credit analysis and decision to enter into this Agreement. Each Lender further represents and warrants that it has reviewed any confidential information memorandum or similar document and each other document made available to it on the Platform in connection with this Agreement and has

acknowledged and accepted the terms and conditions applicable to the recipients thereof (including any such terms and conditions set forth, or otherwise maintained, on the Platform with respect thereto). Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender or any of their respective Affiliates 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 related agreement or any document furnished hereunder or thereunder.

Section 9.08 Name Agents. The parties hereto acknowledge that the Lead Arranger, the Book Manager, the Documentation Agent and the Syndication Agent hold such titles in name only, and that such titles confer no additional rights or obligations relative to those conferred on any Lender hereunder.

Section 9.09 Indemnification. The Lenders severally agree to indemnify each Agent in its capacity as such and each of its Related Persons (to the extent not reimbursed by Borrower or the Guarantors and without limiting the obligation of Borrower or the Guarantors to do so), ratably according to their respective outstanding Loans and Commitments in effect on the date on which indemnification is sought under this Section 9.09 (or, if indemnification is sought after the date upon which all Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such outstanding Loans and Commitments as in effect immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, fines, penalties, actions, claims, suits, judgments, litigations, investigations, inquiries or proceedings, costs, expenses or disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent or Related Person in any way relating to or arising out of, the Commitments, this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein, the Transactions or any of the other transactions contemplated hereby or thereby or any action taken or omitted by such Agent or Related Person under or in connection with any of the foregoing (**IN ALL CASES, WHETHER OR NOT CAUSED OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF ANY AGENT OR RELATED PERSON**); *provided* that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, claims, suits, judgments, litigations, investigations, inquiries or proceedings, costs, expenses or disbursements that are found by a final and nonappealable judgment of a court of competent jurisdiction to have directly resulted solely and directly from such Agent's or Related Party's, as the case may be, gross negligence or willful misconduct. The agreements in this Section 9.09 shall survive the payment of the Loans and all other amounts payable hereunder.

Section 9.10 Withholding Taxes. To the extent required by any applicable law, the Administrative Agent may 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 asserts a claim that the Administrative Agent did not properly withhold Tax from

amounts paid to or for the account of any Lender because the appropriate form was not delivered or was not properly executed or because such Lender failed to notify the Administrative Agent of a change in circumstance which rendered the exemption from, or reduction of, withholding Tax ineffective or for any other reason, or if Administrative Agent reasonably determines that a payment was made to a Lender pursuant to this Agreement without deduction of applicable withholding tax from such payment, such Lender shall indemnify the Administrative Agent fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties or interest and together with all expenses (including legal expenses, allocated internal costs and out-of-pocket expenses) incurred.

Section 9.11 Lender's Representations, Warranties and Acknowledgements. (a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of Borrower and its Subsidiaries in connection with Credit Extensions hereunder and that it has made and shall continue to make its own appraisal of the creditworthiness of Borrower and its Subsidiaries. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to the Lenders. Each Lender acknowledges that no Agent or Related Person of any Agent has made any representation or warranty to it. Except for documents expressly required by any Loan Document to be transmitted by an Agent to the Lenders, no Agent shall have any duty or responsibility (either express or implied) to provide any Lender with any credit or other information concerning any Loan Party, including the business, prospects, operations, property, financial and other condition or creditworthiness of any Loan Party or any Affiliate of a Loan Party, that may come in to the possession of an Agent or any of its Related Persons.

(b) Each Lender, by delivering its signature page to this Agreement or an Assignment Agreement and funding its Loan, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be approved by any Agent, the Required Lenders or the Lenders, as applicable, on the Closing Date.

Section 9.12 Security Documents and Guaranty.

(a) Agents under Security Documents and Guaranty. Each Secured Party hereby further authorizes the Administrative Agent or the Collateral Agent, as applicable, on behalf of and for the benefit of the Secured Parties, to be the agent for and representative of the Secured Parties with respect to the Guaranty, the Collateral and the Loan Documents; provided that neither the Administrative Agent nor the Collateral Agent shall owe any fiduciary duty, duty of loyalty, duty of care, duty of disclosure or any other obligation whatsoever to any holder of Obligations with respect to any Permitted Hedging Agreement. Subject to Section 11.02, without further written consent or authorization from any Secured Party, the Administrative

Agent or the Collateral Agent, as applicable, may execute any documents or instruments necessary to (i) in connection with a sale or disposition of assets permitted by this Agreement, release any Lien encumbering any item of Collateral that is the subject of such sale or other disposition of assets or to which the Required Lenders (or such other Lenders as may be required to give such consent under Section 11.02) have otherwise consented or (ii) release any Guarantor from the Guaranty pursuant to Section 7.09 or with respect to which the Required Lenders (or such other Lenders as may be required to give such consent under Section 11.02) have otherwise consented.

(b) Right to Realize on Collateral and Enforce Guaranty. Anything contained in any of the Loan Documents to the contrary notwithstanding, Borrower, the Administrative Agent, the Collateral Agent and each Secured Party hereby agree that (i) no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Loan Documents may be exercised solely by the Administrative Agent or the Collateral Agent, as applicable, for the benefit of the Secured Parties in accordance with the terms hereof and thereof and all powers, rights and remedies under the Security Documents may be exercised solely by the Collateral Agent for the benefit of the Secured Parties in accordance with the terms thereof, and (ii) in the event of a foreclosure or similar enforcement action by the Collateral Agent on any of the Collateral pursuant to a public or private sale or other disposition (including, without limitation, pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code), the Collateral Agent (or any Lender, except with respect to a “credit bid” pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code,) may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Collateral Agent, as agent for and representative of the Secured Parties (but not any Lender or Lenders in its or their respective individual capacities) shall be entitled, upon instructions from the Required Lenders, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale or disposition, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Collateral Agent at such sale or other disposition.

(c) Release of Collateral and Guarantees, Termination of Loan Documents.

(1) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Administrative Agent shall (without notice to, or vote or consent of, any Lender, or any affiliate of any Lender that is a party to any Hedging Agreement) take such actions as shall be required to release its security interest in any Collateral subject to any disposition permitted by the Loan Documents, and to release any guarantee obligations under any Loan Document of any person subject to such disposition, to the extent necessary to permit consummation of such disposition in accordance with the Loan Documents.

(2) Notwithstanding anything to the contrary contained herein or any other Loan Document, when all Obligations (other than obligations in respect of any Hedging Agreement and contingent indemnification obligations and expense reimbursement claims to the extent no claim therefor has been made) have been paid in full and all Commitments have terminated or expired, upon request of Borrower, the Administrative Agent shall (without notice to, or vote or consent of, any Lender, or any affiliate of any Lender that is a party to any Hedging Agreement) take such actions as shall be required to release its security interest in all Collateral, and to release all guarantee obligations provided for in any Loan Document, whether or not on the date of such release there may be outstanding Obligations in respect of Hedging Agreements or any such contingent indemnification obligations or expense reimbursement claims. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(d) The Collateral Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Collateral Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

Section 9.13 Administrative Agent May File Bankruptcy Disclosure and Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Laws 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 Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;

(b) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its respective agents and counsel and all other amounts due the Administrative Agent under Sections 2.03 and 11.03) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under this Agreement. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Administrative Agent, its agents and counsel, and any other amounts due the Administrative Agent under this Agreement out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Lenders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

ARTICLE X EXCHANGE NOTES

Section 10.01 Exchange Notes Indenture. (a) Borrower and the Arranger hereby agree to negotiate in good faith the form of an Exchange Notes Indenture with respect to the Exchange Notes, which Exchange Notes Indenture shall be governed by New York law. Borrower and Arranger agree to finalize the Exchange Notes Indenture no later than 90 days from the date hereof.

(b) Borrower shall select a bank or trust company reasonably acceptable to the Arranger to act as trustee under the Exchange Notes (the “**Exchange Notes Trustee**”). The Exchange Notes Trustee shall at all times be a bank or trust company organized and doing business under the laws of the United States or of any State or the District of Columbia and having a combined capital and surplus of not less than \$500,000,000 which is authorized under the laws of its jurisdiction of incorporation to exercise corporate trust powers and is subject to supervision or examination by Federal, State or District of Columbia authority and which has an office or agency in New York, New York.

(c) The Exchange Notes Indenture shall be fully executed and delivered and the Exchange Notes will be fully executed and deposited into escrow not later than 10 days prior to the Conversion Date or such other date as the Arranger may agree.

Section 10.02 Exchange Notes.

(a) Subject to satisfaction of the provisions of this Article 10, at any time or from time to time on and after the Conversion Date, each Lender will have the option to notify the Administrative Agent in writing of its request for exchange notes (an “**Exchange Request**”) given in accordance with Section 10.03 below, to exchange all or any portion of its share in the Loan then outstanding for one or more notes (each, a “**Exchange Note**,” and collectively, the “**Exchange Notes**,” and each such exchange being referred to herein as an “**Exchange**”); *provided that* at least \$50.0 million (or such lesser amount acceptable to Borrower) in aggregate principal amount of Loans are exchanged. In connection with any such Exchange, the applicable Lender will not, at the time of such Exchange or the next Interest Payment Date, be entitled to receive accrued and unpaid interest on such Lender’s Loans being exchanged for Exchange Notes on such date; provided that the Exchange Notes issued to such Lender shall accrue interest from the most recent Interest Payment Date prior to such Exchange (even if such date is prior to the first issuance of Exchange Notes.

(b) The Exchange Notes shall:

(i) rank *pari passu* with the Loans to the extent that the Loans remains outstanding;

(ii) be issued pursuant to and shall be governed by and construed solely in accordance with the Exchange Notes Indenture;

(iii) be guaranteed by the same entities that guarantee the Loans on the same basis and will be secured by the same assets securing the Loans on the same basis; and

(iv) require that Borrower and each Guarantor submit to the jurisdiction and venue of the U.S. Federal and state courts of the State of New York and waive any right to trial by jury in connection with disputes arising under the Exchange Notes.

The principal amount of the Exchange Notes in any Exchange will equal 100% of the aggregate principal amount of the Loan for which they are exchanged and shall be issued at an issue price equal to such principal amount of the Loan for which they are exchanged.

(c) Each Exchange Note in an Exchange shall:

(i) be denominated in United States dollars;

(ii) bear interest at a fixed rate *per annum* (computed on the basis of a 360-day year, in each case for the actual number of days elapsed in the period during which it accrues) that is equal to the Cap Rate (excluding default interest (described in the next sentence), if any. In addition, interest on overdue principal and interest, if any, will accrue at a rate that is 2.0% higher than the interest rate on the Exchange Notes, as specified in the Exchange Notes Indenture. Such interest will be payable semi-annually.

(d) If required by law or requested by Administrative Agent or any Arranger, Borrower shall promptly procure that each relevant Loan Party enters into all documentation necessary to ensure that the guarantees and Liens created under the Security Documents and this Agreement secures and guarantees the liabilities and obligations of the Loan Parties under the Exchange Notes including, without limitation, any necessary security confirmations, amendments to security or re-taking of security, all necessary filings and delivery of updated share registers (as applicable).

Section 10.03 Manner of Exchange of Loans.

(a) Subject to Sections 10.01 and 10.02, in order to effect an Exchange a Lender shall provide the Administrative Agent and Borrower with a duly completed Exchange Request substantially in the form of Exhibit F at least ten (10) Business Days prior to the date specified for such Exchange in the Exchange Request (each an “**Exchange Date**”) (which shall also be a Business Day) selected by such Lender for an Exchange in compliance with Section 10.02 above. Each Exchange Request under this Section 10.03 shall specify the following:

(i) the Lender’s legal name;

(ii) the Exchange Date selected by such Lender;

(iii) the name and account of the DTC participant to be credited with such Exchange Notes (or, if applicable, the name of the proposed registered holder of the Exchange Notes) to be issued pursuant to the Exchange Request, and the address for delivery of the Exchange Notes to be delivered thereto, provided that at the Lender’s option, the Exchange Notes may be issued directly to any third party designated by it, upon surrender by such Lender to Borrower of an equal principal amount of the Loan;

(iv) the principal amount of that Lender’s Loan to be repaid and the corresponding principal amount of Exchange Notes to be issued pursuant to the Exchange Request, provided that the minimum denominations in which a Lender’s share in the Loan may be exchanged shall be at least \$1,000,000 and integral multiples of \$1,000 in excess thereof;

(v) the amount of each Exchange Note requested (which shall be at least \$1,000,000 and integral multiples of \$1,000);

(vi) that the Exchange Request is delivered pursuant to this Section 10.03; and

(vii) an acknowledgement in form and substance substantially similar to the acknowledgement set forth in Section 10.04(i) hereof.

If any Exchange Date would occur after a Record Date (as defined in the Exchange Notes Indenture) and prior to the immediately following Interest Payment Date (as defined in the Exchange Notes Indenture), then the Exchange Date shall be deferred until the date of such immediately following Interest Payment Date.

(b) In addition, such Lender shall provide such other information reasonably requested by Administrative Agent or any Arranger.

(c) Not later than 5 Business Days following receipt by Borrower of the first Exchange Request pursuant to Section 10.02,

(i) Borrower shall execute and deliver, and shall use commercially reasonable efforts to cause the Exchange Notes Trustee to execute and deliver, the Exchange Notes Indenture.

(ii) Borrower shall use all commercially reasonable efforts to cause the Exchange Notes to become eligible for deposit at DTC prior to the initial issuance thereof, including by filing with DTC an appropriately executed letter of representations, and

(iii) Borrower shall use all commercially reasonable efforts to obtain "CUSIP" and "ISIN" numbers and ratings from each of Moody's and S&P for the Exchange Notes prior to the initial issuance thereof. Not later than five Business Days following delivery of any Exchange Request, Borrower shall (A) deliver a written notice to the Exchange Notes Trustee, directing such Exchange Notes Trustee to authenticate and delivery Exchange Notes as specified in the Exchange Request and (B) use all commercially reasonable efforts to effect delivery of such Exchange Notes to the requesting Lender on the requested Exchange Date. Each Exchange Note shall be recorded in book-entry form as a beneficial interest in one or more global notes deposited with the Exchange Notes Trustee as custodian for DTC and credited to the account of the exchanging Lender directly or indirectly through the participant in DTC's system specified by such Lender in the applicable Exchange Request, unless the foregoing is not possible after Borrower's use of commercially reasonable efforts in which case each Exchange Note shall be issued as a definitive registered note payable to the registered holder specified by the exchanging Lender in the applicable Exchange Request.

(d) Upon delivery of the Exchange Notes pursuant to this Section 10.03, Administrative Agent shall cancel each relevant Lender's Loans so exchanged and the Exchange Notes so issued will be governed by and construed in accordance with the Exchange Notes Indenture.

(e) Borrower agrees that as a condition to the effectiveness of the exchange of any Loans for Exchange Notes:

(i) Borrower shall have issued the Exchange Notes pursuant to the Exchange Notes Indenture substantially in the applicable form set forth therein, and Borrower and Exchange Notes Trustee shall have executed and delivered the Exchange Notes Indenture;

(ii) Borrower shall have provided to the Administrative Agent copies of resolutions of its board of directors approving the execution and delivery of the Exchange Notes Indenture and the issuance of the Exchange Notes, together with a customary certificate of the secretary of Borrower certifying such resolutions;

(iii) Borrower shall have caused (A) its counsel to deliver to the Administrative Agent an executed legal opinion in form and substance customary for a transaction of that type to be mutually agreed upon by Borrower and the Administrative Agent (including with respect to due authorization, execution and delivery, validity and enforceability of the Exchange Notes and the Exchange Notes Indenture) and (B) its independent auditors to deliver customary accountants' comfort letters as may reasonably be requested by the Administrative Agent and the exchanging Lenders; and

(iv) if requested by the Arranger in connection with an Exchange Request delivered pursuant to Section 10.03, an offering memorandum or offering circular of the type and in the form customary for Rule 144A private placements of high-yield debt securities (without registration rights) (the "**Required Offering Document**"), including (i) all required audited and unaudited financial statements of Borrower, Schuff and Bridgehouse Marine; and (ii) all pro forma financial statements of Borrower customarily included in offering documents for offerings conducted under Rule 144A (without registration rights). Such financial statements shall (A) meet the requirements of Regulation S-X for Form S-1 registration statements (with customary exceptions for offerings conducted under Rule 144A (without registration rights)) (it being understood none of such information need include (I) financial statements required by Rules 3-09, 3-10 or 3-16 of Regulation S-X (the "**Excluded S-X Information**") under the Securities Act, (II) Compensation Discussion and Analysis or other information required by Item 402 of Regulation S-K under the Securities Act and the executive compensation disclosure rules related to SEC Release Nos. 33-8732A, 34-54302A and IC 27444A and (III) any other information customarily excluded in offering memoranda used in connection with Rule 144A private placements of high-yield debt securities (without registration rights), but would include customary disclosure of certain guarantor and non-guarantor information for an offering conducted under Rule 144A that does not include the Excluded S-X Information, and (B) are in a form which will enable the applicable independent auditors of Borrower, Schuff and Bridgehouse Marine to provide customary comfort letters with respect thereto (including customary "negative assurance" comfort).

(f) If the foregoing conditions set forth in Section 10.03(e) are not satisfied with respect to any exchange of the Loans for Exchange Notes, then the applicable Lenders shall retain all of their rights and remedies with respect to the Loans subject to such exchange pursuant to this Agreement until such conditions are satisfied and such Loans are so exchanged for Exchange Notes. Borrower agrees to use commercially reasonable efforts to satisfy the conditions set forth in Section 10.03(e) with respect to any exchange no later than five Business Days after its receipt of the Exchange Request for such exchange.

Section 10.04 Securities Demand Failure.

If a Demand Failure Event shall occur and be continuing for more than five days, then, upon notice by the Administrative Agent to Borrower: (a) the Loans shall be modified to bear interest as provided in Section 2.06(a)(ii), and (b) the optional prepayment provisions of the Loans shall be modified to be subject to the redemption premiums applicable to the Exchange Notes as set forth on Schedule 1.01(f). In addition, upon a Demand Failure Event, Borrower shall pay to the Arranger such fees as shall have been separately agreed upon in writing (including in the Fee Letter) in the amounts and at the times so specified.

Section 10.05 Not a Registered Security.

(a) Each Lender acknowledges that no issuance of the Exchange Notes will be registered under the Securities Act and represents and agrees that it may only acquire Exchange Notes for its own account and that it will not, directly or indirectly, transfer, sell, assign, pledge or otherwise dispose of the Exchange Notes (or any interest therein) unless such transfer, sale, assignment, pledge or other disposition is made (i) pursuant to an effective registration statement under the Securities Act or (ii) pursuant to an available exemption from registration under, and otherwise in compliance with, the Securities Act. Each of the Lenders acknowledges that the Exchange Notes will bear a legend restricting the transfer thereof in accordance with the Securities Act.

(b) Subject to the provisions of the previous paragraph and the register provisions in the Exchange Notes Indenture, each of Borrower and Guarantors agrees that each Lender will be able to sell or transfer all or any part of the Exchange Notes to any third party in compliance with applicable laws.

Section 10.06 Offering Memorandum. Borrower agrees that no later than October 26, 2014, in connection with the transactions contemplated by the Engagement Letter, it will provide to Jefferies LLC a customary preliminary offering memorandum containing, or incorporating by reference to filings publicly made by Borrower, Schuff and Bridgehouse Marine with the SEC, (A) all customary information (other than a “description of notes” and information customarily provided by Jefferies Finance LLC or its affiliates or their counsel or advisors), including financial statements (other than pro forma financial statements which are described below), business and other financial data of the type and form that are customarily included in private placements pursuant to Rule 144A (without registration rights) (including information required by Regulation S-X and Regulation S-K under the Securities Act, which is understood not to include consolidating financial statements, separate subsidiary financial statements and other financial statements and data that would be required by Sections 3-09, 3-10 and 3-16 of Regulation S-X and Item 402 of Regulation S-K and information regarding executive

compensation and related party disclosure related to SEC Release Nos. 33-8732A, 34-54302A and IC-27444A and other customary exceptions) and (B) pro forma financial statements of the type and form that are customarily included in private placements pursuant to Rule 144A (without registration rights) to be prepared in a manner consistent with Regulation S- X (and in the case of pro forma financial statements for the twelve-month period ending on the last day of the most recently completed four-fiscal quarter period of Borrower presented, as if Regulation S-X was applicable to such financial statements) and (ii) all other financial data that would be reasonably necessary for Jefferies LLC to receive customary “comfort” letters from the independent accountants of Borrower, Schuff and Bridgehouse Marine in connection with the offering of the Notes (and Borrower shall have made all commercially reasonable efforts to provide Jefferies LLC with drafts of such “comfort” letters (which shall provide customary “negative assurance” comfort), which such accountants are prepared to issue upon completion of customary procedures).

ARTICLE XI MISCELLANEOUS

Section 11.01 Notices. (a) Generally. Notices and other communications provided for herein shall, except as provided in Section 11.01(b), be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

(i) if to any Loan Party, to Borrower at HC Holdings, Inc., 460 Herndon Parkway, Suite 150, Herndon, VA 20170, Attention: Andrea Mancuso, Facsimile No.: (703) 650-4295, with a copy to Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019-6064, Attention: Eric Goodison, Facsimile No.: (212) 492-0292;

(ii) if to the Administrative Agent or the Collateral Agent, to it at: Jefferies Finance LLC, 520 Madison Avenue, New York, New York 10022, Attention: Account Manager – HC2 Holdings, Facsimile No.: (212) 284-3444, E-mail: JFIN.ADMIN@jefferies.com;

(iii) if to a Lender, to it at its address (or facsimile number) set forth on Annex III or in the Assignment and Assumption or an Affiliated Lender Assignment and Assumption pursuant to which such Lender shall have become a party hereto; and

Notices and other communications to the Lenders hereunder may (subject to Section 11.01(b)) be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent. Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto. The Administrative Agent or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such

procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), 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 (B) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (A) of notification that such notice or communication is available and identifying the website address therefor.

(b) Posting. Each Loan Party hereby agrees that it will provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent pursuant to this Agreement and any other Loan Document, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) relates to a request for a new, or a conversion of an existing, Borrowing or other extension of credit (including any election of an interest rate or interest period relating thereto), (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (iii) provides notice of any Default under this Agreement or (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any borrowing or other extension of credit hereunder (all such non-excluded communications, collectively, the "**Communications**"), by transmitting the Communications in an electronic/soft medium in a format reasonably acceptable to the Administrative Agent at the e-mail address(es) provided to Borrower by the Administrative Agent from time to time or in such other form, including hard copy delivery thereof, as the Administrative Agent shall require. In addition, each Loan Party agrees to continue to provide the Communications to the Administrative Agent in the manner specified in this Agreement or any other Loan Document or in such other form, including hard copy delivery thereof, as the Administrative Agent shall require. Nothing in this Section 11.01 shall prejudice the right of the Agents, any Lender or any Loan Party to give any notice or other communication pursuant to this Agreement or any other Loan Document in any other manner specified in this Agreement or any other Loan Document or as any such Agent shall require.

(c) To the extent consented to by the Administrative Agent in writing from time to time, the Administrative Agent agrees that receipt of the Communications by the Administrative Agent at its e-mail address(es) set forth above shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Loan Documents.

(d) Each Loan Party further agrees that the Administrative Agent may make the Communications available to the other Agents or the Lenders by posting the Communications on a Platform. The Platform and any Approved Electronic Communications are provided "as is" and "as available." The Agents do not warrant the accuracy or completeness

of the Communications, or the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Platform and the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including, without limitation, 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 in connection with the Communications or the Platform. In no event shall any Agent have any liability to any Loan Party, any Lender or any other person for damages of any kind, whether or not based on strict liability and including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in contract, tort or otherwise) arising out of or related to any Loan Party's or any Agent's transmissions of Communications through Internet (including the Platform). Notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor. Each Loan Party understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of the Administrative Agent, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(e) The Administrative Agent agrees that the receipt of the Communications by the Administrative Agent at its e-mail address shall constitute effective delivery of the Communications to the Administrative Agent for purposes of the Loan Documents. Each Lender agrees that receipt of notice to it (as provided in the next sentence) specifying that the Communications have been posted to the Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender agrees to notify the Administrative Agent in writing (including by electronic communication) from time to time of such Lender's e-mail address to which the foregoing notice may be sent by electronic transmission and that the foregoing notice may be sent to such e-mail address. Nothing herein shall prejudice the right of the Administrative Agent or any Lender to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

(f) Each Loan Party, each Lender and each Agent agrees that the Administrative Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with the Administrative Agent's customary document retention procedures and policies.

(g) Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable law, including United States federal and state securities laws, to make reference to

information that is not made available through the “Public Side Information” portion of the Platform and that may contain Non-Public Information with respect to Borrower, its Subsidiaries or their securities for purposes of United States federal or state securities laws. In the event that any Public Lender has determined for itself to not access any information disclosed through the Platform or otherwise, such Public Lender acknowledges that (i) other Lenders may have availed themselves of such information and (ii) neither Borrower nor the Administrative Agent has any responsibility for such Public Lender’s decision to limit the scope of the information it has obtained in connection with this Agreement and the other Loan Documents.

Section 11.02 Waivers; Amendment. (a) No failure or delay by any Agent or any Lender in exercising any right or power hereunder or under any other 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 each 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 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 Section 11.02(b), 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 any Agent or any Lender may have had notice or knowledge of such Default at the time. No notice or demand on Borrower or any other Loan Party in any case shall entitle Borrower or any other Loan Party to any other or further notice or demand in similar or other circumstances.

(b) Subject to Section 2.16(c) and Section 11.02(c), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended, supplemented or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by Borrower and the Required Lenders or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent, the Collateral Agent (in the case of any Security Document) and the Loan Party or Loan Parties that are parties thereto, in each case with the written consent of the Required Lenders; *provided* that no such agreement shall:

(i) increase or extend the expiry date of the Commitment of any Lender without the written consent of such Lender (it being understood that no amendment, modification, termination, waiver or consent with respect to any condition precedent, covenant or Default (or any definition used, respectively, therein) shall constitute an increase in or extension of the expiry date of the Commitment of any Lender for purposes of this clause (i));

(ii) reduce the principal amount or premium, if any, of any Loan or reduce the rate of interest thereon (other than interest pursuant to Section 2.06(c)), or reduce any Fees payable hereunder, or change the form or currency of payment of any Obligation, without the written consent of each Lender directly affected thereby (it being understood that any amendment or modification to the financial definitions in this Agreement shall not constitute a reduction in the rate of interest or fees for purposes of this clause (ii));

(iii) postpone or extend the maturity of any Loan, or any date for the payment of any interest or fees payable hereunder, or reduce the amount of, waive or excuse any such payment (other than a waiver of any increase in the interest rate pursuant to Section 2.06(c)), without the written consent of each Lender directly affected thereby;

(iv) change Section 2.14(b) or (c) or Section 9.02 in a manner that would alter the order of or the *pro rata* sharing of payments or setoffs required thereby, without the written consent of each Lender;

(v) change any provision of this Section 11.02, change the percentages set forth in the definition of "Required Lenders" or any other provision of any Loan Document (including this Section 11.02) specifying the number or percentage of Lenders 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;

(vi) release all or substantially all of the Guarantors from their respective Guarantees (except as expressly provided in Article VII), or limit their liability in respect of such Guarantees, without the written consent of each Lender;

(vii) except as expressly permitted in this Agreement or any Security Document, release all or substantially all of the Collateral from the Liens of the Security Documents or alter the relative priorities of the Secured Obligations entitled to the Liens of the Security Documents (except in connection with securing additional Secured Obligations equally and ratably with the other Secured Obligations), in each case without the written consent of each Lender;

(viii) change Section 11.04(b) in a manner which further restricts assignments thereunder without the written consent of each Lender;

(ix) subordinate the Obligations under the Loan Documents to any other Indebtedness; or

(x) amend Article X in a manner that would materially increase the restrictions on exchanging Loans for Exchange Notes;

provided, further, that (1) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Collateral Agent without the prior written consent of the Administrative Agent or the Collateral Agent, as the case may be and (2) any waiver,

amendment or modification prior to the achievement of a successful syndication of the credit facility provided herein (as determined by the Arranger in its sole discretion) may not be effected without the written consent of the Arranger. Notwithstanding the foregoing, any provision of this Agreement may be amended by an agreement in writing entered into by Borrower, the Required Lenders and the Administrative Agent if (x) by the terms of such agreement the Commitment of each Lender not consenting to the amendment provided for therein shall terminate upon the effectiveness of such amendment, (y) at the time such amendment becomes effective, each Lender not consenting thereto receives payment in full of the principal of, premium, if any, and interest accrued on each Loan made by it and all other amounts owing to it or accrued for its account under this Agreement, and (z) Section 2.16(b) is complied with.

(c) Without the consent of any other person, the applicable Loan Party or Loan Parties and the Administrative Agent and/or Collateral Agent may (in its or their respective sole discretion, or shall, to the extent required by any Loan Document) enter into any amendment or waiver of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by applicable Legal Requirements to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or assets so that the security interests therein comply with applicable Legal Requirements.

Section 11.03 Expenses; Indemnity; Damage Waiver. (a) The Loan Parties agree, jointly and severally, to pay, promptly upon demand:

(i) all reasonable and documented out-of-pocket costs and expenses incurred by the Arranger, the Administrative Agent and the Collateral Agent in connection with the syndication of the Loans and Commitments, the preparation, negotiation, execution and delivery of the Loan Documents, the Exchange Notes and the Exchange Notes Indenture, the administration of the Credit Extensions, and any actual or proposed amendment, supplement or waiver of any of the Loan Documents, the Exchange Notes and the Exchange Notes Indenture (whether or not the transactions contemplated hereby or thereby shall be consummated) and any issuance or proposed issuance of Exchange Notes, including the reasonable and documented fees and out-of-pocket disbursements of one Advisor to the Administrative Agent, the Collateral Agent and the Arranger, taken as a whole, and filing and recording reasonable and documented out-of-pocket fees and expenses, with statements with respect to the foregoing to be submitted to the Loan Parties prior to the Closing Date (in the case of amounts to be paid on the Closing Date) and from time to time thereafter on a quarterly basis or such other periodic basis as the applicable Agent shall deem appropriate);

(ii) all reasonable and documented fees and out-of-pocket costs and expenses incurred by the Administrative Agent or the Collateral Agent, including the reasonable and documented fees and out-of-pocket disbursements of one Advisor for the Administrative Agent and the Collateral Agent, in connection with any action, claim, suit, litigation, investigation, inquiry or proceeding affecting the Collateral or any part thereof, in which action, claim, suit, litigation, investigation, inquiry or proceeding the Administrative Agent or the Collateral Agent is made a party or participates or in which the right to use the Collateral or any part thereof is threatened, or in which it becomes necessary in the judgment of the Administrative Agent or the Collateral Agent to defend or uphold the Liens granted by the Security Documents (including any action, claim, suit, litigation, investigation, inquiry or proceeding to establish or uphold the compliance of the Collateral with any Legal Requirements); and

(iii) all reasonable and documented out-of-pocket costs and expenses incurred by the Arranger, the Administrative Agent, the Collateral Agent, any other Agent or any Lender, including the reasonable and documented fees, charges and documented out-of-pocket disbursements of Advisors for any of the foregoing (limited to, in the case of the Lenders, documented fees and out-of-pocket disbursements of one Advisor for the Lenders), incurred in connection with the enforcement or protection of its rights under the Loan Documents, the Exchange Notes and the Exchange Notes Indenture, including its rights under this [Section 11.03\(a\)](#), or in connection with the collection of the Secured Obligations, including all such costs and expenses incurred during any workout, restructuring or negotiations in respect of the Secured Obligations.

(b) The Loan Parties agree, jointly and severally, to indemnify the Agents and each Lender and each of their respective Related Persons (each such person being called an “**Indemnitee**”) against, and to hold each Indemnitee harmless from, all reasonable and documented out-of-pocket costs and any and all losses, claims, damages, liabilities, fees, fines, penalties, actions, judgments, suits and related expenses, including reasonable and documented fees and out-of-pocket disbursement of one Advisor of the Lenders and one Advisor of each Agent (collectively, “**Claims**”), incurred by, imposed on or asserted against any Indemnitee, directly or indirectly, arising out of, in any way connected with, or as a result of (i) the execution, delivery, performance, administration or enforcement of the Loan Documents or any agreement or instrument contemplated thereby or the performance by the parties thereto of their respective obligations thereunder, (ii) any actual or proposed use of the proceeds of the Loans, (iii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Indemnitee is a party thereto, (iv) any Environmental Liability or any non-compliance with, or violation of, Environmental Laws or Environmental Permits applicable to any Company, or any Company’s business, or any property presently owned, leased, or operated by any Company, (v) the consummation of the Transactions and the other transactions contemplated hereby (including the syndication of the Credit Facility) or (vi) any actual or prospective action, claim, suit, litigation, investigation, inquiry 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 any Loan Party or otherwise, 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 or related expenses are determined by a court of competent jurisdiction by

final and nonappealable judgment to have directly resulted solely from the gross negligence or willful misconduct of such Indemnitee. This Section 11.03(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) The Loan Parties agree, jointly and severally, that, without the prior written consent of the Administrative Agent and any affected Lender, which consent(s) will not be unreasonably withheld, the Loan Parties will not enter into any settlement of a Claim in respect of the subject matter of clauses (i) through (ix) of Section 11.03(b) unless such settlement includes an explicit and unconditional release from the party bringing such Claim of all Indemnitees.

(d) The provisions of this Section 11.03 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the Transactions and the other transactions contemplated hereby, the repayment of the Loans and any other Secured Obligations, the release of any Guarantor or of all or any portion of the Collateral, the expiration of the Commitments, the invalidity or unenforceability of any term or provision of this Agreement or any other Loan Document, or any investigation made by or on behalf of the Agents or any Lender. All amounts due under this Section 11.03 shall be accompanied by reasonable documentation with respect to any reimbursement, indemnification or other amount requested.

(e) To the extent that the Loan Parties fail to indefeasibly pay any amount required to be paid by them to the Agents under Sections 11.03(a) or (b) in accordance with Section 9.03(g), each Lender severally agrees to pay to the Agents 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 (such indemnity shall be effective whether or not the related losses, claims, damages, liabilities and related expenses are incurred or asserted by any party hereto or any third party); *provided* that the unreimbursed Claim was incurred by or asserted against any of the Agents in its capacity as such. For purposes of this Section 11.03(e), a Lender's "*pro rata* share" shall be determined based upon its share of the sum of the total outstanding Loans and unused Commitments at the time.

(f) To the fullest extent permitted by applicable Legal Requirements, no Loan Party shall assert, and each Loan Party hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, exemplary, consequential, or punitive damages (including any loss of profits, business or anticipated savings) arising out of, in connection with, or as a result of, any Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with the Loan Documents or the transactions contemplated hereby or thereby.

(g) All amounts due under this Section 11.03 shall be payable not later than 10 days after written demand therefor.

Section 11.04 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 the Loan Parties may not assign or otherwise transfer any of their respective rights or obligations hereunder without the prior written consent of the Administrative Agent, the Collateral Agent and each Lender, which consent may be withheld in their respective sole discretion (and any attempted assignment or transfer by any Loan Party without such consent shall be null and void). Nothing in this Agreement or any other Loan Document, express 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 expressly provided in Section 11.04(e) and, to the extent expressly contemplated hereby, the other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement or any other Loan Document.

(b) Any Lender shall have the right at any time to assign to one or more assignees (other than any Company or any Affiliate thereof except as provided in Section 11.04(j) below or a natural person) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that:

(i) except in the case of (A) an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, (B) any assignment made in connection with the primary syndication of the Commitments and Loans by the Arranger or (C) an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption or an Affiliated Lender Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all of the assigning Lender's rights and obligations under this Agreement;

(iii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption (it being understood that each such delivery shall be deemed a representation by the assignee that it is not a Disqualified Lender or an Affiliate of a Disqualified Lender (so long as the list of Disqualified Lenders has been made available to all Lenders), together with a processing and recordation fee of \$3,500; *provided* that such fee shall not be payable in the case of an assignment by any Lender to an Approved Fund of such Lender;

(iv) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; and

(v) the Administrative Agent must give its prior written consent to such assignment (which consent shall not be unreasonably withheld, delayed or conditioned);

(vi) Borrower must give its prior written consent to any assignment to a Disqualified Lender so long as a list of Disqualified Lenders has been made available to all Lenders by Borrower; and

Subject to acceptance and recording thereof pursuant to Section 11.04(d), 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 (*provided* that any liability of Borrower to such assignee under Section 2.12, 2.13 or 2.15 shall be limited to the amount, if any, that would have been payable thereunder by Borrower in the absence of such assignment, except to the extent any such amounts are attributable to a Change in Law occurring after the date of such assignment), and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.12, 2.13, 2.15 and 11.03).

(c) The Administrative Agent, acting for this purpose as an agent of 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 Commitments of, and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive in the absence of manifest error, and Borrower, the Administrative Agent and the Lenders may treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrower, the Collateral Agent and any Lender (with respect to its own interest only), at any reasonable time and from time to time upon reasonable prior notice.

(d) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 11.04(b), and any written consent to such assignment required by Section 11.04(b), 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 Section 11.04(b). Any assignment or transfer by a Lender of rights or

obligations under this Agreement that does not comply with the requirements of this Section 11.04 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 Section 11.04(e). To the extent any Lender exchanges its Loans (and related Notes) hereunder for Exchange Notes, the Loans and any Notes so exchanged shall be immediately and automatically cancelled and retired, and Borrower shall in no event become a Lender hereunder. To the extent of any such exchange by a Lender hereunder, such Lender shall be relieved of obligations hereunder with respect to the exchanged Loans. If any Lender exchanges all of its Loans (and related Notes) hereunder pursuant to one or more Exchanges, such Person shall relinquish its rights (other than any rights which survive the termination hereof under Section 11.05) and be released from its obligations hereunder (provided, anything contained in any of the Loan Documents to the contrary notwithstanding, such assigning Lender shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such Lender as a Lender hereunder).

(e) Any Lender shall have the right at any time, without the consent of, or notice to Borrower, the Administrative Agent or any other person to sell participations to any person (other than to a Person that is not an Eligible Assignee; *provided* that for the purposes of this provision, Disqualified Lenders shall be deemed to be Eligible Assignees unless a list of Disqualified Lenders has been made available to all Lenders by Borrower)) (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 (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Borrower, the Administrative Agent, the Collateral 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 the Loan Documents and to approve any amendment, modification or waiver of any provision of the 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 that (1) is described in clauses (i), (ii) or (iii) of the proviso to Section 11.02(b) and (2) directly affects such Participant. Subject to Section 11.04(f), each Participant shall be entitled to the benefits of Sections 2.12, 2.13 and 2.15 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 11.04(b). To the extent permitted by Legal Requirements, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; *provided* that such Participant agrees in writing to be subject to Section 2.14(c) as though it were a Lender. Each Lender shall, acting for this purpose as an agent of Borrower, maintain at one of its offices a register for the recordation of the names and addresses of its Participants, and the amount and terms of its participations (the “**Participant Register**”). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender (and Borrower, to the extent that the Participant requests payment from Borrower) shall treat each person whose name is recorded in the Participant Register as the owner of such

participation for all purposes of this Agreement notwithstanding any notice to the contrary. No Lender shall have any obligation to disclose all or any portion of the Participant Register to any person (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such commitment, loan, or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations.

(f) A Participant shall not be entitled to receive any greater payment under Sections 2.12, 2.13 or 2.15 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the greater payment results from a Change in Law after the date the participation was sold to the Participant. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.15 unless Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Borrower, to comply with Sections 2.15(f) and (g) as though it were a Lender.

(g) Any Lender may 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, and this Section 11.04(g) 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. Without limiting the foregoing, in the case of any Lender that is a fund that invests in bank loans or similar extensions of credit, such Lender may, without the consent of Borrower, the Administrative Agent or any other person, collaterally assign or pledge all or any portion of its rights under this Agreement, including the Loans and Notes or any other instrument evidencing its rights as a Lender under this Agreement, to any holder of, trustee for, or any other representative of holders of, obligations owed or securities issued, by such fund, as security for such obligations or securities.

(h) Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle (an "**SPC**"), identified as such in writing from time to time by the Granting Lender to the Administrative Agent and Borrower, the option to provide to Borrower all or any part of any Loan that such Granting Lender would otherwise be obligated to make to such Borrower pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to make any Loan and (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof; *provided further* that nothing herein shall make the SPC a "Lender" for the purposes of this Agreement, obligate Borrower or any other Loan Party or the Administrative Agent to deal with such SPC directly, obligate Borrower or any other Loan Party in any manner to any greater extent than they were obligated to the Granting Lender, or increase costs or expenses of

Borrower. The Loan Parties and the Administrative Agent shall be entitled to deal solely with, and obtain good discharge from, the Granting Lender and shall not be required to investigate or otherwise seek the consent or approval of any SPC, including for the approval of any amendment, waiver or other modification of any provision of any Loan Document. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Lender). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States of America or any state thereof. In addition, notwithstanding anything to the contrary contained in this Section 11.04(h), any SPC may (i) with notice to, but without the prior written consent of, Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Lender or to any financial institutions (consented to by Borrower and the Administrative Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC.

(i) 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 a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Legal Requirement, 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.

(j) Certain Permitted Loan Repurchases. Notwithstanding anything to the contrary contained in this Section 11.04 or any other provision of this Agreement, so long as no Default or Event of Default has occurred and is continuing or would result therefrom, Borrower may repurchase Loans on the following basis:

(i) Borrower may repurchase all or any portion of the Loans of one or more Lenders pursuant to an Assignment Agreement between Borrower and such Lender or Lenders; *provided* that, with respect to such repurchases, Borrower shall simultaneously provide a copy of such Assignment Agreement and any other agreements between Borrower and such Lender with respect to such repurchase to Administrative Agent;

(iii) Borrower shall conduct one or more modified Dutch auctions (each, an “**Auction**”) to repurchase all or any portion of the Loans (such Loans, the “Offer Loans”) of Lenders, provided that, (A) Borrower delivers a notice of the Loans that will be subject to such Auction to Administrative Agent (for distribution to the Lenders) no later than noon (New York City time) at least five Business Days in advance of a proposed consummation date of such Auction indicating (1) the date on which the Auction will conclude, (2) the maximum principal amount of Loans Borrower is willing to purchase in the Auction and (3) the range of discounts to par at which Borrower would be willing to repurchase the Offer Loans; (B) the maximum dollar amount of the Auction shall be no less than an aggregate \$1,000,000 or an integral multiple of \$250,000 in excess thereof; (C) Borrower shall hold the Auction open for a minimum period of two Business Days; (D) a Lender who elects to participate in the Auction may choose to tender all or part of such Lender’s Offer Loans; (E) the Auction shall be made to Lenders holding the Offer Loans on a pro rata basis in accordance with their Pro Rata Shares; and (F) the Auction shall be conducted pursuant to such procedures as the Administrative Agent may establish which are consistent with this Section 11.04(j) and are reasonably acceptable to Borrower and any applicable auction manager, that a Lender must follow in order to have its Offer Loans repurchased;

(iv) With respect to all repurchases made by Borrower pursuant to this Section 11.04(j), (A) Borrower shall pay to the applicable assigning Lender all accrued and unpaid interest, if any, on the repurchased Loans to the date of repurchase of such Loans, (B) Borrower shall represent that, as of the launch date of the related Auction and the effective date of any Assignment Agreement, it is not in possession of any material non-public information regarding Borrower, its Subsidiaries, or their assets or securities, that (x) has not been disclosed generally to the Lenders which are not “public side” Lenders prior to such date and (y) could reasonably be expected to have a material effect upon, or otherwise be material to, a Lender’s decision to assign Loans to such Person, and (C) such repurchases shall not be deemed to be voluntary prepayments pursuant to Section 2.10(a); and

(v) Following repurchase by Borrower pursuant to this Section 11.04(j), the Loans so repurchased shall, without further action by any Person, be deemed cancelled for all purposes and no longer outstanding (and may not be resold by Borrower), for all purposes of this Agreement and all other Credit Documents, including, but not limited to (A) the making of, or the application of, any payments to the Lenders under this Agreement or any other Credit Document, (B) the making of any request, demand, authorization, direction, notice, consent or waiver under this Agreement or any other Credit Document or (C) the determination of Requisite Lenders, or for any similar or related purpose, under this Agreement or any other Credit Document. In connection with any Loans repurchased and cancelled pursuant to this Section 11.04(j), Administrative Agent is authorized to make appropriate entries in the Register to reflect any such cancellation. Any payment made by Borrower in connection with a repurchase permitted

by this Section 11.04(j) shall not be subject to the provisions of either Section 2.13 or Section 2.14(c). Failure by Borrower to make any payment to a Lender required by an agreement permitted by this Section 11.04(j) shall not constitute an Event of Default under Section 8.1(a).

Notwithstanding anything to the contrary contained in this Section 11.04 or any other provision of this Agreement, Affiliated Lenders, may repurchase outstanding Loans on the following basis:

(i) No Affiliated Lender (other than an Affiliated Debt Fund) shall have the right to purchase any Loan if, after giving effect to such purchase, Affiliated Lenders (other than Affiliated Debt Funds) in the aggregate would own Loans with an aggregate principal amount in excess of 25% of the aggregate principal amount of all Loans then outstanding;

(ii) No Affiliated Lender (other than an Affiliated Debt Fund) shall have any right, (A) to consent to any amendment, modification, waiver, consent or other such action with respect to any of the terms of this Agreement or any other Loan Document, (B) to require any Agent or other Lender to undertake any action (or refrain from taking any action) with respect to this Agreement or any other Loan Document, (C) to otherwise vote on any matter related to this Agreement or any other Loan Document, (D) to attend any meeting with any Agent or Lender or receive any information from any Agent or Lender or (E) to make or bring any claim, in its capacity as a Lender, against the Agent or any Lender with respect to the duties and obligations of such Persons under the Loan Documents, *provided*, that (x) no amendment, modification or waiver shall deprive such Affiliated Lender, in its capacity as Lender, of its share of any payments which the Lenders are entitled to share on a pro rata basis hereunder and (y) with respect to any amendment, modification, waiver, consent or other action described in clauses (i), (ii), (iii) or (iv) of the first proviso of Section 11.02(b) that adversely affects such Affiliated Lender (in its capacity as a Lender) in a disproportionately adverse manner as compared to other Lenders, such Affiliated Lender shall be deemed to have voted its interest as a lender without discretion in such proportion as the allocation of voting with respect to such matter by Lenders who are not Affiliated Lenders; and

(iii) each applicable assignee (other than an Affiliated Debt Fund) shall represent to the Lender assigning such Loans, as of the effective date of any assignment that it is not in possession of any material non-public information regarding Borrower, its Subsidiaries, or their assets or securities, that (x) has not been disclosed generally to the Lenders which are not "public side" Lenders prior to such date and (y) could reasonably be expected to have a material effect upon, or otherwise be material to, a Lender's decision to assign Loans to such Person.

Section 11.05 Survival of Agreement. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the reports, certificates or other instruments delivered in connection with or pursuant to this Agreement or any other 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 Agents 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 as long as any Obligation is outstanding and so long as the Commitments have not expired or terminated. The provisions of Article IX and Sections 2.12 to 2.15, 9.06, 11.03 and 11.08 to 11.10 shall survive and remain in full force and effect regardless of the consummation of the Transactions and the other transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof.

Section 11.06 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 and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent and/or the Arranger, 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 which, 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 transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 11.07 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 11.08 Right of Setoff; Marshalling; Payments Set Aside. If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Legal Requirements, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of any Loan Party against any and all of the obligations of any Loan Party now or hereafter existing under this Agreement or any other Loan Documents held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations may be contingent or unmatured or 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 rights of each Lender under this Section 11.08 are in addition to other rights and remedies (including other rights of setoff) which

such Lender may have. None of any Agent or any Lender shall be under any obligation to marshal any assets in favor of any Loan Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Loan Party makes a payment or payments to Administrative Agent or Lenders (or to Administrative Agent, on behalf of Lenders), or any Agent or Lender enforces any security interests or exercises any right of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any Debtor Relief Law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

Section 11.09 Governing Law; Jurisdiction; Consent to Service of Process. (a) This Agreement and the other Loan Documents and any claims, controversy, dispute or cause of action (whether sounding in contract, tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of New York without giving effect to any choice of law principles that would apply the laws of another jurisdiction.

(b) Each Loan Party hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, 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 shall be heard and determined in such New York State court or, to the extent permitted by applicable Legal Requirements, in such federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Legal Requirements. Nothing in this Agreement or any other Loan Document or otherwise shall affect any right that the Administrative Agent, any other Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(c) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable Legal Requirements, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in Section 11.09(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable Legal Requirements, 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 any action or proceeding arising out of or relating to any Loan Document, in the manner provided for notices (other than facsimile or email) in Section 11.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by applicable Legal Requirements.

Section 11.10 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS, 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, THE TRANSACTIONS OR THE OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER 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 11.11.

Section 11.11 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 11.12 Confidentiality. 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 (a) to its and its Affiliates' and Approved Funds' directors, officers, employees, agents, advisors and other representatives, including accountants, legal counsel and other advisors (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential pursuant to the terms hereof), (b) to the extent requested by any regulatory authority or any quasi-regulatory authority (such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Legal Requirements or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under the Loan Documents or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 11.12, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Borrower and its obligations, or (iii) any actual or prospective investor in an SPC, (g) with the consent of Borrower, (h) to any rating agency when required by it, (i) to an investor or prospective investor

in securities issued by an Approved Fund of any Lender that also agrees that Information shall be used solely for the purpose of evaluating an investment in such securities issued by an Approved Fund of any Lender or to a trustee, collateral manager, servicer, backup servicer, noteholder or secured party in securities issued by an Approved Fund of any Lender in connection with the administration, servicing and reporting on the assets serving as collateral for securities issued by such Approved Fund, or (j) to the extent such Information (x) is publicly available at the time of disclosure or becomes publicly available other than as a result of a breach of this [Section 11.12](#) or (y) becomes available to the Administrative Agent or any Lender on a nonconfidential basis from a source other than Borrower or any Subsidiary. In addition, each of the Administrative Agent and the Lenders may disclose the existence of this Agreement and the information about this Agreement to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans, market data collectors, similar service providers to the lending industry, and service providers to the Administrative Agent and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents. For the purposes of this [Section 11.12](#), “**Information**” shall mean all information received from Borrower relating to Borrower or any of its Subsidiaries or its business that is clearly identified at the time of delivery as confidential, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by Borrower. Any person required to maintain the confidentiality of Information as provided in this [Section 11.12](#) shall be considered to have complied with its obligation to do so if such person has exercised the same degree of care to maintain the confidentiality of such Information as such person would accord to its own confidential information.

Section 11.13 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively, the “**Charges**”), shall exceed the maximum lawful rate (the “**Maximum Rate**”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable Legal Requirements, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this [Section 11.13](#) shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

Section 11.14 Assignment and Assumption. Each Lender to become a party to this Agreement (other than the Administrative Agent and any other Lender that is a signatory hereto) shall do so by delivering to the Administrative Agent an Assignment and Assumption duly executed by such Lender, Borrower (if Borrower consent to such assignment is required hereunder) and the Administrative Agent.

Section 11.15 Obligations Absolute. To the fullest extent permitted by applicable law, all obligations of the Loan Parties hereunder shall be absolute and unconditional irrespective of:

(a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any Loan Party;

(b) any lack of validity or enforceability of any Loan Document or any other agreement or instrument relating thereto against any Loan Party;

(c) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from any Loan Document or any other agreement or instrument relating thereto;

(d) any exchange, release or non-perfection or loss of priority of any Liens on any or all of the Collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Secured Obligations;

(e) any exercise or non-exercise, or any waiver of any right, remedy, power or privilege under or in respect hereof or any Loan Document; or

(f) any other circumstances which might otherwise constitute a defense available to, or a discharge of, the Loan Parties.

Section 11.16 Waiver of Defenses; Absence of Fiduciary Duties. (a) Each of the Loan Parties hereby waives any and all suretyship defenses available to it as a Guarantor arising out of the joint and several nature of its respective duties and obligations hereunder (including any defense contained in Article VII).

(b) Each Agent, each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the “Lenders”), may have economic interests that conflict with those of the Loan Parties, their stockholders and/or their affiliates. Each Loan Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and such Loan Party, its stockholders or its affiliates, on the other. The Loan Parties acknowledge and agree that (i) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Lenders, on the one hand, and the Loan Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of any Loan Party, its stockholders or its affiliates with respect to the transactions contemplated hereby or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Loan Party, its stockholders or its Affiliates on other matters) or any other obligation to any Loan Party except the obligations expressly set forth in the Loan

Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of any Loan Party, its management, stockholders, creditors or any other person. Each Loan Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Loan Party agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Loan Party, in connection with such transaction or the process leading thereto.

Section 11.17 USA Patriot Act. Each Lender hereby notifies each Loan Party that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name, address and taxpayer identification number of each Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the Patriot Act.

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have caused this Credit Agreement to be duly executed by their respective authorized officers or other authorized signatories as of the day and year first above written.

HC2 Holdings, Inc., as Borrower

By /s/ Keith Hladek
Name: Keith Hladek
Title: Chief Operating Officer

PTGi International Holding Inc., as a Subsidiary Guarantor

By /s/ Keith Hladek
Name: Keith Hladek
Title: Chief Operating Officer

PTGi International, Inc., as a Subsidiary Guarantor

By /s/ Keith Hladek
Name: Keith Hladek
Title: Chief Operating Officer

Arbinet Corporation, as a Subsidiary Guarantor

By /s/ Keith Hladek
Name: Keith Hladek
Title: Chief Operating Officer

HC2 Tech Ventures, LLC, as a Subsidiary Guarantor

By /s/ Keith Hladek
Name: Keith Hladek
Title: Chief Operating Officer

HC2 Holdings 2, Inc., as a Subsidiary Guarantor

By /s/ Keith Hladek
Name: Keith Hladek
Title: Chief Operating Officer

CREDIT AGREEMENT

HC2 Investment Securities, Inc. , as a Subsidiary Guarantor

By /s/ Keith Hladek

Name: Keith Hladek

Title: Chief Operating Officer

CREDIT AGREEMENT

JEFFERIES FINANCE LLC, as Arranger, Book Manager,
Documentation Agent and Syndication Agent

By /s/ J. Paul McDonnell

Name: J. Paul McDonnell

Title: Managing Director

JEFFERIES FINANCE LLC, as Administrative Agent and
Collateral Agent

By /s/ J. Paul McDonnell

Name: J. Paul McDonnell

Title: Managing Director

JEFFERIES FINANCE LLC as a Lender

By /s/ J. Paul McDonnell

Name: J. Paul McDonnell

Title: Managing Director

CREDIT AGREEMENT

Initial Lenders and Commitments

Initial Interim Term Loan Commitment

<u>Lender</u>	<u>Term Commitments</u>	<u>Applicable Percentage</u>
Jefferies Finance LLC	\$ 214,000,00	100%
Total	<u><u>\$214,000,000</u></u>	<u><u>100%</u></u>

Delayed Draw Interim Term Loan Commitment

<u>Lender</u>	<u>Term Commitments</u>	<u>Applicable Percentage</u>
Jefferies Finance LLC	\$36,000,000	100%
Total	<u><u>\$36,000,000</u></u>	<u><u>100%</u></u>

Annex I-1

PLEDGE AND SECURITY AGREEMENT

By

**HC2 HOLDINGS, INC.,
as Borrower**

and

**THE SUBSIDIARY GUARANTORS PARTY HERETO,
as Subsidiary Guarantors**

and

**JEFFERIES FINANCE LLC,
as Collateral Agent**

Dated as of September 22, 2014

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PLEDGE AND SECURITY AGREEMENT

This PLEDGE AND SECURITY AGREEMENT, dated as of September 22, 2014 (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the provisions hereof, this "Agreement"), made by HC2 Holdings, Inc., a Delaware corporation (the "Borrower"), and the Subsidiary Guarantors from time to time party hereto by execution of this Agreement or otherwise by execution of a Joinder Agreement (the "Subsidiary Guarantors"), as pledgors, assignors and debtors (the Borrower, together with the Subsidiary Guarantors, in such capacities and together with any successors in such capacities, the "Pledgors," and each, a "Pledgor"), in favor of JEFFERIES FINANCE LLC, in its capacity as collateral agent for the Secured Parties (as defined in the Credit Agreement (as hereinafter defined)), as pledgee, assignee and secured party (in such capacities and together with any successors in such capacities, the "Collateral Agent").

RECITALS:

A. The Borrower, the Subsidiary Guarantors party thereto, Jefferies Finance LLC, in its capacity as administrative agent for the Lenders (in such capacity, the "Administrative Agent") and as collateral agent for the Secured Parties, Jefferies Finance LLC, as arranger and book manager, documentation agent and syndication agent and the lending institutions and other entities from time to time party thereto (the "Lenders") have, in connection with the execution and delivery of this Agreement, entered into that certain Credit Agreement, dated as of September 22, 2014 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement").

B. Each Subsidiary Guarantor has, pursuant to the Credit Agreement, unconditionally guaranteed the Secured Obligations.

C. The Borrower and each Subsidiary Guarantor will receive substantial benefits from the execution, delivery and performance of the Secured Obligations under the Credit Agreement and the other Loan Documents and each is, therefore, willing to enter into this Agreement.

D. This Agreement is given by each Pledgor in favor of the Collateral Agent for the benefit of the Secured Parties (as hereinafter defined) to secure the payment and performance of all of the Secured Obligations.

E. Each Pledgor is, or as to Pledged Collateral acquired by such Pledgor after the date hereof will be, the legal and/or beneficial owner of the Pledged Collateral pledged by it hereunder.

F. It is a condition to (i) the obligations of the Lenders to make the Loans under the Credit Agreement and (ii) the performance of the obligations of the Secured Parties under Permitted Hedging Agreements that constitute Secured Obligations that each Pledgor execute and deliver the applicable Loan Documents, including this Agreement.

PLEDGE AND SECURITY AGREEMENT

A G R E E M E N T :

NOW THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Pledgor and the Collateral Agent hereby agree as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

SECTION 1.1. Definitions.

(a) Unless otherwise defined herein or in the Credit Agreement, capitalized terms used herein that are defined in the UCC shall have the meanings assigned to them in the UCC.

(b) Terms used but not otherwise defined herein that are defined in the Credit Agreement shall have the meanings given to them in the Credit Agreement. Sections 1.03 and 1.06 of the Credit Agreement shall apply herein *mutatis mutandis*.

(c) The following terms shall have the following meanings:

“Agreement” shall have the meaning assigned to such term in the Preamble hereof.

“Borrower” shall have the meaning assigned to such term in the Preamble hereof.

“Collateral Agent” shall have the meaning assigned to such term in the Preamble hereof.

“Commodity Account Control Agreement” shall mean a control agreement in a form that is reasonably satisfactory to the Collateral Agent establishing the Collateral Agent’s Control with respect to any Commodity Account.

“Contracts” shall mean, collectively, with respect to each Pledgor, all sale, service, performance, equipment or property lease contracts, agreements and grants and all other contracts, agreements or grants (in each case, whether written or oral, or third party or intercompany), between such Pledgor and any third party, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof.

“Control” shall mean (i) in the case of each Deposit Account, “control,” as such term is defined in Section 9-104 of the UCC, (ii) in the case of any Security Entitlement, “control,” as such term is defined in Section 8-106 of the UCC, and (iii) in the case of any Commodity Contract, “control,” as such term is defined in Section 9-106 of the UCC.

“Control Agreements” shall mean, collectively, each Deposit Account Control Agreement, each Securities Account Control Agreement and each Commodity Account Control Agreement.

PLEDGE AND SECURITY AGREEMENT

“Copyrights” shall mean, collectively, with respect to each Pledgor, all copyrights (whether protected by statutory or common law copyright, whether established or registered in the United States or any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished) and all copyright registrations and applications made by such Pledgor, in each case, whether now owned or hereafter created or acquired by or assigned to such Pledgor, including the copyrights, registrations and applications listed on Schedule 14(c) to the Perfection Certificate, together with any and all (i) rights and privileges arising under applicable Legal Requirements with respect to such Pledgor’s use of such copyrights, (ii) reissues, renewals, continuations and extensions thereof and amendments thereto, (iii) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable with respect thereto, including damages and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present or future infringements thereof.

“Copyright Security Agreement” shall mean an agreement substantially in the form of Exhibit 3 hereto.

“Credit Agreement” shall have the meaning assigned to such term in Recital A hereof.

“Deposit Account Control Agreement” shall mean a control agreement in a form that is reasonably satisfactory to the Collateral Agent establishing the Collateral Agent’s Control with respect to any Deposit Account.

“Deposit Accounts” shall mean, collectively, with respect to each Pledgor, (i) all “deposit accounts” as such term is defined in the UCC and all accounts and sub-accounts relating to any of the foregoing accounts and (ii) all cash, funds, checks, notes and instruments from time to time on deposit in any of the accounts or sub-accounts described in clause (i) of this definition, in each case except any Excluded Assets and accounts consisting solely of zero balance accounts for the purpose of managing local disbursements, payroll accounts, withholding tax accounts and other fiduciary accounts.

“Distributions” shall mean, collectively, with respect to each Pledgor, all dividends, cash, options, warrants, rights, instruments, distributions, returns of capital or principal, income, interest, profits and other property, interests (debt or equity) or proceeds, including as a result of a split, revision, reclassification or other like change of the Pledged Securities, from time to time received, receivable or otherwise distributed to such Pledgor in respect of or in exchange for any or all of the Pledged Securities or Intercompany Notes.

“Escrow Property” shall mean the Escrow Agreements, the Escrow Accounts and the Escrow Amounts.

PLEDGE AND SECURITY AGREEMENT

“Excluded Assets” shall mean the following assets of the Borrower and the Subsidiary Guarantors:

(a) motor vehicles and other assets subject to certificates of title, letter of credit rights (except to the extent perfection can be obtained by filing of UCC financing statements);

(b) any lease, license or other similar agreement or any property subject to a purchase money security interest or similar arrangement to the extent that a grant of a security interest therein would violate or invalidate such lease, license or similar agreement or purchase money arrangement or create a right of termination in favor of any other party thereto (other than Borrower or a Subsidiary Guarantor) after giving effect to the applicable anti-assignment provisions of the UCC, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the UCC and other applicable laws notwithstanding such prohibition;

(c) any “intent-to-use” application for registration of a Trademark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a “Statement of Use” pursuant to Section 1(d) of the Lanham Act or an “Amendment to Allege Use” pursuant to Section 1(c) of the Lanham Act with respect thereto, solely 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 any registration that issues from such intent-to-use application under applicable federal law;

(d) any governmental licenses or state or local franchises, charters and authorizations, to the extent security interests in such licenses, franchises, charters or authorizations are prohibited or restricted thereby;

(e) Equity Interests constituting 35% of the total voting power of all outstanding voting stock (within the meaning of Treasury Regulation Section 1.956(c)(2)) of each Tax Excluded Subsidiary; provided that 100% of the equity interests not constituting voting stock of any such Subsidiary shall not constitute Excluded Assets;

(f) any Equity Interests of any person that is not a Wholly Owned Subsidiary to the extent (A) that a pledge thereof to secure the Obligations is prohibited by (i) any applicable organizational documents, joint venture agreement or shareholder agreement or (ii) any other contractual obligation with an unaffiliated third party (unless such contractual obligation would be rendered ineffective with respect to the creation of the security interest hereunder pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity and so long as, in the case of clause (i) and clause (ii), such prohibition shall not have been created or established in contemplation of, or for purposes of, avoiding the pledge of the applicable Equity Interests and the Pledgor has used commercially reasonable efforts to obtain an amendment to the applicable organizational documents, joint venture agreement, shareholder agreement or other contractual obligation to permit such pledge); provided however that the Pledged Collateral shall include (and such security interest shall attach) immediately at such time as the contractual prohibition shall no longer be applicable and to the extent severable, shall attach immediately to any portion of such Equity Interests not subject to the prohibitions specified in (i) or (ii) above, (B) any organizational

PLEDGE AND SECURITY AGREEMENT

documents, joint venture agreement or shareholder agreement (or other contractual obligation referred to in subclause (A)(ii) above) prohibits such a pledge without the consent of any other party (and the Pledgor has used commercially reasonable efforts to obtain such consent); provided, that this clause (B) shall not apply if (1) such other party is a Wholly Owned Subsidiary or (2) consent has been obtained to consummate such pledge and for so long as such organizational documents, joint venture agreement or shareholder agreement or replacement or renewal thereof is in effect, or (C) a pledge thereof to secure the Obligations would give any other party (other than a Loan Party or a Wholly Owned Subsidiary) to any organizational documents, joint venture agreement or shareholder agreement governing such Equity Interests (or other contractual obligation referred to in subclause (A)(ii) above) the right to terminate its obligations thereunder (unless in the case of other contractual obligations referred to in subclause (A)(ii), such contractual obligation would be rendered ineffective with respect to the creation of the security interest hereunder pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Bankruptcy Code) or principles of equity; provided further that the exclusions referred to in clause (f) shall not include any Proceeds of any such Equity Interests;

(g) any limited liability company interests in Kaneland, LLC;

(h) Margin Stock; and

(i) any other assets mutually agreed upon between the Borrower and the Collateral Agent.

“General Intangibles” shall mean, collectively, with respect to each Pledgor, all “general intangibles,” as such term is defined in the UCC, of such Pledgor and, in any event, shall include (i) all of such Pledgor’s rights, title and interest in, to and under all Contracts and insurance policies and coverages (including all rights and remedies relating to monetary damages, including indemnification rights and remedies, and claims for damages or other relief pursuant to or in respect of any Contract), (ii) all know-how and warranties relating to any of the Pledged Collateral or the Mortgaged Property, (iii) any and all other rights, claims, choses-in-action and causes of action of such Pledgor against any other person and the benefits of any and all collateral or other security given by any other person in connection therewith, (iv) all guarantees, endorsements and indemnifications on, or of, any of the Pledged Collateral or any of the Mortgaged Property, (v) all lists, books, records, correspondence, ledgers, printouts, files (whether in printed form or stored electronically), tapes and other papers or materials containing information relating to any of the Pledged Collateral or any of the Mortgaged Property, including all customer or tenant lists, identification of suppliers, data, plans, blueprints, specifications, designs, drawings, appraisals, recorded knowledge, surveys, studies, engineering reports, test reports, manuals, standards, processing standards, performance standards, catalogs, research data, computer and automatic machinery software and programs and the like, field repair data, accounting information pertaining to such Pledgor’s operations or any of the Pledged Collateral or any of the Mortgaged Property and all media in which or on which any of the information or knowledge or data or records may be recorded or stored and all computer programs used for the

PLEDGE AND SECURITY AGREEMENT

compilation or printout of such information, knowledge, records or data, (vi) all licenses, consents, permits, variances, certifications, authorizations and approvals, however characterized, now or hereafter acquired or held by such Pledgor, including building permits, certificates of occupancy, environmental certificates, industrial permits or licenses and certificates of operation, (vii) all rights to reserves, payment intangibles, deferred payments, deposits, refunds, indemnification of claims and claims for tax or other refunds against any Governmental Authority and (viii) any and all of the Borrower's rights, title or interests in the Escrow Property.

“Goodwill” shall mean, collectively, with respect to each Pledgor, the goodwill connected with such Pledgor's business including all goodwill connected with (i) the use of and symbolized by any Trademark or Intellectual Property License with respect to any Trademark in which such Pledgor has any interest, (ii) all know-how, trade secrets, customer and supplier lists, proprietary information, inventions, methods, plans, policies, procedures, formulae, descriptions, compositions, technical data, drawings, specifications, name plates, catalogs, confidential information and the right to limit the use or disclosure thereof by any person, pricing and cost information, business and marketing plans and proposals, consulting agreements, engineering contracts and such other assets which relate to such goodwill and (iii) all product lines of such Pledgor's business.

“Instruments” shall mean, collectively, with respect to each Pledgor, all “instruments,” as such term is defined in Article 9, rather than Article 3, of the UCC, and shall include all promissory notes, drafts, bills of exchange or acceptances.

“Intellectual Property Collateral” shall mean, collectively, with respect to each Pledgor, all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including, without limitation, the Patents, Trademarks, Copyrights, Intellectual Property Licenses and Goodwill.

“Intellectual Property Licenses” shall mean, collectively, with respect to each Pledgor, all license and distribution agreements with, and covenants not to sue, any other party with respect to any Patent, Trademark or Copyright or any other patent, trademark or copyright, whether such Pledgor is a licensor or licensee, distributor or distributee under any such license or distribution agreement, together with any and all (i) renewals, extensions, supplements and continuations thereof, (ii) income, fees, royalties, damages, claims and payments now and hereafter due and/or payable thereunder and with respect thereto including damages and payments for past, present or future infringements or violations thereof, (iii) rights to sue for past, present and future infringements or violations thereof and (iv) other rights to use, exploit or practice any or all of the Patents, Trademarks or Copyrights or any other patent, trademark or copyright.

“Intercompany Notes” shall mean, with respect to each Pledgor, all intercompany notes described in Schedule 12 to the Perfection Certificate, if any, and intercompany notes hereafter acquired by such Pledgor and all certificates, instruments or agreements evidencing such intercompany notes, and all assignments, amendments, restatements, supplements, extensions, renewals, replacements or modifications thereof to the extent permitted pursuant to the terms hereof.

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“Investment Property” shall mean a security, whether certificated or uncertificated, Security Entitlement, Securities Account, Commodity Contract or Commodity Account, excluding, however, the Securities Collateral.

“Joinder Agreement” shall mean an agreement substantially in the form of Exhibit 2 hereto.

“Legal Requirements” shall mean, as to any person, the Organizational Documents of such person, and any treaty, law (including the common law), statute, ordinance, code, rule, regulation, guidelines, license, permit requirement, Order or determination of an arbitrator or a court or other Governmental Authority, and the interpretation or administration thereof, 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.

“Patents” shall mean, collectively, with respect to each Pledgor, all patents issued or assigned to, and all patent applications and registrations made by, such Pledgor (whether established or registered or recorded in the United States or any other country or any political subdivision thereof), together with any and all (i) rights and privileges arising under applicable Legal Requirements with respect to such Pledgor’s use of any patents, (ii) inventions and improvements described and claimed therein, (iii) reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof and amendments thereto, (iv) income, fees, royalties, damages, claims and payments now or hereafter due and/or payable thereunder and with respect thereto including damages and payments for past, present or future infringements thereof, (v) rights corresponding thereto throughout the world and (vi) rights to sue for past, present or future infringements thereof.

“Patent Security Agreement” shall mean an agreement substantially in the form of Exhibit 4 hereto.

“Perfection Certificate” shall mean that certain perfection certificate dated September 22, 2014, executed and delivered by each Pledgor in favor of the Collateral Agent for the benefit of the Secured Parties and attached hereto as Annex 1, and each other Perfection Certificate executed and delivered by the applicable Pledgor in favor of the Collateral Agent for the benefit of the Secured Parties contemporaneously with the execution and delivery of each Joinder Agreement executed in accordance with Section 3.5 hereof, in each case, as the same may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the Credit Agreement or upon the reasonable request of the Collateral Agent.

“Pledge Amendment” shall have the meaning assigned to such term in Section 5.1 hereof.

“Pledged Collateral” shall have the meaning assigned to such term in Section 2.1 hereof.

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“Pledged Securities” shall mean, collectively, with respect to each Pledgor, (i) all issued and outstanding Equity Interests of each issuer set forth on Schedule 1 to this Agreement as being owned by such Pledgor and all options, warrants, rights, agreements and additional Equity Interests of whatever class of any such issuer acquired by such Pledgor (including by issuance), together with all rights, privileges, authority and powers of such Pledgor relating to such Equity Interests in each such issuer or under any Organizational Document of each such issuer, and the certificates, instruments and agreements representing such Equity Interests and any and all interest of such Pledgor in the entries on the books of any financial intermediary pertaining to such Equity Interests, (ii) all Equity Interests of any issuer, which Equity Interests are hereafter acquired by such Pledgor (including by issuance) and all options, warrants, rights, agreements and additional Equity Interests of whatever class of any such issuer acquired by such Pledgor (including by issuance), together with all rights, privileges, authority and powers of such Pledgor relating to such Equity Interests or under any Organizational Document of any such issuer, and the certificates, instruments and agreements representing such Equity Interests and any and all interest of such Pledgor in the entries on the books of any financial intermediary pertaining to such Equity Interests, from time to time acquired by such Pledgor in any manner, and (iii) all Equity Interests issued in respect of the Equity Interests referred to in clauses (i) or (ii) upon any consolidation or merger of any issuer of such Equity Interests.

“Pledgor” shall have the meaning assigned to such term in the Preamble hereof.

“Securities Account Control Agreement” shall mean a control agreement in a form that is reasonably satisfactory to the Collateral Agent establishing the Collateral Agent’s Control with respect to any Securities Account.

“Securities Act” shall have the meaning assigned to such term in Section 8.5(b) hereof.

“Securities Collateral” shall mean, collectively, the Pledged Securities, the Intercompany Notes and the Distributions.

“Subsidiary Guarantors” shall have the meaning assigned to such term in the Preamble hereof.

“Trademarks” shall mean, collectively, with respect to each Pledgor, all trademarks (including service marks), slogans, logos, certification marks, trade dress, uniform resource locations (URL’s), domain names, corporate names and trade names, whether registered or unregistered, owned by or assigned to such Pledgor and all registrations and applications for the foregoing (whether statutory or common law and whether established or registered in the United States or any other country or any political subdivision thereof), together with any and all (i) rights and privileges arising under applicable law with respect to such Pledgor’s use of any trademarks, (ii) reissues, continuations, extensions and renewals thereof and amendments thereto, (iii) income, fees, royalties, damages and payments now and hereafter due and/or payable thereunder and with respect thereto, including damages, claims and payments for past, present or future infringements thereof, (iv) rights corresponding thereto throughout the world and (v) rights to sue for past, present and future infringements thereof.

“Trademark Security Agreement” shall mean an agreement substantially in the form of Exhibit 5 hereto.

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“UCC” shall mean 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 applicable Legal Requirements, any or all of the attachment, perfection or priority of the Collateral Agent’s and the Secured Parties’ security interest in any item or portion of the Pledged Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions relating to such provisions.

SECTION 1.2. Perfection Certificate . The Collateral Agent and each Secured Party agree that the Perfection Certificate and all descriptions of Pledged Collateral, schedules, amendments and supplements thereto are and shall at all times remain a part of this Agreement.

ARTICLE II

GRANT OF SECURITY AND SECURED OBLIGATIONS

SECTION 2.1. Grant of Security Interest. As collateral security for the payment and performance in full of all the Secured Obligations, each Pledgor hereby pledges and grants to the Collateral Agent for the ratable benefit of the Secured Parties, a lien on and security interest in and to all of the right, title and interest of such Pledgor in, to and under the following property, wherever located, and whether now existing or hereafter arising or acquired from time to time (collectively, the “Pledged Collateral”):

- (i) all Accounts;
- (ii) all Equipment, Goods, Inventory and Fixtures;
- (iii) all Documents, Instruments and Chattel Paper;
- (iv) all Letters of Credit and Letter-of-Credit Rights (whether or not the Letter of Credit is evidenced by a writing);
- (v) all Securities Collateral;
- (vi) all Investment Property;
- (vii) all Intellectual Property Collateral;
- (viii) the Commercial Tort Claims described on Schedule 15 to the Perfection Certificate;
- (ix) all General Intangibles;
- (x) all Money and all Deposit Accounts;
- (xi) all Supporting Obligations;

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(xii) all books and records relating to the Pledged Collateral;

(xiii) to the extent not covered by clauses (i) through (xii) of this sentence, choses in action and all other personal property of such Pledgor, whether tangible or intangible;

(xiv) the Escrow Property to the extent the Borrower is determined to have any right, title or interest in any of the Escrow Property; and

(xv) all Proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, and any and all Proceeds of any insurance (including, without limitation, in connection with a Casualty Event with respect to any Mortgaged Property, or with respect to improvements or Fixtures thereon, any and all awards made for the taking by eminent domain, or by any proceedings or purchase in lieu thereof, of any Mortgaged Property, or any improvements or Fixtures thereon, including any awards resulting from any damage to any Mortgaged Property, improvements or Fixtures for which compensation shall be given by any Governmental Authority), indemnity, warranty or guaranty payable to such Pledgor from time to time with respect to any of the foregoing.

Notwithstanding anything to the contrary contained in clauses (i) through (xv) above, the security interest created by this Agreement shall not extend to, and the term "Pledged Collateral" shall not include, any Excluded Assets.

SECTION 2.2. Filings. (a) Without limiting the obligations of each Pledgor contained in Section 3.3, each Pledgor hereby irrevocably authorizes the Collateral Agent at any time and from time to time to file in any relevant jurisdiction any initial financing statements (including fixture filings), continuation statements and amendments thereto that contain the information required by Article 9 of the UCC of each applicable jurisdiction for the filing of any financing statement, continuation statement or amendment relating to the Pledged Collateral, including (i) whether such Pledgor is an organization, the type of organization and any organizational identification number issued to such Pledgor, (ii) any financing or continuation statements or other documents without the signature of such Pledgor where permitted by law, including the filing of a financing statement describing the Pledged Collateral as "all assets" or "all assets now owned or hereafter acquired by the Pledgor or in which Pledgor otherwise has rights" and (iii) in the case of a financing statement filed as a fixture filing or covering Pledged Collateral constituting minerals or the like to be extracted or timber to be cut, a sufficient description of the real property to which such Pledged Collateral relates. Each Pledgor agrees to provide all information described in the immediately preceding sentence to the Collateral Agent promptly upon reasonable request by the Collateral Agent. Such financing statements may describe the collateral in the same manner as described herein or may contain a description of collateral that describes such property in any other manner as the Collateral Agent may determine, in its sole discretion, is necessary or advisable to ensure the perfection or priority of the security interest in the collateral granted to the Collateral Agent in connection herewith, including, describing such property as "all assets whether now owned or hereafter acquired" or "all personal property whether now owned or hereafter acquired" (regardless of whether any particular asset comprised in the Pledged Collateral falls within the scope of Article 9 of the UCC).

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(b) Without limiting the obligations of each Pledgor contained in Section 3.3, each Pledgor hereby further authorizes the Collateral Agent to file filings with the United States Patent and Trademark Office or the United States Copyright Office (or any successor office or any similar office in any other country), including this Agreement, the Trademark Security Agreement, any Copyright Security Agreement and any Patent Security Agreement, or other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the pledge and security interest granted by such Pledgor hereunder, without the signature of such Pledgor, and naming such Pledgor, as debtor, and the Collateral Agent, as secured party.

ARTICLE III

PERFECTION; SUPPLEMENTS; FURTHER ASSURANCES; USE OF PLEDGED COLLATERAL

SECTION 3.1. Delivery of Certificated Securities Collateral. Each Pledgor represents and warrants that, subject to Section 4.01(n) of the Credit Agreement, all certificates, agreements or instruments representing or evidencing the Securities Collateral in existence on the date hereof have been delivered to the Collateral Agent in suitable form for transfer by delivery or accompanied by duly executed instruments of transfer or assignment in blank and that the Collateral Agent has a valid, enforceable, perfected first priority security interest therein (subject to Permitted Liens). Each Pledgor hereby agrees that all certificates, agreements or instruments representing or evidencing Securities Collateral acquired by such Pledgor after the date hereof shall promptly (but in any event within thirty (30) days after receipt thereof by such Pledgor) be delivered to and held by or on behalf of the Collateral Agent pursuant hereto. All certificated Securities Collateral shall be in suitable form for transfer by delivery or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance reasonably satisfactory to the Collateral Agent. The Collateral Agent shall have the right, at any time upon the occurrence and during the continuance of any Event of Default, to endorse, assign or otherwise transfer to or to register in the name of the Collateral Agent or any of its nominees or endorse for negotiation any or all of the Securities Collateral, without any indication that such Securities Collateral is subject to the security interest hereunder.

SECTION 3.2. Perfection of Uncertificated Securities Collateral. Each Pledgor represents and warrants that the Collateral Agent has a valid, enforceable, perfected first priority security interest (subject to Permitted Liens) in all uncertificated Pledged Securities pledged by it hereunder that are in existence on the date hereof. Each Pledgor hereby agrees that if any issuer of Pledged Securities is organized in a jurisdiction that does not require the use of certificates to evidence equity ownership or any of the Pledged Securities are at any time not evidenced by certificates of ownership, then each applicable Pledgor shall, to the extent permitted by applicable Legal Requirements, (i) if reasonably necessary or reasonably desirable to perfect a first priority security interest (subject to Permitted Liens) in such Pledged Securities, cause such pledge to be recorded on the equityholder register or the books of the issuer, cause the issuer to execute and deliver to the Collateral Agent an acknowledgment of the pledge of such

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Pledged Securities, execute any customary pledge forms or other documents necessary or appropriate to complete the pledge and give the Collateral Agent the right to transfer such Pledged Securities under the terms hereof and (ii) after the occurrence and during the continuance of any Event of Default, upon request by the Collateral Agent, (A) use commercially reasonable efforts to cause the Organizational Documents of each such issuer that is a Subsidiary of the Borrower to be amended to provide that such Pledged Securities shall be treated as “securities” for purposes of the UCC and (B) cause such Pledged Securities to become certificated and delivered to the Collateral Agent in accordance with the provisions of Section 3.1 hereof. Each Pledgor hereby agrees that it shall not elect to treat or permit any of its Subsidiaries to (x) treat its limited liability company membership interests or partnership interests, as the case may be, as securities as contemplated by the definition of “security” in Section 8-102(15) and by Section 8-103 of Article 8 of UCC or (y) certificate its limited liability company membership interests or partnership interests, as the case may be, unless it is required to do so pursuant to the terms of the preceding sentence.

SECTION 3.3. Financing Statements and Other Filings; Maintenance of Perfected Security Interest. Subject to Section 3.4, each Pledgor represents and warrants that all filings, registrations and recordings necessary to perfect the security interest granted by each Pledgor to the Collateral Agent in respect of the Pledged Collateral shall be delivered to the Collateral Agent in completed and, to the extent necessary or appropriate, duly executed form for filing in each governmental, municipal or other office specified in Schedule 7 to the Perfection Certificate no later than thirty (30) days after the date hereof (as such period may be extended in the sole discretion of the Administrative Agent). Each Pledgor agrees that at the sole cost and expense of the Pledgors, (i) such Pledgor will maintain the security interest created by this Agreement in the Pledged Collateral as a valid, enforceable, perfected first priority security interest (subject only to Permitted Liens) and shall defend such security interest against the claims and demands of all persons, (ii) such Pledgor shall furnish to the Collateral Agent from time to time statements and schedules further identifying and describing the Pledged Collateral and such other reports in connection with the Pledged Collateral as the Collateral Agent may reasonably request, all in reasonable detail and (iii) at any time and from time to time, upon the written request of the Collateral Agent, such Pledgor shall promptly and duly execute and deliver, and file and have recorded, such further instruments and documents and take such further action as the Collateral Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and the rights and powers herein granted, including (x) the filing of any financing statements, continuation statements and other documents (including this Agreement) under the UCC (or other similar laws) in effect in any jurisdiction with respect to the security interest created hereby and (y) the execution and delivery of Control Agreements, all in form reasonably satisfactory to the Collateral Agent and in such offices (including the United States Patent and Trademark Office and the United States Copyright Office) wherever required by applicable Legal Requirements to perfect (to the extent a security interest in such Pledged Collateral may be so perfected under applicable Legal Requirements), continue and maintain a valid, enforceable, first priority security interest (subject to Permitted Liens) in the Pledged Collateral as provided herein and to use commercially reasonable efforts to preserve the other rights and interests granted to the Collateral Agent hereunder, as against third parties, with respect to the Pledged Collateral.

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SECTION 3.4. Other Actions. In order to further ensure the attachment, perfection and priority of, and the ability of the Collateral Agent to enforce, the Collateral Agent's security interest in the Pledged Collateral, each Pledgor represents and warrants and covenants and agrees as follows, in each case at such Pledgor's own expense, to take the following actions with respect to the following Pledged Collateral:

(a) Instruments. As of the date hereof, no amounts payable under or in connection with any of the Pledged Collateral are evidenced by any Instrument other than such Instruments listed in Schedule 12 to the Perfection Certificate. Each Instrument listed in Schedule 12 to the Perfection Certificate has been properly endorsed, assigned and delivered to the Collateral Agent, accompanied by instruments of transfer or assignment duly executed in blank. If any amount then payable under or in connection with any of the Pledged Collateral shall be evidenced by any Instrument, and such amount, together with all amounts payable evidenced by any Instrument not previously delivered to the Collateral Agent exceeds \$1,000,000 in the aggregate for all Pledgors, the Pledgor acquiring such Instrument shall promptly (but in any event within thirty (30) days) (as such period may be extended in the sole discretion of the Administrative Agent) endorse, assign and deliver the same to the Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank as the Collateral Agent may from time to time specify; provided, however, that so long as no Event of Default has occurred and is continuing, upon written request by such Pledgor, the Collateral Agent shall promptly return such Instrument to such Pledgor from time to time, to the extent necessary for collection in the ordinary course of such Pledgor's business. Each Pledgor hereby covenants and agrees that it shall not assign or otherwise transfer for value any promissory notes received at any time in connection with seller financing.

(b) Deposit Accounts. Subject to Section 5.14 of the Credit Agreement, (i) as of the date hereof, no Pledgor has opened nor maintains any Deposit Accounts other than the accounts listed in Schedule 16 to the Perfection Certificate, (ii) no later than sixty (60) days after the date hereof (as such period may be extended in the sole discretion of the Administrative Agent), each applicable Pledgor and the relevant Bank(s) shall have executed and delivered a Deposit Account Control Agreement with respect to each of the Deposit Accounts listed in Schedule 16 to the Perfection Certificate other than Deposit Accounts having a balance of not more than \$250,000, individually and \$1,000,000 in the aggregate and (iii) no later than sixty (60) days after the date hereof (as such period may be extended in the sole discretion of the Administrative Agent), the Collateral Agent shall have a valid, enforceable, perfected first priority security interest (subject to Permitted Liens) in such Deposit Accounts by Control. No Pledgor shall hereafter establish and maintain any Deposit Account unless (1) the applicable Pledgor shall have given the Collateral Agent notice within sixty (60) days' after the establishment of such new Deposit Account with a Bank and (2) such Bank and such Pledgor shall have duly executed and delivered to the Collateral Agent a Deposit Account Control Agreement (or an amendment to an existing Deposit Account Control Agreement) with respect to such Deposit Account. The Collateral Agent agrees with each Pledgor that the Collateral Agent shall not give any instructions directing the disposition of funds from time to time credited to any Deposit Account or withhold any withdrawal rights from such Pledgor with respect to funds from time to time credited to any Deposit Account unless an Event of Default has occurred and is continuing or, after giving effect to any withdrawal, would occur. No Pledgor has granted or shall grant Control of any Deposit Account to any person other than the Collateral Agent.

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(c) **Securities Accounts and Commodity Accounts.** (i) Subject to Section 5.14 of the Credit Agreement, (1) as of the date hereof, no Pledgor has opened nor maintains any Securities Accounts or Commodity Accounts other than those listed in Schedule 16 to the Perfection Certificate, (2) no later than sixty (60) days after the date hereof (as such period may be extended in the sole discretion of the Administrative Agent), each applicable Pledgor and the relevant Securities Intermediary or Commodity Intermediary shall have executed and delivered a Securities Account Control Agreement or Commodity Account Control Agreement, as applicable, for each Securities Account or Commodity Account listed in Schedule 16 to the Perfection Certificate other than Securities Accounts or Commodity Accounts holding securities constituting Investment Property (other than Excluded Assets) with a fair market value of not more \$1,500,000 in the aggregate, or the Pledgors shall have closed such accounts, (3) no later than sixty (60) days after the date hereof (as such period may be extended in the sole discretion of the Administrative Agent), the Collateral Agent shall have a valid, enforceable, perfected first priority security interest (other than Permitted Liens) in such Securities Accounts and Commodity Accounts by Control and (4) as of the date hereof, no Pledgor holds, owns or has any interest in any certificated securities or uncertificated securities other than those constituting Pledged Securities and those maintained in Securities Accounts or Commodity Accounts listed on Schedule 16 to the Perfection Certificate or in respect of which the Collateral Agent has Control. If any Pledgor shall at any time hold or acquire any certificated securities constituting Investment Property with a fair market value, individually or in the aggregate, in excess of \$1,000,000, such Pledgor shall promptly (and in any event within thirty (30) days of acquiring such security) (a) endorse, assign and deliver the same to the Collateral Agent, accompanied by such instruments of transfer or assignment duly executed in blank, all in form and substance reasonably satisfactory to the Collateral Agent or (b) deliver such securities into a Securities Account with respect to which a Control Agreement is in effect in favor of the Collateral Agent. If any securities now or hereafter acquired by any Pledgor constituting Investment Property and having a fair market value, individually or in the aggregate, in excess of \$1,000,000 are uncertificated and are issued to such Pledgor or its nominee directly by the issuer thereof, such Pledgor shall promptly (and in any event within thirty (30) days of acquiring such security (as such period may be extended in the sole discretion of the Administrative Agent)) notify the Collateral Agent thereof and pursuant to an agreement in form and substance reasonably satisfactory to the Collateral Agent, either (a) cause the issuer to agree to comply with Entitlement Orders or other instructions by the Collateral Agent as to such securities, without further consent of any Pledgor or such nominee, (b) cause a Security Entitlement with respect to such uncertificated security to be held in a Securities Account with respect to which the Collateral Agent has Control or (c) arrange for the Collateral Agent to become the registered owner of the securities. No Pledgor shall hereafter establish and maintain any Securities Account or Commodity Account with any Securities Intermediary or Commodity Intermediary unless (1) the applicable Pledgor shall have given the Collateral Agent notice within thirty (30) days' after establishment of such new Securities Account or Commodity Account with such Securities Intermediary or Commodity Intermediary and (2) such Securities Intermediary or Commodity Intermediary, as the case may be, and such Pledgor shall have duly executed and delivered a Control Agreement with respect to such Securities Account or Commodity Account,

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as the case may be. Each Pledgor shall accept any cash and Investment Property in trust for the benefit of the Collateral Agent and within ten (10) days of actual receipt thereof, deposit any and all cash and Investment Property received by it into a Deposit Account or Securities Account subject to the Collateral Agent's Control. The Collateral Agent agrees with each Pledgor that the Collateral Agent shall not give any Entitlement Orders or instructions or directions to any issuer of uncertificated securities, Securities Intermediary or Commodity Intermediary, and shall not withhold its consent to the exercise of any withdrawal or dealing rights by such Pledgor, unless an Event of Default has occurred and is continuing or, after giving effect to any such investment and withdrawal rights, would occur. The provisions of this Section 3.4(c) shall not apply to any Financial Assets credited to a Securities Account for which the Collateral Agent is the Securities Intermediary. No Pledgor shall grant Control over any Investment Property to any person other than the Collateral Agent.

(ii) As between the Collateral Agent and the Pledgors, the Pledgors shall bear the investment risk with respect to the Investment Property and Pledged Securities, and the risk of loss of, damage to, or the destruction of the Investment Property and Pledged Securities, whether in the possession of, or maintained as a Security Entitlement or deposit by, or subject to the Control of, the Collateral Agent, a Securities Intermediary, a Commodity Intermediary, any Pledgor or any other person; provided, however, that nothing contained in this Section 3.4(c) shall release or relieve any Securities Intermediary or Commodity Intermediary of its duties and obligations to the Pledgors or any other person under any Control Agreement or under applicable Legal Requirements. Each Pledgor shall promptly pay all Charges and fees of whatever kind or nature with respect to the Investment Property and Pledged Securities pledged by it under this Agreement. In the event any Pledgor shall fail to make such payment contemplated in the immediately preceding sentence, the Collateral Agent may do so for the account of such Pledgor and the Pledgors shall promptly reimburse and indemnify the Collateral Agent from all costs and expenses incurred by the Collateral Agent under this Section 3.4(c) in accordance with Section 10.03 of the Credit Agreement.

(d) Letter-of-Credit Rights. If any Pledgor is at any time a beneficiary under a Letter of Credit now or hereafter issued in favor of such Pledgor, other than a Letter of Credit that is a "supporting obligation" (as defined in Section 9-102 of the UCC) with respect to other Pledged Collateral in which the Collateral Agent has a valid, enforceable, perfected first priority security interest (subject to Permitted Liens), such Pledgor shall promptly (and in any event within thirty (30) days of becoming a beneficiary thereunder) notify the Collateral Agent thereof and such Pledgor shall, at the request of the Collateral Agent, pursuant to an agreement in form and substance reasonably satisfactory to the Collateral Agent, use its commercially reasonable efforts to either (i) arrange for the issuer and any confirmer or other nominated person of such Letter of Credit to consent to an assignment to the Collateral Agent of the proceeds of any drawing under the Letter of Credit or (ii) arrange for the Collateral Agent to become the transferee beneficiary of such Letter of Credit, with the Collateral Agent agreeing, in each case, that the proceeds of any drawing under the Letter of Credit are to be applied as provided in the Credit Agreement. The actions in the preceding sentence shall not be required to the extent that the amount of any such Letter of Credit, together with the aggregate amount of all other Letters of Credit for which the actions described above in clauses (i) and (ii) have not been taken, does not exceed \$1,000,000 in the aggregate for all Pledgors.

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(e) Commercial Tort Claims. As of the date hereof, each Pledgor hereby represents and warrants that it holds no Commercial Tort Claims other than those listed in Schedule 15 to the Perfection Certificate. If any Pledgor shall at any time hold or acquire a Commercial Tort Claim, such Pledgor shall promptly notify the Collateral Agent in writing signed by such Pledgor of the brief details thereof and grant to the Collateral Agent in such writing a security interest therein and in the Proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to the Collateral Agent. The requirement in the preceding sentence shall not apply to the extent that the amount of such Commercial Tort Claim, together with the amount of all other Commercial Tort Claims held by any Pledgor in which the Collateral Agent does not have a security interest, does not exceed \$1,000,000 in the aggregate for all Pledgors.

SECTION 3.5. Joinder of Additional Subsidiary Guarantors. The Pledgors shall cause each Subsidiary of the Borrower which, from time to time, after the date hereof shall be required to pledge any assets to the Collateral Agent for the benefit of the Secured Parties pursuant to the Credit Agreement, to execute and deliver to the Collateral Agent (i) a Joinder Agreement substantially in the form of Exhibit 2 hereto and (ii) a Perfection Certificate, in each case, within thirty (30) days (as such period may be extended in the sole discretion of the Administrative Agent) of the date on which it was acquired or created, as applicable, and upon such execution and delivery, such Subsidiary shall constitute a "Subsidiary Guarantor" and a "Pledgor" for all purposes hereunder with the same force and effect as if originally named as a Subsidiary Guarantor and Pledgor herein. The execution and delivery of such Joinder Agreement shall not require the consent of any Pledgor hereunder. The rights and obligations of each Pledgor hereunder shall remain in full force and effect notwithstanding the addition of any new Subsidiary Guarantor and Pledgor as a party to this Agreement or any other Loan Document.

SECTION 3.6. Supplements; Further Assurances. Each Pledgor shall take such further actions, and execute and/or deliver to the Collateral Agent such additional financing statements, amendments, assignments, agreements, supplements, powers and instruments, as the Collateral Agent may in its reasonable judgment deem necessary or appropriate in order to create, perfect, preserve and protect the security interest in the Pledged Collateral as provided herein and the rights and interests granted to the Collateral Agent hereunder, to carry into effect the purposes hereof or better to assure and confirm the validity, enforceability and priority of the Collateral Agent's security interest in the Pledged Collateral or permit the Collateral Agent to exercise and enforce its rights, powers and remedies hereunder with respect to any Pledged Collateral, including the filing of financing statements, continuation statements and other documents (including this Agreement) under the UCC (or other similar laws) in effect in any jurisdiction with respect to the security interest created hereby and the execution and delivery of Control Agreements, all in form reasonably satisfactory to the Collateral Agent and in such offices (including the United States Patent and Trademark Office and the United States Copyright Office) wherever required by Legal Requirements to perfect, continue and maintain the validity, enforceability and priority of the security interest in the Pledged Collateral as

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provided herein and to preserve the other rights and interests granted to the Collateral Agent hereunder, as against third parties, with respect to the Pledged Collateral. Without limiting the generality of the foregoing, each Pledgor shall make, execute, endorse, acknowledge, file or refile and/or deliver to the Collateral Agent from time to time upon reasonable request by the Collateral Agent such schedules, confirmatory assignments, supplements, additional security agreements, conveyances, financing statements, transfer endorsements, powers of attorney, certificates, reports and other assurances or instruments as the Collateral Agent shall reasonably request. If an Event of Default has occurred and is continuing, the Collateral Agent may institute and maintain, in its own name or in the name of any Pledgor, such suits and proceedings as the Collateral Agent may be advised by counsel shall be necessary or expedient to prevent any impairment of the security interest in the Pledged Collateral or the perfection or priority thereof. All of the foregoing shall be at the sole cost and expense of the Pledgors.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND COVENANTS

Each Pledgor represents, warrants and covenants as follows:

SECTION 4.1. Title. Except for the security interest granted to the Collateral Agent for the ratable benefit of the Secured Parties pursuant to this Agreement and Permitted Liens, such Pledgor owns or has rights and, as to Pledged Collateral acquired by it from time to time after the date hereof, will own or have rights in each item of Pledged Collateral pledged by it hereunder, free and clear of any and all Liens or claims of others. In addition, no Liens or claims exist on the Securities Collateral, other than as permitted by Section 6.02 of the Credit Agreement and any rights or obligations set forth in the Organizational Documents for any Pledged Securities issued by a Joint Venture.

SECTION 4.2. Validity of Security Interest. The security interest in and Lien on the Pledged Collateral granted to the Collateral Agent for the ratable benefit of the Secured Parties hereunder constitutes (a) a legal and valid security interest in all the Pledged Collateral securing the payment and performance of the Secured Obligations, and (b) subject to the filings and other actions described in Schedule 6 to the Perfection Certificate (to the extent required to be listed on the schedules to the Perfection Certificate as of the date this representation is made or deemed made), a valid, enforceable, perfected first priority security interest (other than Permitted Liens) in all the Pledged Collateral. Each such filing and action shall be made or taken or shall be caused to be made or taken by the Borrower promptly following the Closing Date. The security interest and Lien granted to the Collateral Agent for the ratable benefit of the Secured Parties pursuant to this Agreement in and on the Pledged Collateral will at all times constitute a valid, enforceable, perfected, continuing first priority security interest therein, prior to all other Liens on the Pledged Collateral, subject only to Permitted Liens.

SECTION 4.3. Defense of Claims; Transferability of Pledged Collateral. Each Pledgor shall, at its own cost and expense, defend title to the Pledged Collateral pledged by it hereunder and the security interest therein and Lien thereon granted to the Collateral Agent and the priority thereof required hereunder against all claims and demands of all persons, at its own cost and expense, at any time claiming any interest therein adverse to the Collateral Agent or any

PLEDGE AND SECURITY AGREEMENT

other Secured Party other than Permitted Liens. There is no agreement, order, judgment or decree that restricts the transferability of any of the Pledged Collateral or otherwise impairs or conflicts with any Pledgor's obligations or the rights of the Collateral Agent hereunder, and no Pledgor shall enter into any agreement or take any other action, that would restrict the transferability of any of the Pledged Collateral or otherwise impair or conflict with any Pledgor's obligations or the rights of the Collateral Agent hereunder.

SECTION 4.4. Other Financing Statements. No Pledgor has filed, nor authorized any third party to file (nor will there be), any valid or effective financing statement (or similar statement, instrument of registration or public notice under the law of any jurisdiction) covering or purporting to cover any interest of any kind in the Pledged Collateral, except such as have been filed in favor of the Collateral Agent pursuant to this Agreement or in favor of any holder of a Permitted Lien with respect to such Permitted Lien or financing statements and other statements and instruments or public notices relating to the termination statements listed on Schedule 9(a) to the Perfection Certificate. So long as any of the Secured Obligations remain unpaid and unperformed, no Pledgor shall execute, authorize or permit to be filed in any public office any financing statement (or similar statement, instrument of registration or public notice under the law of any jurisdiction) relating to any Pledged Collateral, except financing statements and other statements and instruments filed or to be filed in respect of and covering the security interests granted by such Pledgor to the Collateral Agent pursuant to this Agreement or the holder(s) of the Permitted Liens.

SECTION 4.5. Chief Executive Office; Change of Name; Jurisdiction of Organization, etc. Such Pledgor shall, (i) unless it shall have given the Collateral Agent not less than thirty (30) days' prior written notice (in the form of an Officers' Certificate), not change its name, identity, legal structure (whether by merger, consolidation, change in corporate form or otherwise), type of organization or jurisdiction of organization, place of business or, if more than one, chief executive office, or mailing address or organizational identification number if it has one and (ii) take all actions necessary or advisable to maintain the continuous validity, perfection and the same or better priority of the Collateral Agent's security interest in the Pledged Collateral granted or intended to be granted hereunder, which in the case of any merger or other change in organizational structure shall include delivering a written notice (in the form of an Officers' Certificate) upon completion of such merger or other change in organizational structure confirming the grant of the security interest under this Agreement. If such Pledgor does not have an organizational identification number and later obtains one, such Pledgor shall promptly notify the Collateral Agent of such organizational identification number. The Collateral Agent may rely on opinions of counsel as to whether any or all UCC financing statements of the Pledgors need to be amended as a result of any of the changes described in this Section 4.5. The Collateral Agent shall not be liable or responsible to any party for any failure to maintain a valid, enforceable, perfected security interest with the priority required hereunder in such Pledgor's property constituting Pledged Collateral. The Collateral Agent shall have no duty to inquire about such changes, the parties acknowledging and agreeing that it would not be feasible or practical for the Collateral Agent to search for information on such changes if such information is not provided by any Pledgor.

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SECTION 4.6. Location of Inventory and Equipment. As of the date hereof, all Equipment having a value in excess of \$1,000,000 and all non-real property Inventory of such Pledgor is located at the chief executive office or such other location listed on Schedule 2(d) to the Perfection Certificate. Within 30 days (as such period may be extended in the sole discretion of the Administrative Agent) of such relocation, such Pledgor shall give the Collateral Agent notice (in the form of an Officer's Certificate), clearly describing such new location within the continental United States and providing such other information in connection therewith as the Collateral Agent may reasonably request; provided that in no event shall any Equipment or Inventory be moved to any location other than one that is listed on Schedule 2(d) to the Perfection Certificate.

SECTION 4.7. Corporate Names; Prior Transactions. Except as set forth in Schedules 1(a), (b) and (c) to the Perfection Certificate, such Pledgor has not, during the past five (5) years, been known by or used any other corporate name or been a party to any merger or consolidation, or acquired all or substantially all of the assets of any person, or acquired any of its property or assets out of the ordinary course of business.

SECTION 4.8. Due Authorization and Issuance. All of the Pledged Securities existing on the date hereof have been, and to the extent any Pledged Securities are hereafter issued, such Pledged Securities will be, upon such issuance, duly authorized, validly issued and fully paid and non-assessable to the extent applicable. As of the date hereof, there is no amount or other obligation owing by any Pledgor to any issuer of the Pledged Securities in exchange for or in connection with the issuance of the Pledged Securities or any Pledgor's status as a partner or a member of any issuer of the Pledged Securities.

SECTION 4.9. Consents, etc. No consent of any party (including equityholders or creditors of such Pledgor) and no consent, authorization, approval, license or other action by, and no notice to or filing with, any Governmental Authority or regulatory body or other person is required for the exercise by the Collateral Agent of (i) the voting or other rights provided for in this Agreement or (ii) the remedies in respect of the Pledged Collateral pursuant to this Agreement. In the event that the Collateral Agent desires to exercise any remedies, voting or consensual rights or attorney-in-fact powers set forth in this Agreement and determines it necessary to obtain any approvals or consents of any Governmental Authority or regulatory body or any other person therefor, then, upon the reasonable request of the Collateral Agent, such Pledgor agrees to assist and aid the Collateral Agent to obtain as soon as practicable any necessary approvals or consents for the exercise of any such remedies, rights and powers.

SECTION 4.10. Information Relating to Pledged Collateral. All information set forth herein, including the schedules annexed hereto, and all information contained in any documents, schedules and lists heretofore delivered to any Secured Party, including the Perfection Certificate and the schedules thereto, in connection with this Agreement, in each case, relating to the Pledged Collateral, is, as modified or supplemented by any other information so delivered on or prior to the date hereof, taken as a whole, accurate and complete in all material respects. The Pledged Collateral described on the schedules to the Perfection Certificate constitutes all of the property of such type of Pledged Collateral owned or held by the Pledgors.

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SECTION 4.11. Insurance. In the event that the proceeds of any insurance claim are paid to any Pledgor after the Collateral Agent has exercised its right to foreclose after an Event of Default, such net cash proceeds shall be paid to the Collateral Agent to satisfy any deficiency remaining after such foreclosure. The Collateral Agent shall retain its interest in the insurance policies and coverages required to be maintained pursuant to the Credit Agreement during any redemption period.

SECTION 4.12. Payment of Taxes; Compliance with Legal Requirements; Contesting Liens; Charges. Each Pledgor may at its own expense contest the validity, amount or applicability of any Charges so long as the contest thereof shall be conducted in accordance with, and permitted pursuant to the provisions of, the Credit Agreement. Notwithstanding the foregoing sentence, (i) no contest of any such obligation may be pursued by such Pledgor if such contest would expose the Collateral Agent or any other Secured Party to (A) any possible criminal liability or (B) any civil liability for failure to comply with such obligations unless such Pledgor shall have furnished a bond or other security therefor satisfactory to the Collateral Agent, or such Secured Party, as the case may be, and (ii) if at any time payment or performance of any obligation contested by such Pledgor pursuant to this Section 4.12 shall become necessary to prevent the imposition of remedies because of non-payment, such Pledgor shall pay or perform the same in sufficient time to prevent the imposition of remedies in respect of such default or prospective default.

SECTION 4.13. Access to Pledged Collateral, Books and Records; Other Information. Each Pledgor shall permit representatives of the Collateral Agent or any Secured Party upon reasonable notice to visit and inspect any of its properties in accordance with the terms of Section 5.07 of the Credit Agreement.

SECTION 4.14. Perfection Certificate. Each of the certifications set forth in the Perfection Certificate shall apply herein mutatis mutandis as if such certification was a representation and warranty made by the Pledgors in this Article IV.

ARTICLE V

CERTAIN PROVISIONS CONCERNING SECURITIES COLLATERAL

SECTION 5.1. Pledge of Additional Securities Collateral. Each Pledgor shall, upon obtaining any Pledged Securities or Intercompany Notes of any person (other than Excluded Assets) in an aggregate amount in excess of \$500,000, accept the same in trust for the benefit of the Collateral Agent and promptly (but in any event within thirty (30) days thereafter) deliver to the Collateral Agent a pledge amendment, duly executed by such Pledgor, in substantially the form of Exhibit 1 hereto (each, a "Pledge Amendment"), and deliver to the Collateral Agent the certificates and other documents required under Section 3.1 and Section 3.2 hereof in respect of the additional Pledged Securities or Intercompany Notes which are to be pledged pursuant to this Agreement, and confirming the attachment of the Lien hereby created on and in respect of such additional Pledged Securities or Intercompany Notes. Each Pledgor hereby authorizes the Collateral Agent to attach each Pledge Amendment to this Agreement and agrees that all Pledged Securities or Intercompany Notes listed on any Pledge Amendment delivered to the Collateral Agent shall for all purposes hereunder be considered Pledged Collateral.

PLEDGE AND SECURITY AGREEMENT

SECTION 5.2. Voting Rights; Distributions; etc.

(a) So long as no Event of Default shall have occurred and be continuing:

(i) Each Pledgor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Securities Collateral or any part thereof for any purpose not inconsistent with the terms or purposes hereof, the Loan Documents or any other document evidencing the Secured Obligations; provided, however, that no Pledgor shall in any event exercise such rights in any manner that is disadvantageous to any Agent or Lender in any material respect.

(ii) Each Pledgor shall be entitled to receive and retain, and to utilize free and clear of the Lien hereof, any and all Distributions, but only if and to the extent made in accordance with the provisions of the Credit Agreement; provided, however, that any and all such Distributions consisting of rights or interests in the form of Pledged Securities shall be promptly (and in any event within thirty (30) days after receipt thereof (as such period may be extended in the sole discretion of the Administrative Agent)) delivered to the Collateral Agent to hold as Pledged Collateral and shall, if received by any Pledgor, be received in trust for the benefit of the Collateral Agent, be segregated from the other property or funds of such Pledgor and be forthwith delivered to the Collateral Agent as Pledged Collateral in the same form as so received (with any necessary or reasonably requested endorsement).

(b) So long as no Event of Default shall have occurred and be continuing, the Collateral Agent shall be deemed without further action or formality to have granted to each Pledgor all necessary consents relating to voting rights and shall, if necessary, upon written request of any Pledgor and at the sole cost and expense of the Pledgors, from time to time execute and deliver (or cause to be executed and delivered) to such Pledgor all such instruments as such Pledgor may reasonably request in order to permit such Pledgor to exercise the voting and other rights which it is entitled to exercise pursuant to Section 5.2(a)(i) hereof and to receive the Distributions which it is authorized to receive and retain pursuant to Section 5.2(a)(ii) hereof.

(c) Upon the occurrence and during the continuance of any Event of Default, upon prior written notice by the Collateral Agent to such Pledgor, if such notice is permitted by applicable Legal Requirements (failing which the following shall occur automatically without the need for notice):

(i) All rights of each Pledgor to exercise the voting and other consensual rights it would otherwise be entitled to exercise pursuant to Section 5.2(a)(i) hereof shall immediately cease, and all such rights shall thereupon become vested in the Collateral Agent, which shall thereupon have the sole right to exercise such voting and other consensual rights until the applicable Event of Default is no longer continuing, in which case the Collateral Agent's rights under this Section 5.2(c)(i) shall cease to be effective, subject to reversion in the event of a subsequent Event of Default that is continuing.

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(ii) All rights of each Pledgor to receive Distributions which it would otherwise be authorized to receive and retain pursuant to Section 5.2(a)(ii) hereof shall immediately cease and all such rights shall thereupon become vested in the Collateral Agent, which shall thereupon have the sole right to receive and hold as Pledged Collateral such Distributions until the applicable Event of Default is no longer continuing, in which case the Collateral Agent's rights under this Section 5.2(c)(ii) shall cease to be effective, subject to re-vesting in the event of a subsequent Event of Default that is continuing.

(d) Upon the occurrence and during the continuation of an Event of Default, each Pledgor shall, at its sole cost and expense, from time to time execute and deliver to the Collateral Agent appropriate instruments as the Collateral Agent may reasonably request in order to permit the Collateral Agent to exercise the voting and other rights which it may be entitled to exercise pursuant to Section 5.2(c)(i) hereof and to receive all Distributions which it may be entitled to receive under Section 5.2(c)(ii) hereof.

(e) All Distributions which are received by any Pledgor contrary to the provisions of Section 5.2(a)(ii) hereof shall be received in trust for the benefit of the Collateral Agent, shall be segregated from other funds of such Pledgor and shall immediately be paid over to the Collateral Agent as Pledged Collateral in the same form as so received (with any necessary or reasonably requested endorsement).

SECTION 5.3. Organizational Documents. As of the date hereof, each Pledgor has delivered to the Collateral Agent true, correct, and complete copies of the Organizational Documents of such Pledgor. As of the date hereof, the Organizational Documents of the Pledgors are in full force and effect, have not as of the date hereof been amended or modified except as disclosed in writing to the Collateral Agent, and there is no existing default by any party thereunder or any event which, with the giving of notice or passage of time or both, would constitute a default under any Organizational Documents. No Pledgor will terminate or agree to terminate any Organizational Documents or make any amendment or modification to any Organizational Documents if such termination, agreement to terminate, amendment or modification could reasonably be expected to have a Material Adverse Effect.

SECTION 5.4. Defaults, etc. As of the date hereof, (i) no Pledgor is in default in the payment of any portion of any mandatory capital contribution, if any, required to be made under any agreement to which such Pledgor is a party relating to the Pledged Securities pledged by it, and such Pledgor is not in violation of any other provisions of any such agreement to which such Pledgor is a party, or otherwise in default or violation thereunder, (ii) no Securities Collateral pledged by any Pledgor is subject to any defense, offset or counterclaim, nor have any of the foregoing been asserted or alleged against such Pledgor by any person with respect thereto and (iii) there are no certificates, instruments, documents or other writings (other than (x) the Organizational Documents of such Pledgor and (y) certificates representing such Pledged Securities that have been delivered to the Collateral Agent) which evidence any Pledged Securities of such Pledgor.

PLEDGE AND SECURITY AGREEMENT

SECTION 5.5. Certain Agreements of Pledgors as Issuers and Holders of Equity Interests.

(a) In the case of each Pledgor that is an issuer of Securities Collateral, such Pledgor agrees to be bound by the terms of this Agreement relating to the Securities Collateral issued by it and will comply with such terms insofar as such terms are applicable to it.

(b) In the case of each Pledgor that is a partner, member or holder of any Equity Interests in a partnership, limited liability company or other entity, such Pledgor hereby consents to the extent required by the applicable Organizational Document to the pledge by each other Pledgor, pursuant to the terms hereof, of the Pledged Securities in such partnership, limited liability company or other entity and, upon the occurrence and during the continuance of an Event of Default, to the transfer of such Pledged Securities to the Collateral Agent or its nominee and to the substitution of the Collateral Agent or its nominee as a substituted partner, member or holder of Equity Interests in such partnership, limited liability company or other entity with all the rights, powers and duties of a general partner, limited partner, member or holder of Equity Interests, as the case may be.

ARTICLE VI

CERTAIN PROVISIONS CONCERNING
INTELLECTUAL PROPERTY COLLATERAL

SECTION 6.1. Grant of Intellectual Property License. For the purpose of enabling the Collateral Agent, during the continuance of an Event of Default, to exercise rights and remedies under Article VIII hereof at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Pledgor hereby grants to the Collateral Agent, to the extent licensable, exercisable solely upon the occurrence and during the continuance of any Event of Default, an irrevocable, non-exclusive worldwide license (exercisable without payment of royalty or other compensation to such Pledgor) subject, in the case of Trademarks, to sufficient rights to quality control and inspection in favor of such Grantor to avoid the risk of invalidation of such Trademarks, to use, assign, license, sublicense or otherwise dispose of the Intellectual Property Collateral now owned or hereafter acquired by such Pledgor (excluding, for the avoidance of doubt, any Intellectual Property License that by its terms is prohibited from being so licensed to the extent constituting Excluded Assets), wherever the same may be located. Such license shall include access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout hereof.

SECTION 6.2. Registration. Except pursuant to Permitted Liens and licenses entered into by any Pledgor in the ordinary course of business, on and as of the date hereof (i) each Pledgor is the sole and exclusive owner and/or possesses the right to use any Copyright, Patent or Trademark listed on Schedules 14(a), (b) and (c) to the Perfection Certificate, and (ii) all registrations listed on Schedules 14(a), (b) and (c) to the Perfection Certificate are, to the knowledge of each Pledgor, valid and in full force and effect.

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SECTION 6.3. No Violations or Proceedings. On and as of the date hereof, (i) there is no violation, dilution, misappropriation or infringement by others of any right of such Pledgor with respect to any Copyright, Patent or Trademark listed on Schedules 14(a), (b) and (c) to the Perfection Certificate, respectively, pledged by it under the name of such Pledgor that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (ii) such Pledgor is not violating, diluting, misappropriating or infringing upon any Intellectual Property of any other person other than such violation, dilution, misappropriation or infringement that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect and (iii) no proceedings have been instituted or are pending against such Pledgor or threatened, and no such claim against such Pledgor has been received by such Pledgor since December 31, 2013 alleging any such violation that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 6.4. Protection of Collateral Agent's Security. On a continuing basis, each Pledgor shall, at its sole cost and expense, (i) promptly following its becoming aware thereof, notify the Collateral Agent of (A) any materially adverse determination in any proceeding in the United States Patent and Trademark Office or the United States Copyright Office with respect to any material Patent, Trademark or Copyright or (B) the institution of any proceeding or any adverse determination in any federal, state, local or foreign court or administrative body regarding such Pledgor's claim of ownership in or right to use any of the Intellectual Property Collateral material to the use and operation of the Pledged Collateral or any Mortgaged Property, its right to register such Intellectual Property Collateral or its right to keep and maintain such registration in full force and effect, (ii) in its reasonable business judgment, maintain and protect the Intellectual Property Collateral material to the use and operation of the Pledged Collateral or any Mortgaged Property as presently used and operated and as contemplated by the Credit Agreement, (iii) in its reasonable business judgment, not permit to lapse or become abandoned any Intellectual Property Collateral material to the use and operation of the Pledged Collateral or any Mortgaged Property as presently used and operated and as contemplated by the Credit Agreement, and not settle or compromise any pending or future litigation or administrative proceeding with respect to such Intellectual Property Collateral without the prior written consent of the Collateral Agent, (iv) upon such Pledgor obtaining knowledge thereof, promptly notify the Collateral Agent in writing of any event that may be reasonably expected to materially and adversely affect the value or utility of the Intellectual Property Collateral, (v) diligently keep adequate records respecting the Intellectual Property Collateral and (vi) furnish to the Collateral Agent from time to time upon the Collateral Agent's reasonable request therefor reasonably detailed statements and amended schedules further identifying and describing the Intellectual Property Collateral and such other materials evidencing or reports pertaining to any Intellectual Property Collateral as the Collateral Agent may from time to time reasonably request.

SECTION 6.5. After-Acquired Property. If any Pledgor shall at any time before the Secured Obligations have been paid and performed in full (other than contingent indemnification obligations that, pursuant to the provisions of the Credit Agreement or the Security Documents, survive the termination thereof), (i) obtain any rights to any additional Intellectual Property Collateral, (ii) become entitled to the benefit of any additional Intellectual Property Collateral or any renewal or extension thereof, including any reissue, division,

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continuation, or continuation-in-part of any Intellectual Property Collateral, or any improvement on any Intellectual Property Collateral, or (iii) file a Statement of Use or an Amendment to Allege Use with respect to any "intent-to-use" Trademark application that, prior to such filing, was an Excluded Asset, the provisions hereof shall automatically apply thereto and any such item enumerated in the preceding clauses (i), (ii) or (iii) with respect to such Pledgor shall automatically constitute Intellectual Property Collateral as if such would have constituted Intellectual Property Collateral at the time of execution hereof and be subject to the Lien and security interest created by this Agreement without further action by any party (excluding any Intellectual Property Collateral that constitutes Excluded Assets). Each Pledgor shall promptly provide to the Collateral Agent written notice of any of the foregoing and confirm the attachment of the Lien and security interest created by this Agreement to any rights described in clauses (i), (ii) and (iii) above by execution of an instrument in form reasonably acceptable to the Collateral Agent and the filing of any instruments or statements as shall be reasonably necessary or reasonably requested by the Collateral Agent to create, preserve, protect or perfect the Collateral Agent's security interest in such Intellectual Property Collateral to the extent such Intellectual Property Collateral may be perfected under applicable Legal Requirements. Further, each Pledgor authorizes the Collateral Agent to modify this Agreement by amending Schedule 7 to the Perfection Certificate to include any Intellectual Property Collateral of such Pledgor acquired or arising after the date hereof.

SECTION 6.6. Litigation. Unless there shall occur and be continuing any Event of Default, each Pledgor shall, in its reasonable business judgment, have the right to commence and prosecute in its own name, as the party in interest, for its own benefit and at the sole cost and expense of the Pledgors, such applications for protection of the Intellectual Property Collateral and suits, proceedings or other actions to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value or other damage as are necessary to protect the Intellectual Property Collateral. Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent shall have the right but shall in no way be obligated to file applications for protection of the Intellectual Property Collateral and/or bring such suit in the name of any Pledgor, the Collateral Agent or the Secured Parties to enforce the Intellectual Property Collateral and any license thereunder. In the event of such suit, each Pledgor shall, at the reasonable request of the Collateral Agent, do any and all lawful acts and execute any and all documents requested by the Collateral Agent in aid of such enforcement and the Pledgors shall promptly reimburse and indemnify the Collateral Agent for all costs and expenses incurred by the Collateral Agent in the exercise of its rights under this Section 6.6 in accordance with Section 10.03 of the Credit Agreement. In the event that the Collateral Agent shall elect not to bring such suit to enforce the Intellectual Property Collateral, each Pledgor agrees, at the reasonable request of the Collateral Agent, to take all actions necessary, whether by suit, proceeding or other action, to prevent the infringement, counterfeiting, unfair competition, dilution, diminution in value of or other damage to any of the Intellectual Property Collateral by others and for that purpose agrees to diligently maintain any suit, proceeding or other action against any person so infringing necessary to prevent such infringement.

PLEDGE AND SECURITY AGREEMENT

ARTICLE VII

TRANSFERS

SECTION 7.1. Transfers of Pledged Collateral. No Pledgor shall sell, convey, assign or otherwise dispose of, or grant any option with respect to, any of the Pledged Collateral pledged by it hereunder except as expressly permitted by the Credit Agreement.

ARTICLE VIII

REMEDIES

SECTION 8.1. Remedies. Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent may from time to time exercise in respect of the Pledged Collateral, in addition to the other rights and remedies provided for herein or otherwise available to it, the following remedies:

(i) Personally, or by agents or attorneys, immediately take possession of the Pledged Collateral or any part thereof, from any Pledgor or any other person who then has possession of any part thereof with or without notice or process of law, and for that purpose may enter upon any Pledgor's premises where any of the Pledged Collateral is located, remove such Pledged Collateral, remain present at such premises to receive copies of all communications and remittances relating to the Pledged Collateral and use in connection with such removal and possession any and all services, supplies, aids and other facilities of any Pledgor;

(ii) Demand, sue for, collect or receive any money or property at any time payable or receivable in respect of the Pledged Collateral including instructing the obligor or obligors on any agreement, instrument or other obligation constituting part of the Pledged Collateral to make any payment required by the terms of such agreement, instrument or other obligation directly to the Collateral Agent, and in connection with any of the foregoing, compromise, settle, extend the time for payment and make other modifications with respect thereto; provided, however, that in the event that any such payments are made directly to any Pledgor, such Pledgor shall segregate all amounts received pursuant thereto in trust for the benefit of the Collateral Agent and shall promptly (but in no event later than three (3) Business Days after receipt thereof) pay such amounts to the Collateral Agent;

(iii) Sell, assign, grant a license to use or otherwise liquidate, or direct any Pledgor to sell, assign, grant a license to use or otherwise liquidate, any and all investments made in whole or in part with the Pledged Collateral or any part thereof, and take possession of the proceeds of any such sale, assignment, license or liquidation;

(iv) Take possession of the Pledged Collateral or any part thereof, by directing any Pledgor in writing to deliver the same to the Collateral Agent at any place or places so designated by the Collateral Agent, in which event such Pledgor shall at its own expense: (A) forthwith cause the same to be moved to the place or places designated

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by the Collateral Agent and therewith delivered to the Collateral Agent, (B) store and keep any Pledged Collateral so delivered to the Collateral Agent at such place or places pending further action by the Collateral Agent and (C) while the Pledged Collateral shall be so stored and kept, provide such security and maintenance services as shall be necessary to protect the same and to preserve and maintain them in good condition. Each Pledgor's obligation to deliver the Pledged Collateral as contemplated in this Section 8.1(iv) is of the essence hereof. Upon application to a court of equity having jurisdiction, the Collateral Agent shall be entitled to a decree requiring specific performance by any Pledgor of such obligation;

(v) Withdraw all moneys, instruments, securities and other property in any bank, financial securities, deposit or other account of any Pledgor constituting Pledged Collateral for application to the Secured Obligations as provided in Article X hereof;

(vi) Retain and apply the Distributions to the Secured Obligations as provided in Article IX hereof;

(vii) Exercise any and all rights as beneficial and legal owner of the Pledged Collateral, including perfecting assignment of and exercising any and all voting, consensual and other rights and powers with respect to any Pledged Collateral; and

(viii) Exercise all rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Pledged Collateral), and the Collateral Agent may also in its sole discretion, without notice except as specified in Section 8.2 hereof, sell, assign, transfer or grant a license to use the Pledged Collateral or any part thereof in one or more parcels at public or private sale, at any exchange, broker's board or at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable. The Collateral Agent or any other Secured Party or any of their respective Affiliates may be the purchaser, licensee, assignee or recipient of the Pledged Collateral or any part thereof at any such sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Pledged Collateral sold, assigned or licensed at such sale, to use and apply any of the Secured Obligations owed to such person as a credit on account of the purchase price of the Pledged Collateral or any part thereof payable by such person at such sale. Each purchaser, assignee, licensee or recipient at any such sale shall acquire the property sold, assigned or licensed absolutely free from any claim or right on the part of any Pledgor, and each Pledgor hereby waives, to the fullest extent permitted by applicable Legal Requirements, all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any Legal Requirements now existing or hereafter enacted. The Collateral Agent shall not be obligated to make any sale of the Pledged Collateral or any part thereof regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so

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adjourned. Each Pledgor hereby waives, to the fullest extent permitted by applicable Legal Requirements, any claims against the Collateral Agent arising by reason of the fact that the price at which the Pledged Collateral or any part thereof may have been sold, assigned or licensed at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Pledged Collateral to more than one offeree.

SECTION 8.2. Notice of Sale. Each Pledgor acknowledges and agrees that, to the extent notice of sale or other disposition of the Pledged Collateral or any part thereof shall be required by any Legal Requirement, ten (10) days' prior notice to such Pledgor of the time and place of any public sale or of the time after which any private sale or other intended disposition is to take place shall be commercially reasonable notification of such matters unless the Pledged Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market (in which case no such prior notice shall be required). No notification need be given to any Pledgor if it has signed, after the occurrence of an Event of Default, a statement renouncing or modifying any right to notification of sale or other intended disposition.

SECTION 8.3. Waiver of Notice and Claims; Other Waivers; Marshalling.

(a) Each Pledgor hereby waives, to the fullest extent permitted by applicable Legal Requirements, notice or judicial hearing in connection with the Collateral Agent's taking possession or the Collateral Agent's disposition of the Pledged Collateral or any part thereof, including any and all prior notice and hearing for any prejudgment remedy or remedies and any such right which such Pledgor would otherwise have under any Legal Requirements, and each Pledgor hereby further waives, to the fullest extent permitted by applicable Legal Requirements: (i) all damages occasioned by such taking of possession, (ii) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Collateral Agent's rights hereunder and (iii) all rights of redemption, appraisal, valuation, stay, extension or moratorium now or hereafter in force under any applicable Legal Requirements. The Collateral Agent shall not be liable for any incorrect or improper payment made pursuant to this Article VIII except to the extent resulting solely from the Collateral Agent's gross negligence or willful misconduct as finally judicially determined by a court of competent jurisdiction. Any sale of, or the grant of options to purchase, or any other realization upon, any Pledged Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the applicable Pledgor therein and thereto, and shall be a perpetual bar both at law and in equity or otherwise against such Pledgor and against any and all persons claiming or attempting to claim the Pledged Collateral so sold, optioned or realized upon, or any part thereof, from, through or under such Pledgor.

(b) Each Pledgor hereby waives demand, notice, protest, notice of acceptance of this Agreement, notice of Credit Extensions, Pledged Collateral received or delivered or any other action taken in reliance hereon and all other demands and notices of any description.

(c) The Collateral Agent shall not be required to marshal any present or future collateral security (including the Pledged Collateral) for, or other assurances of payment of, the Secured Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order. To the maximum extent permitted by applicable Legal Requirements, each Pledgor hereby agrees that it will not invoke any Legal Requirement relating to the marshalling of collateral and hereby irrevocably waives the benefits of all such Legal Requirements.

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SECTION 8.4. Standards for Exercising Rights and Remedies. To the extent that applicable Legal Requirements impose duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, each Pledgor acknowledges and agrees that it is not commercially unreasonable for the Collateral Agent (i) to fail to incur expenses reasonably deemed significant by the Collateral Agent to prepare Pledged Collateral for disposition or otherwise to fail to complete raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Pledged Collateral to be disposed of, or to obtain or, if not required by other Legal Requirements, to fail to obtain consents for Governmental Authorities or third parties for the collection or disposition of Pledged Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against account debtors or other persons obligated on Pledged Collateral or to fail to remove liens or encumbrances on or any adverse claims against Pledged Collateral, (iv) to exercise collection remedies against account debtors and other persons obligated on Pledged Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Pledged Collateral through publications or media of general circulation, whether or not the Pledged Collateral is of a specialized nature, (vi) to contact other persons, whether or not in the same business as any Pledgor, for expressions of interest in acquiring all or any portion of the Pledged Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Pledged Collateral, whether or not the collateral is of a specialized nature, (viii) to dispose of Pledged Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Pledged Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim or modify disposition warranties, (xi) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Pledged Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Pledged Collateral, or (xii) to the extent deemed appropriate by the Collateral Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Collateral Agent in the collection or disposition of any of the Pledged Collateral. The Pledgors acknowledge that the purpose of this Section 8.4 is to provide non-exhaustive indications of what actions or omissions by the Collateral Agent would fulfill the Collateral Agent's duties under the UCC or other Legal Requirements of the State or any other relevant jurisdiction in the Collateral Agent's exercise of remedies against the Pledged Collateral and that other actions or omissions by the Collateral Agent shall not be deemed to fail to fulfill such duties solely on account of not being indicated in this Section 8.4. Without limiting the foregoing, nothing contained in this Section 8.4 shall be construed to grant any rights to any Pledgor or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Agreement or by applicable Legal Requirements in the absence of this Section 9.4.

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SECTION 8.5. Certain Sales of Pledged Collateral.

(a) Each Pledgor recognizes that, by reason of certain prohibitions contained in Legal Requirements, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Pledged Collateral, to limit purchasers to those who meet the requirements of such Governmental Authority. Each Pledgor acknowledges that any such sales may be at prices and on terms less favorable to the Collateral Agent than those obtainable through a public sale without such restrictions, and, notwithstanding such circumstances, agrees that any such restricted sale shall be deemed to have been made in a commercially reasonable manner and that, except as may be required by applicable Legal Requirements, the Collateral Agent shall have no obligation to engage in public sales.

(b) Each Pledgor recognizes that, by reason of certain prohibitions contained in the Securities Act of 1933, as amended (the "Securities Act"), and applicable state or foreign securities laws, the Collateral Agent may be compelled, with respect to any sale or disposition of all or any part of the Securities Collateral and Investment Property, to limit purchasers to persons who will agree, among other things, to acquire such Securities Collateral or Investment Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Pledgor acknowledges that any such private sales may be at prices and on terms less favorable to the Collateral Agent than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act), and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that the Collateral Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Securities Collateral or Investment Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state or foreign securities laws, even if such issuer would agree to do so.

(c) If the Collateral Agent determines to exercise its right to sell any or all of the Securities Collateral or Investment Property, upon written request, the applicable Pledgor shall, and shall cause each issuer of Securities Collateral and Investment Property to be sold hereunder to, from time to time furnish to the Collateral Agent all such information as the Collateral Agent may reasonably request in order to determine the number and nature or interest of securities or other instruments included in the Securities Collateral or Investment Property which may be sold by the Collateral Agent as exempt transactions under the Securities Act and the rules of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

(d) Each Pledgor further agrees that a breach of any of the covenants contained in this Section 8.5 will cause irreparable injury to the Collateral Agent and the other Secured Parties, that the Collateral Agent and the other Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 8.5 shall be specifically enforceable against such Pledgor, and such Pledgor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants.

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SECTION 8.6. No Waiver; Cumulative Remedies.

(a) No failure on the part of the Collateral Agent to exercise, no course of dealing with respect to, and no delay on the part of the Collateral Agent in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power, privilege or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy; nor shall the Collateral Agent be required to look first to, enforce or exhaust any other security, collateral or guaranties. All rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies provided by applicable Legal Requirements, in equity or otherwise.

(b) In the event that the Collateral Agent shall have instituted any proceeding to enforce any right, power, privilege or remedy under this Agreement or any other Loan Document by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Collateral Agent, then and in every such case, the Pledgors, the Collateral Agent and each other Secured Party shall be restored to their respective former positions and rights hereunder with respect to the Pledged Collateral, and all rights, remedies, privileges and powers of the Collateral Agent and the other Secured Parties shall continue as if no such proceeding had been instituted.

SECTION 8.7. Certain Additional Actions Regarding Intellectual Property. If any Event of Default shall have occurred and be continuing, upon the written demand of the Collateral Agent, each Pledgor shall execute and deliver to the Collateral Agent an assignment or assignments of the registered Intellectual Property Collateral or such other documents as are necessary or appropriate to carry out the intent and purposes hereof; provided, however, that if the Event of Default is no longer continuing, the Collateral Agent shall promptly execute and deliver to each Pledgor such reassignments or other documents necessary to place such Pledgors in control and ownership of such Intellectual Property Collateral.

ARTICLE IX

APPLICATION OF PROCEEDS

SECTION 9.1. Application of Proceeds. The proceeds received by the Collateral Agent in respect of any sale of, collection from or other realization upon all or any part of the Pledged Collateral pursuant to the exercise by the Collateral Agent of its remedies shall be applied, together with any other sums then held by the Collateral Agent pursuant to this Agreement, in accordance with the Credit Agreement.

ARTICLE X

MISCELLANEOUS

SECTION 10.1. Concerning Collateral Agent.

(a) The Collateral Agent has been appointed as collateral agent pursuant to the Credit Agreement. The actions of the Collateral Agent hereunder are subject to the

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provisions of the Credit Agreement. The Collateral Agent shall have the right hereunder to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking action (including the release or substitution of the Pledged Collateral), in accordance with this Agreement and the Credit Agreement. Each Secured Party, by its acceptance of the benefits hereof, agrees that it shall have no right individually to realize upon any of the Pledged Collateral hereunder, it being understood and agreed by such Secured Party that all rights and remedies hereunder may be exercised solely by the Collateral Agent for the benefit of the Secured Parties in accordance with the terms of this Agreement. The Collateral Agent may employ agents and attorneys-in-fact in connection herewith and shall not be liable for the negligence or misconduct of any such agents or attorneys-in-fact selected by it in good faith. The Collateral Agent may resign and a successor Collateral Agent may be appointed in the manner provided in the Credit Agreement. Upon the acceptance of any appointment as the Collateral Agent by a successor Collateral Agent, that successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent under this Agreement, and the retiring Collateral Agent shall thereupon be discharged from its duties and obligations under this Agreement. After any retiring Collateral Agent's resignation, the provisions hereof shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was the Collateral Agent.

(b) Except for the exercise of reasonable care in the custody of any Pledged Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Pledged Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Pledged Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Pledged Collateral in its possession if such Pledged Collateral is accorded treatment substantially equivalent to that which the Collateral Agent, in its individual capacity, accords its own property consisting of similar instruments or interests; provided that neither the Collateral Agent nor any of the other Secured Parties nor any of their respective directors, officers, employees or agents shall have responsibility for (i) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Securities Collateral, whether or not the Collateral Agent or any other Secured Party has or is deemed to have knowledge of such matters, (ii) failing to demand, collect or realize upon all or part of the Pledged Collateral or for any delay in doing so or (iii) failing to take any necessary steps to preserve rights against any person with respect to any Pledged Collateral.

(c) The Collateral Agent shall be entitled to rely upon any written notice, statement, certificate, order or other document or any telephone message believed by it to be genuine and correct and to have been signed, sent or made by the proper person, and, with respect to all matters pertaining to this Agreement and its duties hereunder, upon advice of counsel selected by it.

(d) The Collateral Agent may rely on advice of counsel as to whether any or all UCC financing statements of the Pledgors need to be amended as a result of any of the changes described in Section 5.11(a) of the Credit Agreement. If any Pledgor fails to provide information to the Collateral Agent about such changes on a timely basis, the Collateral Agent

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shall not be liable or responsible to any party for any failure to maintain a perfected security interest in such Pledgor's property constituting Pledged Collateral, for which the Collateral Agent needed to have information relating to such changes. The Collateral Agent shall have no duty to inquire about such changes if any Pledgor does not inform the Collateral Agent of such changes, the parties acknowledging and agreeing that it would not be feasible or practical for the Collateral Agent to search for information on such changes if such information is not provided by any Pledgor.

SECTION 10.2. Collateral Agent May Perform; Collateral Agent Appointed Attorney-in-Fact. If any Pledgor shall fail to perform any covenants contained in this Agreement (including such Pledgor's covenants to (i) pay the premiums in respect of all required insurance policies hereunder, (ii) pay Charges, (iii) make repairs, (iv) discharge Liens or (v) pay or perform any obligations of such Pledgor under any Pledged Collateral) or if any representation or warranty on the part of any Pledgor contained herein shall be breached, the Collateral Agent may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach, and may expend funds for such purpose; provided, however, that the Collateral Agent shall in no event be bound to inquire into the validity of any tax, lien, imposition or other obligation which such Pledgor fails to pay or perform as and when required hereby and which such Pledgor does not contest in accordance with the provisions of the Credit Agreement. Any and all amounts so expended by the Collateral Agent shall be paid by the Pledgors in accordance with the provisions of Section 10.03 of the Credit Agreement. Neither the provisions of this Section 10.2 nor any action taken by the Collateral Agent pursuant to the provisions of this Section 10.2 shall prevent any such failure to observe any covenant contained in this Agreement nor any breach of representation or warranty from constituting an Event of Default. Each Pledgor hereby appoints the Collateral Agent its attorney-in-fact, with full power and authority in the place and stead of such Pledgor and in the name of such Pledgor, or otherwise, from time to time in the Collateral Agent's discretion to take any action and to execute any instrument consistent with the terms of the Credit Agreement, this Agreement and the other Loan Documents which the Collateral Agent may deem necessary or advisable to accomplish the purposes hereof (but the Collateral Agent shall not be obligated to and shall have no liability to such Pledgor or any third party for failure to so do or take action). The foregoing grant of authority is a power of attorney coupled with an interest and such appointment shall be irrevocable for the term hereof. Each Pledgor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

SECTION 10.3. Continuing Security Interest; Assignment. This Agreement shall create a continuing security interest in the Pledged Collateral and shall (i) be binding upon the Pledgors, their respective successors and assigns and (ii) inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent and the other Secured Parties and each of their respective successors, transferees and assigns. No other persons (including any other creditor of any Pledgor) shall have any interest herein or any right or benefit with respect hereto. Without limiting the generality of the foregoing clause (ii), any Secured Party may assign or otherwise transfer any obligations held by it secured by this Agreement to any other person, and such other person shall thereupon become vested with all the benefits in respect thereof granted to such Secured Party, herein or otherwise, subject however, to the provisions of the Credit Agreement and, in the case of a Secured Party that is a party to a Permitted Hedging Agreement, such Permitted Hedging Agreement. Each of the Pledgors agrees

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that its obligations hereunder and the security interest created hereunder shall continue to be effective or be reinstated, as applicable, if at any time payment, or any part thereof, of all or any part of the Secured Obligations is rescinded or must otherwise be restored by the Secured Party upon the bankruptcy or reorganization of any Pledgor or otherwise.

SECTION 10.4. Termination; Release; Reinstatement. This Agreement shall terminate and the Pledged Collateral shall be released from the Lien of this Agreement when the Commitments have been terminated and the principal of and interest and premium (if any) on each Loan, all Fees and all other expenses or amounts payable under any Loan Document shall have been paid in full. Upon termination hereof, the security interests granted hereby shall terminate and all rights to the Pledged Collateral shall revert to the applicable Pledgor or to such other person as may be entitled thereto pursuant to any Order or other applicable Legal Requirements. Upon termination hereof or any release of Pledged Collateral in accordance with the provisions of the Credit Agreement, the Collateral Agent shall promptly, upon the written request and at the sole cost and expense of the Pledgors, assign, transfer and deliver to the Pledgors, against receipt and without recourse to or warranty by the Collateral Agent except that the Collateral Agent has not assigned or otherwise transferred its security interest in the Pledged Collateral, such of the Pledged Collateral to be released (in the case of a release) as may be in possession or control of the Collateral Agent and as shall not have been sold or otherwise applied pursuant to the terms hereof, and, with respect to any other Pledged Collateral, with such endorsements or proper documents and instruments (including UCC-3 termination statements or releases) acknowledging the termination hereof or the release of such Pledged Collateral, as the case may be. Each Pledgor agrees that, if any payment made by any Loan Party or other Person and applied to the Secured Obligations is at any time annulled, avoided, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid, or the proceeds of any Collateral are required to be returned by any Secured Party to such Loan Party, its estate, trustee, receiver or any other party, including any Pledgor, under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or repayment, any Lien or other Collateral securing such liability shall be and remain in full force and effect, as fully as if such payment had never been made. If, prior to any of the foregoing, any Lien or other Collateral securing such Pledgor's liability hereunder shall have been released or terminated by virtue of the foregoing, such Lien, other Collateral or provision shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligations of any such Pledgor in respect of any Lien or other Collateral securing such obligation or the amount of such payment.

SECTION 10.5. Modification in Writing. No amendment, modification, supplement, termination or waiver of or to any provision hereof, nor consent to any departure by any Pledgor therefrom, shall be effective unless the same shall be made in accordance with the terms of the Credit Agreement and unless in writing and signed by the Collateral Agent. Any amendment, modification or supplement of or to any provision hereof, any waiver of any provision hereof and any consent to any departure by any Pledgor from the terms of any provision hereof in each case shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Agreement or any other document evidencing the Secured Obligations, no notice to or demand on any Pledgor in any case shall entitle any Pledgor to any other or further notice or demand in similar or other circumstances.

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SECTION 10.6. Notices. Unless otherwise provided herein or in the Credit Agreement, any notice or other communication herein required or permitted to be given shall be given in the manner and become effective as set forth in the Credit Agreement, as to any Pledgor, addressed to it at the address of the Borrower set forth in the Credit Agreement and as to the Collateral Agent, addressed to it at the address set forth in the Credit Agreement, or in each case at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 10.6.

SECTION 10.7. Governing Law, Consent to Jurisdiction and Service of Process; Waiver of Jury Trial.

(a) THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

(b) EACH PLEDGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE SUPREME COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, 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 APPLICABLE LEGAL REQUIREMENTS, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR OTHERWISE SHALL AFFECT ANY RIGHT THAT THE COLLATERAL AGENT, ANY OTHER AGENT OR ANY LENDER OR OTHER SECURED PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY PLEDGOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) EACH PLEDGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SECTION 10.7(b). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

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(d) EACH PARTY TO THIS AGREEMENT IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENT, IN THE MANNER PROVIDED FOR NOTICES (OTHER THAN TELECOPY) IN SECTION 10.6. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) 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 THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, THE TRANSACTIONS OR THE OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER 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 10.7.

SECTION 10.8. Severability of Provisions. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 10.9. Execution in Counterparts. This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original, but all such counterparts together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 10.10. Business Days. In the event any time period or any date provided in this Agreement ends or falls on a day other than a Business Day, then such time period shall be deemed to end and such date shall be deemed to fall on the immediately preceding Business Day, and performance herein may be made on such Business Day, with the same force and effect as if made on such other day.

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SECTION 10.11. Waiver of Stay. Each Pledgor covenants that in the event that such Pledgor or any property or assets of such Pledgor shall hereafter become the subject of a voluntary or involuntary proceeding under the Bankruptcy Code or such Pledgor shall otherwise be a party to any federal or state bankruptcy, insolvency, moratorium or similar proceeding to which the provisions relating to the automatic stay under Section 362 of the Bankruptcy Code or any similar provision in any such Legal Requirement is applicable, then, in any such case, whether or not the Collateral Agent has commenced foreclosure proceedings under this Agreement, such Pledgor shall not, and each Pledgor hereby expressly waives its right to (to the extent it may lawfully do so) at any time insist upon, plead or in any whatsoever, claim or take the benefit or advantage of any such automatic stay or such similar provision as it relates to the exercise of any of the rights and remedies (including any foreclosure proceedings) available to the Collateral Agent as provided in this Agreement, in any other Security Document or any other document evidencing the Secured Obligations. Each Pledgor further covenants that it will not hinder, delay or impede the execution of any power granted herein to the Collateral Agent, but will suffer and permit the execution of every such power as though no law relating to any stay or similar provision had been enacted.

SECTION 10.12. No Credit for Payment of Taxes or Imposition. Such Pledgor shall not be entitled to any credit against the principal, premium, if any, or interest payable under the Credit Agreement, and such Pledgor shall not be entitled to any credit against any other sums which may become payable under the terms thereof or hereof, by reason of the payment of any Tax on the Pledged Collateral or any part thereof.

SECTION 10.13. No Claims Against Collateral Agent. Nothing contained in this Agreement shall constitute any consent or request by the Collateral Agent, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Pledged Collateral or any part thereof, nor as giving any Pledgor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the Collateral Agent in respect thereof or any claim that any Lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the Lien hereof.

SECTION 10.14. No Release. Nothing set forth in this Agreement or any other Loan Document, nor the exercise by the Collateral Agent of any of the rights or remedies hereunder, shall relieve any Pledgor from the performance of any term, covenant, condition or agreement on such Pledgor's part to be performed or observed under or in respect of any of the Pledged Collateral or from any liability to any person under or in respect of any of the Pledged Collateral or shall impose any obligation on the Collateral Agent or any other Secured Party to perform or observe any such term, covenant, condition or agreement on such Pledgor's part to be so performed or observed or shall impose any liability on the Collateral Agent or any other Secured Party for any act or omission on the part of such Pledgor relating thereto or for any breach of any representation or warranty on the part of such Pledgor contained in this Agreement, the Credit Agreement or the other Loan Documents, or under or in respect of the Pledged Collateral or made in connection herewith or therewith. Anything herein to the contrary notwithstanding, neither the Collateral Agent nor any other Secured Party shall have any

PLEDGE AND SECURITY AGREEMENT

obligation or liability under any contracts, agreements and other documents included in the Pledged Collateral by reason of this Agreement, nor shall the Collateral Agent or any other Secured Party be obligated to perform any of the obligations or duties of any Pledgor thereunder or to take any action to collect or enforce any such contract, agreement or other document included in the Pledged Collateral hereunder. The obligations of each Pledgor contained in this Section 10.14 shall survive the termination hereof and the discharge of such Pledgor's other obligations under this Agreement, the Credit Agreement and the other Loan Documents.

SECTION 10.15. Overdue Amounts. Until paid, all amounts due and payable under this Agreement shall constitute Secured Obligations and shall, upon demand by the Required Lenders, bear interest, whether before or after judgment, at the Default Rate.

SECTION 10.16. Obligations Absolute. All obligations of each Pledgor hereunder shall be absolute and unconditional irrespective of:

- (i) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any other Pledgor;
- (ii) any lack of validity or enforceability of any Loan Document, or any other agreement or instrument relating thereto, against any Pledgor;
- (iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from any Loan Document or any other agreement or instrument relating thereto;
- (iv) any pledge, exchange, release or non-perfection or loss of priority of any other collateral, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Secured Obligations;
- (v) any exercise, non-exercise or waiver of any right, remedy, power or privilege under or in respect hereof, any Loan Document except as specifically set forth in a waiver granted pursuant to the provisions of Section 10.5 hereof; or
- (vi) any other circumstances which might otherwise constitute a defense available to, or a discharge of, any Pledgor.

PLEDGE AND SECURITY AGREEMENT

IN WITNESS WHEREOF, each Pledgor and the Collateral Agent have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first above written.

BORROWER:

HC2 Holdings, Inc.

By: /s/ Mesfin Demise

Name: Mesfin Demise

Title: Chief Financial Officer

PLEDGE AND SECURITY AGREEMENT

SUBSIDIARY GUARANTORS:

PTGi International Holding Inc.

By /s/ Mesfin Demise
Name: Mesfin Demise
Title: Chief Financial Officer

PTGi International, Inc.

By /s/ Mesfin Demise
Name: Mesfin Demise
Title: Chief Financial Officer

Arbinet Corporation

By /s/ Mesfin Demise
Name: Mesfin Demise
Title: Chief Financial Officer

HC2 Tech Ventures, LLC

By /s/ Mesfin Demise
Name: Mesfin Demise
Title: Chief Financial Officer

HC2 Holdings 2, Inc.

By /s/ Mesfin Demise
Name: Mesfin Demise
Title: Chief Financial Officer

HC2 Investment Securities, Inc.

By /s/ Mesfin Demise
Name: Mesfin Demise
Title: Chief Financial Officer

PLEDGE AND SECURITY AGREEMENT

COLLATERAL AGENT:
JEFFERIES FINANCE LLC

By: /s/ J. Paul McDonnell
Name: J. Paul McDonnell
Title: Managing Director

PLEDGE AND SECURITY AGREEMENT

SECURITIES COLLATERAL

<u>Pledgor</u>	<u>Issuer</u>	<u>Number of Shares</u>	<u>Number of Shares or Interests</u>	<u>Percentage Pledged</u>
HC2 Holdings, Inc.	HC2 Holdings 2, Inc.	100	100	100%
	PTGi International Holding, Inc.	100	100	100%
	Schuff International, Inc.	4,183,385 ¹	2,500,000	64.48%
PTGi International Holding, Inc.	Arbinet Corporation	1,000	Unknown	100%
	PTGi IHC, Inc.	100	100	100%
	Lingo Holdings, Inc.	1,000	1,000	100%
	PTGi International, Inc.	1,000	100	100%
	St. Thomas & San Juan Telephone Company, Inc.	1,000	130,000	65%
PTGi International, Inc.	Stubbs, Ltd	Unknown	1	65%
	Primus Telecommunications El Salvador SA de C.V.	Unknown	Unknown	65%
Arbinet Corporation	Arbinet Communications, Inc.	10,000	Unknown	100%
	Arbinet Services, Inc.	10,000	Unknown	100%
	Arbinet-thexchange HK Limited	1,000	1	65%
	PTGi International Carrier Services, Inc.	10,000	100	100%
	Arbinet-thexchange Ltd	100	1	65%
	Arbinet Managed Services, Inc.	10,000	100	100%
	Arbinet Digital Media Corporation	10,000	100	100%
ANIP, Inc.	1,000	Unknown	100%	

¹ This number represents the shares outstanding as of September 22, 2014 (10,038,707 issued minus 5,855,322 Treasury = 4,202,933).

<u>Pledgor</u>	<u>Issuer</u>	<u>Number of Shares</u>	<u>Number of Shares or Interests</u>	<u>Percentage Pledged</u>
HC2 Holdings 2, Inc.	HC2 Investment Securities, Inc.	100	100	100%
	Pansend, LLC	N/A	N/A	100%
	ANG Holdings, Inc.	15,500	Unknown	100%
		Series A Convertible Preferred Shares		
	HC2 Tech Ventures, LLC	N/A	N/A	100%
	Global Marine Holdings, LLC	N/A	N/A	65%

SECURITIES PURCHASE AGREEMENT**by and among****HC2 HOLDINGS, INC.****and the****PURCHASERS PARTY HERETO****September 22, 2014**

This Securities Purchase Agreement contains a number of representations and warranties which the Company and the Purchasers have made to each other. The assertions embodied in those representations and warranties are qualified by information in confidential disclosure schedules that the Company and the Purchasers have exchanged in connection with signing this Securities Purchase Agreement. These disclosure schedules contain information that has been included in the general prior public disclosures of the Company, as well as additional non-public information. While we do not believe that this non-public information is required to be publicly disclosed by the Company under the applicable securities laws, that information does modify, qualify and create exceptions to the representations and warranties set forth in this Securities Purchase Agreement. In addition, these representations and warranties were made as of the date of this Securities Purchase Agreement. Information concerning the subject matter of the representations and warranties may have changed since the date of this Securities Purchase Agreement, which subsequent information may or may not be fully reflected in the public disclosures of the Company. Moreover, representations and warranties are frequently utilized in Securities Purchase Agreements as a means of allocating risks, both known and unknown, rather than to make affirmative factual claims or statements. Accordingly, ONLY THE PARTIES TO THIS AGREEMENT SHOULD RELY ON THE REPRESENTATIONS AND WARRANTIES AS CURRENT CHARACTERIZATIONS OF FACTUAL INFORMATION ABOUT THE COMPANY OR THE PURCHASERS.

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Annexes

Annex A	Preferred Shares and Purchasers
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Exhibits

<u>Exhibit A</u>	Form of Certificate of Designation
<u>Exhibit B</u>	Form of Amended and Restated Registration Rights Agreement

SECURITIES PURCHASE AGREEMENT

SECURITIES PURCHASE AGREEMENT (this “**Agreement**”), dated September 22, 2014, by and among HC2 Holdings, Inc., Delaware corporation (the “**Company**”), and the parties set forth on Annex A hereto as Purchasers (each a “**Purchaser**” and collectively, the “**Purchasers**”).

WHEREAS, the Company has authorized the issuance and sale pursuant to this Agreement of 11,000 shares of Series A-1 Convertible Participating Preferred Stock, par value \$0.001 per share, of the Company (the “**Convertible Preferred Stock**”), the rights, preferences and privileges of which are to be set forth in a Certificate of Designation, in the form attached hereto as Exhibit A (the “**Certificate of Designation**”), which shares of Convertible Preferred Stock shall be convertible into authorized but unissued shares of Common Stock (as defined below);

WHEREAS, subject to the terms and conditions set forth herein, the Company desires to issue and sell to the several Purchasers, and the several Purchasers desire to purchase from the Company, the Preferred Shares (as defined below);

WHEREAS, the Board (as defined below) has (i) determined that it is in the best interests of the Company and its stockholders, and declared it advisable, to enter into this Agreement and the other Transaction Agreements (as defined below) to which the Company is a party providing for the transactions contemplated hereby and thereby in accordance with the General Corporation Law of the State of Delaware (the “**DGCL**”), upon the terms and subject to the conditions set forth herein, and (ii) approved the execution, delivery and performance of this Agreement and the other Transaction Agreements to which the Company is a party and the consummation of the transactions contemplated hereby and thereby in accordance with the DGCL upon the terms and conditions contained herein and therein;

WHEREAS, each Purchaser has approved the execution, delivery and performance of this Agreement and the other Transaction Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby in accordance with applicable law upon the terms and conditions contained herein and therein;

WHEREAS, as a condition to the consummation of the transactions contemplated hereby, on the Closing Date the Company and the Purchasers will enter into the Amended and Restated Registration Rights Agreement in the form attached as Exhibit B hereto (the “**Registration Rights Agreement**”); and

NOW THEREFORE, in consideration of the mutual agreements, representations, warranties and covenants herein contained, the parties hereto agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

“**Accreting Dividends**” shall have the meaning set forth in the Certificate of Designation.

“**Additional Preferred Securities**” shall have the meaning set forth in the Certificate of Designation.

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person. Notwithstanding the foregoing, (i) none of the Company, its Subsidiaries or its other controlled Affiliates, nor any HRG Affiliates shall be considered Affiliates of any Purchaser, (ii) no Purchaser shall be considered an Affiliate of any Portfolio Company in which such Purchaser or any of its Affiliates have made a debt or equity investment (provided, however, that for purposes of Sections 5.3 and 5.6 hereof, a Purchaser shall be considered an Affiliate of any such Portfolio Company if such Portfolio Company has received Confidential Information regarding the Company or any of its Subsidiaries from such Purchaser or any of its Affiliates in violation of Section 5.9 (disregarding for this purpose clause (v) of Section 5.9(a)), (iii) no Purchaser shall be considered an Affiliate of any other Purchaser or any of such other Purchaser’s Affiliates’ and (iv) no holder of Convertible Preferred Stock, Series A Convertible Preferred Stock or Common Stock shall be considered an Affiliate of any other holder of Convertible Preferred Stock, Series A Convertible Preferred Stock or Common Stock solely by virtue of such holding; provided, however, that a Portfolio Company shall be deemed to be an Affiliate of a Purchaser if such Purchaser, directly or indirectly, encouraged, directed or caused such Portfolio Company to take any action that would have been prohibited by the terms of this Agreement if such Portfolio Company had been an Affiliate of such Purchaser but for clause (ii) of this definition.

“**Agreement**” shall have the meaning set forth in the preamble.

“**Basket Amount**” shall have the meaning set forth in Section 10.4.

“**Beneficially Own,**” “**Beneficially Owned,**” or “**Beneficial Ownership**” shall have the meaning set forth in Rule 13d-3 of the rules and regulations promulgated under the Exchange Act; provided, however, that, other than for purposes of the definition of “Hedging Agreement”, a Person will be deemed to be the beneficial owner of any security which may be acquired by such Person whether within 60 days or thereafter, upon the conversion, exchange or exercise (without giving effect to any provision governing such security that would limit, reduce or otherwise restrict the conversion, exchange or exercise features of such security) of any rights, options, warrants or similar securities to subscribe for, purchase or otherwise acquire such security.

“**Benefit Plans**” with respect to any Person shall mean each material “employee benefit plan” (within the meaning of Section 3(3) of ERISA), and all stock purchase, stock option, severance, employment, change-in-control, fringe benefit, collective bargaining, bonus, incentive, deferred compensation, employee loan and all other employee benefit plans, agreements, programs, policies or other arrangements, whether or not subject to ERISA (including any funding mechanism therefor now in effect or required in the future as a result of the transaction contemplated by this Agreement or otherwise), whether formal or informal, oral or written, legally binding or not, under which any employee of such Person or its Subsidiaries has any present or future right to benefits or which are contributed to, sponsored by or maintained by the Person or any of its Subsidiaries.

“Board” shall mean the Board of Directors of the Company.

“Business Day” shall mean any day, other than a Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in the State of New York are authorized or required by Law or other governmental action to close.

“Capitalization Date” shall have the meaning set forth in Section 3.2(a).

“Certificate of Designation” shall have the meaning set forth in the recitals.

“Change” shall have the meaning set forth in the definition of “Material Adverse Effect.”

“Closing” shall have the meaning set forth in Section 2.2.

“Closing Date” shall have the meaning set forth in Section 2.2.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Common Stock” shall mean the Common Stock, par value \$0.001 per share, of the Company, or any other shares of capital stock into which the Common Stock shall be reclassified or changed.

“Company” shall have the meaning set forth in the preamble.

“Company Plan” shall mean any Benefit Plan sponsored by or contributed to the Company, its Subsidiaries or any of its ERISA Affiliates or for which the Company, its Subsidiaries or any of its ERISA Affiliates has any liability, contingent or otherwise.

“Company Annual Report” shall have the meaning set forth in Section 3.8(a).

“Change of Control” shall have the meaning set forth in the Certificate of Designation as in effect as of the date hereof.

“Company Financial Statements” shall have the meaning set forth in Section 3.8(c).

“Company Indemnified Party” shall have the meaning set forth in Section 10.3.

“Company Intellectual Property” shall have the meaning set forth in Section 3.12(c).

“Company Option” shall mean an option to acquire shares of Common Stock that was issued under any Company Stock Plan.

“Company SEC Filings” shall have the meaning set forth in Section 3.8(a).

“Company Stock Plans” shall mean the plans listed on Schedule 1.2.

“Confidential Information” shall have the meaning set forth in Section 5.9(a).

“**Consent**” shall have the meaning set forth in Section 3.6.

“**Contracts**” shall have the meaning set forth in Section 3.23(a)(v).

“**control**” (including the terms “**controlling**” “**controlled by**” and “**under common control with**”) with respect to any Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“**Conversion Price**” shall have the meaning set forth in the Certificate of Designation.

“**Conversion Shares**” shall mean the shares of Common Stock issuable upon the conversion of the Convertible Preferred Stock as provided for in the Certificate of Designation.

“**Convertible Preferred Stock**” shall have the meaning set forth in the recitals.

“**Debt Exercise Notice**” shall have the meaning set forth in Section 5.4(d)(ii).

“**Debt Issuance**” means the proposed issuance of indebtedness to be made by the Company pursuant to the Credit Agreement.

“**Debt Participation Amount**” shall have the meaning set forth in Section 5.4(b).

“**Debt Participation Right**” shall have the meaning set forth in Section 5.4(b).

“**Debt Participation Rights Notice**” shall have the meaning set forth in Section 5.4(d)(i).

“**Debt Transaction**” shall have the meaning set forth in Section 5.4(b).

“**Debt Transaction Lender**” shall have the meaning set forth in Section 5.4(b).

“**DG Purchasers**” shall mean DG Value Partners, LP, DG Value Partners II Master Fund, LP and DG Credit Opportunities, LP.

“**DGCL**” shall have the meaning set forth in the recitals.

“**Director**” means any member of the Board.

“**Disclosure Schedule**” shall have the meaning set forth in Section 3.

“**Environmental Law**” shall mean any and all Laws relating to the protection of the environment (including ambient air, surface water, groundwater or land) or natural resources and any other Laws concerning human exposure to Hazardous Substances.

“**Environmental Permits**” shall have the meaning set forth in Section 3.20(a)(i).

“**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“**ERISA Affiliate**” shall have the meaning set forth in [Section 3.13\(c\)](#).

“**Equity Securities**” shall mean, with respect to any Person, (i) shares of capital stock of, or other equity or voting interest in, such Person, (ii) any securities convertible into or exchangeable for shares of capital stock of, or other equity or voting interest in, such Person, (iii) options, warrants, rights or other commitments or agreements to acquire from such Person, or that obligates such Person to issue, any capital stock of, or other equity or voting interest in, or any securities convertible into or exchangeable for shares of capital stock of, or other equity or voting interest in, such Person, (iv) obligations of such Person to grant, extend or enter into any subscription, warrant, right, convertible or exchangeable security or other similar agreement or commitment relating to any capital stock of, or other equity or voting interest (including any voting debt) in, such Person and (v) the capital stock of such Person.

“**Exchange**” means the NASDAQ Global Market, the NASDAQ Global Select Market, The New York Stock Exchange, the NYSE MKT LLC or any of their respective successors.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended, and all of the rules and regulations promulgated thereunder.

“**Fraud**” shall mean with respect to any claim or action, all of the following elements: (a) a false statement of a material fact relating to such claim or action; (b) knowledge on the part of the Person making such statement of a material fact that the statement is false; (c) intent on the part of the Person making such statement of a material fact to deceive the receiving party by making the false statement; (d) justifiable reliance by the receiving party on the false statement of material fact; and (e) injury to the receiving party as a result of such reliance on the false statement of material fact.

“**Foreign Benefit Plans**” shall have the meaning set forth in [Section 3.13\(g\)](#).

“**GAAP**” shall have the meaning set forth in [Section 3.9\(b\)](#).

“**Governmental Entity**” shall mean any United States or non-United States federal, state or local government, or any agency, bureau, board, commission, department, tribunal or instrumentality thereof or any court, tribunal, or arbitral or judicial body.

“**HRG Affiliate**” shall mean (a) Philip A. Falcone, (b) Harbinger Group, Inc. or any of its Subsidiaries, (c) Harbinger Capital Partners LLC, Harbinger Capital Partners II LP or any limited partnership, limited liability company, corporation or other entity that controls, is controlled by, or is under common control with Harbinger Capital Partners LLC, Harbinger Capital Partners II LP or Philip A. Falcone.

“**Hazardous Substance**” shall mean any substance, material or chemical that is characterized or regulated under any Environmental Law as “hazardous,” a “pollutant,” “waste,” a “contaminant,” “toxic” or words of similar meaning or effect, or that could result in liability under any Environmental Law, and shall include petroleum and petroleum products, polychlorinated biphenyls, lead, crystalline silica and asbestos.

“**Hedging Agreement**” shall mean any swap, forward or option contract or any other agreement, arrangement, contract or transaction that hedges the direct or indirect economic exposure to a decline in value resulting from ownership by any Person of the Common Stock, the Convertible Preferred Stock, the Series A Convertible Preferred Stock or the equity securities of any Subsidiary of the Company that are traded on a national securities exchange or on the OTCQB, regardless of whether any such agreement, arrangement, contract or transaction is to be settled by delivery of securities, in cash or otherwise; provided, however, that, for the avoidance of doubt, in no event shall an agreement providing for the direct Transfer of Common Stock, Convertible Preferred Stock or Series A Convertible Preferred Stock actually Beneficially Owned by such Person be deemed a “Hedging Agreement” hereunder.

“**Hedging Limitation Period**” shall mean the period from the date hereof until the twelve (12) month anniversary of the Closing Date.

“**HSR Act**” shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and all of the rules and regulations promulgated thereunder.

“**Indemnified Party**” shall have the meaning set forth in Section 10.5.

“**Indemnifying Party**” shall have the meaning set forth in Section 10.5.

“**Intellectual Property**” shall mean all U.S. or foreign intellectual property, including (i) patents, trademarks, service marks, trade names, domain names, other source indicators and the goodwill of the business symbolized thereby, copyrights, works of authorship in any medium, designs and trade secrets, (ii) applications for and registrations of such patents, trademarks, service marks, trade names, domain names, copyrights and designs (“**Registered Intellectual Property**”), (iii) inventions, processes, formulae, methods, schematics, technology, know-how, computer software programs and applications, and (iv) other tangible or intangible proprietary or confidential information and materials.

“**Investment Securities**” with respect to a Person means debt or equity securities issued by such Person or similar obligations of, or participations in, such Person.

“**Knowledge**” shall mean, with respect to the Company, the knowledge of any of the Persons set forth on Schedule 1.1. Such individuals will be deemed to have “knowledge” of a particular fact or other matter if (i) such individual has or at any time had actual knowledge of such fact or other matter or (ii) a prudent individual would be expected to discover or otherwise become aware of such fact or other matter in the course of conducting a reasonably diligent review concerning the existence thereof with each employee of the Company or any of its Subsidiaries who reports directly to such individual and who (x) has responsibilities or (y) would reasonably be expected to have actual knowledge of circumstances or other information, in each case, that would reasonably be expected to be pertinent to such fact or other matter. Notwithstanding the foregoing, the Company will be deemed to have knowledge of any fact or matter of which an officer of the Company has received written notice (whether in hard copy, digital or electronic format).

“**Law**” shall have the meaning set forth in Section 3.5.

“**Leased Real Property**” shall have the meaning set forth in Section 3.21(b).

“**Legal Proceeding**” shall mean any action, suit, litigation, petition, claim, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, inquiry, or investigation by or before, or otherwise involving, any court or other Governmental Entity or arbitral body.

“**Liability**” shall mean any liability, obligation or commitment of any kind (whether accrued, absolute, contingent, matured, unmatured or otherwise and whether or not required to be recorded or reflected on a balance sheet prepared in accordance with GAAP).

“**Lien**” shall have the meaning set forth in Section 3.5.

“**Loan Agreement**” means the Credit Agreement, dated as of the date hereof, among the Company, the Subsidiary Guarantors (as defined therein), the Lenders (as defined therein) and Jefferies Finance LLC, as lead arranger, as book manager and as documentation agent, syndication agent and administrative agent for the Lenders and as collateral agent for the Secured Parties, as amended from time to time.

“**Losses**” shall mean any and all actions, causes of action, suits, claims, liabilities, losses, damages, penalties, judgments, costs and out-of-pocket expenses in connection therewith (including reasonable attorneys’ fees and expenses), it being agreed that Losses shall include any losses that any Person deciding any dispute in respect thereof (whether a court, jury or other Person) may determine are recoverable, including if so determined to be recoverable, losses that represent diminution in value.

“**Luxor Purchasers**” means Luxor Capital Partners, LP; Luxor Capital Partners Offshore Master Fund, LP and Luxor Wavefront, LP.

“**Material Adverse Effect**” shall mean any fact, circumstance, event, change, effect, occurrence or development (each, a “**Change**”) that, individually or in the aggregate with all other Changes, (i) has or would reasonably be expected to have a material adverse effect on or with respect to the business, operations, assets (including intangible assets), liabilities, results of operation or financial condition of the Company and its Subsidiaries taken as a whole or (ii) results in or would reasonably be expected to result in a Liability or Loss to the Company or its Subsidiaries in an amount exceeding \$1,000,000.

“**Material Contracts**” shall have the meaning set forth in Section 3.23(a).

“**May SPA**” means that certain Securities Purchase Agreement, dated as of May 29, 2014, by and among the Preferred Holders and the Company, as amended from time to time.

“**New York Court**” shall have the meaning set forth in Section 12.5(b).

“**Non-Convertible Preferred Participation Amount**” shall have the meaning set forth in Section 5.4(a).

“**OTCQB**” means the OTCQB Market.

“Participation Rights” shall have the meaning set forth in [Section 5.4\(b\)](#).

“Participation Rights Fraction” shall mean, with respect to a Purchaser, a fraction, the numerator of which is the number of shares of Common Stock held by such Purchaser and its Affiliates in the aggregate on an as converted basis, as of such date, and the denominator of which is the number of shares of Common Stock then outstanding (assuming all Preferred Stock and Series A Preferred Stock is converted to Common Stock), as of such date.

“Permitted Liens” means, (a) local, state and federal Laws, including, without limitation, zoning or planning restrictions, and utility lines, easements, permits, covenants, conditions, restrictions, rights-of-way, oil, gas or mineral leases of record and other restrictions or limitations on the use of real property or irregularities in title thereto, which do not materially impair the value of such properties or the continued use of such property for the purposes for which the property is currently being used by the Company or any Subsidiary, (b) Liens for Taxes not yet due and payable, that are payable without penalty or that are being contested in good faith and for which adequate reserves have been recorded on the Company Financial Statements, (c) Liens for carriers’, warehousemen’s, mechanics’, repairmen’s, workers’ and similar Liens incurred in the ordinary course of business, consistent with past practice, in each case for sums not yet due and payable or due but not delinquent or being contested in good faith by appropriate proceedings and for which adequate reserves have been recorded on the Company Financial Statements, (d) Liens incurred in the ordinary course of business, consistent with past practice, in connection with workers’ compensation, unemployment insurance and other types of social security or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return of money bonds and similar obligations, which do not materially impair the value of the underlying property or the continued use of such property for the purposes for which the property is currently being used by the Company or any Subsidiary, (e) Liens granted under equipment leases with third parties entered into in the ordinary course of business consistent with past practice, (f) Liens permissible under any applicable loan agreements and indentures, (g) restrictions arising under applicable securities Laws and (h) Liens securing the indebtedness under the Loan Agreement or any other existing indebtedness for borrowed money of the Company, Schuff or any of their Subsidiaries.

“Person” shall mean an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture or any other entity or organization.

“Portfolio Company” means, with respect to a referent Person, any other Person that issues Investment Securities if such referent Person beneficially owns Investment Securities representing a controlling interest in such Person.

“Preferred Holders” means each of (i) Hudson Bay Absolute Return Credit Opportunities Master Fund Ltd., (ii) DG Value Partners, LP, (iii) DG Value Partners II Master Fund, LP, (iii) Special Situations, LLC, (iv) Special Situations X, LLC, (v) DG Credit Opportunities, LP., (vi) Providence Debt Fund III L.P., (vii) Providence Debt Fund III Master (Non-US) L.P., (viii) PECM Strategic Funding L.P. and (ix) Benefit Street Partners SMA LM L.P.

“**Preferred Share Purchase Price**” shall have the meaning set forth in [Section 2.1](#).

“**Preferred Stock**” shall have the meaning set forth in [Section 3.2\(a\)](#).

“**Public Market Capitalization**” shall have the meaning set forth in the Certificate of Designation.

“**Purchasers**” shall have the meaning set forth in the recitals.

“**Purchaser Adverse Effect**” shall have the meaning set forth in the [Section 4.3](#).

“**Purchaser Indemnified Party**” shall have the meaning set forth in [Section 10.1](#).

“**Registered Intellectual Property**” shall have the meaning set forth in the definition of “Intellectual Property.”

“**Registration Rights Agreement**” shall have the meaning set forth in the recitals.

“**Representatives**” means, with respect to any Person, such Person’s Affiliates (other than any Portfolio Company) and their respective directors, officers, employees, managers, trustees, principals, stockholders, members, general or limited partners, agents and other representatives.

“**Requisite Holders**” means Purchasers (or permitted transferees thereof) holding not less than 75% of the Shares issued to the Purchasers hereunder on the Closing Date (determined on an as-converted to Common Stock basis).

“**Rule 144**” shall have the meaning set forth in [Section 4.8\(a\)](#).

“**Schuff**” means Schuff International, Inc.

“**SEC**” shall mean the Securities and Exchange Commission.

“**Securities Act**” shall mean the Securities Act of 1933, as amended, and all of the rules and regulations promulgated thereunder.

“**Securities Exercise Notice**” shall have the meaning set forth in [Section 5.4\(c\)\(ii\)](#).

“**Securities Participation Amount**” shall have the meaning set forth in [Section 5.4\(a\)](#).

“**Securities Participation Right**” shall have the meaning set forth in [Section 5.4\(a\)](#).

“**Securities Participation Rights Notice**” shall have the meaning set forth in [Section 5.4\(c\)\(i\)](#).

“**Series A Convertible Preferred Stock**” means the Series A Convertible Participating Preferred Stock, par value \$0.001 per share, of the Company.

“Significant Subsidiary” shall mean any Subsidiary or group of Subsidiaries that would, taken together, be a “significant subsidiary” as defined in Article 1, Rule 1-02 (w)(1) or (2) of Regulation S-X promulgated under the Securities Act, as such regulation is in effect from time to time. For the avoidance of any doubt, Schuff and its Subsidiaries shall be deemed to be Significant Subsidiaries of the Company for all purposes, including, with respect to the representations and warranties of the Company set forth in Section 3 hereof, except with respect to Section 3.8(d).

“Specified Breach Event” shall have the meaning set forth in the Certificate of Designation.

“Standstill Period” shall have the meaning set forth in Section 5.3(a).

“Subsidiary” of any Person shall mean any corporation, partnership, joint venture, limited liability company, trust or other form of legal entity (whether incorporated or unincorporated) of which (or in which) more than 50% of (i) the Voting Power; (ii) the interest in the capital or profits of such partnership, joint venture or limited liability company; or (iii) the beneficial interest in such trust or estate; is, directly or indirectly, owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person’s other Subsidiaries. For the avoidance of any doubt, Schuff and its Subsidiaries are Subsidiaries of the Company for all purposes, including, with respect to the representations and warranties of the Company set forth in Section 3 hereof, except with respect to Section 3.8(d).

“Tax Returns” shall mean returns, reports, information statements and other documentation (including any additional or supporting material) filed or required to be filed in connection with the calculation, determination, assessment or collection of any Tax, including any schedules or amendments thereto.

“Taxes” shall mean any and all taxes, levies, fees, imposts, duties and charges of whatever kind (including any interest, penalties or additions to the tax imposed in connection therewith or with respect thereto) imposed by any Governmental Authority, including, without limitation, taxes imposed on, or measured by, income, franchise, profits or gross receipts, and any ad valorem, value added, sales, use, service, real or personal property, capital stock, license, payroll, withholding, employment, social security, workers’ compensation, unemployment compensation, utility, severance, production, excise, stamp, occupation, premium, windfall profits, transfer and gains taxes and customs or duties.

“Third Party Intellectual Property” shall have the meaning set forth in Section 3.12(c).

“Transaction Agreements” shall mean this Agreement, the Certificate of Designation, and the Registration Rights Agreement.

“Transfer” shall mean the direct or indirect transfer, sale, assignment, exchange, distribution, mortgage, pledge or disposition of any Equity Securities of the Company.

“Treasury Regulation” shall mean the Treasury Regulations promulgated under the Code.

“**Voting Power**” shall mean either (a) the power to elect, designate or nominate directors to the Board, or (b) vote (as Common Stock or together with Common Stock) on matters to be voted on or consented to by the Common Stock through the ownership of Voting Stock, by contract or otherwise.

“**Voting Stock**” shall mean securities of any class or kind ordinarily having the power to vote generally for the election of (x) Directors of the Company or its successor (including the Common Stock, the Convertible Preferred Stock and the Series A Convertible Preferred Stock) or (y) directors of any Subsidiary of the Company.

“**Wholly Owned Subsidiary**” means any Subsidiary of the Company of which the Company owns, either directly or indirectly, 100% of the outstanding equity interests of such Subsidiary (excluding qualifying shares held by directors).

2. Authorization, Purchase and Sale of Preferred Shares.

2.1 Authorization, Purchase and Sale. Subject to and upon the terms and conditions of this Agreement, the Company will issue and sell to the several Purchasers, and the several Purchasers will purchase from the Company, at the Closing, the number of shares of Convertible Preferred Stock (each, a “**Preferred Share**” and collectively, the “**Preferred Shares**”) set forth next to each such Purchaser’s name on Annex A. The purchase price per Preferred Share shall be \$1,000 and the aggregate purchase price (the “**Preferred Share Purchase Price**”) for the Preferred Shares shall be the amount set forth on Annex A.

2.2 Closing.

(a) The closing of the purchase and sale of the Preferred Shares (the “**Closing**”) shall take place at the offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York immediately following the satisfaction or waiver of each of the conditions set forth in Section 6 with respect to Closing (other than those conditions which, by their terms, are to be satisfied or waived at the Closing), at 7:00 am Eastern Time on September 22, 2014 (the “**Closing Date**”).

(b) Closing Deliveries:

(i) At the Closing the Company shall deliver to each Purchaser certificates representing the Preferred Shares purchased by such Purchaser; and

(ii) At the Closing, each Purchaser shall deliver, or cause to be delivered, to the Company, subject to any reductions for expenses as set forth in Section 12.8, an amount equal to the portion of the Preferred Share Purchase Price set forth next to such Purchaser’s name on Annex A by wire transfer of immediately available funds to an account set forth on Annex A under the heading “Company Wire Information”.

3. Representations and Warranties of the Company. Except as set forth in the disclosure schedule delivered by the Company to the Purchasers on the date hereof (the “**Disclosure Schedule**”) (it being agreed that disclosure of any item in any section of the Disclosure Schedule shall also be deemed disclosure with respect to any other Section of this

Agreement to which the relevance of such item is reasonably apparent) or as disclosed in the Company SEC Filings, filed on or after January 1, 2012 and publicly available prior to the date of this Agreement and only as and to the extent disclosed therein (but excluding any risk factor disclosures contained under the heading "Risk Factors," any disclosure of risks included in any "forward-looking statements" disclaimer or any other statements that are similarly forward-looking), the Company hereby represents and warrants to the Purchasers as follows:

3.1 Organization and Power.

(a) Each of the Company and its Subsidiaries is a legal entity duly organized, validly existing and in good standing under the Laws of its respective jurisdiction of organization. Each of the Company and its Subsidiaries has the requisite corporate power and authority to carry on its respective business as it is presently being conducted and to own, lease or operate its respective properties and assets, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Each of the Company and its Subsidiaries is duly qualified to do business and is in good standing as a foreign corporation (or other legal entity) in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The organizational or governing documents of the Company and each of its Subsidiaries are in full force and effect. Neither the Company nor any Subsidiary is in violation of its organizational or governing documents. The Company has delivered or made available to the Purchasers complete and correct copies of the certificates of incorporation and bylaws or other constituent documents, as amended to date and currently in full force and effect, of the Company and its Significant Subsidiaries.

3.2 Capitalization.

(a) As of the date of this Agreement, after giving effect to the filing of the Certificate of Designation, the authorized shares of capital stock of the Company consist of 80,000,000 shares of Common Stock and 20,000,000 shares of preferred stock, par value \$0.001 per share ("**Preferred Stock**"), of which 30,000 shares are authorized as Series A Convertible Preferred Stock and 11,000 shares are authorized as Convertible Preferred Stock. As of the close of business on September 17, 2014 (the "**Capitalization Date**"), (i) 23,316,690 shares of Common Stock were issued and outstanding, (ii) 2,123,604 shares of Common Stock were reserved for issuance under the Company Stock Plans, (iii) 30,000 shares of Series A Convertible Preferred Stock were issued and outstanding, (iv) 0 shares of Convertible Preferred Stock were issued and outstanding; (v) 7,083,922 shares of Common Stock were reserved for issuance upon conversion of the currently outstanding Series A Convertible Preferred Stock in accordance with the Certificate of Designation of the Series A Preferred Stock, as amended, and (vi) 31,626 shares of Common Stock or Preferred Stock were held by the Company as treasury shares. All outstanding shares of Common Stock and Series A Convertible Preferred Stock are validly issued, fully paid, nonassessable and free of preemptive or similar rights. Since the Capitalization Date, the Company has not sold or issued or repurchased, redeemed or otherwise acquired any shares of the Company's capital stock (other than issuances pursuant to the exercise

of any Company Option or vesting of any share unit award that had been granted under any Company Stock Plan, or repurchases, redemptions or other acquisitions pursuant to agreements contemplated by a Company Stock Plan). No Subsidiary of the Company owns any Equity Securities of the Company.

(b) As of the Capitalization Date, with respect to the Company Stock Plans, (i) there were 1,775,343 shares of Common Stock underlying outstanding Company Options to acquire shares of Common Stock, such outstanding Company Options having the exercise price per share as of the Capitalization Date as set forth on Schedule 3.2, (ii) there were 234,428 shares of Common Stock issuable upon the vesting of outstanding share award units, (iii) there were 113,833 shares of Common Stock which vested on September 16, 2014 but were not yet issued, and (iv) 5,031,095 additional shares of Common Stock were reserved for issuance for future grants pursuant to the Company Stock Plans. All shares of Common Stock reserved for issuance as noted in the foregoing sentence, when issued in accordance with the respective terms thereof, are or will be validly issued, fully paid, nonassessable and free of preemptive or similar rights. Each Company Option was granted with an exercise price per share equal to or greater than the per share fair market value (as such term is used in Code Section 409A and the Department of Treasury regulations and other interpretive guidance issued thereunder) of the Common Stock underlying such Company Option on the grant date thereof and was otherwise issued in material compliance with applicable Law.

(c) Schedule 3.2 sets forth a list of all outstanding warrants to purchase any Equity Securities of the Company as of the date of this Agreement, together with the number of shares subject thereto, the exercise price thereof, the dates of any scheduled vesting thereof, in each case as of the date hereof.

(d) Except as set forth in this Section 3.2, as of the date of this Agreement, there are no outstanding Equity Securities of the Company and no other obligations by the Company or any of its Subsidiaries to make any payments based on the price or value of any Equity Securities of the Company. There are no outstanding agreements of any kind which obligate the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Equity Securities of the Company.

(e) Except as set forth in the Transaction Agreements or as set forth in Schedule 3.2, neither the Company nor any of its Subsidiaries is a party to any agreement relating to the voting of, requiring registration of, or granting any preemptive, anti-dilutive rights or rights of first refusal or other similar rights with respect to any Equity Securities of the Company.

(f) Upon the filing of the Certificate of Designation with the Secretary of State of the State of Delaware, (i) the Preferred Shares will be duly authorized and (ii) a sufficient number of Conversion Shares will have been duly authorized and validly reserved for issuance upon conversion of the Preferred Shares in accordance with the Certificate of Designation. When the Preferred Shares are issued and paid for in accordance with the provisions of this Agreement and the Certificate of Designation, all such Preferred Shares will be duly authorized, validly issued, fully paid, nonassessable and free of preemptive or similar rights except as set forth in the Transaction Agreements and Schedule 3.2. When Conversion Shares

are issued in accordance with the provisions of the Certificate of Designation all such Conversion Shares will be duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights.

(g) Neither the Company nor any of its Subsidiaries have any Liabilities in respect of any Indebtedness (as defined in the Certificate of Designation) except as set forth on Schedule 3.2(g). For each item of Indebtedness, Schedule 3.2(g) sets forth the debtor, the principal amount of the Indebtedness as the date of this Agreement, the creditor, the maturity date, and the collateral, if any, securing the Indebtedness. Except as set forth on Schedule 3.2(g), neither the Company, nor any of its Subsidiaries has any Liability in respect of a guarantee of any indebtedness or other Liability of any other Person (other than the Company or any of its Subsidiaries).

3.3 Authorization. The Company has all requisite corporate power to enter into each of the Transaction Agreements to which it is a party and to consummate the transactions contemplated by each of the Transaction Agreements to which it is a party and to carry out and perform its obligations thereunder. All corporate action on the part of the Company, its officers and directors necessary for the authorization of the Preferred Shares and the authorization, execution, delivery and performance of the Transaction Agreements to which the Company is a party has been taken. The execution, delivery and performance of the Transaction Agreements to which the Company is a party by the Company and the issuance of the Common Stock upon conversion of the Preferred Shares, in each case in accordance with their terms, and the consummation of the other transactions contemplated herein do not require any approval of the Company's stockholders, except as set forth on Schedule 3.3. Upon their respective execution by the Company and the other parties thereto and assuming that they constitute legal and binding agreements of each Purchaser party thereto, each of the Transaction Agreements to which the Company is a party will constitute a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except that such enforceability (a) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar Laws affecting or relating to creditors' rights generally, and (b) is subject to general principles of equity (regardless of whether considered in a proceeding in equity or at Law).

3.4 Registration Requirements. Subject to the accuracy of the representations made by the Purchasers in Section 4, the offer, sale and issuance of the Preferred Shares and the conversion of the Preferred Shares into Common Stock in accordance with the Certificate of Designation (i) has been and will be made in compliance with applicable exemptions from the registration and prospectus delivery requirements of the Securities Act and (ii) will have been registered or qualified (or are exempt from registration and qualification) under the registration, permit or qualification requirements of all applicable Blue Sky laws.

3.5 No Conflict. Except as set forth on Schedule 3.5, the execution, delivery and performance of the Transaction Agreements to which the Company is a party by the Company, the issuance of the Preferred Shares and the Common Stock upon conversion of the Preferred Shares and the consummation of the other transactions contemplated hereby and by the other Transaction Agreements to which the Company is a party will not (i) conflict with or result in any violation of any provision of the certificate of incorporation or bylaws of the Company,

or, upon its filing with the Secretary of State of the State of Delaware, the Certificate of Designation, (ii) result in any breach or violation of, or default (with or without notice or lapse of time, or both) under, require consent under, or give rise to a right of termination, cancellation, modification or acceleration of any obligation or to the loss of any benefit under any mortgage, Contract, insurance policy (including any directors and officers insurance policy), purchase or sale order, instrument, permit, concession, franchise, right or license, binding upon the Company or any of its Subsidiaries or result in the creation of any liens, claims, mortgages, encumbrances, pledges, security interests, equities or charges of any kind (each, a “**Lien**”) upon any of the properties, assets or rights of the Company or any of its Subsidiaries, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, or (iii) subject to the matters referred to in Section 3.6, conflict with or violate any applicable material law, statute, code, ordinance, rule, regulation (including rules or regulations applicable to the listing of the Company’s capital stock on any trading exchange), or agency requirement of or undertaking to or agreement with any Governmental Entity, including common law (collectively, “**Laws**” and each, a “**Law**”) or any judgment, order, injunction or decree issued by any Governmental Entity.

3.6 Consents. No consent, approval, order, or authorization of, or filing or registration with, or notification to (any of the foregoing being a “**Consent**”), any Governmental Entity or any trading exchange is required on the part of the Company or its Subsidiaries in connection with (a) the execution, delivery or performance of the Transaction Agreements to which the Company is a party and the consummation of the transactions contemplated hereby and thereby, or (b) the issuance of the Preferred Shares or the issuance of the Common Stock upon conversion of the Preferred Shares in accordance with the Certificate of Designation; other than (i) the filing of the Certificate of Designation with the Secretary of State of the State of Delaware, (ii) those to be obtained, in connection with the registration of the Preferred Shares under the Registration Rights Agreement, under the applicable requirements of the Securities Act and any related filings and approvals under applicable state securities laws, and (iii) such Consents the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.7 Permits. The Company and each of its Subsidiaries possess all material permits, licenses, authorizations, consents, approvals and franchises of Governmental Entities or any trading exchange that are required to conduct its business.

3.8 SEC Reports; Financial Statements.

(a) The Company has filed, since January 1, 2012, all forms, reports and documents with the SEC that have been required to be filed by it under applicable Laws (the “**Company SEC Filings**”), including the Annual Report of the Company on Form 10-K for the fiscal year ended December 31, 2013, as amended through the date of this Agreement (the “**Company Annual Report**”). Each Company SEC Filing complied as of its filing date, as to form in all material respects with the applicable requirements of the Securities Act or the Exchange Act, as the case may be, each as in effect on the date such Company SEC Filing was filed (and, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseded filing). As of its filing date (and, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseded filing),

each Company SEC Filing did not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. None of the Company's Subsidiaries is required to file any forms, reports or other documents with the SEC pursuant to Sections 13(d) and 15(d) of the Exchange Act. No executive officer of the Company has failed to make the certifications required by him or her under Section 302 and 906 of the Sarbanes Oxley Act of 2002 with respect to any Company SEC Filing. There are no transactions that have occurred since January 1, 2012 that are required to be disclosed in the appropriate Company SEC Filings pursuant to Item 404 of Regulation S-K that have not been disclosed in the Company SEC Filings.

(b) The consolidated financial statements (including all related notes and schedules) of the Company and its Subsidiaries included in the Company SEC Filings and (collectively, the "**Company Financial Statements**") (i) comply as to form in all material respects with the published rules and regulations of the SEC with respect thereto and (ii) fairly present, in all material respects, the consolidated financial position of the Company and its Subsidiaries as of the dates indicated and the results of their operations and their cash flows for the periods therein specified, all in accordance with United States generally accepted accounting principles applied on a consistent basis ("**GAAP**") throughout the periods therein specified (except as otherwise noted therein, and in the case of quarterly financial statements except for the absence of footnote disclosure and subject, in the case of interim periods, to normal year-end adjustments, the effect of which will not, individually or in the aggregate, be materially adverse, and the absence of footnote disclosure that if presented, would not differ materially from those included in the audited Company Financial Statements).

(c) Except as disclosed on the Disclosure Schedule, there are no Liabilities of the Company or any of its Subsidiaries of any kind whatsoever, other than: (i) Liabilities disclosed and provided for in the Company Financial Statements; (ii) Liabilities incurred in the ordinary course of business consistent with past practice; (iii) Liabilities incurred in connection with the transactions contemplated by this Agreement or the other Transaction Agreements to which the Company is a party; or (iv) Liabilities individually or in the aggregate have not had and would not be reasonably expected to have a Material Adverse Effect (excluding clause (ii) of such definition).

(d) The Company's principal executive officer and its principal financial officer have (i) devised and maintained a system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and preparation of financial statements in accordance with GAAP, and have evaluated such system at the times required by the Exchange Act and in any event no less frequently than at reasonable intervals and (ii) disclosed to the Company's management, auditors and the audit committee of the Board (x) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the Company's or any of its Subsidiaries' ability to record, process, summarize and report financial information and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Company, and the Company has provided to the Purchasers copies of any written materials relating to the foregoing. The Company has established and maintains disclosure controls and procedures (as such term is

defined in Rule 13a 15 under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating to the Company and its Subsidiaries required to be included in the Company's periodic reports under the Exchange Act is made known to the Company's principal executive officer and its principal financial officer by others within those entities, and such disclosure controls and procedures are sufficient to ensure that the Company's principal executive officer and its principal financial officer are made aware of such material information required to be included in the Company's periodic reports required under the Exchange Act. There are no outstanding loans made by the Company or any of its Subsidiaries to any executive officer (as defined in Rule 3b-7 under the Exchange Act) or director of the Company. Neither the Company, nor any Subsidiary of the Company, since the date that the Company acquired (either directly or indirectly) a majority of the outstanding capital stock of such Subsidiary, has made any loans to any executive officer (as defined in Rule 3b-7 under the Exchange Act) or director of the Company or any of its Subsidiaries. For the purposes of this Section 3.8(d), Schuff and its Subsidiaries shall be deemed not to be a Subsidiary of the Company.

3.9 Litigation. Except as set forth on Schedule 3.9, there are no (i) investigations or, to the Knowledge of the Company, proceedings pending or threatened by any Governmental Entity with respect to the Company or any of its Subsidiaries or any of their properties or assets, (ii) Legal Proceedings pending or, to the Knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries, or any of their respective properties or assets, at Law or in equity that would reasonably be expected to result in liability to the Company or its Subsidiaries in excess of \$250,000 or any other material non-monetary Liability or restrictions, or (iii) orders, judgments or decrees of any Governmental Entity against the Company or any of its Subsidiaries.

3.10 Absence of Certain Changes. Since December 31, 2013, there has not been any Change which, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect and except as disclosed on Schedule 3.10, the business of the Company and its Subsidiaries has been conducted in the ordinary course of business consistent with past practices and there has not been:

(a) any declaration, setting aside or payment of any dividend or other distribution with respect to any shares of capital stock of the Company, or any repurchase, redemption or other acquisition by the Company or any of its Subsidiaries of any outstanding shares of capital stock or other securities of the Company or any of its Subsidiaries;

(b) any incurrence, assumption or guarantee by the Company or any of its Subsidiaries of any indebtedness for borrowed money in excess of \$250,000, individually, or \$1,000,000, in the aggregate, or the repurchase, redemption or repayment of any indebtedness for borrowed money of the Company or any of its Subsidiaries in excess of \$250,000, individually, or \$1,000,000, in the aggregate, other than any such incurrence, assumption or guarantee in relation to the Loan Agreement;

(c) any event of default (or event which with notice, the passage of time or both, would become an event of default) in the payment of any indebtedness for borrowed money in an aggregate principal amount in excess of \$250,000 by the Company or any of its Subsidiaries;

(d) any change in any methods of accounting by the Company or any of its Subsidiaries, except as may be appropriate to conform to changes in GAAP; or

(e) any material Tax election made by the Company or any of its Subsidiaries or any settlement or compromise of any material Tax liability by the Company or any of its Subsidiaries, except (i) as required by applicable Law or (ii) with respect to any material Tax election, consistent with elections historically made by the Company.

3.11 Compliance with Law. The Company and each of its Subsidiaries are in compliance with and are not in default under or in violation of, and have not received any written notices of non-compliance, default or violation with, in each case, in any material respect, with respect to any material Laws, in each case, except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect or to materially delay or hinder the ability of the Company to perform its obligations under the Transaction Agreements.

3.12 Intellectual Property.

(a) The Company and its Subsidiaries own, license, sublicense or otherwise possess respects legally enforceable rights to use all Intellectual Property necessary to conduct the business of the Company and its Subsidiaries, as currently conducted, free and clear of all Liens (other than non-exclusive licenses granted in the ordinary course of business or Permitted Liens), except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, all material Intellectual Property developed for the Company or any of its Subsidiaries by any employees, contractors and consultants of the Company or any of its Subsidiaries is exclusively owned by the Company or one of its Subsidiaries, free and clear of all Liens (other than non-exclusive licenses granted in the ordinary course of business or Permitted Liens).

(b) All Registered Intellectual Property owned by the Company or any of its Subsidiaries is subsisting and has not expired or been cancelled or abandoned and, to the Company's Knowledge, is valid and enforceable, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Company's Knowledge, no third party is infringing, violating or misappropriating any of the Company Intellectual Property in any material respect.

(c) The execution and delivery of the Transaction Agreements to which the Company is a party by the Company and the consummation of the transactions contemplated hereby and thereby will not result in, the breach of, or create on behalf of any third party the right to terminate or modify, (i) any license or other agreement relating to any Intellectual Property owned by the Company or any of its Subsidiaries (the "**Company Intellectual Property**"), or (ii) any license, sublicense and other agreement as to which the Company or any of its Subsidiaries is a party and pursuant to which the Company or any of its

Subsidiaries is authorized to use any third party Intellectual Property, excluding generally commercially available, off-the-shelf software programs licensed for a license fee of less than \$50,000 in the aggregate (the “**Third Party Intellectual Property**”), except, in either case, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(d) Except as set forth in Schedule 3.12(d), to the Company’s Knowledge, the conduct of the business of the Company and its Subsidiaries has not infringed, violated or constituted a misappropriation of any Intellectual Property of any third party and as currently conducted does not infringe, violate or constitute a misappropriation of any Intellectual Property of any third party, except, in either case, as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as set forth in Schedule 3.12(d), neither the Company nor any of its Subsidiaries (i) has received any written claim or notice alleging any such infringement, violation or misappropriation, or (ii) has been or is subject to any settlement, order, decree, injunction, or stipulation imposed by any Governmental Entity that may affect the use, validity or enforceability of Company Intellectual Property.

(e) The Company and its Subsidiaries take all reasonable actions respects to protect the Company Intellectual Property and to protect and preserve the confidentiality of their trade secrets, including disclosing trade secrets to a third party only where such third party is bound by a confidentiality agreement, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.13 Employee Benefits.

(a) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, with respect to any Company Plan, no Legal Proceeding has been threatened, asserted, instituted, or, to the Knowledge of the Company, is anticipated (other than non-material routine claims for benefits, and appeals of such claims), and, to the Knowledge of the Company, no facts or circumstances exist that would give rise to any such Legal Proceeding. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) no Company Plan is or, within the last six (6) years, has been the subject of an examination or audit by a Governmental Entity, is the subject of an application or filing under, or is a participant in, a government-sponsored amnesty, voluntary compliance, self-correction or similar program, (ii) the Company has satisfied all reporting and disclosure requirements under the Code and ERISA that are applicable to the Company Plans, and (iii) the Company has not terminated any Company Plan or taken any action with respect thereto that would result in a Lien on any of the assets or properties of the Company.

(b) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each Company Plan has been established and administered in accordance with its terms and any applicable collective bargaining agreement, and in compliance with the applicable provisions of ERISA, the Code and all other applicable laws, rules and regulations, and each Company Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination or opinion letter from the Internal Revenue Service to the effect that such Company Plan is qualified under the Code (or is entitled to rely on a prototype letter with regard to such determination) and nothing has occurred

that would reasonably be expected to cause the loss of such qualification. The Company and its Subsidiaries has complied with reporting and disclosure requirements under the Code and ERISA that are applicable to the Company Plans, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) Except as set forth in Schedule 3.13(c), neither the Company, any of its Subsidiaries, nor any other entity which, together with the Company or any of its Subsidiaries would be treated as a single employer under Section 4001 of ERISA or Section 414 of the Code (each such entity, an “**ERISA Affiliate**”) sponsors, maintains, contributes to, or has had in the past six (6) years an obligation at any time to sponsor, maintain or contribute to, or has any liability in respect of (i) any “defined benefit pension plan” (as defined in Section 3(35) of ERISA), (ii) any “employee benefit plan” (as defined in Section 3(3) of ERISA) subject to Section 412 of the Code or Section 302 of ERISA or Title IV of ERISA, including any “multiemployer plan” (as defined in Section 4001(a)(15) of ERISA)(“**Multiemployer Plan**”), (iii) any other plan which is subject to Section 4063, 4064 or 4069 of ERISA, or (iv) any “employee pension benefit plan” (within the meaning of Section 3(2) of ERISA) that is not intended to be qualified under Section 401(a) of the Code. Except as set forth in Schedule 3.13(c), except as required by Section 4980B of the Code, no Company Plan provides any retiree or post-employment medical, disability or life insurance benefits to any person. The assets of any defined benefit pension plan equal or exceed the projected benefit obligation of such plan, as determined using the actuarial assumptions used for purposes of the Company Financial Statements. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) none of the Company, any of its Subsidiaries or ERISA Affiliates has incurred any withdrawal liability, within the meaning of Section 4201 of ERISA, or any contingent withdrawal liability under Section 4204 of ERISA, to any Multiemployer Plan, which liability could become a liability of the Company, any of its Subsidiaries, or any of its ERISA Affiliates or impose any lien or encumbrance against the assets of the Company, any Subsidiaries or any ERISA Affiliate, and the execution of the Transaction Agreements or the transactions contemplated hereby will not cause or result in any such withdrawal liability (contingent or actual), (ii) all contributions that the Company, its Subsidiaries or any of its ERISA Affiliates are required to have made to any Multiemployer Plan have been made, (iii) no liability under Title IV of ERISA has been incurred or is expected to be incurred with respect to any Company Plan subject thereto (other than PBGC premiums incurred and paid when due), nor has there been any “reportable event” within the meaning of Section 4043(c) of ERISA with respect to any such Company Plan, and (iv) no non-exempt “prohibited transaction” (within the meaning of Section 4975 of the Code or Section 406 of ERISA) has occurred with respect to any Company Plan that has subjected or could reasonably be expected to subject the Company, its Subsidiaries or any ERISA Affiliate, to a Tax or penalty pursuant to Section 502 of ERISA or Section 4975 of the Code or any other liability or penalty with respect thereto.

(d) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each “nonqualified deferred compensation plan” (as defined in Code Section 409A(d)(1) and applicable regulations) with respect to any service provider to the Company or its Subsidiaries (i) complies and has been operated in compliance with the requirements of Code Section 409A and regulations promulgated thereunder, or (ii) is exempt from compliance under the “grandfather” provisions of IRS Notice 2005-1 and applicable regulations and has not been “materially modified” (within the meaning of IRS Notice 2005-1 and Treasury Regulations §1.409A-6(a)(4)) subsequent to October 3, 2004.

(e) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, all required contributions to, and premium payments on account of, each Company Plan have been made on a timely basis. Each Company Plan may be amended or terminated without penalty other than the funding or payment of benefits, fees or charges accrued or incurred through the date of termination.

(f) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or as set forth on Schedule 3.13(f), neither the execution of the Transaction Agreements nor the consummation of the transactions contemplated hereby and thereby will (i) accelerate the time of payment or vesting or increase the amount of compensation or benefits due to any Company employee, or (ii) give rise to any other liability or funding obligation under any Company Plan or otherwise, including liability for severance pay, unemployment compensation or termination pay.

(g) Except as set forth on Schedule 3.13(g), no Benefit Plan of the Company is maintained outside the jurisdiction of the United States, or covers any employee residing or working outside the United States (any such Benefit Plan the “**Foreign Benefit Plans**”). Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, all Foreign Benefit Plans that are required to be funded are fully funded, and with respect to all other Foreign Benefit Plans, adequate reserves therefor have been established on the accounting statements of the Company or its applicable Subsidiary.

3.14 Labor Relations.

(a) (i) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or as set for in Schedule 3.14, no Company employee is represented by a labor union or works council and, to the Knowledge of the Company, no organizing efforts have been conducted within the last three years or are now being conducted, (ii) neither the Company nor any of its Subsidiaries is a party to any material collective bargaining agreement or other labor contract or collective agreement, and (iii) neither the Company nor any of its Subsidiaries currently has, or, to the Knowledge of the Company, is there now threatened, a strike, picket, work stoppage, work slowdown or other material labor dispute.

(b) (i) Each of the Company and its Subsidiaries has complied with all applicable laws relating to the employment of labor, including all applicable laws relating to wages, hours, collective bargaining, employment discrimination, civil rights, safety and health, workers’ compensation, pay equity and the collection and payment of withholding and/or social security taxes, except as would not, individually or in the aggregate, have a Material Adverse Effect and (ii) neither the Company nor any of its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or any similar state or local Law within the last two years which remains unsatisfied.

3.15 Taxes.

(a) The Company and each of its Subsidiaries have filed all federal income Tax Returns and all other material Tax Returns required to have been filed as of the date hereof (taking into account any extensions that have been duly obtained) and such Tax Returns are correct and complete in all respects and have paid all Taxes required to have been timely paid by them in full through the date hereof, regardless of whether or not shown on any such Tax Return, except to the extent such Taxes are both (i) being challenged in good faith and (ii) adequately provided for on the financial statements of the Company and its Subsidiaries in accordance with GAAP, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Neither the Company nor any of its Subsidiaries has any current liability, and to the Knowledge of the Company, there are no events or circumstances which would result in any liability, for Taxes of any Person (other than the Company and its Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract or otherwise, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) None of the Company or any of its Subsidiaries is a party to, is bound by or has any obligation under any Tax sharing or Tax indemnity agreement or similar Contract or arrangement other than any such agreement or similar Contract or arrangement to which the Company and any of its Subsidiaries are the exclusive parties.

(d) All Taxes required to be withheld, collected or deposited by or with respect to Company and each of its Subsidiaries have been timely withheld, collected or deposited as the case may be, and to the extent required, have been paid to the relevant taxing authority except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(e) No deficiencies for any Taxes have been proposed or assessed in writing against or with respect to the Company or any of its Subsidiaries, and there is no outstanding audit, assessment, dispute or claim concerning any Tax liability of the Company or any of its Subsidiaries pending or raised by an authority in writing, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No written claim has been made by any Governmental Entity in a jurisdiction where neither the Company nor any of its Subsidiaries files Tax Returns that the Company or any of its Subsidiaries is or may be subject to taxation by that jurisdiction. Neither the Company nor any of its Subsidiaries has granted any waiver of any federal, state, local or foreign statute of limitations with respect to, or any extension of a period for the assessment of, any material Tax.

(f) There are no material Liens with respect to Taxes upon any of the assets or properties of either the Company or any of its Subsidiaries, other than with respect to Taxes not yet delinquent except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(g) No closing agreement pursuant to Section 7121 of the Code (or any similar provision of state, local or foreign law) has been entered into by or with respect to the Company or any of its Subsidiaries.

(h) Neither the Company nor any of its Subsidiaries has participated in a “listed transaction” within the meaning of Treasury Regulation Section 1.6011-4(b)(2).

(i) The representations and warranties expressly set forth in this Section 3.15 shall be the only representations and warranties, express or implied, written or oral, with respect to the subject matter contained in this Section 3.15.

3.16 Registration. Shares of the Common Stock are registered pursuant to Section 12(g) of the Exchange Act and there is no action pending by the Company or any other Person to terminate the registration of the Common Stock under the Exchange Act, nor has the Company received any notification that the SEC is currently contemplating terminating such registration.

3.17 Investment Company Act. The Company is not, nor immediately after the Company’s receipt of the Preferred Share Purchase Price from the Purchasers, will the Company be, an “investment company” within the meaning of, and required to be registered under, the Investment Company Act of 1940, as amended.

3.18 Brokers. The Company has not retained, utilized or been represented by any broker or finder who is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement.

3.19 Subsidiaries.

(a) As of the date hereof, the Company has no Subsidiaries other than as listed in Schedule 3.19.

(b) Except as set forth on Schedule 3.19, all of the outstanding shares of capital stock of, or other equity or voting interest in, each Subsidiary of the Company that are owned by the Company or one of its Subsidiaries (i) have been duly authorized, validly issued and are fully paid and nonassessable and (ii) are owned, directly or indirectly, by the Company or one of its Subsidiaries, free and clear of all Liens (other than restrictions under applicable securities Laws and Liens securing the indebtedness under the Loan Agreement or under any other existing Indebtedness for borrowed money of Schuff or any of its Subsidiaries set forth on Schedule 3.2(g)).

3.20 Environmental Matters.

(a) Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect:

(i) The Company and its Subsidiaries and their respective operations are and have been in compliance with all, and have not violated any, applicable Environmental Laws, which compliance includes the possession and maintenance of, and

compliance with, all permits, licenses, authorizations, waivers, exemptions, registrations, consents, approvals and franchises from Governmental Entities required under applicable Environmental Laws (“**Environmental Permits**”) for the operation of the business of the Company and its Subsidiaries; the Company has no reason to believe that any such Environmental Permits will be modified, revoked or otherwise made ineffective, or will not be renewed on terms substantially the same as those currently in effect.

(ii) Neither the Company nor any of its Subsidiaries, nor any other entity for which the Company or any of its Subsidiaries is responsible, has transported, produced, processed, manufactured, generated, used, treated, handled, stored or disposed of any Hazardous Substances, except in compliance with applicable Environmental Laws and in a manner that would not result in liability under any applicable Environmental Law. No Hazardous Substance has been released by the Company, the Subsidiaries, or to the Knowledge of the Company, by any other Person (including, without limitation, any of the predecessors in interest to the Company or any of its Subsidiaries), at, on, about or under (i) any property now or formerly owned, operated or leased by the Company, its Subsidiaries or their respective predecessors in interest; or (ii) any property to which the Company, its Subsidiaries or their respective predecessors in interest has sent waste;

(iii) Neither the Company nor any of its Subsidiaries, nor, to the Knowledge of the Company, any of their respective predecessors in interest has exposed any employee or any third party to Hazardous Substances in violation of, or in a manner that would result in a liability under, any applicable Environmental Law or tort law;

(iv) Neither, the Company nor any of its Subsidiaries, nor, to the Knowledge of the Company, any of their respective predecessors in interest, is a party to or the subject of any pending, or, to the Knowledge of the Company, threatened, Legal Proceeding alleging Liabilities under or noncompliance with any Environmental Law or seeking to impose any financial responsibility for any investigation, cleanup, removal, containment or any other remediation or compliance under any Environmental Law. Neither the Company nor any of its Subsidiaries, nor, to the Knowledge of the Company, any of their respective predecessors in interest, is subject to any orders, judgments or decrees or agreement by or with any Governmental Entity or third party imposing any Liabilities with respect to any Environmental Laws or any Hazardous Substances;

(v) There are no liabilities of any third party arising out of or related to Environmental Laws or Hazardous Substances that the Company, its Subsidiaries or, to the Knowledge of the Company, their respective predecessors in interest has expressly agreed to assume, to indemnify or retain by contract or otherwise;

(vi) Neither the Company nor the Subsidiaries has received any notice, claim, subpoena, or summons from any Person alleging: (i) any environmental liability relating to the Company, the Subsidiaries, or their respective predecessors in interest; or (ii) any violation by the Company, the Subsidiaries or their respective predecessors in interest of any Environmental Law;

(vii) Neither the Company nor any of its Subsidiaries has manufactured any products that are not or were not in compliance with all Environmental Laws applicable to such products to be imported, sold, or otherwise marketed in any jurisdiction in which such products are currently, or have been, imported, sold, or otherwise marketed; and

(viii) None of the products currently or formerly manufactured, produced, distributed, sold, leased, licensed, repaired, delivered, installed, conveyed or otherwise put into the stream of commerce by the Company or any of its Subsidiaries, or, to the Knowledge of the Company, any other Person for which the Company or any of its Subsidiaries is responsible by contract or operation of law, contains or has contained (i) asbestos; or (ii) any other Hazardous Substance that has resulted in or would reasonably be expected to result in any liability to the Company or any of its Subsidiaries.

(b) As of the date hereof, all reports of environmental site assessments, reviews, audits, investigations or similar evaluations, and any material documents in the possession or control of the Company or any of its Subsidiaries concerning (i) environmental conditions at any facilities or real property ever owned, operated or leased by the Company, the Subsidiaries or any of their respective predecessors in interest; or (ii) any environmental liability of the Company, its Subsidiaries or any of their respective predecessors in interest have been made available to the Purchasers.

(c) The representations and warranties expressly set forth in this Section 3.20 shall be the only representations and warranties, express or implied, written or oral, with respect to the subject matter contained in this Section 3.20.

3.21 Assets.

(a) The Company and its Subsidiaries have good and marketable title to all of its or their real or personal properties (whether tangible or intangible), rights and assets, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, in each case, free and clear of all Liens (other than Permitted Liens or as disclosed on Schedule 3.21). The properties and assets owned and leased by the Company and its Subsidiaries are sufficient to carry on their businesses as they are now being conducted except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Company or a Subsidiary of the Company has good and valid leasehold interests in all of its leased properties, whether as lessee or sublessee (the "**Leased Real Property**"), in each case, sufficient to conduct its respective businesses as currently conducted, free and clear of all Liens (other than Permitted Liens), assuming the timely discharge of all obligations owing under or related to Leased Real Property. Except as set forth on Schedule 3.21(b), neither the Company nor any of its Subsidiaries owns or has ever owned any real property.

3.22 Insurance. The Company and its Subsidiaries have and maintain in effect policies of insurance covering the Company, its Subsidiaries or any of their respective

employees, properties or assets, including policies of life, property, fire, workers' compensation, products liability, directors' and officers' liability and other casualty and liability insurance, that is in a form and amount that is customarily carried by persons conducting business similar to that of the Company and its Subsidiaries and which the Company reasonably believes are adequate for the operation of its business. All such insurance policies are in full force and effect, no written notice of cancellation has been received by the Company as of the date hereof and, to the Knowledge of the Company, no such notice is imminent, and there is no existing default or event which, with the giving of notice or lapse of time or both, would constitute a default, by any insured thereunder, except for such defaults that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There is no material claim pending under any of such policies as to which coverage has been denied or disputed by the underwriters of such policies and there has been no threatened termination of any such policies, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.23 Material Contracts.

(a) Except as filed as an exhibit to the Company SEC Filings or as set forth on Schedule 3.23, there are none of the following (each a "**Material Contract**");

(i) Contracts restricting the payment of dividends upon, or the redemption, repurchase or conversion of, the Convertible Preferred Stock or the Common Stock issuable upon conversion thereof;

(ii) joint venture, partnership, limited liability or other similar Contract or arrangement relating to the formation, creation, operation, management or control of any partnership or joint venture that is material to the business of the Company and its Subsidiaries, taken as a whole;

(iii) any Contract relating to the acquisition or disposition of any business, stock or assets that (x) is material to the business of the Company and its Subsidiaries, taken as a whole, other than in the ordinary course of business consistent with past practice, or (y) has representations, covenants, escrows, indemnities, purchase price payments, "earn-outs", adjustments or other obligations that are still in effect;

(iv) Contracts containing any covenant (x) limiting the right of the Company or any of its Subsidiaries to engage in any line of business or in any geographic area, or (y) prohibiting the Company or any of its Subsidiaries from engaging in business with any Person or levying a fine, charge or other payment for doing so;

(v) "material contracts" (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC, excluding any exhibits, schedules and annexes to such material contracts that are not required to be filed with the SEC, and those agreements and arrangements described in Item 601(b)(10)(iii)) with respect to the Company and its Subsidiaries required to be filed with the SEC (the Material Contracts, together with any lease, binding commitment, option, insurance policy, benefit plan or other contract, agreement, instrument or obligation (whether oral or written) to which the Company or any of its Subsidiaries may be bound, the "**Contracts**");

(vi) Contracts relating to indebtedness for borrowed money of the Company or any of its Subsidiaries in an amount exceeding \$250,000;

(vii) Contracts (other than the Transaction Agreements) that would be or purport to be binding on the Purchasers or any of their Affiliates after the Closing;

(viii) Contracts with any Governmental Entity that imposes any material obligation or restriction on the Company or any of its Subsidiaries, taken as a whole; and

(ix) any material Contract with any current or former director, officer or employee, or with any HRG Affiliate.

(b) Each Material Contract is valid and binding on the Company (and/or each such Subsidiary of the Company party thereto) and, to the Knowledge of the Company, on each other party thereto, and is in full force and effect, and neither the Company nor any of its Subsidiaries that is a party thereto, nor, to the Knowledge of the Company, any other party thereto, is in breach of, or default under, any such Material Contract, and no event has occurred that with notice or lapse of time or both would constitute such a breach or default thereunder or would result in the termination thereof or would cause or permit the acceleration or other change of any right or obligation of the loss of any benefit thereunder by the Company or any of its Subsidiaries, or, to the Knowledge of the Company, any other party thereto, except for such failures to be in full force and effect and such breaches and defaults that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.24 Right of First Refusal; Stockholders Agreement; Voting and Registration Rights; and Related Party Transactions. Except as set forth on Schedule 3.24 or as provided for in this Agreement or the other Transaction Agreements, no party has any right of first refusal, right of first offer, right of co-sale, preemptive right, anti-dilution right or other similar right regarding Equity Securities of the Company. Except as set forth on Schedule 3.24, there are no provisions of the Company's organizational documents and no Material Contracts other than the Certificate of Designation, this Agreement or the other Transaction Agreements, which (a) may affect or restrict the voting rights of the Purchasers with respect to the Preferred Shares in their capacity as stockholders of the Company, (b) restrict the ability of the Purchasers, or any successor thereto or assignee or transferee thereof, to transfer the Preferred Shares, (c) would adversely affect the Company's or the Purchasers' right or ability to consummate the transactions contemplated by this Agreement or comply with the terms of the other Transaction Agreements or the Certificates of Designation and the transactions contemplated hereby or thereby, (d) require the vote of more than a majority of the Company's issued and outstanding Common Stock or require a separate class vote, voting together as a single class, to take or prevent any corporate action (other than those matters expressly requiring a different vote under the provisions of the DGCL) or (e) entitle any party to nominate or elect any director of the Company or require any of the Company's stockholders to vote for any such nominee or other person as a director of the Company. Except for the matters disclosed on Schedule 3.24 or as

described in the Company SEC Filings, no Affiliate of the Company or any of its Subsidiaries and no officer or director (or equivalent) of the Company or any of its Subsidiaries (or, to the Company's Knowledge, any family member of any such Person who is an individual or any entity in which any such Person or any such family member thereof owns a material interest): (a) has any material interest in any material asset owned or leased by the Company or any of its Subsidiaries or used in connection with the business of the Company or (b) has engaged in or is a party to any material transaction, arrangement or understanding with the Company or any of its Subsidiaries (other than payments made to, and other compensation provided to, officers and directors (or equivalent) in the ordinary course of business).

3.25 Section 203 of DGCL. The Company has elected in its certificate of incorporation not to be governed by Section 203 of the DGCL and no other state takeover statute or similar regulation applies to or purports to apply to the Transaction Agreements and the transactions contemplated hereby and thereby.

3.26 No Other Representations and Warranties. Except for the representations and warranties contained in Section 3 (including, or as qualified by, the Disclosure Schedule), the Company makes no other representation or warranty, express or implied, written or oral, and hereby, to the maximum extent permitted by applicable Law, disclaims any such representation or warranty, whether by the Company or any other Person, with respect to the Company or with respect to any other information (including, without limitation, pro-forma financial information, financial projections or other forward-looking statements) provided to or made available to any Purchaser in connection with the transactions contemplated hereby. Neither the Company nor any other Person will have or be subject to any liability or indemnification obligation to any Purchaser or any other Person resulting from any other express or implied representation or warranty with respect to the Company, unless any such information is expressly included in a representation or warranty contained in Section 3 or in an applicable section of the Disclosure Schedule.

4. Representations and Warranties of the Purchasers. Except as set forth in Section 4.10, each Purchaser represents and warrants, severally and not jointly, to the Company as follows:

4.1 Organization. Such Purchaser is a legal entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization.

4.2 Authorization. Such Purchaser has all requisite corporate or other power to enter into this Agreement and the other Transaction Agreements to which such Purchaser is a party and to consummate the transactions contemplated by the Transaction Agreements to which such Purchaser is a party and to carry out and perform its obligations thereunder. All corporate or other action on the part of such Purchaser or the holders of the capital stock or other equity interests of such Purchaser necessary for the authorization, execution, delivery and performance of the Transaction Agreements to which such Purchaser is a party has been taken. Upon their respective execution by such Purchaser and the other parties thereto and assuming that they constitute legal and binding agreements of the Company, each of the Transaction Agreements to which such Purchaser is a party will constitute a legal, valid and binding obligation of such Purchaser, enforceable against such Purchaser in accordance with its

terms, except that such enforceability (a) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar Laws affecting or relating to creditors' rights generally, and (b) is subject to general principles of equity (regardless of whether considered in a proceeding in equity or at Law).

4.3 No Conflict. The execution, delivery and performance of the Transaction Agreements to which such Purchaser is a party by such Purchaser, the issuance of the Preferred Shares and the Common Stock upon conversion of the Preferred Shares in accordance with the Certificate of Designation and the consummation of the other transactions contemplated hereby will not (i) conflict with or result in any violation of any provision of the certificate of incorporation or by-laws or other equivalent organizational document, in each case as amended, of such Purchaser, (ii) result in any breach or violation of, or default (with or without notice or lapse of time, or both) under, require consent under, any Contract binding upon such Purchaser or (iii) subject to the matters referred to in Section 4.4, conflict with or violate any applicable Laws or any judgment, order, injunction or decree issued by any Governmental Entity, except in the case of each of clauses (i), (ii) and (iii) as would not, individually or in the aggregate, be reasonably expected to materially delay or hinder the ability of such Purchaser to perform its obligations under the Transaction Agreements (with respect to each Purchaser, a "**Purchaser Adverse Effect**").

4.4 Consents. No Consent of any Governmental Entity is required on the part of such Purchaser in connection with (a) the execution, delivery or performance of the Transaction Agreements to which such Purchaser is a party and the consummation of the transactions contemplated hereby and thereby, and (b) the issuance of the Preferred Shares or the issuance of the Common Stock upon conversion of the Preferred Shares in accordance with the Certificate of Designation, other than (i) those to be obtained, in connection with the registration of the Preferred Shares under the Registration Rights Agreement, under the applicable requirements of the Securities Act and any related filings and approvals under applicable state securities Laws, (ii) such filings and approvals as may be required by any federal or state securities Laws, including compliance with any applicable requirements of the Exchange Act, and (iii) such Consents the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Purchaser Adverse Effect.

4.5 Brokers. Such Purchaser has not retained, utilized or been represented by any broker or finder in connection with the transactions contemplated by this Agreement whose fees the Company would be required to pay.

4.6 Purchase Entirely for Own Account. Such Purchaser is acquiring the Preferred Shares for its own account solely for the purpose of investment, not as nominee or agent, and not with a view to, or for sale in connection with, any distribution of the Preferred Shares in violation of the Securities Act, and such Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same, in violation of the Securities Act. Such Purchaser has no present agreement, undertaking, arrangement, obligation or commitment providing for the disposition of the Preferred Shares.

4.7 Investor Status. Such Purchaser certifies and represents to the Company that such Purchaser is an "accredited investor" as defined in Rule 501 of Regulation D

promulgated under the Securities Act. Such Purchaser's financial condition is such that it is able to bear the risk of holding the Preferred Shares for an indefinite period of time and the risk of loss of its entire investment. Such Purchaser has been afforded the opportunity to receive information from, and to ask questions of and receive answers from the management of, the Company concerning this investment so as to allow it to make an informed investment decision prior to its investment and has sufficient knowledge and experience in investing in companies similar to the Company so as to be able to evaluate the risks and merits of its investment in the Company.

4.8 Securities Not Registered.

(a) Such Purchaser understands that the Preferred Shares and the Conversion Shares have not been approved or disapproved by the SEC or by any state securities commission nor have the Preferred Shares or the Conversion Shares been registered under the Securities Act, by reason of their issuance by the Company in a transaction exempt from the registration requirements of the Securities Act, and that the Preferred Shares and the Conversion Shares must continue to be held by such Purchaser unless a subsequent disposition thereof is registered under the Securities Act or is exempt from such registration. Such Purchaser understands that the exemptions from registration afforded by Rule 144 under the Securities Act ("**Rule 144**") (the provisions of which are known to it) depend on the satisfaction of various conditions, and that, if applicable, Rule 144 may afford the basis for sales only in limited amounts.

(b) The Preferred Shares and the Conversion Shares shall be subject to the restrictions contained herein.

(c) It is understood that the Preferred Shares and the Conversion Shares, and any securities issued in respect thereof or in exchange therefor, may bear one or all of the legends set forth in Section 9.

4.9 Financing. Such Purchaser has (and at the Closing will have) an amount of cash sufficient to enable it to consummate the transactions contemplated hereunder (including the purchase of the Preferred Shares set forth next to such Purchaser's name on Annex A) on the terms and conditions set forth in this Agreement.

4.10 Equity Securities of the Company and its Subsidiaries.

(a) Each of the Luxor Purchasers represent and warrant to the Company that no Luxor Purchasers nor any of their Affiliates Beneficially Owns any Equity Securities of the Company or any of its Subsidiaries, except, as of the Closing, the Preferred Shares.

(b) Each of the DG Purchasers represent and warrant to the Company that, as of immediately prior to the Closing, the DG Purchasers (together with their Affiliates) Beneficially Owns 1,192,335 Common Shares and 5,000 shares of Series A Convertible Preferred Stock.

4.11 Indebtedness. Except as disclosed to the Company in writing on or prior to the date hereof, neither such Purchaser nor any of its Affiliates owns any debt securities or other indebtedness issued by the Company or any of its Subsidiaries.

5. Covenants.

5.1 Shares Issuable Upon Conversion. The Company will at all times have reserved and available for issuance such number of shares of Common Stock as shall be from time to time sufficient to permit the conversion in full of the outstanding Preferred Shares into Common Stock, including as may be adjusted for share splits, combinations or other similar transactions as of the date of determination or due to the accrual of Accreting Dividends.

5.2 Commercially Reasonable Efforts; Further Assurances.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the Purchasers and the Company shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties or parties hereto in doing, all things reasonably necessary, proper or advisable under applicable Law to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement and the other Transaction Agreements, including using commercially reasonable efforts to: (i) cause the conditions to the applicable Closing set forth in Section 6 to be satisfied; (ii) obtain all necessary actions or non-actions, waivers, consents, approvals, orders and authorizations from Governmental Entities and make all necessary registrations, declarations and filings with Governmental Entities; and (iii) execute or deliver any additional instruments reasonably necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement and the other Transaction Agreements.

(b) Each party agrees to cooperate with each other and their respective officers, employees, attorneys, accountants and other agents, and, generally, do such other reasonable acts and things in good faith as may be reasonably necessary to effectuate the transactions contemplated by this Agreement and the other Transaction Agreements, subject to the terms and conditions hereof and thereof and compliance with applicable Law, including taking reasonable action to facilitate the filing of any document or the taking of reasonable action to assist the other parties hereto in complying with the terms hereof and thereof.

5.3 Standstill.

(a) Each Purchaser hereby agrees that from the Closing until the date that is three (3) years following the Closing (the “**Standstill Period**”), such Purchaser shall not, and shall cause its Affiliates not to, directly or indirectly:

(i) except for Equity Securities of the Company received (1) by way of stock splits, stock dividends, reclassifications, recapitalizations or other distributions by the Company in respect of the Preferred Shares or, with respect to the DG Purchasers, shares of Series A Convertible Preferred Stock held by such Purchasers on the date hereof (or the Common Stock issuable on conversion of the Preferred Shares or such shares of Series A Convertible Preferred Stock), (2) pursuant to the conversion of the Preferred Shares or,

with respect to the DG Purchasers, shares of Series A Convertible Preferred Stock held by such Purchasers on the date hereof, (3) pursuant to Section 5.4 or 5.5, (4) by such Purchaser by way of a transfer or sale from any other Purchaser or, with respect to the DG Investors, a transfer or sale from any Purchaser under and as defined in the Securities Purchase Agreement, dated as of May 29, 2014, between the Company and the purchasers party thereto, subject to the terms and conditions thereof, (5) by way of an issuance by the Company, or (6) upon the exercise or conversion of any convertible or exercisable Equity Securities of the Company received pursuant to the foregoing sub-clauses (1), (2), (3), (4) or (5), (x) acquire (directly or indirectly, by purchase or otherwise) any Equity Securities of the Company or (y) authorize or make a tender offer, exchange offer or other offer or proposal, whether oral or written, to acquire (directly or indirectly, by purchase or otherwise) Equity Securities of the Company, in each case, if such acquisition (together with any other Equity Securities of the Company previously acquired) would result in such Purchaser and its Affiliates Beneficially Owning (on an as converted basis) an amount of Common Stock equal to or greater than fifteen percent (15%) of the Company's issued and outstanding Common Stock (assuming the conversion of the Preferred Shares and shares of Series A Convertible Preferred Stock held by such Purchaser and its Affiliates);

(ii) except indirectly as a result of ownership of Equity Securities of the Company acquired hereunder at any Closing or thereafter in accordance with Section 5.3(a)(i), (x) acquire (directly or indirectly, by purchase or otherwise) any Equity Securities of any Subsidiary of the Company or (y) authorize or make a tender offer, exchange offer or other offer or proposal, whether oral or written, to acquire (directly or indirectly, by purchase or otherwise) Equity Securities of any Subsidiary of the Company, in each case if such acquisition (together with any other Equity Securities of any Subsidiary of the Company previously acquired) would result in such Purchaser and its Affiliates Beneficially Owning (on an as converted basis) an amount of any such Subsidiary's common stock equal to or greater than fifteen percent (15%) of such Subsidiary's issued and outstanding common stock (assuming conversion of any Equity Securities that is convertible into common stock held by such Purchaser and its Affiliates);

(iii) make, or in any way participate, directly or indirectly, in any "solicitation" of "proxies" to vote (as such terms are used in the rules of the SEC), or seek to advise or influence any Person (other than (x) such Purchaser or its Affiliates or (y) in accordance with and consistent with the recommendation of the Board) with respect to the voting of any Voting Stock;

(iv) authorize or commence any tender offer or exchange offer for shares of Voting Stock (for the avoidance of doubt, tendering into any tender offer or exchange offer not otherwise violating this clause this Section 5.3(a)(iv) will not violate this Section 5.3(a)(iv));

(v) form, join or in any way participate in a "group" as defined in Section 13(d)(3) of the Exchange Act, for the purpose of voting, acquiring, holding, or disposing of any Voting Stock;

(vi) submit to the Board a written proposal for or offer of (with or without conditions), any merger, recapitalization, reorganization, business combination or other extraordinary transaction involving the Company or any Subsidiary thereof or any of the securities or assets, or make any public announcement with respect to such proposal or offer;

(vii) request the Company or any of its Affiliates, directly or indirectly, to amend or waive any provision of this Section 5.3; or

(viii) enter into any arrangements with any third party concerning any of the foregoing.

(b) If, at any time prior to the termination of the Standstill Period, (i) the Company has entered into a definitive agreement, the consummation of which would result in a Change of Control, (ii) any Person shall have commenced and not withdrawn a bona fide public tender or exchange offer which if consummated would result in a Change of Control and the Board has not recommended that the stockholders of the Company reject such offer within the time period contemplated by Rule 14e 3 under the Exchange Act, or (iii) the Company files or consents to the filing against the Company of a petition for relief or reorganization or arrangement or any other petition in bankruptcy, insolvency, reorganization or other similar Law, makes an assignment for the benefit of creditors or consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to the Company or with respect to any substantial part or its property, then, in each case, for so long as such condition continues to apply, the limitation on the actions described in clauses (iii), (iv), (v), (vi), (vii) and (viii) of Section 5.3(a) (and any related acquisition of Beneficial Ownership by such Purchaser and/or their Affiliates) shall not be applicable to such Purchaser.

(c) Anything in this Section 5.3 to the contrary notwithstanding, this Section 5.3 shall not be construed to prohibit or restrict (i) any actions taken by any designee, nominee or appointee on the Board, in their capacities as a member of the Board and in compliance with and subject to his or her fiduciary duties as a member of the Board, (ii) the Purchaser from making non-public suggestions, recommendations and proposals regarding the future management of, or business plans of, the Company to the Company's management or its Board, in each case that would not require any Person to publicly disclose such suggestions, recommendations or proposals, or (iii) taking any action for purposes of exercising or enforcing such Purchaser's right under Section 7 of the Certificate of Designation (Director Election Rights).

5.4 Participation Rights.

(a) For so long as the Luxor Purchasers own at least 50% of the aggregate number of Preferred Shares issued to the Luxor Purchasers at the Closing (or the Common Stock issued upon conversion thereof), the Company shall not issue, or agree to issue, any Equity Securities of the Company to any Person unless the Company offers each Luxor Purchaser (in the case of clause (ii), together with its Affiliates) the right (the "**Securities Participation Right**") to purchase in the aggregate (i) subject to the following clause (ii), up to the number of such Equity Securities of the Company (the "**Securities Participation Amount**") equal to the product of (x) the total number of such offered shares of Equity Securities of the Company multiplied by (y) such Luxor Purchaser's Participation Rights Fraction, or (ii) in the event that the Equity Securities of the Company issued are preferred stock that are not

convertible into Common Stock (or Equity Securities of the Company that are convertible into Common Stock) and non-voting (treating preferred stock that is entitled to elect no more than two directors upon a default resulting from the failure to pay six (6) or more consecutive quarterly dividends as non-voting for this purpose) (“**Non-Convertible Preferred Securities**”), up to 6% of the total issuance by the Company (the “**Non-Convertible Preferred Participation Amount**”), at the same price per security (payable in cash, except to the extent that the consideration for such issuance is an exchange of Convertible Preferred Stock) and otherwise upon the same terms and conditions as those offered to such Person in accordance with the procedures set forth in this Section 5.4; provided that the Securities Participation Rights shall not be applicable to the issuance of the following Equity Securities of the Company: (i) an underwritten registered public offering of Common Stock for cash (which shall exclude for this purpose any registered direct offering to one or more purchasers (other than to or through brokers, dealers, underwriters or market makers, in each case purchasing for resale to investors) in an aggregate amount greater than the lesser of \$5 million and 1% of the shares of the Company’s Common Stock then outstanding), (ii) an issuance of equity or equity linked securities pursuant to any director, officer or employee compensation arrangements that is permitted, or not prohibited by, the Certificate of Designation or any issuance of equity or equity linked securities pursuant to the existing terms of any such arrangements in effect as of the Closing Date, (iii) an issuance of equity to a seller, or in the case of a merger, the shareholders of the target company, and the employees or officers of any target company in connection with a bona fide merger, business combination transaction or acquisition of stock or assets outside of the ordinary course (other than any issuance to an Affiliate in connection thereof), (iv) a conversion of shares of one class of capital stock of the Company into shares of another class of capital stock of the Company in accordance with the terms of such securities, (v) a stock split or other subdivision or combination, or a stock dividend made to all holders on a pro rata basis of any Equity Securities of the Company, (vi) an issuance of any Additional Preferred Securities following compliance with Section 5.5, or (vii) an issuance of Equity Securities of the Company that is incidental to and is issued as part of a debt financing from a bank, institutional lender or similar financial institution. For purposes of clarity, the parties agree that the issuance of Conversion Shares shall not be subject to the Securities Participation Rights. In no event will any Convertible Preferred Stock, Series A Convertible Preferred Stock (or any Common Stock issuable in connection with the conversion of any Convertible Preferred Stock or Series A Convertible Preferred Stock) issued in connection with or as a result of accretions to the face amount of, or payments in kind with respect to, any Convertible Preferred Stock, Series A Convertible Preferred Stock or Equity Securities of the Company outstanding on the Closing or otherwise permitted to be issued, or not prohibited, by the Certificate of Designation be subject to the Securities Participation Rights. A Luxor Purchaser shall be entitled to apportion or assign its Securities Participation Amount or Non-Convertible Preferred Participation Amount in such proportions as it deems appropriate, among itself, its Affiliates, and to any other Luxor Purchaser, provided that the total amount of Non-Convertible Preferred Participation Amount that the Luxor Purchasers shall be entitled to purchase in the aggregate pursuant to this section shall not exceed 6% of the aggregate amount of Non-Convertible Preferred Securities issued in such transaction.

(b) In addition to the foregoing, for so long as a Purchaser (along with its Affiliates) owns at least 50% of the aggregate number of Preferred Shares issued to such Purchaser and its Affiliates at the Closing (or the Common Stock issued upon conversion thereof), if the Company or any Subsidiary of the Company determines to (x) sell or issue debt

securities to, or (y) establish any loan or credit facility or line of credit with, any lender(s) (each a “**Debt Transaction Lender**” and collectively the “**Debt Transaction Lenders**”), in each case, resulting in or providing for the incurrence of indebtedness for borrowed money by the Company or such Subsidiary (excluding (i) trade payables, (ii) capital lease obligations, (iii) indebtedness solely by and between the Company and any of its Wholly Owned Subsidiaries, or (iv) any working capital credit facility or line of credit providing financing to Schuff or any of its Subsidiaries) (any such issuance or incurrence not so excluded, a “**Debt Transaction**”), the Company must offer, or cause the Subsidiary to offer, Luxor Purchaser (along with its Affiliates) the right (the “**Debt Participation Right**” and, together with the Securities Participation Right, the “**Participation Rights**”) to purchase a portion of the securities or indebtedness issued or incurred in such Debt Transaction equal to, (x) for the Luxor Purchasers, in the aggregate 10% of the aggregate principal amount of the securities or indebtedness issued or incurred in such Debt Transaction and (y) for the DG Purchasers, in the aggregate 1% of the aggregate principal amount of the securities or indebtedness issued or incurred in such Debt Transaction (respectively, the “**Debt Participation Amount**”), on the same terms and conditions as the Debt Transaction Lenders. A Purchaser shall be entitled to apportion or assign its Debt Participation Amount in such proportions as it deems appropriate, among itself, its Affiliates, and to any other Purchaser, provided that the total amount of Debt Participation Amount that the Purchasers shall be entitled to purchase in the aggregate pursuant to this section shall not exceed 11% of the aggregate principal amount of the securities or indebtedness issued or incurred in such Debt Transaction.

(c) *Securities Participation Rights Process.*

(i) The Company shall send a written notice (the “**Securities Participation Rights Notice**”) to each Luxor Purchaser stating the number of Equity Securities of the Company to be offered, a description of the terms of such Equity Securities of the Company if not Common Stock, the price and terms on which it proposes to offer such Equity Securities of the Company (including a description of any non-cash consideration sufficiently detailed to permit a valuation thereof), and a reference to such Luxor Purchaser’s Securities Participation Rights hereunder.

(ii) Within ten (10) Business Days after the delivery of the Securities Participation Rights Notice, each such Luxor Purchaser may elect by written notice to the Company (the “**Securities Exercise Notice**”) to purchase such Equity Securities of the Company, at the price and on the terms specified in the Securities Participation Rights Notice (or, if such price includes non-cash consideration, an amount of cash equal to the fair market value of such non-cash consideration, except to the extent that the consideration for such issuance is an exchange of Convertible Preferred Stock), up to (i) such Luxor Purchaser’s Securities Participation Amount or, (ii) in the event that the offered securities are preferred securities that are not convertible into Common Stock or Equity Securities of the Company that are convertible into Common Stock, up to such Luxor Purchaser’s Non-Convertible Preferred Participation Amount (or, in the case of each of the foregoing clauses (i) and (ii), such higher amount as has been assigned to such Luxor Purchaser by any other Luxor Purchaser in accordance with Section 5.4(a) hereof). A Securities Exercise Notice shall constitute a binding agreement of such Luxor Purchaser to purchase the amount of Equity Securities of the Company so specified at the price and other terms set forth in the Securities Participation Rights Notice

(subject to the form, terms and conditions of the definitive documentation thereof being reasonable satisfactory to such Luxor Purchaser). Assuming delivery of the Securities Participation Rights Notice in accordance with the terms hereof, the failure of any such Luxor Purchaser to respond within such ten (10) Business Day period shall be deemed a waiver of such Luxor Purchaser's rights under this Section 5.4 with respect to the offering described in the applicable Securities Participation Rights Notice. Notwithstanding anything to the contrary herein, at any time prior to the issuance of the Equity Securities of the Company (whether or not a Securities Exercise Notice shall have been delivered), the Company may elect (in its sole discretion), upon written notice to the applicable Luxor Purchasers, not to issue such Equity Securities of the Company and rescind, in such event, the applicable Securities Participation Rights Notice without liability to any Person hereunder.

(iii) Subject to the last sentence of this Section 5.4(c)(iii), the Company may offer the Equity Securities of the Company specified in the Securities Participation Rights Notice in excess of the Securities Participation Amount, if any, to any Person or Persons at a price not less than, and on terms no more favorable to such offerees than, those set forth in such Securities Participation Rights Notice, at any time after the Securities Participation Rights Notice is sent but on or before the 90th day after the Securities Participation Rights Notice was sent. In addition, during the period beginning ten (10) Business Days after the Securities Participation Rights Notice was sent and ending on the 90th day after the Securities Participation Rights Notice was sent, the Company may offer any Equity Securities of the Company of the Securities Participation Amount that are not timely elected to be purchased by the applicable Luxor Purchasers in accordance herewith to any other Person or Persons, provided that if such Equity Securities of the Company are to be offered at a price less than, or on terms materially more favorable to such offerees than, those specified in the Securities Participation Rights Notice, the Company shall promptly notify the applicable Luxor Purchasers in writing of such modified terms and such Luxor Purchasers shall have five (5) Business Days after the receipt of such notice in which to elect to purchase the Securities Participation Amount of such Equity Securities of the Company at the price and on the terms specified in such subsequent notice.

(iv) The closing of the purchase of Equity Securities of the Company by each Luxor Purchaser pursuant to this Section 5.4(c) shall occur as promptly as practicable following delivery of the Securities Exercise Notice to the Company by all Luxor Purchasers; provided that such closing shall be subject to and shall occur not earlier than the later of (x) concurrently with the closing of the purchase of Equity Securities of the Company by such offeree and (y) ten (10) Business Days after delivery of the Securities Exercise Notice by each Luxor Purchaser to the Company. The closing of the purchase of Equity Securities of the Company by the applicable Luxor Purchasers pursuant to this Section 5.4(c) shall also be subject to the receipt of any necessary regulatory approvals, the expiration of any required waiting periods and applicable Law.

(v) Notwithstanding anything to the contrary contained in this Agreement, in the event any Luxor Purchaser would be required to file any Notification and Report Form pursuant to the HSR Act as a result of the purchase of Equity Securities of the Company by such Luxor Purchaser pursuant to this Section 5.4, the closing of such purchase by such Luxor Purchaser shall be delayed (in whole, or at the option of such Luxor Purchaser, only

to the extent necessary to avoid a violation of the HSR Act), until such Luxor Purchaser shall have made such filing under the HSR Act and such Luxor Purchaser shall have received early termination clearance in respect thereof or the waiting period in connection with such filing under the HSR Act shall have expired. In such circumstances such Luxor Purchaser shall use commercially reasonable efforts to make such filing and obtain such clearance or expiration of such waiting period as promptly as reasonably practical and the Company shall use commercially reasonable efforts to make all required filings and reasonably cooperate with and assist such holder in connection with the making of such filing and obtaining such clearance or expiration of such waiting period.

(d) *Debt Participation Rights Process.*

(i) The Company shall send a written notice (the “**Debt Participation Rights Notice**”) to each Purchaser stating the amount of indebtedness the Company or its Subsidiary plans to incur in connection with the Debt Transaction, a description of the terms and conditions of the Debt Transaction, and a reference to the such Purchaser’s Debt Participation Rights hereunder.

(ii) Within ten (10) Business Days after the delivery of the Debt Participation Rights Notice, each such Purchaser may elect by written notice to the Company (the “**Debt Exercise Notice**”), to participate in the Debt Transaction on the terms and conditions specified in the Debt Participation Rights Notice, for a portion of the indebtedness issued or incurred in the Debt Transaction up to the Debt Participation Amount (or such higher amount as assigned to such Purchaser by any other Purchaser in accordance with Section 5.4(b) hereof) and the Company or its Subsidiary, as the case may be, shall include or shall cause the Debt Transaction Lenders to include such Purchaser as a lender in such Debt Transaction. A Debt Exercise Notice shall constitute a binding agreement of such Purchaser to purchase the amount of indebtedness issued or incurred in the Debt Transaction so specified at the price and other terms set forth in the Debt Participation Rights Notice (subject to the form, terms and conditions of the definitive documentation thereof being reasonable satisfactory to such Purchaser). Assuming delivery of the Debt Participation Rights Notice in accordance with the terms hereof, the failure of such Purchaser to respond within such ten (10) Business Day period shall be deemed a waiver of such Purchaser’s rights under this Section 5.4 with respect to the offering described in the applicable Debt Participation Rights Notice. Notwithstanding anything to the contrary herein, at any time prior to the closing of a Debt Transaction (whether or not a Debt Exercise Notice shall have been delivered), the Company or its Subsidiary, as the case may be, may elect (in its sole discretion), upon written notice to such Purchaser, to terminate such Debt Transaction and, in such event, rescind the applicable Debt Participation Rights Notice without liability to any Person hereunder.

(iii) Subject to the last sentence of this Section 5.4(d)(iii), the Company or its Subsidiary, as the case may be, may offer indebtedness in connection with any Debt Transaction specified in the Debt Participation Rights Notice in excess of the Debt Participation Amount, if any, to any Person or Persons at a price not less than, and on terms no more favorable to such offerees than, those set forth in such Debt Participation Rights Notice, at any time after the Debt Participation Rights Notice is sent but on or before the 90th day after the Debt Participation Rights Notice was sent. In addition, during the period beginning ten (10)

Business Days after the Debt Participation Rights Notice was sent and ending on the 90th day after the Debt Participation Rights Notice was sent, the Company or its Subsidiary, as the case may be, may offer any indebtedness of the Debt Participation Amount that is not timely elected to be purchased by the applicable Purchaser in accordance herewith to any other Person or Persons, provided that if such indebtedness is to be offered at a price less than, or on terms materially more favorable to such offerees than, those specified in the Debt Participation Rights Notice, the Company shall promptly notify the applicable Purchaser in writing of such modified terms and such Purchaser shall have five (5) Business Days after the receipt of such notice in which to elect to purchase the Debt Participation Amount of such indebtedness at the price and on the terms specified in such subsequent notice.

(iv) The closing of the purchase of the indebtedness in the Debt Transaction by each Purchaser pursuant to this Section 5.4(d) shall occur as promptly as practicable following the delivery of the Debt Exercise Notice to the Company by all Purchasers; provided that such closing shall be subject to and shall occur not earlier than the later of (x) concurrently with the closing of the purchase of the indebtedness by the applicable offeree and (y) ten (10) Business Days after delivery of the Debt Exercise Notice to the Company by each Purchaser. The closing of the purchase of the indebtedness by the applicable Purchaser pursuant to this Section 5.4(d) shall also be subject to the receipt of any necessary regulatory approvals, the expiration of any required waiting periods and applicable Law.

5.5 Rights with Respect to Additional Preferred Security. Subject to the terms and conditions of this Subsection 5.5 and applicable securities laws, and for so long as a Luxor Purchaser (along with its Affiliates) owns at least 50% of the aggregate number of Preferred Shares issued to such Luxor Purchaser and its Affiliates at the Closing (or the Common Stock issued upon conversion thereof), if the Company proposes to offer or sell any Additional Preferred Securities, the Company shall first offer such Additional Preferred Securities to each Luxor Purchaser. A Luxor Purchaser shall be entitled to apportion or assign the right of first offer to purchase any Additional Preferred Securities hereby granted to it (the “**Right of First Offer**”) in such proportions as it deems appropriate, among itself, its Affiliates and to any DG Purchaser or other Preferred Holder.

(a) The Company shall give notice (the “**Offer Notice**”) to each Luxor Purchaser, stating (i) its bona fide intention to offer such Additional Preferred Securities, (ii) the number of such Additional Preferred Securities to be offered, and (iii) the price and terms, if any, upon which it proposes to offer such Additional Preferred Securities. The Company shall be required to give an additional Offer Notice to each Luxor Purchaser if, at any time following the delivery of the first Offer Notice, there is any alteration of the material terms upon which it proposes to offer such Additional Preferred Securities (including but not limited to a reduction in the proposed conversion price).

(b) By notification to the Company within five (5) days after the Offer Notice is given, each Luxor Purchaser may elect to purchase or otherwise acquire, at the price and on the terms specified in the Offer Notice, up to that portion of such Additional Preferred Securities which equals the proportion that the Common Stock then held by such Luxor Purchasers (along with its Affiliates (provided that no Affiliates’ interest is counted more than once)) on an as converted basis bears to the total Common Stock then held by (x) the Luxor Purchasers (along with their

Affiliates) and (y) the Preferred Holders (along with their Affiliates), in each case on an as converted basis (or such higher amount as has been assigned to such Luxor Purchaser by any other Luxor Purchaser in accordance with Section 5.5 hereof or by the Preferred Holders in accordance with the terms of the May SPA). At the expiration of such five (5) day period, the Company shall promptly notify each Luxor Purchaser that elects to purchase or acquire all the shares available to it (together with any Preferred Holder that elects to purchase or acquire all the shares available to it under the May SPA, each, a “**Fully Exercising Investor**”) of any other Luxor Purchaser’s failure to do likewise and of any Preferred Holder’s failure to do likewise under the May SPA. During the five (5) day period commencing after the Company has given such notice, each Fully Exercising Investor may, by giving notice to the Company, elect to purchase or acquire, in addition to the number of shares specified above, up to that portion of the Additional Preferred Securities for which the Luxor Purchasers and the Preferred Holders (under the May SPA) were entitled to subscribe but that were not subscribed for by the Luxor Purchasers or the Preferred Holders (under the May SPA) which is equal to the proportion that the Common Stock issued and held by such Luxor Purchaser (along with its Affiliates (provided that no Affiliates’ interest is counted more than once)) on an as converted basis bears to the Common Stock issued and held (on an as converted basis) by all the other Fully Exercising Purchasers who wish to purchase such unsubscribed shares. The closing of any sale pursuant to this Subsection 5.5(b) shall occur within the later of ninety days of the date that the Offer Notice is given and the date of initial sale of Additional Preferred Securities pursuant to Subsection 5.5(c).

(c) If all Additional Preferred Securities referred to in the Offer Notice are not elected to be purchased or acquired as provided in Subsection 5.5(b), the Company may, during the ninety (90) day period following the expiration of the periods provided in Subsection 5.5(b), offer and sell the remaining unsubscribed portion of such Additional Preferred Securities to any Person or Persons at a price not less than, and upon terms no more favorable to the offeree in any material respect, than, those specified in the Offer Notice. If the Company does not enter into an agreement for the sale of the Additional Preferred Securities within such period, or if such agreement is not consummated within ninety (90) days of the execution thereof, the right provided hereunder shall be deemed to be revived and such Additional Preferred Securities shall not be offered unless first reoffered to the Luxor Purchasers in accordance with this Subsection 5.5.

5.6 Hedging Restrictions. Each Purchaser agrees that, during the Hedging Limitation Period, it shall not, and shall cause each of its Affiliates not to, enter into any Hedging Agreement with respect to the Common Stock, the Convertible Preferred Stock the Series A Convertible Preferred Stock or the equity securities of any Subsidiary of the Company that are traded on a national securities exchange or the OTCQB. For the avoidance of doubt, following the Hedging Limitation Period, nothing in this Section 5.6 shall prohibit such Purchaser or its Affiliates from entering into any Hedging Agreement with respect to the Common Stock, the Convertible Preferred Stock or the Series A Convertible Preferred Stock or the equity securities of any Subsidiary of the Company, including any transactions involving an index-based portfolio of securities that includes Common Stock or the equity securities of any Subsidiary of the Company (regardless of the value of such Common Stock or equity securities of any Subsidiary of the Company in such portfolio relative to the total value of the portfolio of securities) or involving the purchase or sale of derivative securities or any short sale of the Common Stock or the equity securities of any Subsidiary of the Company.

5.7 Form 8-K. The Company shall, promptly following the date hereof (but in any event within the time period required by the rules and regulations of the SEC), file a Current Report on Form 8-K, disclosing the material terms of the transactions contemplated hereby and filing the Transaction Agreements as exhibits thereto, provided that the Company shall afford the Purchasers with reasonable opportunity to review and comment on such Current Report on Form 8-K prior to the filing thereof.

5.8 Tax Characterization. Unless otherwise required by a “determination”, as defined in Section 1313(a) of the Code, the parties agree to treat the Convertible Preferred Stock as stock other than preferred stock for U.S. federal, and to the extent applicable, state and local income tax purposes.

5.9 Confidential Information.

(a) Each Purchaser recognizes that Confidential Information may have been and may be disclosed to such Purchaser by the Company or any of its Subsidiaries. Each Purchaser shall not engage in the unauthorized use, and shall cause its Affiliates not to engage in the unauthorized use, or make any unauthorized disclosure to any third party, of any Confidential Information without the prior written consent of the Company and shall use due care to ensure that such Confidential Information is kept confidential, including by treating such information as such party would treat its own Confidential Information. Notwithstanding the foregoing, the Purchasers shall have the right to share any Confidential Information with any of their Representatives, each of whom shall be required to agree to keep confidential such Confidential Information to the extent required of the Purchaser under this Section 5.9. As used herein, “**Confidential Information**” means all information, knowledge, systems or data relating to the business, operations, finances, policies, strategies, intentions or inventions of the Company and/or its Subsidiaries (including any of the terms of this Agreement) from whatever source obtained, except for any such information, knowledge, systems or data which (i) has become publicly known and made generally available through no wrongful act of such Purchaser, (ii) has been rightfully received by such Purchaser from a third party who, to the knowledge of such Purchaser, is not bound any obligations of confidentiality with respect to such information, knowledge, systems or data, (iii) is independently developed by such Purchaser without use of Confidential Information, (iv) is already known by or is already in the possession of such Purchaser or any of its Affiliates prior to the date hereof, or (v) subject to the obligations set forth in Section 5.9(b), is required by law, court order, subpoena, stock exchange, self-regulatory organization, governmental agency, or regulatory body to be disclosed.

(b) If any Purchaser is requested to disclose any Confidential Information by any Governmental Entity or for any regulatory reason, such Purchaser will promptly notify the Company, as is reasonably practicable and legally permissible under the circumstances, to permit it to seek a protective order or take other action that the Board in its discretion deems appropriate, and such Purchaser will cooperate in any such efforts to obtain a protective order or other reasonable assurance that confidential treatment will be accorded such Confidential Information, at the Company’s sole cost and expense. If, in the absence of a protective order, such Purchaser is compelled to disclose any such information in any proceeding or pursuant to legal process, such Purchaser may disclose to the party compelling disclosure only the part of such Confidential Information as is required to be disclosed (in which case, prior to

such disclosure, such Purchaser will advise and, if requested by the Board, consult with the Company and its counsel as to such disclosure and the nature and wording of such disclosure) and such Purchaser will use its commercially reasonable efforts to obtain confidential treatment therefor. Notwithstanding the foregoing, the Purchaser shall not be required to notify the Company if it is required to disclose Confidential Information pursuant to a routine regulatory inquiry or blanket document request, not targeting the Company or the Board.

6. Conditions Precedent.

6.1 Conditions to the Obligation of the Purchasers to Consummate the Closing. The obligations of the Purchasers to consummate the transactions to be consummated at the Closing, and to purchase and pay for the Preferred Shares pursuant to this Agreement, are subject to the satisfaction of the following conditions precedent:

- (a) the Company shall have filed with the Secretary of State of the State of Delaware the Certificate of Designation;
- (b) the Company shall have executed and delivered the Registration Rights Agreement; and

(c) the Company shall have delivered to the Purchasers a certificate dated as of the Closing Date to the effect that each of the conditions specified in Section 6.1 has been satisfied ("**Closing Certificate**").

6.2 Conditions to the Obligation of the Company to Consummate the Closing. The obligation of the Company to consummate the transactions to be consummated at the Closing, and to issue and sell to the Purchasers the Preferred Shares pursuant to this Agreement, is subject to the satisfaction of the following conditions precedent:

- (a) each Purchaser shall have executed and delivered each Transaction Agreement to which such Purchaser is a party; and
- (b) the Certificate of Designation shall have been duly filed and accepted by the Secretary of State of the State of Delaware.

7. Additional Covenants.

7.1 Material Non-Public Information. If, at any time, a Luxor Purchaser has notified the Company in writing that it does not want to receive any material nonpublic information regarding the Company and its Subsidiaries, the Company shall thereafter not disclose material nonpublic information to such Luxor Purchaser, or to advisors to or representatives of such Luxor Purchaser (in their capacity as such) until such time as such Luxor Purchaser may again request in writing to receive such information.

7.2 Information Rights. For so long as the Luxor Purchasers and their Affiliates collectively own at least seven and a half percent (7.5%) of the issued and outstanding shares of Common Stock (assuming conversion of any Preferred Shares they own), whether or not the Company is required to file any forms, reports or documents with the SEC, the Company

shall deliver to each such Luxor Purchaser all quarterly and annual financial information that would be required to be contained in a filing with the SEC on Form 10-Q or Form 10-K, as applicable, if the Company were required to file such Form with the SEC and, with respect to the annual information only, a report thereon by the Company's independent registered accountants. Notwithstanding the foregoing, the Company's obligation under this Section 7.2 to deliver the foregoing information shall be deemed to have been satisfied upon the filing of the abovementioned forms, reports and documents with the SEC in accordance with applicable Laws.

7.3 Consent to Debt Issuance; Waiver of Debt Participation Rights. Each of the Purchasers does hereby (a) consent to the Debt Issuance (inclusive of all interest and other fees and expenses accrued in the ordinary course in connection with such indebtedness), including pursuant to Section 9(a) of the Certificate of Designation and (b) waive its Debt Participation Right with respect to such Debt Issuance. For the avoidance of doubt, the consent granted pursuant to the immediately preceding sentence is limited to the Initial Interim Term Loans and the Delayed Draw Interim Term Loans described in the Credit Agreement (as described in the Credit Agreement provided as of the date hereof). Each of the Purchasers does hereby further consent to, pursuant to Section 9(a) of the Certificate of Designation, any issuance of indebtedness in connection with any refinancing of indebtedness under the Credit Agreement, including a refinancing of such indebtedness pursuant to the Permanent Notes Documents or the Exchange Notes Documents (each as defined in the Credit Agreement) provided that (i) in the case of the issuance of Exchange Notes (as defined in the Credit Agreement), such Exchange Notes are issued in accordance with the terms of the Credit Agreement and (ii) in the case of any other refinancing, the principal amount of such indebtedness (A) does not exceed the sum of (x) the then outstanding principal plus accrued and unpaid interest under the Credit Agreement, plus (y) any principal amount that was previously prepaid under the Credit Agreement plus (z) any related refinancing fees and expenses and (B) the entire proceeds of the issuance of such indebtedness (less an amount equal to any principal amount that was previously prepaid under the Credit Agreement) are used to repay indebtedness under the Credit Agreement and any related refinancing fees and expenses. Each of the Purchasers does hereby further waive its rights pursuant to Section 5.4 of this Agreement to participate in any issuance of indebtedness issued pursuant to Exchange Notes (as defined in the Credit Agreement). For the avoidance of doubt, the waiver granted pursuant to this Section 7.3 shall not apply to, and the Purchasers hereby expressly reserve their right pursuant to Section 5.4 of this Agreement to participate in, the issuance of indebtedness issued pursuant to the Permanent Notes Documents (as defined in the Credit Agreement).

8. Transfer Restrictions. Each Purchaser understands and agrees that the Preferred Shares and any Conversion Shares may be offered, resold, pledged or otherwise transferred only (a) in a transaction not involving a public offering, (b) pursuant to an exemption from registration under the Securities Act provided by Rule 144 thereunder (if available), (c) pursuant to an effective registration statement under the Securities Act, (d) to the Company or one of its Subsidiaries, (e) to any Affiliate of such Purchaser (provided such Person is an institutional investor) or (f) to any other holder of shares of Convertible Preferred Stock and to any Affiliates thereof (provided such Person is an institutional investor); in each of cases (a) through (e) in accordance with any applicable state and federal securities laws; provided that as a condition precedent to a transfer of any Preferred Shares or Conversion Shares to an Affiliate of a

Purchaser pursuant to clause (e), any such Affiliate shall assume, on a several and not joint basis, all then continuing obligations of such Purchaser hereunder pursuant to a written agreement reasonably acceptable to the Company. Any purported transfer of Preferred Shares or Conversion Shares other than in compliance with the terms hereof shall be void ab initio.

9. Legends; Securities Act Compliance.

9.1 Legend. Each certificate representing the Preferred Shares and each certificate representing Conversion Shares will bear a legend conspicuously thereon to the following effect:

“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, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF UNLESS THE SAME ARE REGISTERED AND QUALIFIED IN ACCORDANCE WITH THE SAID ACT AND ANY OTHER APPLICABLE STATE SECURITIES LAWS OR SUCH OFFER, SALE, TRANSFER OR OTHER DISPOSITION IS EXEMPT FROM REGISTRATION UNDER SUCH ACT AND ANY OTHER APPLICABLE STATE SECURITIES LAWS.”

9.2 Termination of 1933 Act Legend. The requirement imposed by Section 9.2 hereof shall cease and terminate as to any particular Preferred Shares (a) when, in the opinion of counsel reasonably acceptable to the Company, such legend is no longer required in order to assure compliance by the Company with the Securities Act or (b) when such Preferred Shares have been effectively registered under the Securities Act or transferred pursuant to Rule 144. Wherever (x) such requirement shall cease and terminate as to any Preferred Shares or (y) such Preferred Shares shall be transferable under paragraph (b)(1) of Rule 144, the holder thereof shall be entitled to receive from the Company, without expense, new certificates not bearing the legend set forth in Section 9.2 hereof.

10. Indemnification; Survival.

10.1 Company Indemnification. The Company shall defend, indemnify, exonerate and hold free and harmless each Purchaser and its Affiliates and their respective directors, officers and employees (each, a “**Purchaser Indemnified Party**” and, collectively, the “**Purchaser Indemnified Parties**”) from and against any and all Losses actually incurred by such Indemnified Parties that arise out of, or result from: (i) any inaccuracy in or breach of the Company’s representations or warranties in this Agreement or the Closing Certificates or (ii) the Company’s breach of its agreements or covenants in this Agreement.

10.2 Survival of Representations and Warranties; Covenants. The representations and warranties contained herein shall survive until the earlier of (i) 5:00 p.m. EDT on the twenty four (24) month anniversary of the Closing or (ii) the date that the Public Float Hurdle (as such term is defined in the Certificate of Designation) is met but in any event

for a minimum of fifteen (15) months following the Closing, other than the representations and warranties set forth in Sections 3.1, 3.2, 3.3, and 3.4, which shall survive indefinitely. For the avoidance of doubt, all other covenants, agreements and obligations contained in this Agreement shall survive indefinitely (unless a different period is specifically provided for pursuant to the provisions of this Agreement expressly relating thereto).

10.3 Purchaser Indemnification. Each Purchaser, severally and not jointly, shall defend, indemnify, exonerate and hold free and harmless the Company and its Affiliates and their respective directors, officers and employees (each a “**Company Indemnified Party**” and collectively, the “**Company Indemnified Parties**”) from and against any and all Losses actually incurred by such Company Indemnified Parties that arise out of, or result from: (i) any inaccuracy in or breach of such Purchaser’s representations or warranties in this Agreement (which breach and any resulting Losses shall be determined for purposes of this Section 10.3 without giving effect to any qualification as to “materiality”, “Material Adverse Affect” or words of like meaning set forth therein) or (ii) such Purchaser’s breach of its agreements or covenants in this Agreement.

10.4 Limitations. Notwithstanding anything in this Agreement to the contrary, (i) no indemnification claims for Losses shall be asserted by the Purchaser Indemnified Parties under Section 10.1 (other than indemnification claims for Losses with respect to the representations and warranties set forth in Sections 3.1, 3.2, 3.3, 3.4, 3.15 and 3.18, (the foregoing referred to as the “**Company Fundamental Representations**”) or based on Fraud) or by the Company Indemnified Parties under Section 10.3 (other than indemnification claims for Losses with respect to the representation and warranties set forth in Section 4.1, 4.2, 4.5, and 4.7 or based on Fraud), unless and until (x) the aggregate amount of Losses that would otherwise be payable under Section 10.1 or Section 10.3, as applicable, exceeds \$500,000 (the “**Basket Amount**”), whereupon the Purchaser Indemnified Party or Company Indemnified Party, as applicable, shall be entitled to receive only amounts for Losses in excess of the Basket Amount or (y) Losses have been asserted against such Person in accordance with this Section 10.4, and (ii) the aggregate liability of the Company or any Purchaser for Losses under Section 10.1 or Section 10.3, as applicable, shall in no event exceed the applicable Preferred Share Purchase Price.

10.5 Procedures. A party entitled to indemnification hereunder (each, an “**Indemnified Party**”) shall give written notice to the party from whom indemnification is sought (the “**Indemnifying Party**”) of any claim with respect to which it seeks indemnification promptly after the discovery by such Indemnified Party of any matters giving rise to a claim for indemnification hereunder; provided, that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Section 10 unless and to the extent that the Indemnifying Party shall have been materially prejudiced by the failure of such Indemnified Party to so notify such party. Such notice shall describe in reasonable detail such claim. In case any such action, suit, claim or proceeding is brought against an Indemnified Party, the Indemnifying Party shall be entitled to assume and conduct the defense thereof, with counsel reasonably satisfactory to the Indemnified Party unless (i) such claim seeks remedies, in addition to or other than, monetary damages that are reasonably likely to be awarded, (ii) such claim involves a criminal proceeding or (iii) counsel to the Indemnified Party advises such Indemnifying Party in writing that such claim involves a conflict of interest

that would reasonably be expected to make it inappropriate for the same counsel to represent both the Indemnifying Party and the Indemnified Party. If any one of the foregoing clauses (i) through (iii) applies, the Indemnified Party shall be entitled to retain its own counsel at the cost and expense of the Indemnifying Party (except that the Indemnifying Party shall only be liable for the legal fees and expenses of one law firm for all Indemnified Parties, taken together with respect to any single action or group of related actions, other than local counsel). If the Indemnifying Party assumes the defense of any claim, the Indemnified Party shall nevertheless be entitled to hire, at its own expense, separate counsel and participate in the defense thereof; provided, that all Indemnified Parties shall thereafter deliver to the Indemnifying Party copies of all notices and documents (including court papers) received by the Indemnified Party relating to the claim, and each Indemnified Party shall reasonably cooperate in the defense or prosecution of such claim. Such reasonable cooperation shall include the retention and (upon the Indemnifying Party's reasonable request) the provision to the Indemnifying Party of records and information that are reasonably relevant to such claim, and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The Indemnifying Party shall not be liable for any settlement of any action, suit, claim or proceeding effected without its prior written consent (not to be unreasonably withheld, conditioned or delayed). The Indemnifying Party further agrees that it will not, without the Indemnified Party's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), settle or compromise any claim or consent to entry of any judgment in respect thereof in any pending or threatened action, suit, claim or proceeding in respect of which indemnification has been sought or may be hereunder unless such settlement or compromise includes an unconditional release of such Indemnified Party from all liability arising out of such action, suit, claim or proceeding and is solely for monetary damages.

10.6 Additional Limitations. Notwithstanding anything contained herein to the contrary, "Losses" shall not include (i) any Losses to the extent such Losses could not have been reasonably foreseen by the parties as of the Closing, and (ii) punitive damages, except to the extent payable by an Indemnified Party to a third party. No party hereto shall be obligated to indemnify any other Person with respect to any representation, warranty, covenant or condition specifically waived in writing by any other party on or prior to the applicable Closing.

10.7 Exclusive Remedies. Notwithstanding anything to the contrary herein, other than in the case of Fraud, the provisions of Section 10 and Section 12.6 shall be the sole and exclusive remedies of parties under this Agreement following the Closing for any and all breaches or alleged breaches of any representations or warranties, covenants or agreements of the parties contained in this Agreement. For the avoidance of doubt, this Section 10 shall not prevent the parties from obtaining specific performance or other non-monetary remedies in equity or at Law pursuant to Section 12.6 of this Agreement and shall not limit other remedies that may be available to the parties under any of the Transaction Agreements (other than this Agreement).

11. Termination.

11.1 Conditions of Termination. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated at any time before the Closing by either the Company, on the one hand, or any Purchaser, on the other hand, if the Closing shall not have occurred on or prior to 5:00 p.m., New York time, on the date hereof.

11.2 Effect of Termination. In the event of any termination pursuant to Section 11.1 hereof, this Agreement shall become null and void and have no further effect, with no liability on the part of the Company or any Purchaser, or their directors, partners, members, employees, affiliates, officers, stockholders or agents or other representatives, with respect to this Agreement, except for the terms of this Section 11.2 and Section 12 (Miscellaneous Provisions), which shall survive the termination of this Agreement.

12. Miscellaneous Provisions.

12.1 Public Statements or Releases. Neither the Company nor any Purchaser shall make any public release or announcement with respect to the existence or terms of this Agreement or the transactions provided for herein without the prior approval of the other parties, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, nothing in this Section 12.1 shall prevent any party from making any public release required (in the exercise of its reasonable judgment) in order to satisfy its obligations under law or under the rules or regulations of any United States national securities exchange, in which case the party or parties, as applicable, required to make the release or announcement shall, to the extent reasonably practicable, allow the other party or parties, as applicable, reasonable time to comment on such release or announcement in advance of such issuance.

12.2 Interpretation. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement, and section and subsection references are to this Agreement unless otherwise specified. The headings in this Agreement are included for convenience of reference only and will not limit or otherwise affect the meaning or interpretation of this Agreement. Whenever the words “include,” “includes” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation.” The phrases “the date of this Agreement,” “the date hereof” and terms of similar import, unless the context otherwise requires, will be deemed to refer to the date set forth in the first paragraph of this Agreement. The meanings given to terms defined herein will be equally applicable to both the singular and plural forms of such terms. All matters to be agreed to by any party hereto must be agreed to in writing by such party unless otherwise indicated herein. Except as specified otherwise herein, references to agreements, policies, standards, guidelines or instruments, or to statutes or regulations, are to such agreements, policies, standards, guidelines or instruments, or statutes or regulations, as amended or supplemented from time to time (or to successors thereto). All references herein to the Subsidiaries of a Person shall be deemed to include all direct and indirect Subsidiaries of such Person, unless otherwise indicated or the context otherwise requires. The parties hereto agree that they have been represented by counsel during the negotiation and execution of the Transaction Agreements and, therefore, waive the application of any Law, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

12.3 Notices. All notices, requests, consents, and other communications under this Agreement shall be in writing and shall be deemed delivered (a) three (3) Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid (b) one (1) Business Day after being sent via a reputable nationwide overnight courier service guaranteeing next business day delivery, (c) on the date of delivery if delivered personally, or (d) if by facsimile, upon written confirmation of receipt by facsimile, in each case to the intended recipient as set forth below:

(a) if to the Company, addressed as follows:

HC2 Holdings, Inc.
460 Herndon Parkway,
Suite 150,
Herndon, VA 20170
Attention: Andrea L. Mancuso
Facsimile: (703) 650-4295

with copies (which shall not constitute notice) to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
Attention: Jeffrey D. Marell
Facsimile: (212) 757-3990

(b) if to the Luxor Purchasers, to them at:

Luxor Capital Partners, LP
1114 Avenue of the Americas
Twenty-Ninth Floor
New York, NY 10036
Attention: Kelly Skura – Chief Financial Officer
Phone: (212) 763-8042
Fax: (212) 763-8001
Email: Ops@Luxorcap.com

(c) if to the DG Purchasers, to them at:

DG Capital Management, LLC
460 Park Avenue, 13th Floor
New York, NY 10022
Attention: Dov Gertzulin
Facsimile: (212) 202-4639

with copies (which shall not constitute notice) to:

Brown Rudnick LLP
One Financial Center
Boston, MA 02111
Attention: Andreas Andromalos
Facsimile: (617) 289-0495

Any party may change the address to which notices, requests, consents or other communications hereunder are to be delivered by giving the other parties notice in the manner set forth in this Section 12.3.

12.4 Severability. In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

12.5 Governing Law; Jurisdiction; WAIVER OF JURY TRIAL.

(a) This 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 law thereof.

(b) Each of the parties hereto irrevocably (i) agrees that any legal suit, action or proceeding brought by any party hereto against arising out of or based upon this Agreement may be instituted in any United States federal court or New York State court located in the Borough of Manhattan in The City of New York (a "**New York Court**"), (ii) waives, to the fullest extent it may effectively do so, any objection which it may now or hereafter have to the laying of venue of any such proceeding and (iii) submits to the non-exclusive jurisdiction of a New York Court in any such suit, action or proceeding.

(c) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF ANY PURCHASER OR THE COMPANY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

12.6 Specific Performance. The parties hereto agree that the obligations imposed on them in this Agreement are special, unique and of an extraordinary character, and that irreparable damages for which money damages, even if available, would not be an adequate remedy, would occur in the event that the parties hereto do not perform the provisions of this Agreement in accordance with its specified terms or otherwise breach such provisions. The parties acknowledge and agree that the parties shall be entitled to seek an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled, at law or in equity; and the parties hereto further agree to waive any requirement for the securing or posting of any bond or other security in connection with the obtaining of any such injunctive or other equitable relief. Each of the parties agrees that it will

not oppose the granting of an injunction, specific performance and other equitable relief as provided herein on the basis that (x) either party has an adequate remedy at law or (y) an award of specific performance is not an appropriate remedy for any reason at law or equity.

12.7 Delays or Omissions; Waiver. No delay or omission to exercise any right, power, or remedy accruing to a party upon any breach or default of another party under this Agreement shall impair any such right, power, or remedy of such party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or be construed as, a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement. Any agreement on the part of a party or parties hereto to any waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party or parties, as applicable. Any delay in exercising any right under this Agreement shall not constitute a waiver of such right.

12.8 Fees; Expenses.

(a) Except as set forth in this Section 12.8, all fees and expenses incurred in connection with the Transaction Agreements and the transactions contemplated hereby and thereby shall be paid by the party or parties, as applicable, incurring such expenses whether or not the transactions contemplated hereby and thereby are consummated.

(b) The Company shall reimburse the Luxor Purchasers for up to \$30,000 of reasonable out-of-pocket costs and expenses of the Luxor Purchasers and their advisors incurred in connection with their due diligence of the Company and its Subsidiaries, negotiation and preparation of the Transaction Agreements and participating in the transaction contemplated by the Transaction Agreements. An estimate of the fees and expenses of such advisors may be paid by wire transfer to such advisor at the Closing by the Luxor Purchasers, the amount of such check or wire transfer being deducted from the aggregate amount to be paid by such Luxor Purchasers at the Closing for the Preferred Shares. In addition, the Company shall pay all reasonable out of pocket costs and expenses of the Purchasers incurred with respect to any subsequent amendments, approvals or modifications associated with the transactions contemplated by the Transaction Agreements.

(c) The Company shall pay any and all documentary, stamp or similar issue or transfer Tax payable in connection with this Agreement, the issuance of the Preferred Shares at Closing and the issuance of the Conversion Shares.

12.9 Assignment. Except as otherwise provided herein, none of the parties may assign its rights or obligations under this Agreement without the prior written consent of the other parties, provided, however, that each Purchaser may assign its right and obligations hereunder to an Affiliate of such Purchaser without the prior written consent of the Company or any other Purchaser or in connection with a transfer of Preferred Shares or Conversion Shares in accordance with Section 8 hereof with the prior written consent of the Company (which consent

shall not be unreasonably withheld, delayed or conditioned); provided, further, that as a condition precedent to such assignment (x) any such Affiliate shall assume, on a several and not joint basis, all then continuing obligations of such Purchaser hereunder pursuant to a written agreement reasonably acceptable to the Company, and (y) no assignment and assumption shall relieve such Purchaser from any liability hereunder; provided, further, that any assignment to an Affiliate shall only be effective for so long as such Person remains an Affiliate of the applicable Purchaser and the rights assigned to such Person shall cease to be of further force and effect when such Person ceases to be an Affiliate of the applicable Purchaser. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties to this Agreement and their respective successors and permitted assigns. Any purported assignment other than in compliance with the terms hereof shall be void ab initio.

12.10 No Third Party Beneficiaries. Except for Sections 10 (with respect to which all Indemnified Parties shall be third party beneficiaries), 12.13 (with respect to which all Purchaser Representatives named therein shall be third party beneficiaries), this Agreement does not create any rights, claims or benefits inuring to any Person that is not a party hereto nor create or establish any third party beneficiary hereto. Without limiting the foregoing, the representations and warranties in this Agreement are the product of negotiations among the parties hereto and are for the sole benefit of the parties hereto. In some instances, the representations and warranties in this Agreement may represent an allocation among the parties hereto of risks associated with particular matters regardless of the knowledge of any of the parties hereto. Consequently, Persons other than the parties hereto may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

12.11 Counterparts. This Agreement may be executed and delivered (including by facsimile or electronic transmission) in any number of counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed an original, but all of which taken together shall constitute a single instrument.

12.12 Entire Agreement; Amendments; Actions. This Agreement and the documents and instruments and other agreements among the parties hereto as contemplated by or referred to herein, including the Disclosure Schedule and the Annexes and Exhibits hereto, constitute the entire agreement between the parties hereto respecting the subject matter hereof and supersede all prior agreements, negotiations, understandings, representations and statements respecting the subject matter hereof, whether written or oral. No modification, alteration, waiver or change in any of the terms of this Agreement shall be valid or binding upon the parties hereto unless made in writing and duly executed by the Company, on the one hand, and subject to the last sentence of this Section 12.12, the Purchasers on the other hand. Notwithstanding anything to the contrary contained herein, any consent, waiver, vote, decision, election or action required or permitted to be taken hereunder by the Purchasers as a group, including with respect to the immediately foregoing clause, shall require the approval of the Requisite Holders, and after such approval, such decision shall be binding on all Purchasers.

12.13 Freedom to Pursue Opportunities. Each of the parties hereto expressly acknowledges and agrees that: (i) the each Purchaser and each Purchaser Representative has the right to, and shall have no duty (contractual or otherwise) not to, directly or indirectly engage in

the same or similar business activities or lines of business as the Company or any of its Subsidiaries, including those deemed to be competing with the Company or any of its Subsidiaries; and (ii) in the event that the Purchaser or any Purchaser Representative acquires knowledge of a potential transaction or matter (other than to the extent knowledge of such transaction or matter was acquired by such Person solely in their capacity as a director) that may be a corporate opportunity for each of the Company and the Purchaser or any Purchaser Representative, such Person shall have no duty (contractual or otherwise) to communicate or present such corporate opportunity to the Company or any of its Subsidiaries, as the case may be, and, notwithstanding any provision of this Agreement to the contrary, shall not be liable to the Company or its Affiliates for breach of any duty (contractual or otherwise) by reason of the fact that the Purchaser, Purchaser Representative, directly or indirectly, pursues or acquires such opportunity for itself, directs such opportunity to another Person, or does not present such opportunity to the Company.

12.14 No Personal Liability of Directors, Officers, Owners, Etc. No director, officer, employee, incorporator, shareholder, managing member, member, general partner, limited partner, principal or other agent of any of the Purchasers or the Company shall have any liability for any obligations of the Purchasers or the Company, as applicable, under this Agreement or for any claim based on, in respect of, or by reason of, the respective obligations of the Purchasers or the Company, as applicable, under this Agreement. Each party hereby waives and releases all such liability. This waiver and release is a material inducement to each party's entry into this Agreement.

12.15 Nature of Purchasers' Obligations and Rights. The obligations of each Purchaser under this Agreement or any Transaction Agreement are several and not joint with the obligations of any other Purchaser, and no Purchaser shall be responsible in any way for the performance of the obligations of any other Purchaser under this Agreement or any other Transaction Agreement. Nothing contained herein or in any other Transaction Agreement, and no action taken by any Purchaser pursuant hereto or thereto, shall be deemed to constitute the Purchasers as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement or any other Transaction Agreement. Each Purchaser confirms that it has independently participated in the negotiation of the transactions contemplated hereby and has been represented by counsel. All rights, powers and remedies provided to the Purchasers under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative or exclusive, and the exercise or beginning of the exercise of any thereof by any party shall not preclude the simultaneous or later exercise of any other rights, powers or remedies by such party or any other party.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COMPANY:

HC2 HOLDINGS, INC.

By: /s/ Keith M. Hladek

Name: Keith M. Hladek

Title: Chief Operating Officer

[Signature Page to Securities Purchase Agreement]

LUXOR PURCHASERS

LUXOR CAPITAL PARTNERS, LP

By: Luxor Capital Group, LP, its *investment manager*

By: /s/ Norris Nissim

Name: Norris Nissim

Title: General Counsel

[Signature Page to Securities Purchase Agreement]

**LUXOR CAPITAL PARTNERS OFFSHORE MASTER
FUND, LP**

By: Luxor Capital Group, LP, its *investment manager*

By: /s/ Norris Nissim

Name: Norris Nissim

Title: General Counsel

[Signature Page to Securities Purchase Agreement]

LUXOR WAVEFRONT, LP

By: Luxor Capital Group, LP, its *investment manager*

By: /s/ Norris Nissim

Name: Norris Nissim

Title: General Counsel

[Signature Page to Securities Purchase Agreement]

DG PURCHASERS

DG VALUE PARTNERS, LP

By: DG Capital Management, LLC, its *investment manager*

By: /s/ Dov Gertzulin

Name: Dov Gertzulin

Title: Managing Member

[Signature Page to Securities Purchase Agreement]

DG VALUE PARTNERS II MASTER FUND, LP

By: DG Capital Management, LLC, its *investment manager*

By: /s/ Dov Gertzulin

Name: Dov Gertzulin

Title: Managing Member

[Signature Page to Securities Purchase Agreement]

DG CREDIT OPPORTUNITIES, LP

By: DG Capital Management, LLC, its *investment manager*

By: /s/ Dov Gertzulin

Name: Dov Gertzulin

Title: Managing Member

[Signature Page to Securities Purchase Agreement]

Annex A

Convertible Preferred Stock Shares and Purchasers

<u>Purchaser</u>	<u>Shares</u>	<u>Type</u>	<u>Share Purchase Price</u>
Luxor Purchasers			
Luxor Capital Partners, LP	4,430	Convertible Preferred Stock	\$ 4,430,000.00
Luxor Capital Partners Offshore Master Fund, LP	4,656	Convertible Preferred Stock	\$ 4,656,000.00
Luxor Wavefront, LP	914	Convertible Preferred Stock	\$ 914,000.00
DG Purchasers			
DG Value Partners, LP	181	Convertible Preferred Stock	\$ 181,000.00
DG Value Partners II Master Fund, LP	775	Convertible Preferred Stock	\$ 775,000.00
DG Credit Opportunities, LP	44	Convertible Preferred Stock	\$ 44,000.00
TOTAL:	<u>11,000</u>		<u>\$ 11,000,000</u>

AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

by and among

HC2 HOLDINGS INC.

and the INVESTORS party hereto

Dated September 22, 2014

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AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

THIS AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”), is made as of the 22nd day of September, 2014, by and among HC2 Holdings Inc., a Delaware corporation (the “**Company**”), and each of the investors listed on Schedule A hereto (each of which is referred to in this Agreement as an “**Investor**”).

RECITALS

WHEREAS, the Company entered into that certain Securities Purchase Agreement dated as of May 29, 2014 (the “**Original Purchase Agreement**”) with the investors party thereto (the “**Initial Preferred Holders**”), pursuant to which the Company has issued and sold to the Initial Preferred Holders shares of Series A Convertible Participating Preferred Stock, par value \$0.001 per share, of the Company (the “**Series A Preferred Stock**”) and Common Stock (as defined below). The Series A Preferred Stock was issued pursuant to that certain Certificate of Designation, dated as of May 29, 2014 (the “**Series A Certificate of Designation**”).

WHEREAS, the Company, the DG Investors and the Luxor Investors are parties to the Securities Purchase Agreement dated as of the date hereof (the “**Luxor/DG Purchase Agreement**,” and together with the Original Purchase Agreement, the “**Purchase Agreements**”), pursuant to which the Company has issued and sold to the Luxor Investors and the DG Investors shares of Series A-1 Convertible Participating Preferred Stock, par value \$0.001 per share, of the Company (the “**Series A-1 Preferred Stock**” and, together with the Series A Preferred Stock, the “**Preferred Stock**”). The Series A-1 Preferred Stock was issued pursuant to that certain Certificate of Designation, dated as of the date hereof (the “**Series A-1 Certificate of Designation**”).

WHEREAS, the Series A Certificate of Designation has been amended and restated in connection with the transactions contemplated by the Luxor/DG Purchase Agreement (as amended, the “**Amended Series A Certificate of Designation**”).

WHEREAS, the Series A Preferred Stock and the Series A-1 Preferred Stock are convertible into shares of Common Stock of the Company in accordance with the terms of the Amended Series A Certificate of Designation and the Series A-1 Certificate of Designation, respectively.

WHEREAS, the Company and the Initial Preferred Holders were party to that certain Registration Rights Agreement (the “**Original Registration Rights Agreement**”), dated as of May 29, 2014, and desire to amend and restate the Original Registration Rights Agreement in its entirety to reflect the Amended Series A Certificate of Designation, the adoption of the Series A-1 Certificate of Designation, the issuance of Series A-1 Preferred Stock to the Luxor Investors and the DG Investors and the granting of registration rights with respect to the Registrable Securities (as defined below) issued to the Luxor Investors and the DG Investors.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions.** For purposes of this Agreement:

1.1 “**Affiliate**” means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person.

1.2 “**Amended Series A Certificate of Designation**” has the meaning set forth in the Recitals.

1.3 “**Automatic Shelf Registration Statement**” means an “automatic shelf registration statement” as defined in Rule 405 promulgated under the Securities Act.

1.4 “**Board of Directors**” means the board of directors of the Company (or any duly authorized committee thereof).

1.5 “**Common Stock**” means shares of the Company’s common stock, par value \$0.001 per share.

1.6 “**Cut Back Shares**” has the meaning set forth in Subsection 2.1(f).

1.7 “**Damages**” means any loss, damage, claim or liability (joint or several) to which a party hereto may become subject under the Securities Act, the Exchange Act, or other federal or state law, insofar as such loss, damage, claim or liability (or any action in respect thereof) arises out of or is based upon: (i) any untrue statement or alleged untrue statement of a material fact contained in any registration statement of the Company, including any preliminary prospectus, free writing prospectus prepared by a Holder or the Company, as applicable, or final prospectus contained therein or any amendments or supplements thereto; (ii) an omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading; or (iii) any violation or alleged violation by the indemnifying party (or any of its agents or Affiliates) of this Agreement, the Securities Act, the Exchange Act, any state securities law, or any rule or regulation promulgated under the Securities Act, the Exchange Act, or any state securities law.

1.8 “**Demand Notice**” has the meaning set forth in Subsection 2.1.

1.9 “**DG Investors**” means those investors listed under the heading “DG Investors” on Schedule A.

1.10 “**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

1.11 “**Excluded Registration**” means (i) a registration relating to the sale of securities to employees of the Company or a subsidiary pursuant to a stock option, stock purchase, or similar plan; (ii) a registration relating to an SEC Rule 145 transaction; or (iii) a registration in which the only Common Stock being registered is Common Stock issuable upon conversion of debt securities that are also being registered.

1.12 “**FINRA**” means the Financial Industry Regulatory Authority.

1.13 “**Form S-1**” means such form under the Securities Act as in effect on the date hereof or any successor registration form under the Securities Act subsequently adopted by the SEC.

1.14 “**Form S-3**” means such form under the Securities Act as in effect on the date hereof or any registration form under the Securities Act subsequently adopted by the SEC that permits incorporation of substantial information by reference to other documents filed by the Company with the SEC.

1.15 “**Hedging Counterparty**” means a broker-dealer registered under Section 15(b) of the Exchange Act or an Affiliate thereof.

1.16 “**Hedging Transaction**” means any transaction involving a security linked to Registrable Securities or any security that would be deemed to be a “derivative security” (as defined in Rule 16a-1(c) promulgated under the Exchange Act) with respect to Registrable Securities or transaction (even if not a security) which would (were it a security) be considered such a derivative security, or which transfers some or all of the economic risk of ownership of Registrable Securities, including any forward contract, equity swap, put or call, put or call equivalent position, collar, non-recourse loan, sale of exchangeable security or similar transaction. For the avoidance of doubt, the following transactions shall be deemed to be Hedging Transactions:

- (a) transactions by a Holder in which a Hedging Counterparty engages in short sales of securities of the same class as Registrable Securities pursuant to a Prospectus and may use Registrable Securities to close out its short position;
- (b) transactions pursuant to which a Holder sells short securities of the same class as Registrable Securities pursuant to a Prospectus and delivers Registrable Securities to close out its short position;
- (c) transactions by a Holder in which the Holder delivers, in a transaction exempt from registration under the Securities Act, Registrable Securities to the Hedging Counterparty who will then publicly resell or otherwise transfer such Registrable Securities pursuant to a Prospectus or an exemption from registration under the Securities Act; and
- (d) a loan or pledge of Registrable Securities to a Hedging Counterparty who may then become a selling stockholder and sell the loaned shares or, in an event of default in the case of a pledge, sell the pledged shares, in each case, in a public transaction pursuant to a Prospectus.

1.17 “**Holdback Period**” has the meaning set forth in Section 2.11.

- 1.18 “**Holdback Extension**” has the meaning set forth in Section 2.11.
- 1.19 “**Holders**” means any Investor and any other holder of Registrable Securities who is a party to this Agreement.
- 1.20 “**HRG**” means Harbinger Group Inc., a Delaware corporation.
- 1.21 “**Hudson Bay Investors**” means those investors listed under the heading “Hudson Bay Investors” on Schedule A.
- 1.22 “**Hudson Bay Registrable Securities**” means, as of any date, the Registrable Securities held by the Hudson Bay Investors or their successors and assigns on such date.
- 1.23 “**Immediate Family Member**” means a child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including, adoptive relationships, of a natural person referred to herein.
- 1.24 “**Initial Preferred Holders**” has the meaning set forth in the Recitals.
- 1.25 “**Initiating Holders**” means, collectively, Holders who properly initiate a registration request under this Agreement.
- 1.26 “**Luxor Investors**” means those investors listed under the heading “Luxor Investors” on Schedule A.
- 1.27 “**Luxor/DG Purchase Agreement**” has the meaning set forth in the Recitals.
- 1.28 “**Luxor Registrable Securities**” means, as of any date, the Registrable Securities held by the Luxor Investors or their successors and assigns on such date.
- 1.29 “**Majority Hudson Bay Investors**” means, as of any date, the Holders of a majority of the Hudson Bay Registrable Securities on such date.
- 1.30 “**Majority Luxor Investors**” means, as of any date, the Holders of a majority of the Luxor Registrable Securities on such date.
- 1.31 “**Majority PECM Investors**” means, as of any date, the Holders of a majority of the PECM Registrable Securities on such date.
- 1.32 “**Original Purchase Agreement**” has the meaning set forth in the Recitals.

1.33 “**Other Requesting Holders**” has the meaning set forth in Subsection 2.4(a).

1.34 “**PECM Investors**” means those investors listed under the heading “PECM Investors” on Schedule A.

1.35 “**PECM Registrable Securities**” means, as of any date, the Registrable Securities held by the PECM Investors or their successors and assigns on such date.

1.36 “**Person**” means any individual, corporation, partnership, trust, limited liability company, association or other entity.

1.37 “**Preferred Stock**” has the meaning set forth in the Recitals.

1.38 “**Prospectus**” means the prospectus related to any Registration Statement (whether preliminary or final or any prospectus supplement, including, without limitation, a prospectus or prospectus supplement that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance on Rule 415, 424, 430A, 430B or 430C under the Securities Act, as amended or supplemented by any amendment or prospectus supplement), including post-effective amendments, and all materials incorporated by reference in such prospectus.

1.39 “**Purchase Agreements**” has the meaning set forth in the Recitals.

1.40 “**Registrable Securities**” means (i) any shares of Common Stock acquired pursuant to the Purchase Agreements; (ii) any shares of Common Stock otherwise acquired from time to time by a Holder or any permitted transferee hereunder; (iii) any and all shares of Common Stock or other securities issuable or issued upon conversion of the Preferred Stock or issued or issuable upon the conversion of any other securities beneficially owned by a Holder; and (iv) shares of Common Stock issued as a dividend or distribution with respect to, or in exchange for or in replacement of, the shares referenced in (i) through (iii) above or in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization; provided, that Registrable Securities held by any Holder will cease to be Registrable Securities, when they have been (A) sold to or through a broker or dealer or underwriter in a public distribution or a public securities transaction (including pursuant to Rule 144 of the Securities Act), or (B) sold in a transaction in which the transferor’s rights under this Agreement are not validly assigned in accordance with this Agreement.

1.41 “**Registrable Securities then outstanding**” means the number of shares determined by adding the number of shares of outstanding Common Stock that are Registrable Securities and the number of shares of Common Stock issuable (directly or indirectly) pursuant to then exercisable and/or convertible securities that are Registrable Securities.

1.42 “**Registration Statement**” means any registration statement filed pursuant to the Securities Act.

- 1.43 “**SEC**” means the Securities and Exchange Commission.
- 1.44 “**SEC Restrictions**” has the meaning set forth in Subsection 2.1(f).
- 1.45 “**SEC Rule 144**” means Rule 144 promulgated by the SEC under the Securities Act.
- 1.46 “**SEC Rule 145**” means Rule 145 promulgated by the SEC under the Securities Act.
- 1.47 “**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.
- 1.48 “**Selling Holder Counsel**” has the meaning set forth in Subsection 2.6.
- 1.49 “**Selling Expenses**” means all underwriting discounts, selling commissions, and stock transfer taxes applicable to the sale of Registrable Securities, and fees and disbursements of counsel for any Holder, except for the fees and disbursements of the Selling Holder Counsel borne and paid by the Company as provided in Subsection 2.6.
- 1.50 “**Series A Certificate of Designation**” has the meaning set forth in the Recitals.
- 1.51 “**Series A Preferred Stock**” has the meaning set forth in the Recitals.
- 1.52 “**Series A-1 Certificate of Designation**” has the meaning set forth in the Recitals.
- 1.53 “**Series A-1 Preferred Stock**” has the meaning set forth in the Recitals.
- 1.54 “**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.
- 1.55 “**Shelf Registration Statement**” has the meaning set forth in Subsection 2.1(b) hereof.
- 1.56 “**Suspension Period**” has the meaning set forth in Subsection 2.1(d).
- 1.57 “**Underwriter**” means the underwriter, placement agent or other similar intermediary participating in an Underwriting.

1.58 “**Underwriting**” of securities means a public offering of securities registered under the Securities Act in which an underwriter, placement agent or other similar intermediary participates in the distribution of such securities.

1.59 “**Underwritten Takedown**” means an underwritten offering takedown to be conducted by one or more Holders in accordance with Section 2.3(b).

2. Registration Rights. The Company covenants and agrees as follows:

2.1 Demand and Shelf Registration.

(a) Form S-1 Demand. If at any time after the date hereof, the Company receives a request from a Holder or Holders of Registrable Securities then outstanding that the Company file a Form S-1 registration statement with respect to any outstanding Registrable Securities of such Holders having an anticipated aggregate offering price, net of Selling Expenses, of at least \$5 million, then the Company shall (x) within two (2) days after the date such request is given, give notice thereof (the “**Demand Notice**”) to all Holders other than the Initiating Holders; and (y) as soon as practicable, and in any event within thirty (30) days after the date such request is given by the Initiating Holders, file a Form S-1 registration statement under the Securities Act covering all Registrable Securities that the Initiating Holders requested to be registered and any additional Registrable Securities requested to be included in such registration by any other Holders, as specified by notice given by each such Holder to the Company within five (5) days of the date the Demand Notice is given, and in each case, subject to the limitations of Subsections 2.1(c) and 2.3. No Holder shall deliver an initiating request under this Section 2.1(a) at any time when a Shelf Registration Statement covering such Holder’s Registrable Securities is effective and available for use in connection with a resale of such Registrable Securities. The Company shall not be required to file a Form S-1 registration statement under this Section 2.1(a) if it is then eligible to use Form S-3 for secondary offerings of Registrable and it advises the Initiating Holders that it is preparing a Shelf Registration Statement in accordance with the first sentence of Section 2.1(b)(i).

(b) Shelf Registration.

(i) Within thirty (30) days after the date on which a Holder of Registrable Securities shall so request (provided, that the Company is, at the time of receipt of such request, eligible to use a Form S-3 registration statement for secondary offerings of Registrable Securities) and for so long as there are Registrable Securities outstanding, the Company shall use its reasonable best efforts to ensure that the Company shall at all times have and maintain an effective Registration Statement for a Shelf Registration covering the resale of all of the Registrable Securities requested to be included by any Holder, on a delayed or continuous basis (the “**Shelf Registration Statement**”). The Company shall give written notice of the filing of any Shelf Registration Statement at least fifteen (15) days prior to filing such Shelf Registration Statement to all Holders of Registrable Securities and shall, upon receipt of a request from any Holder, include in such Shelf Registration Statement all Registrable Securities of each requesting Holder. The Company shall use its reasonable best efforts to maintain the effectiveness of such Shelf Registration Statement in accordance with the terms hereof. The “Plan of Distribution” section of such Shelf Registration Statement shall permit all lawful means

of disposition of Registrable Securities, including firm-commitment underwritten public offerings, block trades, agent transactions, sales directly into the market, purchases or sales by brokers, Hedging Transactions, distributions to stockholders, partners or members of such Holders and sales not involving a public offering.

(ii) From and after the date that the Shelf Registration Statement is initially effective, as promptly as is practicable after receipt of a request from a Holder, and in any event within (x) ten (10) days after the date such request is received by the Company or (y) if a request is so received during a Suspension Period, five (5) days after the expiration of such Suspension Period, the Company shall take all necessary action to cause the requesting Holder to be named as a selling securityholder in the Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus in connection with sales of such Registrable Securities to the purchasers thereof in accordance with applicable law, which action may include: (A) if required by applicable law, filing with the Commission a post-effective amendment to the Shelf Registration Statement; (B) preparing and, if required by applicable law, filing a supplement or supplements to the related Prospectus or a supplement or amendment to any document incorporated therein by reference; (C) filing any other required document; or (D) with respect to a post-effective amendment to the Shelf Registration Statement that is not automatically effective, using its reasonable best efforts to cause such post-effective amendment to be declared or to otherwise become effective under the Securities Act as promptly as is practicable; provided that: (A) the Company may delay such filing until the date that is twenty (20) days after any prior such filing; (B) if the Shelf Registration Statement is not an Automatic Shelf Registration Statement and the Company has already made such a filing during the calendar quarter in which such filing would otherwise be required to be made, the Company may delay such filing until the tenth (10th) day of the following calendar quarter; and (C) if such request is delivered during a Suspension Period, the Company shall so inform the Holder delivering such request and shall take the actions set forth above upon expiration of the Suspension Period in accordance with Subsection 2.1(d).

(c) Notwithstanding the foregoing obligations, if the Company furnishes to Holders requesting a registration pursuant to this Subsection 2.1 a certificate signed by the Company's chief executive officer stating that in the good faith judgment of the Company's Board of Directors, after consultation with counsel, it would be materially detrimental to the Company and its stockholders for such registration statement to either become effective or remain effective for as long as such registration statement otherwise would be required to remain effective, because such action would (i) be expected to have a material adverse effect on any proposal or plan of the Company to effect a merger, acquisition, disposition, financing, reorganization, recapitalization or similar transaction; (ii) require premature disclosure of material information that the Company has a bona fide business purpose for preserving as confidential; or (iii) render the Company unable to comply with requirements under the Securities Act or Exchange Act, then the Company shall have the right to defer taking action with respect to such filing, and any time periods with respect to filing or effectiveness thereof shall be tolled correspondingly, for a period of not more than forty five (45) days after the request of the Initiating Holders is given; provided, however, that the Company may not invoke this right more than once in any twelve (12) month period; and provided further that the Company shall not register any securities for its own account or that of any other stockholder during such forty five (45) day period other than an Excluded Registration

(d) Suspension Periods. Upon written notice to the Holders of Registrable Securities, (x) the Company shall be entitled to suspend, for a period of time, the use of any Registration Statement or Prospectus if the Board of Directors determines in its good faith judgment, after consultation with counsel, that the Registration Statement or any Prospectus may contain an untrue statement of a material fact or omits any fact necessary to make the statements in the Registration Statement or Prospectus not misleading and (y) the Company shall not be required to amend or supplement the Registration Statement, any related Prospectus or any document incorporated therein by reference if the Board of Directors determines in its good faith judgment, after consultation with counsel, that such amendment or supplement would reasonably be expected to have a material adverse effect on any proposal or plan of the Company to effect a merger, acquisition, disposition, financing, reorganization, recapitalization or similar transaction, in each case that is material to the Company (in case of each clause (x) and (y), a “**Suspension Period**”); provided that (A) the duration of all Suspension Periods may not exceed one hundred and twenty (120) days in the aggregate in any 12-month period and (B) the Company shall use its commercially reasonable efforts to amend or supplement the Registration Statement and/or Prospectus to correct such untrue statement or omission as soon as reasonably practicable, but in no event shall any single suspension period exceed forty five (45) days.

(e) The Company shall not be obligated to effect, or to take any action to effect, any registration pursuant to Subsection 2.1(a) during the period ending ninety (90) days after the effective date of, another registration by the Company, including a Company-initiated registration, in each case, in which Holders were entitled to include Registrable Securities in accordance with Section 2.2. A registration shall not be counted as “effected” for purposes of this Subsection 2.1(e) until such time as the applicable registration statement has been declared effective by the SEC; provided, however, if the Initiating Holders withdraw their request for such registration and elect to pay the registration expenses therefor, such withdrawn registration statement shall not be counted as “effected” for purposes of this Subsection 2.1(e).

(f) Secondary Offering. If at any time the SEC takes the position that the offering of some or all of the Registrable Securities in a Registration Statement are not eligible to be made as a secondary offering, the Company shall use commercially reasonable best efforts to persuade the SEC that the offering contemplated by the Registration Statement is a bona fide secondary offering. In the event that the SEC refuses to alter its position, the Company shall (i) remove from the Registration Statement such portion of the Registrable Securities (the “**Cut Back Shares**”) and/or (ii) agree to such restrictions and limitations on the registration and resale of the Registrable Securities as the SEC may require to assure that the Registration Statement is deemed a secondary offering (collectively, the “**SEC Restrictions**”); provided, however, that the Company shall not agree to name any Holder as an “underwriter” in such Registration Statement without the prior written consent of such Holder. Any cut-back imposed pursuant to this Section 2.1(f) shall be allocated among the Holders on a pro rata basis in accordance with the number of shares that such Holders have requested to be included in such Registration Statement, unless the SEC Restrictions otherwise require or provide or the participating Holders otherwise agree. From and after the date that the Company is able to effect the registration of such Cut Back Shares in accordance with any SEC Restrictions, all of the provisions of this Section 2.1 shall again be applicable to such Cut Back Shares.

2.2 Company Registration. If the Company proposes to register (including, for this purpose, a registration effected by the Company for stockholders other than the Holders) any of its Common Stock under the Securities Act in connection with the public offering of such securities solely for cash (other than in an Excluded Registration), the Company shall, at such time, promptly give each Holder written notice of such Registration. In the case of a takedown offering under a Shelf Registration, the Company shall give each Holder notice of such registration not less than five (5) days prior to the expected date of commencement of marketing efforts for such takedown. Upon the request of each Holder given within two (2) days after such notice is given by the Company, the Company shall, subject to the provisions of Subsection 2.3, cause to be included all of the Registrable Securities that each such Holder has requested to be included in such registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Subsection 2.2 before the effective date of such registration, whether or not any Holder has elected to include Registrable Securities in such registration. The expenses (other than Selling Expenses) of such withdrawn registration shall be borne by the Company in accordance with Subsection 2.6.

2.3 Underwriting Requirements.

(a) If, pursuant to Subsection 2.1(a), the Initiating Holders intend to distribute the Registrable Securities covered by their request by means of an Underwriting, they shall so advise the Company as a part of their request made pursuant to Subsection 2.1, and the Company shall include such information in the Demand Notice. The managing Underwriter(s) will be selected by the Initiating Holders, subject only to the reasonable approval of the Company. In such event, the right of any Holder to include such Holder's Registrable Securities in such registration shall be conditioned upon such Holder's participation in such Underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders proposing to distribute their securities through such Underwriting shall (together with the Company as provided in Subsection 2.4(n)) enter into an underwriting agreement in customary form with the Underwriter(s) selected for such Underwriting. Notwithstanding any other provision of this Subsection 2.3, if the managing Underwriter(s) advise the Initiating Holders in writing that marketing factors require a limitation on the number of shares to be underwritten, then the Initiating Holders shall so advise all Holders of Registrable Securities that otherwise would be underwritten pursuant hereto, and the number of Registrable Securities that shall be included in the underwriting shall be allocated among such Holders of Registrable Securities, including the Initiating Holders, in proportion (as nearly as practicable) to the number of Registrable Securities proposed by each Holder to be included in the registration or in such other proportion as shall mutually be agreed to in writing by all such selling Holders; provided, however, that the number of Registrable Securities held by the Holders to be included in such underwriting shall not be reduced unless all other securities to be sold by persons who are not Holders are first entirely excluded from the underwriting.

(b) Shelf Underwritten Takedown.

(i) At any time after the Company has an effective shelf registration one or more Holders of outstanding Registrable Securities may request that the Company effect an underwritten takedown under the Shelf Registration Statement of at least \$5 million in Registrable Securities, based on the closing market price on the trading day

immediately prior to the initial request of such requesting Holders. Within five (5) days of receipt of such request, the Company shall notify all other Holders whose Registrable Securities are included in such Shelf Registration Statement of such request and shall (except as provided in clause (iii) below) include in such Underwritten Takedown all Registrable Securities requested to be included therein by Holders who respond within five (5) days of the Company's notification described above.

(ii) For any Underwritten Takedown from a Shelf Registration Statement, the managing underwriter or underwriters shall be selected by the Holders participating in such offering holding a majority of the Registrable Securities to be disposed of pursuant to such offering and shall be reasonably acceptable to the Company.

(iii) If the managing underwriter or underwriters for the Underwritten Takedown advise the Company that in their reasonable opinion the number of securities requested to be included in such underwritten offering takedown exceeds the number which can be sold in an orderly manner in such offering within a price range acceptable to the Initiating Holders, the Company shall include in such Underwritten Takedown the number which can be so sold in the following order of priority: (A) first, the securities requested to be included by the Holders (pro rata among the Holders of such securities on the basis of the number of securities requested to be included therein by each such holder), (B) second, the securities requested to be included in such Underwritten Takedown by holders exercising piggyback registration rights (pro rata among the holders of such securities on the basis of the number of securities requested to be included therein by each such holder), (C) third, the securities the Company proposes to sell, and (D) fourth, other securities requested to be included in such Underwritten Takedown (pro rata among the holders of such securities on the basis of the number of securities requested to be included therein by each such holder).

(iv) The Company shall not be required to effect an Underwritten Takedown more than once in any six (6) month period.

(c) In connection with any offering involving an underwriting of shares of the Company's capital stock pursuant to Subsection 2.2, the Company shall not be required to include any of the Holders' Registrable Securities in such underwriting unless the Holders accept the terms of the underwriting as agreed upon between the Company and its underwriters, and then only in such quantity as the underwriters in their sole discretion determine will not jeopardize the success of the offering by the Company. If the total number of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the number of securities to be sold that the underwriters in their reasonable discretion determine is compatible with the success of the offering, then the Company shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters and the Company in their sole discretion determine will not jeopardize the success of the offering. If the underwriters determine that less than all of the Registrable Securities requested to be registered can be included in such offering, then the Registrable Securities that are included in such offering shall be allocated among the selling Holders in proportion (as nearly as practicable to) to the number of Registrable Securities proposed by each Holder to be included in the registration or in such other proportions as shall mutually be agreed to in writing by all such selling Holders. Notwithstanding the foregoing, in no event shall (i) the

number of Registrable Securities included in the offering be reduced unless all other securities (other than securities to be sold by the Company) are first entirely excluded from the offering. For purposes of the provision in this Subsection 2.3(c) and Sections 2.3(a) and 2.3(b)(iii) concerning apportionment, for any selling Holder that is a partnership, limited liability company, or corporation, the partners, members, retired partners, retired members, stockholders, and Affiliates of such Holder, or the estates and Immediate Family Members of any such partners, retired partners, members, and retired members and any trusts for the benefit of any of the foregoing Persons, shall be deemed to be a single "selling Holder," and any pro rata reduction with respect to such "selling Holder" shall be based upon the aggregate number of Registrable Securities owned by all Persons included in such "selling Holder," as defined in this sentence.

(d) For purposes of Subsection 2.1 and 2.3(b), a registration shall not be counted as "effected" if, as a result of an exercise of the underwriter's cutback provisions in Subsection 2.3(a), fewer than seventy-five percent (75%) of the total number of Registrable Securities that Holders have requested to be included in such registration statement are actually included.

2.4 Obligations of the Company. Whenever required under this Section 2 to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) prepare and file with the SEC a registration statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such registration statement to become effective and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for a period of up to one hundred twenty (120) days or, if earlier, until the distribution contemplated in the registration statement has been completed; provided, however, that (i) such one hundred twenty (120) day period shall be extended for a period of time equal to the period the Holder refrains, at the request of an underwriter of Common Stock (or other securities) of the Company, from selling any securities included in such registration, and (ii) in the case of any registration of Registrable Securities on Form S-3 that are intended to be offered on a continuous or delayed basis, subject to compliance with applicable SEC rules, such one hundred twenty (120) day period shall be extended in accordance with Section 2.1(b) until all such Registrable Securities are sold;

(b) prepare and file with the SEC such amendments and supplements to such registration statement, and the prospectus used in connection with such registration statement, as may be necessary to comply with the Securities Act in order to enable the disposition of all securities covered by such registration statement;

(c) furnish to the selling Holders such numbers of copies of a prospectus, including a preliminary prospectus, as required by the Securities Act, and such other documents as the Holders may reasonably request in order to facilitate their disposition of their Registrable Securities;

- (d) provide counsel to the Holders a reasonable opportunity to review and comment upon any Registration Statement and any Prospectus supplements;
- (e) if requested by any participating Holder, promptly include in a Prospectus supplement or amendment such information as the Holder may reasonably request, including in order to permit the intended method of distribution of such securities, and make all required filings of such Prospectus supplement or such amendment as soon as reasonably practicable after the Company has received such request;
- (f) use its commercially reasonable efforts to register and qualify, or obtain an exemption from registration or qualification for the securities covered by such registration statement under such other securities or blue-sky laws of such jurisdictions as shall be reasonably requested by the selling Holders; provided that the Company shall not be required to qualify to do business or to file a general consent to service of process in any such states or jurisdictions, unless the Company is already subject to service in such jurisdiction and except as may be required by the Securities Act;
- (g) in the case of certificated Registrable Securities, cooperate with the participating Holders of Registrable Securities and the managing underwriters to facilitate the timely preparation and delivery of certificates (not bearing any legends) representing Registrable Securities sold pursuant to a Shelf Registration Statement;
- (h) in the case of an underwritten offering, use its commercially reasonable efforts to obtain a “comfort” letter or letters, dated as of such date or dates as the managing underwriters reasonably requests, from the Company’s independent public accountants in customary form and covering such matters of the type customarily covered by “comfort” letters as any managing underwriter reasonably requests;
- (i) in the case of a underwritten offering, furnish, at the request of any managing underwriter for such offering an opinion with respect to legal matters and a negative assurance letter with respect to disclosure matters, dated as of each closing date of such offering of counsel representing the Company for the purposes of such registration, addressed to the underwriters, covering such matters with respect to the registration in respect of which such opinion and letter are being delivered as the underwriters, may reasonably request and are customarily included in such opinions and negative assurance letters;
- (j) in the case of an underwritten offering, furnish, at the request of any managing underwriter for such offering an opinion with respect to legal matters and a negative assurance letter with respect to disclosure matters, dated as of each closing date of such offering of counsel representing the Company for the purposes of such registration, addressed to the underwriters, covering such matters with respect to the registration in respect of which such opinion and letter are being delivered as the underwriters, may reasonably request and are customarily included in such opinions and negative assurance letters;
- (k) in the case of an underwritten offering, use its commercially reasonable efforts to cooperate and assist in any filings required to be made with FINRA and in the performance of any due diligence investigation by any underwriter and its counsel (including

any “qualified independent underwriter,” if applicable) that is (A) required or requested by FINRA in order to obtain written confirmation from FINRA that FINRA does not object to the fairness and reasonableness of the underwriting terms and arrangements (or any deemed underwriting terms and arrangements) relating to the resale of Registrable Securities pursuant to the Shelf Registration Statement, including, without limitation, information provided to FINRA through its COBRADesk system or (B) required to be retained in accordance with the rules and regulations of FINRA;

(l) if requested by the managing underwriters, if any, or by any Holder of Registrable Securities being sold in an underwritten offering, promptly incorporate in a Prospectus supplement or post-effective amendment to the Registration Statement such information as the managing underwriters, if any, or such Holders indicate relates to them or that they reasonably request be included therein and make appropriate members of management available to meeting with potential investors in the offering;

(m) cause the Registrable Securities covered by such Registration Statement to be registered with or approved by such other governmental agencies or authorities, as may be reasonably necessary by virtue of the business and operations of the Company to enable the seller or sellers of Registrable Securities to consummate the disposition of such Registrable Securities;

(n) in the event of any underwritten offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the underwriter(s) of such offering;

(o) in the event of the issuance or threatened issuance of any stop order suspending the effectiveness of a Registration Statement, or of any order suspending or preventing the use of any related Prospectus or suspending the qualification of any Registrable Securities included in such Registration Statement for sale in any jurisdiction, use its commercially reasonable efforts promptly to (i) prevent the issuance of any such stop order, and in the event of such issuance, to obtain the withdrawal of such order and (ii) obtain, at the earliest practicable date, the withdrawal of any order suspending or preventing the use of any related Prospectus or suspending qualification of any Registrable Securities included in such Registration Statement for sale in any jurisdiction;

(p) use its commercially reasonable efforts to cause all such Registrable Securities covered by such registration statement to be listed on each securities exchange and trading system (if any) on which similar securities issued by the Company are then listed;

(q) provide a transfer agent and registrar for all Registrable Securities registered pursuant to this Agreement and provide a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(r) promptly make available for inspection by the selling Holders, any managing underwriter(s) participating in any disposition pursuant to such registration statement, and any attorney or accountant or other agent retained by any such underwriter or selected by the

selling Holders, all financial and other records, pertinent corporate documents, and properties of the Company, and cause the Company's officers, directors, employees, and independent accountants to supply all oral or written information reasonably requested by any such seller, underwriter, attorney, accountant, or agent, in each case, as necessary or advisable to verify the accuracy of the information in such registration statement and to conduct appropriate due diligence in connection therewith;

(s) notify each selling Holder, promptly after the Company receives notice thereof, of the time when such registration statement has been declared effective or a supplement to any prospectus forming a part of such registration statement has been filed;

(t) notify each selling Holder at any time when a Prospectus relating to the applicable Registration Statement is required to be delivered under the Securities Act: (i) as promptly as practicable upon discovery that, or upon the happening of any event as a result of which, such Registration Statement, or the Prospectus relating to such Registration Statement, or any document incorporated or deemed to be incorporated therein by reference contains an untrue statement of a material fact or omits any fact necessary to make the statements in the Registration Statement, the Prospectus relating thereto not misleading or otherwise requires the making of any changes in such Registration Statement, Prospectus, or document, and, at the request of any such Holder and subject to the Company's ability to declare Suspension Periods pursuant to Section 2.1(d), the Company shall promptly prepare a supplement or amendment to such Prospectus, furnish a reasonable number of copies of such supplement or amendment to each such seller of such Registrable Securities, and file such supplement or amendment with the SEC so that, as thereafter delivered to the purchasers of such Registrable Securities, such Prospectus as so amended or supplemented shall not contain an untrue statement of a material fact or omit to state any fact necessary to make the statements therein not misleading, (ii) as promptly as practicable after the Company becomes aware of any request by the SEC or any Federal or state governmental authority for amendments or supplements to a Registration Statement or related Prospectus covering Registrable Securities or for additional information relating thereto, (iii) as promptly as practicable after the Company becomes aware of the issuance or threatened issuance by the SEC of any stop order suspending or threatening to suspend the effectiveness of a Registration Statement covering the Registrable Securities or (iv) as promptly as practicable after the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any Registrable Security for sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose; and

(u) after such registration statement becomes effective, notify each selling Holder of any request by the SEC that the Company amend or supplement such registration statement or prospectus.

In addition, the Company shall ensure that, at all times after any registration statement covering a public offering of securities of the Company under the Securities Act shall have become effective, its insider trading policy shall provide that the Company's directors may implement a trading program under Rule 10b5-1 of the Exchange Act.

2.5 Furnish Information. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 2 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as is reasonably required to effect the registration of such Holder's Registrable Securities.

2.6 Expenses of Registration. All expenses (other than Selling Expenses) incurred in connection with registrations, filings, or qualifications pursuant to Section 2, including all registration, filing, and qualification fees; printers' and accounting fees; fees and disbursements of counsel for the Company; and the reasonable fees and disbursements of one counsel for each of the selling Holders ("**Selling Holder Counsel**"), shall be borne and paid by the Company; provided, however, that the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Subsection 2.1 if the registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (in which case all selling Holders shall bear such expenses pro rata based upon the number of Registrable Securities that were to be included in the withdrawn registration); provided further that if, at the time of such withdrawal, the Holders shall have learned of a material adverse change in the condition, business, or prospects of the Company from that known to the Holders at the time of their request and have withdrawn the request with reasonable promptness after learning of such information then the Holders shall not be required to pay any of such expenses. All Selling Expenses relating to Registrable Securities registered pursuant to this Section 2 shall be borne and paid by the Holders pro rata on the basis of the number of Registrable Securities registered on their behalf.

2.7 Delay of Registration. No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any registration pursuant to this Agreement as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

2.8 Indemnification. If any Registrable Securities are included in a Registration Statement under this Section 2:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each selling Holder, and the partners, members, officers, directors, and stockholders of each such Holder; legal counsel and accountants for each such Holder; any underwriter (as defined in the Securities Act) for each such Holder; and each Person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any Damages, and the Company will pay to each such Holder, underwriter, controlling Person, or other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Subsection 2.8(a) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld, nor shall the Company be liable for any Damages to the extent that they arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of any such Holder, underwriter, controlling Person, or other aforementioned Person expressly for use in connection with such registration.

(b) To the extent permitted by law, each selling Holder, severally and not jointly, will indemnify and hold harmless the Company, and each of its directors, each of its officers who has signed the Registration Statement, each Person (if any), who controls the Company within the meaning of the Securities Act, legal counsel and accountants for the Company, any underwriter (as defined in the Securities Act), any other Holder selling securities in such registration statement, and any controlling Person of any such underwriter or other Holder, against any Damages, in each case only to the extent that such Damages arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of such selling Holder expressly for use in connection with such registration; and each such selling Holder will pay to the Company and each other aforementioned Person any legal or other expenses reasonably incurred thereby in connection with investigating or defending any claim or proceeding from which Damages may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Subsection 2.8(b) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; and provided further that in no event shall the aggregate amounts payable by any Holder by way of indemnity or contribution under Subsections 2.8(b) and 2.8(d) exceed the proceeds from the related offering received by such Holder (net of any Selling Expenses paid by such Holder).

(c) Promptly after receipt by an indemnified party under this Subsection 2.8 of notice of the commencement of any action (including any governmental action) for which a party may be entitled to indemnification hereunder, such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Subsection 2.8, give the indemnifying party notice of the commencement thereof. The indemnifying party shall have the right to participate in such action and, to the extent the indemnifying party so desires, participate jointly with any other indemnifying party to which notice has been given, and to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties that may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such action.

(d) To provide for just and equitable contribution to joint liability under the Securities Act in any case in which either: (i) any party otherwise entitled to indemnification hereunder makes a claim for indemnification pursuant to this Subsection 2.8 but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case, notwithstanding the fact that this Subsection 2.8 provides for indemnification in such case, or (ii) contribution under the Securities Act may be required on the part of any party hereto for which indemnification is provided under this Subsection 2.8, then, and in each such case, such parties will contribute to the aggregate losses,

claims, damages, liabilities, or expenses to which they may be subject (after contribution from others) in such proportion as is appropriate to reflect the relative fault of each of the indemnifying party and the indemnified party in connection with the statements, omissions, or other actions that resulted in such loss, claim, damage, liability, or expense, as well as to reflect any other relevant equitable considerations. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or allegedly untrue statement of a material fact, or the omission or alleged omission of a material fact, relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission; provided, however, that, in any such case no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation; and provided further that in no event shall a Holder's liability pursuant to this Subsection 2.8(d), when combined with the amounts paid or payable by such Holder pursuant to Subsection 2.8(b), exceed the proceeds from the related offering received by such Holder (net of any Selling Expenses paid by such Holder), except in the case of willful misconduct or fraud by such Holder.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control between the parties to such agreement.

(f) Unless otherwise superseded by an underwriting agreement entered into in connection with the underwritten public offering, the obligations of the Company and Holders under this Subsection 2.8 shall survive the completion of any offering of Registrable Securities in a registration under this Section 2, and otherwise shall survive the termination of this Agreement.

2.9 Reports Under Exchange Act. With a view to making available to the Holders the benefits of SEC Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company shall:

(a) make and keep available adequate current public information, as those terms are understood and defined in SEC Rule 144;

(b) use commercially reasonable efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act (at any time after the Company is subject to such reporting requirements); and

(c) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) to the extent accurate, a written statement by the Company that it has complied with the reporting requirements of SEC Rule 144, the Securities Act, and the Exchange Act, or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after the Company so qualifies); and (ii) such other information as may be

reasonably requested in availing any Holder of any rule or regulation of the SEC that permits the selling of any such securities without registration or pursuant to Form S-3 (at any time after the Company so qualifies to use such form).

2.10 Limitations on Subsequent Registration Rights. Subject to Section 3.11, from and after the date of this Agreement, the Company shall not, without the prior written consent of the Majority Hudson Bay Investors, the Majority PECM Investors and the Majority Luxor Investors and the Holders of a majority of the Registrable Securities then outstanding, enter into any agreement with any holder or prospective holder of any securities of the Company that would provide to such holder the right to include securities in any registration on other than a subordinate basis after all Holders have had the opportunity to include in the registration and offering all shares of Registrable Securities that they wish to so include.

2.11 Market Stand-off Agreement. Each Holder and the Company hereby agree that it will not, without the prior written consent of the managing underwriter, in connection with an underwritten offering pursuant to Section 2.2 by the Company for its own behalf of shares of its Common Stock or any other equity securities under the Securities Act on a registration statement on Form S-1 or Form S-3, during the period commencing on the date of the final prospectus relating to and ending on the date specified by the Company and the managing underwriter (such period not to exceed ninety (90) days (the “**Holdback Period**”)), effect any sale or distribution of equity securities of the Company, as applicable, or any securities convertible into or exchangeable or exercisable for such securities. If (x) the Company issues an earnings release or other material news or a material event relating to the Company and its subsidiaries occurs during the last 17 days of the Holdback Period or (y) prior to the expiration of the Holdback Period, the Company announces that it will release earnings results during the 16-day period beginning upon the expiration of the Holdback Period, then to the extent necessary for a managing or co-managing underwriter of an underwritten offering required hereunder to comply with FINRA Rule 2711(f)(4) or any successor regulation, the Holdback Period shall be extended until 18 days after the earnings release or the occurrence of the material news or event, as the case may be (such period the “**Holdback Extension**”). The Company may impose stop-transfer instructions with respect to its securities that are subject to the forgoing restriction until the end of such period, including any period of Holdback Extension. The foregoing provisions of this Subsection 2.11 shall (i) not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, (ii) shall be applicable to the Holders only if all officers and directors are subject to substantially the same restrictions and the Company uses commercially reasonable efforts to obtain a similar agreement from all stockholders individually owning more than five percent (5%) of the Company’s outstanding Common Stock (after giving effect to conversion into Common Stock of all outstanding Preferred Stock) and (iii) shall be applicable to the Holders only if the Company has complied with its obligations under Section 2 and has included at least 75% of the Registered Securities requested by such Holders in such underwritten offering. The underwriters in connection with such underwritten offering are intended third-party beneficiaries of this Subsection 2.11 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Each Holder further agrees to execute such agreements as may be reasonably requested by the underwriters in connection with such underwritten offering that are consistent with this Subsection 2.11 or that are necessary to give further effect thereto.

2.12 Termination of Registration Rights. The right of any Holder to request registration or inclusion of Registrable Securities in any registration pursuant to Subsections 2.1 or 2.2 shall terminate upon when all shares of such Holder's that were Registrable Securities cease to be Registrable Securities, provided that the indemnification provisions of Subsection 2.8 shall survive such termination.

2.13 Hedging Transactions.

(i) The Company agrees that, in connection with any proposed Hedging Transaction, if, in the reasonable judgment of counsel to the Holders' it is necessary or desirable to register under the Securities Act such Hedging Transaction or sales or transfers (whether short or long) of securities of the same class as the Registrable Securities in connection therewith, then the Company shall use its reasonable best efforts to take such actions (which may include, among other things, the filing of a post-effective amendment to a Registration Statement to include additional or changed information that is material or is otherwise required to be disclosed, including a description of such Hedging Transaction, the name of the Hedging Counterparty, identification of the Hedging Counterparty or its affiliates as underwriters or potential underwriters, if applicable, or any change to the plan of distribution) as may reasonably be required to register such Hedging Transaction or sales or transfers of securities of the same class as the Registrable Securities in connection therewith under the Securities Act in a manner consistent with the rights and obligations of the Company hereunder with respect to the registration of Registrable Securities. Any information provided by the Holders regarding the Hedging Transaction that is included in a Registration Statement, Prospectus or other document pursuant to this Section 2.13 shall be deemed to be information provided by the Holders selling Registrable Securities pursuant to such Registration Statement for purposes of Section 2.8.

(ii) All Registration Statements in which Holders may include Registrable Securities under this Agreement shall be subject to the provisions of this Section 2.13, and the registration of securities of the same class as the Registrable Securities thereunder pursuant to this Section 2.13 shall be subject to the provisions of this Agreement applicable to any such Registration Statements; provided, however, that the selection of any Hedging Counterparty shall in the sole discretion of the Holders of a majority of the Registrable Securities subject to the Hedging Transaction that are proposed to be included in such Registration Statement.

(iii) If in connection with a Hedging Transaction, a Hedging Counterparty or any affiliate thereof is (or may be considered under applicable SEC guidance) an underwriter or selling stockholder, then it shall, if requested by the relevant Holder, be required to provide customary indemnities to the Company regarding the plan of distribution and like matters.

(iv) The Company further agrees to include, under the caption "Plan of Distribution" (or the equivalent caption), in each Registration Statement, and any related Prospectus (to the extent such inclusion is permitted under applicable Commission regulations and is consistent with comments received from the Commission during any Commission review of the Registration Statement), such disclosure as is mutually agreed upon by the Company, the relevant Holders and the Hedging Counterparty describing such Hedging Transaction.

3. Miscellaneous.

3.1 Successors and Assigns. This Agreement shall inure, as hereinafter provided, to the benefit of and be binding upon the successors and permitted assigns of each of the parties, including each person who is a transferee of a Holder of any Registrable Securities, who executes a Joinder in the form attached as Annex A hereto, provided that nothing herein shall be deemed to permit any assignment, transfer or other disposition of Registrable Securities in violation of the terms of the Amended Series A Certificate of Designation, the Series A-1 Certificate of Designation, applicable law and any applicable agreement. If any transferee of any Holder shall acquire Registrable Securities, in any manner, whether by operation of law or otherwise, such Registrable Securities shall be held subject to and benefit from all of the terms of this Agreement, and by taking and holding such Registrable Securities, such person shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement and such person shall be entitled to receive the benefits hereof.

3.2 Governing Law. This Agreement shall be governed by the internal law of the State of New York.

3.3 Jurisdiction. Any action or proceeding against any party hereto relating in any way to this Agreement or the transactions contemplated hereby may be brought and enforced in any United States federal court or New York State Court located in the Borough of Manhattan in The City of New York, and each party, on behalf of itself and its respective successors and assigns, irrevocably consents to the jurisdiction of each such court in respect of any such action or proceeding. Each party, on behalf of itself and its respective successors and assigns, irrevocably consents to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, return receipt requested, to such person or entity at the address for such person or entity set forth in Section 3.7 hereof of this Agreement or such other address such person or entity shall notify the other in writing. The foregoing shall not limit the right of any person or entity to serve process in any other manner permitted by law or to bring any action or proceeding, or to obtain execution of any judgment, in any other jurisdiction.

Each party, on behalf of itself and its respective successors and assigns, hereby irrevocably waives any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising under or relating to this Agreement or the transactions contemplated hereby in any court located in the Borough of Manhattan in The City of New York. Each party, on behalf of itself and its respective successors and assigns, hereby irrevocably waives any claim that a court located in the State of New York is not a convenient forum for any such action or proceeding.

Each party, on behalf of itself and its respective successors and assigns, hereby irrevocably waives, to the fullest extent permitted by applicable United States federal and state law, all immunity from jurisdiction, service of process, attachment (both before and after judgment) and execution to which he might otherwise be entitled in any action or proceeding relating in any way to this Agreement or the transactions contemplated hereby in the courts of the State of New York, of the United States or of any other country or jurisdiction, and hereby waives any right he might otherwise have to raise or claim or cause to be pleaded any such immunity at or in respect of any such action or proceeding.

3.4 Waiver of Jury Trial. EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS, THE SECURITIES OR THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

3.5 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature 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.

3.6 Titles and Subtitles. The titles and subtitles used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

3.7 Notices. All notices, demands and other communications provided for or permitted hereunder shall be made in writing and shall be made by registered or certified first-class mail, return receipt requested, telecopy, electronic transmission, courier service or personal delivery:

(a) If to the Company:

Suite 150
460 Herndon Parkway
Herndon, VA 20170
Telecopy: (703) 650-4295
Attention: Andrea L. Mancuso, General Counsel

With a copy to (which shall not constitute notice hereunder):

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Telecopy: (212) 492-0105
Attention: Jeffery D. Marell

(b) If to any Holder, at its address as it appears on Exhibit A, or at the Holder's address as it appears in the records of the Company if updated after the execution of this Agreement.

All such notices, demands and other communications shall be deemed to have been duly given when delivered by hand, if personally delivered; when delivered by courier, if delivered by commercial courier service; five (5) days after being deposited in the mail, postage prepaid, if mailed; and when receipt is acknowledged, if telecopied or electronically transmitted. Any party may by notice given in accordance with this Section 3.7 designate another address or Person for receipt of notices hereunder. If the due date for any notice is a day that is not a business day for commercial banks in the City of New York, then such notice shall be considered timely delivered if it is delivered by the end of the following such business day.

3.8 Amendments and Waivers. This Agreement may be amended with the consent of the Company and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only if the Company shall have obtained a written consent to such amendment, action or omission to act of the Hudson Bay Majority Investors, the PECM Majority Investors and the Luxor Investors and the Holders of at least a majority of the Registrable Securities then outstanding, provided however, that any modification, alteration, waiver or change that has a disproportionate and adverse effect on any right of any Holder or any person named in Section 3.11 to the extent he or it has not yet become a party to this Agreement pursuant to Section 3.11 under this Agreement shall not be effective against such Holder without the prior written consent of such Holder.

No waiver of any terms or conditions of this Agreement shall operate as a waiver of any other breach of such terms and conditions or any other term or condition, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision hereof. No written waiver hereunder, unless it by its own terms explicitly provides to the contrary, shall be construed to effect a continuing waiver of the provisions being waived and no such waiver in any instance shall constitute a waiver in any other instance or for any other purpose or impair the right of the party against whom such waiver is claimed in all other instances or for all other purposes to require full compliance with such provision. The failure of any party to enforce any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the right of such party thereafter to enforce each provision of this Agreement in accordance with its terms.

3.9 Severability. In case any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and such invalid, illegal, or unenforceable provision shall be reformed and construed so that it will be valid, legal, and enforceable to the maximum extent permitted by law.

3.10 Aggregation of Stock. All shares of Registrable Securities held or acquired by Affiliates shall be aggregated together for the purpose of determining the availability of any rights under this Agreement and such Affiliated persons may apportion such rights as among themselves in any manner they deem appropriate.

3.11 Additional Investor. Notwithstanding anything to the contrary contained herein, each of Philip A Falcone and HRG may become a party to this Agreement by executing and delivering a joinder to this Agreement in the form attached hereto as Exhibit A, and thereafter shall be deemed an “Investor” for all purposes hereunder. No action or consent by the Investors shall be required for such joinder to this Agreement by HRG, so long as HRG has agreed in writing to be bound by all of the obligations as an “Investor” hereunder.

3.12 Entire Agreement. This Agreement (including any Schedules and Exhibits hereto) constitutes the full and entire understanding and agreement among the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties is expressly canceled.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

COMPANY:

HC2 HOLDINGS INC.

By: /s/ Mesfin Demise

Name: Mesfin Demise

Title: Chief Financial Officer

SIGNATURE PAGE TO AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

HUDSON BAY INVESTORS:

HUDSON BAY ABSOLUTE RETURN CREDIT
OPPORTUNITIES MASTER FUND LTD.

By: /s/ Marc Sole

Name: Marc Sole

Title: Authorized Signatory

SIGNATURE PAGE TO AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

PECM INVESTORS:

PROVIDENCE DEBT FUND III L.P.

By: /s/ Bryan Martoken

Name: Bryan Martoken

Title: CFO – Capital Markets Group

SIGNATURE PAGE TO AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

By: /s/ Bryan Martoken

Name: Bryan Martoken

Title: CFO – Capital Markets Group

SIGNATURE PAGE TO AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

PECM STRATEGIC FUNDING L.P.

By: PECM Strategic Funding GP L.P.

By: PECEM Strategic Funding GP Ltd.

By: /s/ Bryan Martoken

Name: Bryan Martoken

Title: CFO – Capital Markets Group

SIGNATURE PAGE TO AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

By: /s/ Bryan Martoken

Name: Bryan Martoken

Title: CFO – Capital Markets Group

SIGNATURE PAGE TO AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

DG VALUE PARTNERS, LP

By: DG Capital Management, LLC, *its investment manager*

By: /s/ Dov Gertzulin

Name: Dov Gertzulin

Title: Managing Member

SIGNATURE PAGE TO AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

DG VALUE PARTNERS II MASTER FUND, LP

By: DG Capital Management, LLC, *its investment manager*

By: /s/ Dov Gertzulin

Name: Dov Gertzulin

Title: Managing Member

SIGNATURE PAGE TO AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

SPECIAL SITUATIONS, LLC

By: DG Capital Management, LLC, *its investment manager*

By: /s/ Dov Gertzulin

Name: Dov Gertzulin

Title: Managing Member

SIGNATURE PAGE TO AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

SPECIAL SITUATIONS X, LLC

By: DG Capital Management, LLC, *its investment manager*

By: /s/ Dov Gertzulin

Name: Dov Gertzulin

Title: Managing Member

SIGNATURE PAGE TO AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

DG CREDIT OPPORTUNITIES, LP

By: DG Capital Management, LLC, *its investment manager*

By: /s/ Dov Gertzulin

Name: Dov Gertzulin

Title: Managing Member

SIGNATURE PAGE TO AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

LUXOR PURCHASERS

LUXOR CAPITAL PARTNERS, LP

By: Luxor Capital Group, LP, its *investment manager*

By: /s/ Norris Nissim

Name: Norris Nissim

Title: General Counsel

SIGNATURE PAGE TO AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

**LUXOR CAPITAL PARTNERS OFFSHORE MASTER
FUND, LP**

By: Luxor Capital Group, LP, its *investment manager*

By: /s/ Norris Nissim

Name: Norris Nissim

Title: General Counsel

SIGNATURE PAGE TO AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

LUXOR WAVEFRONT, LP

By: Luxor Capital Group, LP, its *investment manager*

By: /s/ Norris Nissim

Name: Norris Nissim

Title: General Counsel

SIGNATURE PAGE TO AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

SCHEDULE A

Investors

Hudson Bay Investors

HUDSON BAY ABSOLUTE RETURN CREDIT OPPORTUNITIES MASTER FUND LTD.

PECM Investors

PROVIDENCE DEBT FUND III L.P.
PROVIDENCE DEBT FUND III MASTER (NON-US) L.P.
PECM STRATEGIC FUNDING L.P.
BENEFIT STREET PARTNERS SMA LM L.P.

Luxor Investors

LUXOR CAPITAL PARTNERS, LP
LUXOR CAPITAL PARTNERS OFFSHORE MASTER FUND, LP
LUXOR WAVEFRONT, LP

DG Investors

DG VALUE PARTNERS, LP
DG VALUE PARTNERS II MASTER FUND, LP
SPECIAL SITUATIONS, LLC
SPECIAL SITUATIONS X, LLC
DG CREDIT OPPORTUNITIES, LP

EXHIBIT A

FORM OF JOINDER

THIS JOINDER is made on this day of , ,

BETWEEN

(1) (the “New Party”);

AND

(2) THE INVESTORS

(collectively, the “Current Parties” and individually, a “Current Party”);

AND

(3) HC2 HOLDINGS INC., (the “Company”).

WHEREAS an Amended and Restated Registration Rights Agreement was entered into on September 22, 2014 by and among, inter alia, certain of the Current Parties and the Company (the “Registration Rights Agreement”), a copy of which the New Party hereby confirms that it has been supplied with and acknowledges the terms therein.

NOW IT IS AGREED as follows:

1. In this Joinder, unless the context otherwise requires, words and expressions respectively defined or construed in the Registration Rights Agreement shall have the same meanings when used or referred to herein.
2. The New Party hereby accedes to and ratifies the Registration Rights Agreement and covenants and agrees with the Current Parties and the Company to be bound by the terms of the Registration Rights Agreement as an “Investor” and to duly and punctually perform and discharge all liabilities and obligations whatsoever from time to time to be performed or discharged by it under or by virtue of the Registration Rights Agreement in all respects as if named as a party therein.
3. The Company covenants and agrees that the New Party shall be entitled to all the benefits of the terms and conditions of the Registration Rights Agreement to the intent and effect that the New Party shall be deemed, with effect from the date on which the New Party executes this Joinder, to be a party to the Registration Rights Agreement as an “Investor.”
4. This Joinder shall hereafter be read and construed in conjunction and as one document with the Registration Rights Agreement and references in the Registration Rights Agreement to “the Agreement” or “this Agreement,” and references in all other instruments and documents executed thereunder or pursuant thereto to the Registration Rights Agreement, shall for all purposes refer to the Registration Rights Agreement incorporating and as supplemented by this Joinder.

5. THIS JOINDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW THEREOF.

6. Any action or proceeding against any party hereto relating in any way to this Joinder or the transactions contemplated hereby may be brought and enforced in any United States federal court or New York State Court located in the Borough of Manhattan in The City of New York, and each party, on behalf of itself and its respective successors and assigns, irrevocably consents to the jurisdiction of each such court in respect of any such action or proceeding. Each party, on behalf of itself and its respective successors and assigns, irrevocably consents to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, return receipt requested, to such person or entity at the address for such person or entity set forth in Section 3.7 of the Registration Rights Agreement or such other address such person or entity shall notify the other in writing. The foregoing shall not limit the right of any person or entity to serve process in any other manner permitted by law or to bring any action or proceeding, or to obtain execution of any judgment, in any other jurisdiction.

7. Each party, on behalf of itself and its respective successors and assigns, hereby irrevocably waives any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising under or relating to this Joinder or the transactions contemplated hereby in any court located in the Borough of Manhattan in The City of New York. Each party, on behalf of itself and its respective successors and assigns, hereby irrevocably waives any claim that a court located in the State of New York is not a convenient forum for any such action or proceeding.

8. Each party, on behalf of itself and its respective successors and assigns, hereby irrevocably waives, to the fullest extent permitted by applicable United States federal and state law, all immunity from jurisdiction, service of process, attachment (both before and after judgment) and execution to which he might otherwise be entitled in any action or proceeding relating in any way to this Joinder or the transactions contemplated hereby in the courts of the State of New York, of the United States or of any other country or jurisdiction, and hereby waives any right he might otherwise have to raise or claim or cause to be pleaded any such immunity at or in respect of any such action or proceeding.

9. The address of the undersigned for purposes of all notices under the Registration Rights Agreement is:

[NEW PARTY]

By: _____

Name:

Title: