

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549  
Amendment No. 2

To

**FORM S-1  
REGISTRATION STATEMENT**

*UNDER THE  
SECURITIES ACT OF 1933*

**Leonardo DRS, Inc.**

(Exact Name of Registrant as Specified in its Charter)

Delaware  
(State or Other Jurisdiction  
of Incorporation or Organization)

3812  
(Primary Standard Industrial  
Classification Code Number)

13-2632319  
(I.R.S. Employer  
Identification Number)

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Suite 1000  
Arlington, Virginia 22202  
(703) 416-8000

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

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

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

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

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

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

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

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

Emerging growth company

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

### CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered <sup>(1)</sup>	Proposed Maximum Offering Price Per Share <sup>(2)</sup>	Proposed Maximum Aggregate Offering Price <sup>(2)</sup>	Amount of Registration Fee
Common Stock, par value \$0.01 per share	36,685,000	\$22.00	\$807,070,000	\$88,051.34 <sup>(3)</sup>

- (1) Includes 4,785,000 shares of common stock subject to the underwriters' option to purchase additional shares.
- (2) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(o) of the Securities Act of 1933, as amended.
- (3) The registrant previously paid a registration fee of \$10,910.00 in connection with the initial filing of this registration statement.

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the U.S. Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

The information in this preliminary prospectus is not complete and may be changed. We and the selling stockholder may not sell these securities until the U.S. Securities and Exchange Commission declares our registration statement effective. This preliminary prospectus is not an offer to sell these securities and it is not soliciting offers to buy these securities in any state or jurisdiction where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED MARCH 15, 2021

31,900,000 Shares



## Leonardo DRS, Inc. Common Stock

This is an initial public offering of shares of common stock of Leonardo DRS, Inc. The selling stockholder, Leonardo US Holding, Inc., a wholly owned subsidiary of Leonardo – Società per azioni, is offering 31,900,000 shares of common stock. We will not receive any of the proceeds from the sale of the shares being sold by the selling stockholder in this offering.

Prior to this offering, there has been no public market for our common stock. We have applied to list our common stock on the New York Stock Exchange ("NYSE"), under the symbol "DRS."

We anticipate that the initial public offering price will be between \$20.00 and \$22.00 per share.

After the completion of this offering, the selling stockholder will continue to hold up to 78.0% of our common stock and we expect to be a "controlled company" within the meaning of the corporate governance standards of the NYSE.

**Investing in our common stock involves risks. See "Risk Factors" beginning on page 16 of this prospectus to read about factors you should consider before buying shares of our common stock.**

	Per Share	Total
Initial public offering price	\$	\$
Underwriting discounts and commissions <sup>(1)</sup>	\$	\$
Proceeds, before expenses, to the selling stockholder	\$	\$

(1) We have agreed to reimburse the underwriters for certain expenses in connection with this offering. See "Underwriting."

The underwriters also may purchase up to 4,785,000 additional shares from the selling stockholder at the initial offering price less the underwriting discounts and commissions, within 30 days from the date of this prospectus.

**Neither the U.S. Securities and Exchange Commission nor any state securities commission has approved or disapproved the securities described herein or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

The underwriters expect to deliver the shares to purchasers on or about \_\_\_\_\_, 2021.

**Goldman Sachs & Co. LLC**

**BofA Securities**

**J.P. Morgan**

**Barclays**

**Citigroup**

**Credit Suisse**

**Morgan Stanley**

**Credit Agricole CIB**

**IMI - Intesa Sanpaolo**

**MUFG**

**UniCredit Capital Markets**

Prospectus dated \_\_\_\_\_, 2021

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**You should rely only on the information contained in this prospectus and any free writing prospectus we may authorize to be delivered to you. We have not, and the selling stockholder and the underwriters have not, authorized anyone to provide you with information different from, or in addition to, that contained in this prospectus and any related free writing prospectus. We, the selling stockholder and the underwriters take no responsibility for, and can provide no assurances as to the reliability of, any information that others may give you. This prospectus is an offer to sell only the shares offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus is only accurate as of the date of this prospectus, regardless of the time of delivery of this prospectus and any sale of shares of our common stock.**

### CERTAIN DEFINED TERMS

We use the following terms in this prospectus:

- “US Holding” means Leonardo US Holding, Inc., a Delaware corporation, the selling stockholder in this offering and a direct wholly owned subsidiary of Leonardo S.p.A.;
- “Leonardo S.p.A.” means Leonardo – Società per azioni, an Italian società per azioni listed on the Milan Stock Exchange; and

- “we,” “us,” “our,” “DRS” and the “Company” mean Leonardo DRS, Inc. and its consolidated subsidiaries, unless the context refers only to Leonardo DRS, Inc. as a corporate entity.

### **SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS AND INFORMATION**

This prospectus contains forward-looking statements and cautionary statements within the meaning of the Private Securities Litigation Reform Act of 1995. Some of the forward-looking statements can be identified by the use of forward-looking terms such as “believes,” “expects,” “may,” “will,” “shall,” “should,” “would,” “could,” “seeks,” “aims,” “strives,” “targets,” “projects,” “intends,” “plans,” “estimates,” “anticipates” or other comparable terms. Forward-looking statements include, without limitation, all matters that are not historical facts. They appear in a number of places throughout this prospectus and include, without limitation, statements regarding our intentions, beliefs, assumptions or current expectations concerning, among other things, financial goals, financial position, results of operations, cash flows, prospects, strategies or expectations, and the impact of prevailing economic conditions.

Forward-looking statements are subject to known and unknown risks and uncertainties, many of which may be beyond our control. We caution you that forward-looking statements are not guarantees of future performance or outcomes and that actual performance and outcomes may differ materially from those made in or suggested by the forward-looking statements contained in this prospectus. In addition, even if future performance and outcomes are consistent with the forward-looking statements contained in this prospectus, those results or developments may not be indicative of results or developments in subsequent periods. New factors emerge from time to time that may cause our business not to develop as we expect, and it is not possible for us to predict all of them. Factors that could cause actual results and outcomes to differ from those reflected in forward-looking statements include, without limitation:

- Disruptions or deteriorations in our relationship with the relevant agencies of the U.S. government, as well as any failure to pass routine audits or otherwise comply with governmental requirements including those related to security clearance or procurement rules, including the False Claims Act;
- Significant delays or reductions in appropriations for our programs and changes in U.S. government priorities and spending levels more broadly;
- Any failure to comply with the proxy agreement with the U.S. Department of Defense (the “DoD”);
- The coronavirus pandemic (“COVID-19”) and related impacts on our business, financial condition and results of operations;
- Our mix of fixed-price, cost-plus and time-and-material type contracts and any resulting impact on our cash flows due to cost overruns;
- Our dependence on U.S. government contracts, which often are only partially funded and are subject to immediate termination, and the concentration of our customer base in the U.S. defense industry;
- Our use of estimates in pricing and accounting for many of our programs that are inherently uncertain and which may not prove to be accurate;
- Our ability to realize the full value of our backlog;
- Our ability to predict future capital needs or to obtain additional financing if we need it;
- Our ability to compete efficiently, including due to U.S. government organizational conflict of interest rules which may limit new contract opportunities or require us to wind down existing contracts;

- Our relationships with other industry participants, including any contractual disputes or the inability of our key suppliers to timely deliver our components, parts or services;
- Any failure to meet our contractual obligations;
- Any security breach, including any cyber attack, cyber intrusion, insider threat, or other significant disruption of our IT networks and related systems as well as any act of terrorism or other threat to our physical security and personnel;
- Our ability to fully exploit or obtain patents or other intellectual property protections necessary to secure our proprietary technology, including our ability to avoid infringing upon the intellectual property of third parties or prevent third parties from infringing upon our own intellectual property;
- The conduct of our employees, agents, affiliates, subcontractors, suppliers, business partners or joint ventures in which we participate which may impact our reputation and ability to do business;
- Our compliance with environmental laws and regulations, and any environmental liabilities that may affect our reputation or financial position;
- The outcome of litigation, arbitration, investigations, claims, disputes, enforcement actions and other legal proceedings in which we are involved;
- Various geopolitical and economic factors, laws and regulations including the Foreign Corrupt Practices Act (“FCPA”), the Export Control Act, the International Traffic in Arms Regulations (“ITAR”), the Export Administration Regulations (“EAR”), and those that we are exposed to as a result of our international business;
- Our ability to obtain export licenses necessary to conduct certain operations abroad, including any attempts by Congress to prevent proposed sales to certain foreign governments;
- Our ability to attract and retain technical and other key personnel;
- The occurrence of prolonged work stoppages;
- The unavailability or inadequacy of our insurance coverage, customer indemnifications or other liability protections to cover all of our significant risks or to pay for material losses we incur;
- Future changes in U.S. tax laws and regulations or interpretations thereof;
- Changes in estimates used in accounting for our pension plans, including in respect of the funding status thereof;
- Changes in future business or other market conditions that could cause business investments and/or recorded goodwill or other long-term assets to become impaired;
- Adverse consequences from any acquisitions such as operating difficulties, dilution and other harmful consequences or any modification, delay or prevention of any future acquisition or investment activity by the Committee on Foreign Investment in the United States (“CFIUS”);
- Natural disasters or other significant disruptions; or
- Any conflict of interest that may arise because our majority stockholder, US Holding, or ultimate parent, Leonardo S.p.A., may have interests that are different from those of our other stockholders, including as a result of any ongoing business relationships Leonardo S.p.A. may have with us, and their significant ownership in us may discourage change of control transactions.

You should read this prospectus completely and with the understanding that actual future results may be materially different from expectations. All forward-looking statements made in this prospectus are

qualified by these cautionary statements. These forward-looking statements are made only as of the date of this prospectus, and we do not undertake any obligation, other than as may be required by law, to update or revise any forward-looking or cautionary statements to reflect changes in assumptions, the occurrence of events, unanticipated or otherwise, and changes in future operating results over time or otherwise.

Other risks, uncertainties and factors, including those discussed under “Risk Factors,” could cause our actual results to differ materially from those projected in any forward-looking statements we make. Readers should read carefully the factors described in “Risk Factors” to better understand the risks and uncertainties inherent in our business and underlying any forward-looking statements.

### **MARKET AND INDUSTRY DATA**

This prospectus includes estimates regarding market and industry data and forecasts, which are based on publicly available information, industry publications and surveys, reports from government agencies, reports by market research firms and our own estimates based on our management’s knowledge of, and experience in, the defense industry and market segments in which we compete. Third-party industry publications and forecasts generally state that the information contained therein has been obtained from sources generally believed to be reliable. Furthermore, certain reports, industry publications and surveys from which we have obtained industry and market data that are used in this prospectus had been based on information available before the outbreak of COVID-19 and therefore may not reflect any impact of COVID-19 or actions or inactions by any governmental agency or private party resulting therefrom on any specific market or globally. Our estimates involve risks and uncertainties, including risks and uncertainties related to COVID-19, and are subject to change based on various factors, including those discussed under the captions “Risk Factors,” “Special Note Regarding Forward-Looking Statements and Information” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

### **SERVICE MARKS, TRADEMARKS AND TRADE NAMES**

We hold and license various service marks, trademarks and trade names that we deem particularly important to the marketing conducted by our business. This prospectus also contains trademarks, service marks and trade names of other companies which are the property of their respective holders. We do not intend our use or display of such names or marks to imply relationships with, or endorsements of us by, any other company other than explicitly stated.

### **PRESENTATION OF FINANCIAL INFORMATION**

We have made rounding adjustments to some of the figures included in this prospectus. Accordingly, numerical figures shown as totals in some tables may not be an arithmetic aggregation of the figures that precede them. Unless otherwise indicated, all references to “U.S. dollars,” “dollars,” “U.S. \$” and “\$” in this prospectus are to the lawful currency of the United States of America.

In this prospectus, we present certain financial measures that are not calculated in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”), such measures referred to herein as “non-GAAP,” including Adjusted EBITDA, Adjusted EBITDA Margin, Adjusted EPS, Leverage Ratio, and Free Cash Flow. You should review the reconciliation and accompanying disclosures carefully in connection with your consideration of such non-GAAP measures and note that the way in which we calculate these measures may not be comparable to similarly titled measures employed by other companies.

## PROSPECTUS SUMMARY

*The following summary highlights selected information about our company and this offering that is included elsewhere in this prospectus in greater detail. It does not contain all of the information that you should consider before investing in our common stock. For a more comprehensive understanding of our company and this offering, you should read this entire prospectus carefully, including the information presented under the heading “Risk Factors,” “Special Note Regarding Forward-Looking Statements and Information,” “Selected Historical Consolidated Financial Data,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and in our consolidated financial statements and notes thereto.*

*In this prospectus, unless we indicate otherwise or the context requires, “DRS,” “we,” “our,” “ours,” “us” and the “Company” refer to Leonardo DRS, Inc. and its consolidated subsidiaries and joint ventures.*

### Overview

DRS is a leading provider of defense products and technologies that are used across land, air, sea, space and cyber domains. Our diverse array of defense systems and solutions is offered to all branches of the U.S. military, major aerospace and defense prime contractors, government intelligence agencies and international military customers for deployment on a wide range of military platforms. We focus our capabilities in areas of critical importance to the U.S. military, such as sensing, electronic warfare (“EW”), cyber security, network computing, communications, force protection and electrical power conversion and propulsion. As a mid-tier defense company with a portfolio that includes internally developed proprietary intellectual property (“IP”) and offerings at the component, sub-system and system level, we are able to serve as either prime contractor or a sub-contractor on key contracts, affording us flexibility in how we approach the market.

Our alignment with the nation’s top defense priorities has allowed us to achieve a 12% compounded annual growth rate (“CAGR”) in revenues from the year ended December 31, 2016 through the year ended December 31, 2020. This growth, which exceeded the DoD budget CAGR of 5.3% during such period and drove our annual revenue to approximately \$2.8 billion for the year ended December 31, 2020, was driven by organic growth. During the same period, our net earnings (loss) improved by \$247 million to \$85 million, our operating earnings grew \$178 million to \$181 million and our Adjusted EBITDA grew \$117 million to \$268 million (CAGR of 16%). Adjusted EBITDA is a non-GAAP measure. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Key Financial and Operating Measures—Non-GAAP Financial Measures” for a reconciliation of Adjusted EBITDA to net earnings.

We have a 50-year legacy of designing and manufacturing innovative and differentiated products and solutions for military applications. From our earliest sonar systems that were instrumental in detecting enemy submarines, to today’s best-in-class electro-optical sensors, we have continually developed advanced technologies to address complex military challenges. Throughout much of our history, we have targeted our investments towards the highest growth areas of the DoD defense budgets. Today, we employ approximately 6,500 people including a substantial number of highly trained engineers and personnel with security clearances to support classified programs for the U.S. military.

We focus on products, systems and solutions that can be adapted for installation on a wide range of military platforms. This allows us to leverage our technology investments to expand revenue opportunities. Our high-technology solutions are designed to transition from one military platform to another. In addition, we have a significant installed base of products and solutions, which allows us to enhance revenue opportunities by providing upgrades to existing platforms. This gives us a resilient position to offer new solutions and technology in changing budget environments. Our growth has been facilitated by our longstanding relationships and position as a trusted partner with the U.S. military, intelligence community and industry customers. Together, these characteristics allow us to pivot quickly to



address emerging needs for our customers and generate growth opportunities in today's dynamic defense market.

We operate in three segments: Advanced Sensor Technologies, Network Computing & Communications and Integrated Mission Systems. We have achieved significant growth over the past five years by aligning our investments and technology development to address the greatest threats to U.S. defense interests.

**Advanced Sensor Technologies:** Our Advanced Sensor Technologies segment provides world-class electro-optical sensor technologies, laser systems, EW systems and intelligence and surveillance solutions to U.S. military and intelligence community customers. We are a leading provider of ground vehicle targeting and surveillance sensors, including electro-optical and advanced detection systems. We are also a leading provider of soldier sensor systems in high priority modernization areas such as infrared imaging and precision targeting systems. Our infrared focal plane array foundry is recognized as a leading provider of high performance and small sized cryogenically cooled and uncooled detector arrays. We are also a leading and world-recognized provider of signals intelligence high-performance radio frequency receivers and transceivers for U.S. and international customers. Our quantum cascade laser technology has promising military and commercial medical applications. Collectively, these sensor technologies provide our warfighters with a distinct battlefield advantage.

**Network Computing & Communications:** Our Network Computing & Communications segment provides advanced defense electronics solutions across warfare domains. Our technologies and products are used on legacy and new military platforms, end-to-end network communication systems, network services and cyber solutions. We are a leading provider of ruggedized computing equipment, having provided advanced tactical computing units for ground combat vehicles and command post operations for more than two decades. During this period we have delivered more than 125,000 units. For the U.S. Navy and its allies, we provide naval computing infrastructure, network and data distribution, radar and rugged naval control systems, which are present on naval surface and subsurface combatant vessels. Across the full spectrum of our network computing capabilities, we have leadership positions at both the product and sub-systems levels. Our global communications network is a worldwide network of terrestrial and satellite bandwidth that ensures our customers' data is secure and reliable. As a result of this capability, we are positioned as one of the leading providers of secured commercial satellite communications to the U.S. military.

**Integrated Mission Systems:** Our Integrated Mission Systems segment provides critical force protection, vehicle integration, transportation and logistics and electrical conversion and ship propulsion systems to the U.S. military. Our force protection systems protect service members and military assets from evolving threats and include solutions for counter-unmanned aerial systems, short-range air defense systems and active protection systems on ground vehicles. In 2018, we were awarded the Expedited Active Protection System program by bringing the TROPHY™ Active Protection System ("APS") to the U.S. market, making us the leading U.S. provider of active protection systems for the U.S. Army. We were also awarded the Initial Maneuver Short-Range Air Defense ("IM-SHORAD") Mission Equipment Package Program for the U.S. Army that year, culminating an 18-month cycle from development to customer delivery. We have military transportation and logistics offerings and ground vehicle integration capabilities to support U.S. forces in a wide range of operational environments. We provide power conversion and propulsion systems for the U.S. Navy's top priority shipbuilding programs, building on our legacy of providing power components and systems for nearly all naval combat vessels for three decades, positioning us to continue as a leading provider of electrical ship propulsion systems and components for the U.S. Navy.

#### **U.S. Defense Market Trends and Market Opportunities**

Our core markets have experienced strong growth. The DoD defense budget has grown at a CAGR of 5.3% from 2016 to 2020, reflecting the shift of the DoD's priorities from a focus on global terrorism to emerging threats from more sophisticated and technologically advanced adversaries requiring enhanced

capabilities across the DoD. Additionally, we foresee growth opportunities in foreign military sales and direct commercial sales, particularly as international allies require similar force modernization.

The DoD is our largest customer and, for the year ended December 31, 2020, accounted for approximately 84% of our business as an end-user, with revenues principally derived directly or indirectly from contracts with the U.S. Army and U.S. Navy, which represented 43% and 32%, respectively, of our total revenues for the year ended December 31, 2020. The stated U.S. National Defense Strategy is to “compete, win and deter” in a challenging and complex international security environment. The current landscape is defined by rapid technological change and competition from emerging peer and near-peer adversaries who are nation states that are becoming great powers. Every domain of U.S. military advantage is expected to be contested, including air, land, sea, space and cyberspace. U.S. forces facing these new threats are in need of modernization as readiness has been strained following nearly two decades of continuous conflict with both traditional and novel adversaries. In order to face these challenges, the U.S. military will likely need to balance limited resources between new high-cost technological capabilities and upgrades of existing equipment.

In today’s threat environment, the U.S. military is positioning itself for non-stop, continuous competition against these rising nation state threats. Military services are increasingly moving towards multi-domain operations that now include both space and cyberspace domains in addition to the air, land and sea domains. The creation of the U.S. Space Force is also expected to drive new requirements for high technology defense capabilities, including increased space sensing and evolution of communications approaches. Even as new spending priorities shift towards addressing high-end threats, the U.S. military knows that it cannot compete with yesterday’s weapons or equipment. Military modernization programs and priorities are expected to provide both opportunities for new solutions and for upgrades to existing platforms. We believe that companies with an existing installed base of hardware will be able to perform upgrades to provide modernization solutions at a lower cost. Companies with strong customer relationships and outstanding execution will more effectively maintain program positions.

In this new military environment, U.S. forces are seeking the ability to sense further from a greater distance and enhance their reach across the spectrum of warfare. Increased use of sensor technologies enables forces to detect threats further and more quickly and deliver rapid, forceful responses. Sensors and laser systems are expected to enable optionally manned and autonomous platforms for the future.

The need for greater situational understanding for the warfighter also drives the need for increased data and communications bandwidth to and from command centers to forward-positioned military platforms and dismounted soldiers. Network computing and communications systems need to provide deployed forces with access to secure data to promote information-sharing and situational understanding for faster decision-making. Battlefield management systems and individual soldier communications systems require secure rugged computing solutions and are becoming increasingly interoperable with current combat air forces and naval computing infrastructure. Encrypted data and cyber protection capabilities aim to ensure that the data U.S. forces receive is trusted and protected from enemies. This capability is intended to allow forces to be more mobile and geographically dispersed while operating with immediate access to trusted information. Satellite communications systems also provide data to U.S. warfighters around the globe and are projected to increasingly utilize satellite constellations at all altitudes for redundancy, lower latency, expanded bandwidth and security.

U.S. forces are in need of greater force protection technologies. Emerging requirements for counter-unmanned aerial systems, active protection, infrared countermeasures and air defense systems require rapid deployment to keep U.S. military platforms and personnel safe from growing threats. The U.S. military is also focusing efforts on transportation and logistics capabilities, ensuring that their trained and equipped personnel and supplies can make it to the battlefield wherever that may be. All of the increased sensing, self-protection, directed energy, communications and computing needs for the warfighter require significantly higher levels of mobile power than in the past. Electrical power generation, conversion, storage and distribution and on-board vehicle power solutions will provide U.S. forces the energy they need in the future to win in this era of competition.

The U.S. military budget accounts for nearly 40% of the world's defense spending and foreign military allies often select U.S. military solutions to train, equip and modernize their forces to enhance interoperability. Beyond the opportunity for direct commercial and foreign military sales to these foreign countries, many allies leverage U.S. funding and equipment, providing opportunities for U.S. defense contractors offering solutions that can be sold internationally.

The global community is in a period of rapid technological change and new commercial technologies may change society and, ultimately, the character of conflicts. We believe that investing in high technological capabilities, developing proprietary intellectual capability, as well as integrating leading-edge commercial technology into our solutions will provide us with a competitive advantage. New acquisition programs are expected to seek innovative solutions. The need for innovation is more critical than ever, and to accelerate innovation, the DoD has deployed more rapid acquisition methods. We believe that these methods will provide greater opportunities for companies with proven abilities to quickly develop and deploy new technologies. The DoD has placed a high priority on defense procurement reform to speed up the development of new key capabilities, increase responsibility and accountability for major acquisition programs and reduce acquisition risk. As a result, we believe that mid-tier companies, such as DRS, with proven technological capabilities and an agile decision-making structure are positioned to rapidly respond to emerging requirements.

### **Our Products and Solutions**

The DoD is placing its focus and investment priorities in several platforms and capabilities where we have compelling offerings and market share. These offerings include: Ground Vehicle Sensors; Soldier Sensor Systems; EW & Cyber; Network Computing; Communications; Force Protection; Transportation and Logistics; and Electrical Power & Propulsion. These directly align with our three segments: Advanced Sensor Technologies, Network Computing & Communications, and Integrated Mission Systems. In these areas, we have distinguishing capabilities, core technologies and IP underlying our product portfolio that we believe provide us with a sustainable differentiation from our competitors. We believe that our installed base of existing products and platform-agnostic offerings provide an opportunity for our business to continue to grow.

### **Advanced Sensor Technologies**

Our Advanced Sensor Technologies segment provides world-class cryogenically cooled and uncooled infrared sensor technologies, laser systems, EW systems and intelligence and surveillance solutions to the U.S. military and intelligence community customers. Our products and solutions have significant capabilities and core technologies to meet the warfighter's need for increased battlefield awareness and longer range sensing. Our infrared focal plane array foundry produces cooled and uncooled infrared sensors and our IP provides us with key technology differentiators and builds upon our long legacy of market-leading technology.

**Ground Vehicle Sensors** – The U.S. military has identified specific needs for advanced sensor technology for ground vehicles, including electro-optical and advanced detection capabilities to enhance battlefield understanding, vehicle protection and vehicle targeting capabilities. Our market-leading sensor products include third-generation infrared sensing, fused sensing and sensors for threat detection and situational awareness, which we believe position us well for these opportunities. We are a leading provider of uncooled focal plane arrays and brownout solutions (which are sensors that can see through blowing sand). We are also a leader in ground vehicle sensor sighting systems led by our third-generation infrared imaging systems.

**Soldier Sensors** – Our complement of soldier sensor systems employs state-of-the-art sensors, precision targeting capabilities and optics designed to improve infantry combat effectiveness. We have produced a family of innovative electro-optical and infrared systems for soldiers, from our legacy imaging system, the Thermal Weapons Sight, to the next generation of thermal weapon sights being produced today. We believe that our current position on next-generation soldier precision targeting programs will

enable us to compete effectively in this area of growing need. Our uncooled sensor technology also positions us well to support the future of soldier goggle systems.

**EW & Cyber** – We have significant technological capabilities and program experience in EW & Cyber and offer integrated capabilities for multi-domain operations to supplement kinetic warfare. We have developed mounted and dismounted EW systems, EW software and training systems and intelligence solutions across a broad range of platforms. We believe that our capabilities in integrated mounted and dismounted ground EW, exploitation and cyber-based multi-domain operations position us well in this area of growing DoD priority. We have leveraged international EW programs to develop our capabilities for DoD offerings and have invested to meet developing U.S. Army and U.S. Marine Corps requirements for integrated solutions to address threats which are emanating from peer and near-peer adversaries.

**Force Protection** – Aircraft Survivability – Our Advanced Sensors Technology segment also features quantum cascade laser (“QCL”) technology which, along with our advanced two-color infrared sensors, have enabled us to support a high-profile U.S. Navy contract for advanced systems to protect aircraft from ground-launch missiles. We are also a critical partner on the U.S. Army’s common infrared countermeasures program and the next generation missile warning program.

**Other Advanced Sensor Technologies Capabilities** – Our aircraft training instrumentation systems were selected for the high-profile Joint Strike Fighter program that has been the leading U.S. and allied forces military air platform in development over the past two decades. We are also a leading provider of the aircraft training instrumentation which deploy on both legacy and modern aircraft and are required for aircraft training programs.

#### **Network Computing & Communications**

Our Network Computing & Communications segment provides an array of network computing products and sub-systems that bring trusted and resilient communications and computational resources to U.S. and international military forces, allowing them to rapidly share data and improve situational understanding. We provide trusted computing systems for ground vehicles, naval computing infrastructure, network and data distribution programs, rugged naval computational and control systems and networked communications. We also provide terrestrial and satellite communications for the U.S. Army, U.S. Navy, U.S. Special Forces, and intelligence communities.

**Network Computing** - The U.S. military has recently shifted its computing paradigm for command, control, communications, computers, intelligence, surveillance and reconnaissance to include cyber capabilities. Our Mounted Family of Computing Systems (“MFoCs”) and MFoCs-II have earned us a reputation as a leading provider of mounted battle management systems hardware in the U.S. We have invested in cyber defense and trusted computing capabilities over the past several years to protect information at the edge of the battlefield. We have also transformed our legacy of naval display and computing equipment over the past several years, to secure a position as a leading provider of surface combat system components, submarine combat systems and command and control system components. We are a leading provider of naval ship communications, integrated logistics support and sustainment and manufacturing services to U.S. and allied military customers. We hold a leading market share in Command, Control, Communications, Computers and Intelligence (“C4I”) programs for the U.S. Navy, including those that will be upgraded as the fleet continues to modernize. For submarines, we provide hardware which is planned to be upgraded continuously over a two-year cycle. In addition, our joint venture, Advanced Acoustic Concepts, LLC (“AAC”), focuses on underwater products, acoustic training systems, and related products and services.

**Communications** – We are contracted on two of the U.S. military’s top five satellite communications programs, including its largest, serving special operations forces with terrestrial and space bandwidth. This long-standing program provides secure and reliable communications for the U.S.’s forward-deployed military forces across the globe, and is well positioned to meet future needs. Our contracts on these programs make us one of the largest satellite communications providers for the U.S. military. We believe

that our legacy and outstanding reputation with the U.S. military will enable us to continue to be a leading communications provider for all DoD services.

### **Integrated Mission Systems**

Our Integrated Mission Systems segment supports the U.S. military's need to deter and defend against increasingly lethal adversaries through a wide range of force protection solutions, integrated mission equipment, transportation and logistics products, naval power technologies and forward-deployed electrical power solutions. This segment enables us to maximize our customer offerings by integrating our products and systems onto platforms. We believe that our leading position in naval electrical power and propulsion will position us to help meet the U.S. military's future electrical power needs as it increasingly deploys high technology capabilities to its forces.

**Force Protection** – DRS is an integrator of systems in ground vehicles, including reconnaissance and surveillance, mission support and vehicle survivability and protection. Protecting U.S. service members and valuable defense assets is always a top DoD priority. To help accomplish this mission, we have a family of key force protection systems, including counter-unmanned aerial systems and portable ground radar, active protection systems, modular combat vehicle turrets and stabilized sensor suites. We believe that our record providing the TROPHY™ APS to the U.S. Army enhances our reputation and positions us well to provide future vehicle protection systems. Our short-range air defense mission equipment package and mounted counter-unmanned aerial systems integrate market-leading technologies that are ready to rapidly deploy to the field in upcoming competitive pursuits.

**Transportation and Logistics** – DRS is a provider of transportation and logistics solutions for the DoD, including bridging systems, cargo loaders and trailers. Our Tunner and Halvorsen programs have provided the U.S. Air Force with rapidly deployable, high-reach mechanized aircraft loaders that can lift up to 60,000 and 25,000 pounds, respectively, of cargo onto military aircraft. The Joint Assault Bridge program positions us well as the U.S. Army is looking to expand its tactical bridging capabilities. We believe that our legacy position in heavy military trailers will allow us to win new opportunities as the U.S. Army looks for increased solutions. We also have capabilities in military fuel and water handling and distribution which can support U.S. military forces in a variety of challenging forward deployed environments.

**Electrical Power & Propulsion** – DRS is a leading provider of next generation electrical propulsion components and systems for the U.S. Navy, with significant capabilities to service the fleet's future needs, including on the Columbia-class submarine program which is integral to the United States' deterrence strategy and among its highest priority programs. Beyond electrification of its fleet, the U.S. Navy will require increased power to expand and modernize its vessels, including for the introduction of laser weapons. This increased power demand will require improved power generation, storage, conversion, management and distribution, which align with the core competencies of this segment.

### **Our Competitive Strengths**

As a diverse, defense technology company that is primarily focused on U.S. military programs, we have significant attributes that make us well positioned in the market. With a heritage of excellence in defense products, systems and solutions, we have transformed ourselves into a leading defense technology company with capabilities in sensing, electro-optics and laser systems, a critical provider of trusted network computing and communications systems and a key leader in integrated mission systems. We believe that we are positioned to grow our market position as a leading mid-tier U.S. defense technologies provider.

#### ***Our innovative portfolio is well positioned for core platform wins.***

Over the past five decades, DRS has advanced its portfolio through focused innovation, targeted investments, selective partnerships and mergers and acquisitions. DRS has solutions for a number of military platforms and serves the branches of the U.S. military, and competes at the prime contractor,

systems, supplier, or component level. Our core set of defense technologies and capabilities have applications that cross our three segments, allowing us to leverage research and development (“R&D”) and IP across multiple product lines, platforms and end markets. We also provide higher-value integrated sub-systems and systems and have a goal of increasing scope and market share by integrating our own products and technologies.

***Our portfolio of defense technologies is strategically aligned with key DoD priorities.***

We believe that our product and technology portfolio aligns with rising great power competition needs and modernization efforts, which are high priorities for DoD spending. Our technology portfolio and knowledge of the U.S. military enable us to win positions on key programs and adapt quickly to changing customer dynamics. Our size and lean management structure allow us to shift our focus to changing priorities rapidly to best serve our customers’ growing needs. Our recent execution performance in short-range air defense exemplifies this ability, as we were able to rapidly develop and field new technology to address urgent needs of the warfighter in an extremely short procurement cycle.

***We hold an embedded position on key defense platforms and with prime contractors, supported by our installed base of existing products spanning U.S. Army, U.S. Navy and U.S. Air Force platforms.***

Our current installed base of existing products spans over 300,000 computer and display systems that are fielded globally, approximately 60,000 enhanced driver vision systems for military combat vehicles, over 50,000 thermal weapon systems and critical naval computing infrastructure and technology on every U.S. naval combatant vessel in service. The notable platforms for this installed base include: surface ships, submarines, tracked and wheeled ground vehicles, fixed and rotary wing aircraft, unmanned aircraft, operating bases, and commercial vehicles and facilities. This installed base of existing products provide us opportunities for upgrades and new business that leverages these solutions.

***Our record of growth should drive profitability due to program lifecycle evolution, sole source positions and operational efficiencies.***

Over the past five years through 2020, we have had a revenue CAGR of 12%, operating earnings expanded by \$178 million and our Adjusted EBITDA Margin has increased to 9.6%. We have accomplished this through key program wins and sole-source positions, including prominent positions on the Columbia-class submarine program, MFoCS ruggedized computing battle management program, next generation of thermal weapon sights and our active protection system awards. Going forward, we anticipate that recent investments will drive profitability expansion and corresponding cash flow generation. As our program lifecycle in several key programs shifts from lower-margin, fixed-price development efforts to production, and topline growth brings more operational efficiencies, we expect to improve margin. Across our business, our continuous improvement culture is embodied in our Operational Excellence initiative called “Always Performing For Excellence,” or “APEX,” which strives to reduce cost and improves efficiencies while increasing the quality of our products and services.

***Our highly experienced management team and talented workforce have transformed DRS.***

Our management team has transformed DRS into the market-leading, high-growth, technology company it is today by focusing attention and investment on the fastest growing areas of the DoD budget. We have done this through an active portfolio management process that targeted investment to growing technological capabilities and acquisitions of smaller accretive companies that fill key strategic gaps in our portfolio, and by creating partnerships or joint ventures to supplement our own IP. The result of these efforts has led DRS to be well positioned in the U.S. defense market. Our management team has an average tenure of 15 years with the Company and nearly 30 years in the industry.

Our work force of approximately 6,500 people is highly innovative and we maintain a culture that fosters and rewards growth, problem-solving, technology development and process improvements. We have approximately 1,350 world-class engineers highly trained to work on programs in sensing, electro-

optical infrared systems, laser systems, network computing, communications systems, integration and power propulsion. Our employees maintain over 2,000 security clearances to allow engineers and management to carry on business activities for our customers' classified programs. Our strong commitment to diversity, inclusion, succession planning and training has fostered a highly collaborative and motivated work force. Our human resources policies and benefits have been designed to allow us to recruit and retain top talent.

***We are focused on sustainability and diversity.***

We strongly believe that in order to succeed as a company, we must remain a strong and positive contributor to the communities where we do business, and the greater world around us. Sustainability to us means taking important steps towards protecting the environment, engaging in corporate social responsibility, ensuring a safe work force and promoting diversity. We have enacted a sustainability risk management model to take action towards responsible consumption. We have focused our corporate giving program on military veterans and have initiated a program called MyCommunity that matches donations to local charities and provides paid volunteer hours to employees. We created a Diversity Advisory Group to improve our diversity and inclusiveness so that we look like the communities in which we operate. We have targeted increases in minority hiring and women in management and overall women in the workforce, which is 2.6% higher than our industry average.

**Our Growth Strategy**

Our growth strategy is focused on four pillars: targeting investment to drive organic growth; executing on our programs to enhance profitability; actively managing our portfolio for optimization; and taking care of our people. Our goal is to grow and increase margins faster than the overall defense market through focused market selection, technology differentiation and operational excellence. Our vision is to be the best mid-tier defense technology company in the U.S. market.

***Targeting Investment to Drive Organic Growth***

We strategically select the markets where we compete and the programs on which we bid.

- We target programs in markets where we have strong core technology and where the DoD is focused. We seek to compete only in the areas in which we have a technological or market advantage, and which will attract funding. As an example, our core technology in high-performance receivers/transceivers is sought after by our customers for their wide-bandwidth and high signal dynamic range. These features are required for modern EW systems being developed for the U.S. Army, U.S. Marine Corp. and other customers to capture, exploit and/or disrupt modern signals.
- We target our investments in core technologies in areas of high market growth. Our investments fill gaps, create leading market offerings and make capital improvements to our business. We are also awarded, and leverage, significant customer research and development funding to complement our investments.

***Executing on Our Programs to Enhance Profitability***

We remain focused on continuing to drive operational enhancements and efficiencies, which we believe will result in improved profitability over time. We believe that our world-class technology and innovative solutions coupled with the transition of development programs into production will serve as the foundation for continued profitable growth.

- We believe that outstanding performance and timely execution on our programs will win us new business and lead to profitable growth, including new opportunities for follow-on orders which will add to our growing production base. Our recent short-range air defense program is an example of

a program that we were able to win because of our reputation with the customer and our ability to quickly react to their needs.

- Integrated systems offerings of our products and systems should further expand margins as we continue to grow the topline. Our Integrated Missions Systems business, for example, has strong integration capabilities which will enable us to grow content on programs as we increase our role from smaller sub-systems into full systems integration.
- Successful execution on key development programs in early phases is expected to drive a transition to higher margin business in production, bringing sustained profitable success. Our Columbia-class submarine program is an example of a fixed-price development program that we invested in while recognizing that it will deliver long-term profitable growth, beginning in 2021, when it transitions into production.
- Our APEX program focuses on the achievement of operational savings in production, supply chain and our overall cost structure. The APEX program's goal is to strive for continuous improvement through unification of our business practices, tools and metrics, ongoing employee training and innovation. Commitment to excellence requires us to challenge ourselves to exceed our customers' expectations. A culture of continuous improvement will allow us to improve our efficiency and increase our margins.

#### ***Actively Managing our Portfolio for Optimization***

We manage our portfolio to optimize our growth in areas where we have the strongest core technology base, where we have a competitive cost structure and where the defense market is growing.

- DRS has a portfolio of products and services that we believe are positioned to move up the value chain to provide sub-systems and integrated systems and solutions. We regularly assess our portfolio to ensure strong alignment with our customers' needs and priorities and consider accretive acquisitions in areas where we have strategic gaps to address our customer's needs.
- We employ a strategy of active IP management to acquire technologies and IP through partnerships, teaming arrangements, strategic licenses and other business arrangements. This active IP management strategy allows us access to new technologies in a disciplined manner to maintain the strength of our diversified portfolio.

#### ***Continue to Take Care of Our People***

We seek to recruit and retain the highest caliber of talent through competitive pay and benefits packages, diverse and inclusive personnel policies and fostering an innovative and modern workforce.

- We strive to maintain the highest ethical standards and foster a collaborative workplace to ensure a strong culture in our people.
- We constantly assess and make thoughtful changes to our personnel practices, including changes to our pay and benefits packages and increased training and growth opportunities, to ensure that we attract and retain top talent.
- We have implemented a strong diversity and inclusion program to ensure that our workforce looks like the communities in which they operate. This helps us to bring diverse ideas and perspectives to decision-making and problem-solving and allows us to draw from the largest pool of available talent.

#### **History of the Company**

DRS was founded in 1969, in Mount Vernon, New York, as Diagnostic Retrieval Systems, and soon became best known by its acronym, DRS. In 1981, we first became a publicly traded company. Over the



subsequent decades, DRS experienced a period of rapid growth driven in large part by numerous acquisitions. In 2008, our stock ceased to be publicly traded when we were acquired by the Italian-headquartered Finmeccanica S.p.A. (now known as Leonardo S.p.A.) and we subsequently rebranded ourselves as Leonardo DRS. Since the Leonardo acquisition, we have operated under agreements with the DoD and related security policies in order to limit our foreign parent's ability to control our business operations.

### **Governance Structure**

Following completion of this offering, we expect that Leonardo S.p.A. will indirectly hold 78.0% of our common stock through US Holding (or 74.7% if the underwriters exercise their option to purchase additional shares from the selling stockholder). As a U.S. defense contractor with high level personal and facility security clearances, DRS, US Holding and Leonardo S.p.A. have entered into an agreement with the DoD to mitigate against the potential for undue foreign ownership control and influence ("FOCI") on the performance of classified programs by implementing various limitations on US Holding's and Leonardo S.p.A.'s rights as the direct stockholder and ultimate foreign parent company of DRS, respectively. Specifically, US Holding has authorized certain cleared US persons to operate as its proxies and exercise the key prerogatives of stock ownership. The proxy agreement requires that DRS have the financial and operational ability to operate as an independent entity under an independent board of directors, subject to certain limited, enumerated consent rights of the majority stockholder (including material mergers and acquisitions and incurrence of debt). For additional information, see "Certain Relationships and Related Party Transactions—Transactions with Leonardo S.p.A. Affiliates—Proxy Agreement."

### **Our Ultimate Parent**

Leonardo S.p.A., a global high-technology company, is among the top ten world players in Aerospace, Defense and Security and Italy's main industrial company. Organized into five business divisions, Leonardo S.p.A. has a significant industrial presence in Italy, the United Kingdom, Poland and the USA, where it also operates through subsidiaries such as Leonardo DRS (defense electronics), and joint ventures and partnerships: ATR, MBDA, Telespazio, Thales Alenia Space and Avio. Leonardo S.p.A. competes in the most important international markets by leveraging its areas of technological and product leadership (Helicopters, Aircraft, Aerostructures, Electronics, Cyber Security and Space). Listed on the Milan Stock Exchange (LDO), in 2020 Leonardo S.p.A. recorded consolidated revenues of €13.4 billion and invested €1.6 billion in Research and Development. The group has been part of the Dow Jones Sustainability Index ("DJSI") since 2010 and is named as sustainability global leader in the Aerospace & Defense sector of DJSI for the second year in a row in 2020.

### **The Offering**

DRS is a wholly owned subsidiary of US Holding and, indirectly, of Leonardo S.p.A., which operates under a U.S. defense proxy board. We believe this offering will enable us to show the full potential of DRS's value and provide focused capital allocation to fuel growth. Following this transaction, US Holding will remain a majority stockholder in the Company and will manage its ownership stake in accordance with an amended and restated proxy agreement and a cooperation agreement that will address rights that US Holding and Leonardo S.p.A. will have with respect to business and financial information and financial accounting matters and certain consent rights.

### **Organizational Structure**

After the completion of this offering, we expect that Leonardo S.p.A. will indirectly hold 78.0% of our common stock through US Holding (or 74.7% if the underwriters exercise their option to purchase additional shares from the selling stockholder). As a result, we expect to be a "controlled company" within the meaning of NYSE rules, following the completion of this offering. This status will allow us to rely on exemptions from certain corporate governance requirements otherwise applicable to listed companies,

although we currently do not intend to use these exemptions. See “Management—Corporate Governance—Controlled Company.”

### **Recapitalization**

To prepare for this offering and operation as a stand-alone public company, we have undertaken recapitalization initiatives to align our capital structure more closely with other U.S. public companies, including the expected repayment in full of our outstanding related-party borrowings of \$237 million and entry into financing arrangements providing for the issuance of \$450 million of third-party debt. The third-party debt is expected to consist of (i) \$100 million of Term A debt at the London Inter-Bank Offered Rate (“LIBOR”) plus 2.25% (the “Term A Loan”) under a credit agreement providing for \$300 million of senior unsecured credit facilities, and (ii) a bridge loan in an aggregate principal amount of \$350 million with an interest rate of LIBOR plus 2.25% subject to quarterly 0.25% duration increases through the 364 day loan duration (the “Bridge Loan,” and together with the Term A Loan, our “New Debt”), in each case subject to the consummation of this offering. We anticipate that the Bridge Loan will be repaid with the net proceeds from the issuance of unsecured senior notes following this offering. Any such unsecured senior notes would be offered pursuant to a separate offering memorandum and nothing contained in this prospectus shall constitute an offer to sell or solicitation of an offer to buy such unsecured senior notes. See “Recapitalization” and “Unaudited Pro Forma Consolidated Financial Information.”

### **Our Corporate Information**

We are a Delaware corporation. Our principal executive offices are located at 2345 Crystal Drive Suite 1000, Arlington, Virginia 22202 and our telephone number is (703) 416-8000.

## Summary Risk Factors

Our business is subject to a number of risks, including risks that may prevent us from achieving our business objectives or may adversely affect our business, financial condition, results of operations, cash flows and prospects that you should consider before making a decision to invest in our common stock. These risks are discussed more fully in "Risk Factors" in this prospectus. These risks include, but are not limited to, the following:

- We depend on U.S. defense spending for the vast majority of our revenues. Disruptions or deteriorations in our relationships with the relevant agencies of the U.S. government could have a material adverse impact on our business, financial condition and results of operations.
- Significant delays or reductions in appropriations for our programs and changes in U.S. government priorities and spending levels more broadly may negatively impact our business and could have a material adverse impact on our business, financial condition and results of operations.
- The COVID-19 pandemic and related impacts have had and are likely to continue to have an adverse impact on our business, financial condition and results of operations.
- Our results of operations and cash flows are substantially affected by our mix of fixed-price, cost-plus and time-and-material type contracts. In particular, fixed-price contracts subject us to the risk of loss in the event of cost overruns or higher than anticipated inflation.
- We are subject to the U.S. government's requirements, including the DoD's National Industrial Security Program Operating Manual, for our facility security clearances, which are prerequisites to our ability to perform on classified contracts for the U.S. government.
- We depend on U.S. government contracts, which often are only partially funded and are subject to immediate termination. The termination or failure to fund one or more of these contracts could have a material adverse impact on our business, financial condition and results of operations.
- We operate in a highly regulated environment and are routinely audited and reviewed by the U.S. government and its agencies.
- We are subject to a number of procurement, international trade, and other rules, regulations and requirements related to our industry, our products, and the businesses we operate. If we fail to comply with such rules, regulations or other requirements we may be subject to civil and/or criminal penalties and/or administrative sanctions.
- The U.S. government's organizational conflict of interest rules could limit our ability to successfully compete for new contracts or may require us to exit or wind down certain existing contracts, any of which could adversely affect our business, financial condition, results of operations and prospects.
- The U.S. government has and may continue to implement initiatives focused on efficiencies, affordability and cost growth and other changes to its procurement practices.
- We use estimates in pricing and accounting for many of our programs, and changes in our estimates could adversely impact our business, financial condition and results of operations.
- We may not realize the full value of our total estimated contract value or bookings, including as a result of reduction of funding or cancellation of our U.S. government contracts, which could have a material adverse impact on our business, financial condition and results of operations.
- Our business may be harmed if we are unable to appropriately manage our inventory.
- Our working capital requirements and cash flows are extremely variable and subject to fluctuation, which could have a material adverse effect on our business, financial condition and results of operations.
- We cannot predict future capital needs, the sufficiency of our current financing or our ability to obtain additional financing if we need it.
- The agreements governing our debt may contain various covenants that limit our ability to take certain actions and also require us to meet financial maintenance tests, and failure to comply with these covenants could have an adverse impact on our business, financial condition and results of operations.
- To service indebtedness and fund other cash needs, we will require a significant amount of cash, and our ability to generate cash depends on many factors beyond our control.
- We face intense competition and may suffer losses if we fail to compete efficiently.
- We depend in part upon our relationships and alliances with industry participants in order to

generate revenue, which involves risks and uncertainties.

- Contractual disputes with industry participants or the inability of our key suppliers to timely deliver our components, parts or services, could cause our products, systems or services to be produced or delivered in an untimely or unsatisfactory manner.
- We are susceptible to a security breach, through cyber attack, cyber intrusion, insider threats or otherwise, and to other significant disruptions of our IT networks and related systems or of those we operate for our customers.
- We may be at greater risk from terrorism and other threats to our physical security and personnel, than other companies.
- Our future success will depend on our ability to respond to the rapid technological changes in the markets in which we compete, our ability to introduce new or enhanced products and to enter into new markets.
- Many of our contracts contain performance obligations that require innovative design capabilities, are technologically complex, require state-of-the-art manufacturing expertise or are dependent upon factors not wholly within our control. Failure to meet our contractual obligations could adversely affect our business, financial condition, results of operations, reputation and future prospects.
- We may not be able to fully exploit or obtain patents or other intellectual property protections necessary to secure our proprietary technology.
- Third parties have claimed in the past and may claim in the future that we are infringing directly or indirectly upon their intellectual property rights, and third parties may infringe upon our intellectual property rights.
- Our reputation and ability to do business may be impacted by the improper conduct of our employees, agents, affiliates, subcontractors, suppliers, business partners or joint ventures in which we participate.
- Our international business exposes us to additional risks, including risks related to geopolitical and economic factors, laws and regulations.
- We may not be successful in obtaining the export licenses necessary to conduct certain operations abroad, and Congress may prevent proposed sales to certain foreign governments.
- A failure to attract and retain technical and other key personnel could reduce our revenues and our operational effectiveness.
- Our insurance coverage, customer indemnifications or other liability protections may be unavailable or inadequate to cover all of our significant risks or our insurers may deny coverage of or be unable to pay for material losses we incur, which could adversely affect our business, financial condition and results of operations.
- We could be liable for certain tax liabilities, including tax liabilities of US Holding and its subsidiaries, under tax law and the tax allocation agreement.
- We have significant operations in locations that could be materially and adversely impacted in the event of a natural disaster or other significant disruption.
- Our leases may be terminated or we may be unable to renew our leases on acceptable terms and if we wish to relocate, we may incur additional costs if we terminate a lease.
- We operate under a proxy agreement with the DoD that regulates significant areas of our governance. If we fail to comply with the proxy agreement our classified U.S. government contracts could be terminated, which could have a material adverse impact on our business, financial condition and results of operations.
- CFIUS may modify, delay or prevent our future acquisition or investment activities.
- Our ultimate majority stockholder, Leonardo S.p.A., may have interests that are different from, or conflict with, those of our other stockholders, and their significant ownership in us may discourage change of control transactions.
- Following this offering, we expect to be a “controlled company” within the meaning of NYSE rules and, as a result, we will qualify for exemptions from certain corporate governance requirements. You may not have the same protections afforded to stockholders of companies that are subject to such requirements.
- We will have obligations in favor of Leonardo S.p.A. after this offering.
- Some of our contracts with the U.S. government are classified, which may limit investor insight into portions of our business.
- We do not expect to declare any dividends in the near term.

## THE OFFERING

Common stock offered by the selling stockholder	31,900,000 shares.
Common stock to be outstanding after this offering	145,000,000 shares.
Option to purchase additional shares	The underwriters have a 30-day option to purchase up to an additional 4,785,000 shares of common stock from the selling stockholder at the initial public offering price, less underwriting discounts and commissions.
Use of proceeds	We will not receive any proceeds from the sale of common stock in this offering; the selling stockholder will receive all of the proceeds from the sale of shares of our common stock.
Dividend policy	We do not currently anticipate declaring or paying regular cash dividends on our common stock in the near term. We expect that we will retain all of our future earnings for use in the operation and expansion of our business. See "Dividend Policy."
Proposed stock exchange symbol	"DRS."

The number of shares of our common stock to be outstanding immediately following this offering is based on 145,000,000 shares outstanding as of March 15, 2021, and excludes 3,511,400 shares of common stock reserved for future issuance following this offering under the Leonardo DRS 2021 Omnibus Equity Compensation Plan (the "Omnibus Plan") adopted in connection with this offering.

Unless otherwise indicated, all information in this prospectus:

- gives effect to a 1,450,000-for-1 forward stock split on our common stock effected on February 25, 2021;
- gives effect to the transactions described in the section "Recapitalization", including the anticipated repayment of \$237 million of related-party borrowings and the expected issuance of \$450 million of third-party debt (consisting of the Term A Loan and the Bridge Loan) in connection with this offering;
- assumes no exercise by the underwriters of their option to purchase additional shares from the selling stockholder; and
- gives effect to our amended and restated certificate of incorporation and amended and restated bylaws adopted effective as of March 9, 2021.

## SUMMARY CONSOLIDATED FINANCIAL DATA

The financial information included in the Consolidated Statements of Earnings (Loss) Data for the years ended December 31, 2020, 2019 and 2018, and for the Consolidated Balance Sheet Data as of December 31, 2020 and 2019 have been derived from our audited consolidated financial statements included elsewhere in this prospectus. The Balance Sheet Data as of December 31, 2018 has been derived from unaudited financial statements not included herein. The unaudited portion of the Consolidated Balance Sheet Data has been prepared on the same basis as the audited Consolidated Financial Statements and in the opinion of management, reflects all adjustments necessary for the fair presentation of the 2018 Balance Sheet Data. This summary consolidated financial data should be read in conjunction with "Selected Historical Consolidated Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the financial statements included elsewhere in this prospectus. Historical results are not indicative of future operating results.

(\$ in millions)	Year Ended December 31,		
	2020	2019	2018
<b>Consolidated Statements of Earnings (Loss) Data:</b>			
Total revenues	\$ 2,778	\$ 2,714	\$ 2,333
Operating earnings	181	163	45
Net earnings (loss)	\$ 85	\$ 75	\$ (10)
Basic and diluted earnings (loss) per share: <sup>(1)</sup>	0.59	0.52	(0.07)
<b>Consolidated Balance Sheet Data:</b>			
Cash and cash equivalents	\$ 61	\$ 85	\$ 79
Total assets	2,956	2,888	2,429
Long-term debt	374	656	552
Total shareholder's equity	1,427	1,019	956
<b>Consolidated Statement of Cash Flows Data:</b>			
Net cash provided by operating activities	\$ 125	\$ 157	\$ 105
<b>Other Financial Data:</b>			
Adjusted EBITDA <sup>(2)</sup>	\$ 268	\$ 234	\$ 187
Adjusted EBITDA Margin <sup>(2)</sup>	9.6 %	8.6 %	8.0 %
Free cash flow <sup>(2)</sup>	\$ 74	\$ 110	\$ 65
Backlog <sup>(3)</sup>	\$ 3,291	\$ 2,844	\$ 2,684
Bookings <sup>(3)</sup>	\$ 3,055	\$ 2,923	\$ 2,879

(1) Gives effect to a 1,450,000-for-1 forward stock split on our common stock effected on February 25, 2021.

(2) Adjusted EBITDA, Adjusted EBITDA Margin and free cash flow are non-GAAP measures. Refer to "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Financial and Operating Measures—Non-GAAP Financial Measures" for definitions, additional discussion of management's use of non-GAAP measures as supplemental financial measures and reconciliations of net earnings (loss) to Adjusted EBITDA and net cash provided by operating activities to free cash flow. Adjusted EBITDA, Adjusted EBITDA Margin and free cash flow may not be comparable to similarly titled non-GAAP measures of other companies as other companies may have calculated the measures differently.

(3) Refer to "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Financial and Operating Measures" for the definition and additional discussion of management's use of backlog and bookings as key operating and financial measures.

## RISK FACTORS

Investing in our common stock involves risk. You should consider carefully the risks and uncertainties described below, as well as other information contained in this prospectus, including our financial statements and the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations," before making an investment decision. The risks described below are not the only ones facing us, and are not necessarily presented in the order of importance. The occurrence of any of the following risks or additional risks and uncertainties not presently known to us or that we currently believe to be immaterial could materially and adversely affect our business, financial condition and results of operations. In any such case, the trading price of our common stock could decline, and you could lose all or part of your investment. This prospectus also contains forward-looking statements and estimates that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of a number of factors, including the risks and uncertainties described below.

### Risks Relating to Our Business

***We depend on U.S. defense spending for the vast majority of our revenues. Disruptions or deteriorations in our relationships with the relevant agencies of the U.S. government could have a material adverse impact on our business, financial condition and results of operations.***

We depend on revenues from contracts and subcontracts with the U.S. government, including defense-related programs with the DoD and a broad range of programs with all branches of the U.S. military. Revenues derived directly or indirectly from contracts with the U.S. government represented approximately 84%, 89% and 86% of our total revenues for the years ended December 31, 2020, 2019 and 2018, respectively, with revenues principally derived directly or indirectly from contracts with the U.S. Army and U.S. Navy, which represented 43% and 32%, respectively, of our total revenues for the year ended December 31, 2020. Because our customer base is concentrated within the U.S. defense industry, any disruption or deterioration in our relationship with the U.S. government and its prime contractors, or any change in the U.S. government's willingness to commit substantial resources to the continued purchase of our products, could significantly reduce our revenues and have a material adverse impact on our business, financial condition and results of operations.

***Significant delays or reductions in appropriations for our programs and changes in U.S. government priorities and spending levels more broadly may negatively impact our business and could have a material adverse impact on our business, financial condition and results of operations.***

The availability of U.S. government funding for significant programs in which we participate may be impacted by a number of factors beyond our control including the overall federal budget, changes in spending priorities and defense spending levels, sequestration, the appropriations process, use of continuing resolutions (with restrictions, e.g., on starting new programs) and the permissible level of federal debt. These factors may also delay purchasing or payment decisions by our customers. In the event government funding for significant programs in which we participate becomes unavailable, or is reduced or delayed, our contract or subcontract under such programs may be terminated or adjusted by the U.S. government or the prime contractor. U.S. government priorities and spending levels have fluctuated and may continue to fluctuate over time. We cannot predict the impact on existing, follow-on, replacement or future programs from potential changes in priorities whether due to changes in defense spending levels, the threat environment, procurement strategy, military strategy and planning and/or changes in social, economic or political priorities, including in response to the COVID-19 pandemic. As the DoD budget represents the largest part of the federal discretionary budget, it is possible that the various COVID-19 relief legislative actions might exert downward pressure on defense spending, as well as other non-defense discretionary outlays. The U.S. government may also delay, modify or cancel ongoing competitive bidding processes, procurements and programs, as well as change its acquisition

strategy. A significant shift in government priorities, programs or acquisition strategies could have a material adverse impact on our business, financial condition and results of operations.

Considerable uncertainty exists regarding future budget and program decisions, including U.S. defense spending priorities, what challenges budget reductions will present for the defense industry, whether annual appropriations bills for all agencies will be enacted for U.S. government fiscal year 2021 and thereafter, and how the Biden administration will approach those decisions through the budgeting process. The U.S. government's budget deficit and the national debt could significantly affect government budgeting priorities and could have an adverse impact on our business, financial condition and results of operations in a number of ways, including the following:

- the U.S. government could reduce or delay its spending on, or reprioritize its spending away from, defense programs in which we participate;
- U.S. defense spending could be impacted by alternate arrangements to sequestration, which increases the uncertainty as to, and the difficulty in predicting, U.S. government spending priorities and levels;
- we may experience reduced or delayed orders or payments or other responses to economic difficulties experienced by our customers and prospective customers, including U.S. Federal, state and local governments; and
- the U.S. government could reduce the outsourcing of functions that we are currently contracted to provide, including as a result of increased insourcing by various U.S. government agencies due to changes in the definition of "inherently governmental" work, such as proposals to limit contractor access to sensitive or classified information and work assignments.

***The COVID-19 pandemic and related impacts have had and are likely to continue to have an adverse impact on our business, financial condition and results of operations.***

In March 2020, COVID-19 was recognized as a pandemic by the World Health Organization and declared a national emergency by the U.S. government. We are closely monitoring the impact of the COVID-19 pandemic on all aspects of our business and geographies, including how it is impacting our workforce, communities, suppliers, subcontractors and customers. The COVID-19 pandemic has created significant volatility, uncertainty and economic disruption, which has adversely affected, and is expected to continue to adversely affect, our business operations, and could materially and adversely affect our business, financial condition and results of operations.

In addition to volatility in the overall demand environment for our products, systems and services, we have restricted the operations in our facilities, and we may continue to restrict operations if we deem it necessary or if recommended or mandated by governmental authorities which would have a further adverse impact on us. For example, we have temporarily closed portions of, and in some cases, entire facilities, including our manufacturing and engineering facility in St. Louis, Missouri for a two-week period, and implemented operational and travel restrictions, which have disrupted how we operate our business. We have also implemented enhanced health leave benefits and incurred other costs related to the COVID-19 pandemic. We incurred \$12 million of expenditures from March 1, 2020 through December 31, 2020 to ensure a safe work environment for our employees. Although we offset a portion of the cash impacts from COVID-19 pursuant to Section 3610 of the Coronavirus Aid, Relief and Economic Securities Act (the "CARES Act"), allowing for a deferral of social security payroll tax payments and pension related contributions, we may not be able to fully offset COVID-19 related costs. We are designated as an essential business in the primary jurisdictions in which we operate, but if we lose that designation we may be subject to additional restrictions on our operations. We may be unable to perform fully on our contracts and our costs may increase as a result of the COVID-19 outbreak. These cost increases may not be fully recoverable or adequately covered by insurance. See "Management's Discussion and Analysis of Financial Condition—Business Overview and Considerations—Impacts of COVID-19 On Our Business."



The COVID-19 pandemic has the potential to significantly impact our supply chains, including our access to vital products and services we source from suppliers and vendors. Our supply chains could be impacted if the operations of our suppliers, logistics and other service providers are disrupted, temporarily closed or experience worker shortages. In particular, we rely on smaller suppliers for some materials and underlying components needed for our products and these suppliers may be particularly vulnerable to COVID-19 related disruptions. To the extent that there is a slow-down in production from our suppliers, limiting our own production capacity, this could adversely affect our revenues and profit for a reporting period or beyond. Further, the COVID-19 pandemic could cause delay, or limit the ability of the U.S. government and other customers to perform, including in making timely payments to us. Any effect on our suppliers, other service providers and customers could materially adversely impact our business, financial condition and results of operations.

Further, our management is focused on mitigating the effects of COVID-19, which has required and is expected to continue to require, a large investment of time and resources across our enterprise and which may delay other value-added services or initiatives. Additionally, many of our employees are currently working remotely. An extended period of remote work arrangements could strain our business continuity plans, introduce operational and compliance risk, including but not limited to cyber security risks, and impair our ability to manage our business.

The extent to which the COVID-19 pandemic, or any mutation of this virus or a new virus that necessitates a similar national response, will impact us in the future will depend on numerous evolving factors and developments that we are unable to predict, including: the severity and transmission rate of the virus(es); the duration of the outbreak, including the risk of a resurgence of the virus in areas in which it appears to have been contained; the extent and effectiveness of containment actions; governmental, business and other actions (which could include limitations on our operations or mandates to provide products, systems or services); the continued success of measures taken by governmental authorities worldwide to stabilize the markets and support economic growth, which is unknown and may not be sufficient to address future market dislocations or avert severe and prolonged reductions in economic activity; the impacts on our supply chain; the impact of the pandemic on economic activity; the effects of additional business or facility closures or other changes to our operations; the health of and the effect on our workforce and our ability to meet staffing needs in our businesses and facilities, particularly if members of our workforce are quarantined as a result of exposure; any impairment in value of our tangible or intangible assets which could be recorded as a result of a weaker economic conditions; and the potential effects on our internal controls, including those over financial reporting, as a result of remote working environments and other conditions such as shelter-in-place and similar orders that apply to our employees and business partners, among others. In addition, disruptions in the credit or financial markets or impacts on our credit ratings from the pandemic could adversely affect our ability to access capital on favorable terms and continue to meet our liquidity needs, all of which are highly uncertain and cannot be predicted. This situation continues to evolve, sometimes rapidly, and additional impacts may arise that we are not aware of currently.

The impacts of the COVID-19 pandemic may exacerbate other risks described in this section, any of which could have a material adverse impact on our business, financial condition and results of operations.

***Our results of operations and cash flows are substantially affected by our mix of fixed-price, cost-plus and time-and-material type contracts. In particular, fixed-price contracts subject us to the risk of loss in the event of cost overruns or higher than anticipated inflation.***

We generate revenue through various fixed-price, cost-plus and time-and-material contracts. For a general description of our U.S. government contracts and subcontracts, including a discussion of revenue generated thereunder and of cost-reimbursable versus fixed-price contracts please see "Management's Discussion and Analysis of Financial Condition and Results of Operations."

For the years ended December 31, 2020, 2019 and 2018, approximately 87%, 86% and 82%, respectively, of our revenue was derived from fixed-price contracts. We assume financial risk on fixed-

price contracts due to the risk of potential cost overruns, particularly for firm fixed-price contracts in which we assume all of the cost burden. Our failure to anticipate risks or technical problems, estimate costs accurately or control costs during performance will reduce our profit or cause a loss on these contracts. U.S. government contracts can expose us to potentially large losses because the U.S. government can hold us responsible for completing a project or, in certain circumstances, paying the entire cost of its replacement by another provider regardless of the size or foreseeability of any cost overruns that occur over the life of the contract. Because many of these contracts involve new technologies and applications and can last for years, unforeseen events, such as technological difficulties, engineering or development challenges, fluctuations in raw materials prices, higher than expected inflation, increased labor costs, problems with our suppliers and cost overruns, can result in the contractual price becoming less favorable or even unprofitable to us over time. Furthermore, if we do not meet contract deadlines or specifications, we may need to renegotiate contracts on less favorable terms, be forced to pay penalties or liquidated damages or suffer significant losses if the customer terminates our contract. In addition, some of our contracts have provisions relating to cost controls and audit rights, and if we fail to meet the terms specified in those contracts, we may not realize their full benefits. For further information, see “—*We operate in a highly regulated environment and are routinely audited and reviewed by the U.S. government and its agencies.*” Our results of operations depend on our ability to maximize our earnings from our contracts. Cost overruns could have a material adverse impact on our business, financial condition and results of operations.

***We are subject to the U.S. government’s requirements, including the DoD’s National Industrial Security Program Operating Manual, for our facility security clearances, which are prerequisites to our ability to perform on classified contracts for the U.S. government.***

We require a facility security clearance to perform on classified contracts for the DoD and certain other agencies of the U.S. government. Security clearances are subject to regulations and requirements including, among others, the National Industrial Security Program Operating Manual (the “NISPOM”), which specifies the requirements for the protection of classified information released or disclosed in connection with classified U.S. government contracts. The Defense Counterintelligence and Security Agency (the “DCSA”) manages the facility clearance process under the NISPOM and conducts various facility audits and inspections throughout the lifecycle of a respective facility clearance.

We require certain facility and personnel security clearances to perform our classified U.S. government business. Any facility not audit ready, not staffed by appropriately cleared personnel, and/or that fails a routine inspection places that contract in jeopardy. As such, we must comply with the requirements of the NISPOM and other applicable U.S. government industrial security regulations, including extensive requirements related to cybersecurity. If we were to violate the terms and requirements of the NISPOM or such industrial security regulations (which apply to us under the terms of classified contracts), or if one or more of our facility or personnel security clearances is invalidated or terminated, we may not be able to continue to perform our existing classified contracts and may not be able to enter into new classified contracts, which could adversely affect our revenues. Failure to comply with the NISPOM or other security requirements may result in loss of access to classified information and subject us to civil and criminal penalties and administrative sanctions, including termination of contracts, forfeiture of profits, suspension of payments, fines and suspension or prohibition from doing business with the U.S. government, which could have a material adverse impact on our business, financial condition and results of operations.

Additionally, the NISPOM requires that a corporation maintaining a facility security clearance be effectively insulated from FOCI. A company is considered to be operating under FOCI whenever a foreign interest has the power, direct or indirect, whether or not exercised, and whether or not exercisable, to direct or decide matters affecting the management or operations of that company in a manner that may result in unauthorized access to classified information, may adversely affect the performance of classified contracts, or may undermine U.S. security or export controls.

Following this offering, Leonardo S.p.A., an Italian company listed on the Milan Stock Exchange, will continue to own the entire share capital of US Holding which, in turn, will beneficially own 78.0% of the voting power of our outstanding common stock (or 74.7% if the underwriters exercise their option to purchase additional shares in full). As a result, we are deemed to be under FOCI. Furthermore, the Italian state beneficially owns approximately 30.2% of Leonardo S.p.A.'s voting power (through its ownership of approximately 30.2% of the outstanding ordinary shares of Leonardo S.p.A.). In order to be permitted to maintain our security clearances and our access to classified data and to perform or bid on classified programs, we are required to mitigate FOCI through a proxy agreement, which we have done by entering into a proxy agreement, dated as of October 26, 2017, with the DoD. Following this offering we expect to enter into an amended and restated proxy agreement and the parties to the proxy agreement have entered into a commitment letter, dated as of February 26, 2021, as to the form and content of the amended and restated proxy agreement which allows us to operate as if the amended and restated proxy agreement was already in effect. The description of the proxy agreement in this prospectus therefore reflects the terms of the proxy agreement as it will be amended and restated, in accordance with the commitment letter, following this offering. For additional information on the terms and requirements of the proxy agreement, see *“—We operate under a proxy agreement with the DoD that regulates significant areas of our governance. If we fail to comply with the proxy agreement our classified U.S. government contracts could be terminated, which could have a material adverse impact on our business, financial condition and results of operations.”*

While we currently mitigate FOCI under the proxy agreement, the DoD reserves the right to impose such additional security safeguards as it believes necessary in order to prevent unauthorized access to classified and controlled unclassified information and any U.S. government agency may deny or revoke our access to classified and controlled unclassified information under its jurisdiction if it considers it necessary to protect national security. Failure to maintain an agreement with the DoD regarding the appropriate FOCI mitigation arrangement could result in invalidation or termination of our facility security clearances, which in turn would mean that we would not be able to perform under current or enter into future contracts with the U.S. government requiring facility security clearances.

We depend on revenues from contracts and subcontracts with the U.S. government, including defense-related programs with the DoD and a broad range of programs with each of the service branches. Revenues derived directly or indirectly from contracts with the U.S. government were approximately 84%, 89% and 86% for the years ended December 31, 2020, 2019 and 2018, respectively. If we fail to maintain an agreement with the DoD regarding the appropriate FOCI mitigation arrangement or otherwise fail to comply with the NISPOM, this could have a material adverse impact on our business, financial condition and results of operations. For further information, see *“—We depend on U.S. defense spending for the vast majority of our revenues. Disruptions or deteriorations in our relationships with the relevant agencies of the U.S. government could have a material adverse impact on our business, financial condition and results of operations.”*

***We depend on U.S. government contracts, which often are only partially funded and are subject to immediate termination. The termination or failure to fund one or more of these contracts could have a material adverse impact on our business, financial condition and results of operations.***

Over its lifetime, a U.S. government program may be implemented by the award of many different individual contracts and subcontracts. The funding of U.S. government programs is subject to Congressional appropriations. U.S. government appropriations in turn are affected by general U.S. government budgetary issues and related legislation. Although multi-year contracts may be authorized and appropriated in connection with major procurements, Congress generally appropriates funds on a government fiscal year basis, which runs from October 1 to September 30. Procurement funds are typically made available for obligation over the course of one to three years. Consequently, programs often initially receive only partial funding, and additional funds are obligated only as Congress makes further appropriations. We cannot predict the extent to which total funding and/or funding for individual programs will be included, increased or reduced as part of the annual appropriations process ultimately approved by Congress and the President or in separate supplemental appropriations or continuing

resolutions, as applicable. The termination of funding for a U.S. government program would result in a loss of anticipated future revenue attributable to that program, which could have a material adverse impact on our business, financial condition and results of operations. In addition, the termination of a program or the failure to commit additional funds to a program that already has been started could result in lost revenue and increase our overall costs of doing business. The loss of revenues from our possible failure to obtain renewal or follow-on contracts may be significant because we depend on the U.S. government for a significant portion of our revenues. For further information, see *“—We depend on U.S. defense spending for the vast majority of our revenues. Disruptions or deteriorations in our relationships with the relevant agencies of the U.S. government could have a material adverse impact on our business, financial condition and results of operations.”*

In addition, U.S. government contracts may generally be terminated, in whole or in part, without prior notice at the U.S. government's convenience upon payment only for work done and commitments made at the time of termination. For some contracts, we are a subcontractor and not the prime contractor, and in those arrangements, the U.S. government could terminate the prime contractor for convenience without regard for our performance as a subcontractor. We can give no assurance that one or more of our contracts will not be terminated under those circumstances. Also, we can give no assurance that we would be able to procure new contracts to offset the revenue or backlog lost as a result of any termination of our contracts. Because a significant portion of our revenue depends on our performance and payment under our contracts, the loss of one or more large contracts could have a material adverse impact on our business, financial condition and results of operations.

In addition to termination for convenience, U.S. defense contracts are generally also terminable for default based on performance. Termination by the U.S. government, or one of its prime contractors, of a contract due to default could in addition to the loss of future revenue obligate us to pay for re-procurement costs in excess of the original contract price, net of the value of work accepted from the original contract, as well as other damages. Termination of a contract due to our default could also impair our reputation and our ability to compete for other contracts which could have a material adverse impact on our business, financial condition and results of operations. Additionally, our U.S. government contracts are heavily regulated and subject to audit and negative audit findings could result in the termination of these or other contracts or the failure to receive future awards, see *“—We operate in a highly regulated environment and are routinely audited and reviewed by the U.S. government and its agencies.”*

The U.S. government also has the ability to stop work under a contract for a limited period of time for its convenience. It is possible that the U.S. government, or one of its prime contractors, could invoke this ability across a limited or broad number of contracts. In the event of a stop work order, contractors are typically protected by provisions covering reimbursement for costs incurred on the contract to date and for costs associated with the temporary stoppage of work on the contract plus a reasonable fee. However, such temporary stoppages and delays could introduce inefficiencies and result in financial and other damages for which we may not be able to receive full recovery. They could also ultimately result in termination of a contract (or contracts) for convenience or reduced future orders.

***We operate in a highly regulated environment and are routinely audited and reviewed by the U.S. government and its agencies.***

We depend on U.S. government contracts, which are heavily regulated and subject to audit by the U.S. government and its agencies, such as the Defense Contract Audit Agency (“DCAA”), Defense Contract Management Agency (“DCMA”), the DoD Inspector General, and others. These agencies review performance on government contracts, direct and indirect rates and pricing practices, and compliance with applicable contracting and procurement laws, regulations and standards. They also review compliance with government standards for our business systems and the adequacy of our internal control systems and policies. Negative findings related to our business and accounting systems and financial controls and capability could result in our ineligibility for future cost-plus contracts. Costs ultimately disallowed or found to be improperly allocated to a specific contract will not be reimbursed or must be refunded if already reimbursed. We record contract revenue based on costs on which we expect to be

paid after any final audit. However, we do not know the outcome of any future audits and adjustments in advance, and we may be required to reduce our revenue or profits materially upon completion and final negotiation of audits. As a result of certain cost reduction initiatives across our industry, we have experienced and may continue to experience an increased number of audits and/or a lengthened period of time required to close open audits. For example, the thresholds for certain allowable costs in the U.S., including compensation costs, have been significantly reduced; the allowability of other types of costs are being challenged, debated and, in certain cases, modified, all with potentially significant financial costs to the Company.

If an audit uncovers improper or illegal activities, we may be subject to civil and criminal penalties, sanctions, termination of contracts, forfeiture of profits or suspension or debarment from doing business with the U.S. government. Whether or not illegal activities are alleged, the U.S. government has the ability to decrease or withhold certain payments when it deems systems subject to its review to be inadequate, with significant financial impact. In addition, we could suffer serious reputational harm if allegations of impropriety were made against us or our business partners and suppliers.

Additionally, we are reviewed and rated by our government clients on a contract by contract basis. The receipt of a negative review on one contract could cause us reputational harm and adversely affect our ability to win future contracts.

Due to our reliance on government contracts, negative audit findings or reviews for one or more of these contracts could have a material adverse impact on our business, financial condition and results of operations.

***We are subject to a number of procurement, international trade, and other rules regulations and requirements related to our industry, our products, and the businesses we operate. If we fail to comply with such rules, regulations or other requirements we may be subject to civil and/or criminal penalties and/or administrative sanctions.***

As a U.S. government contractor, we (and our subcontractors and others with whom we do business) must comply with many significant procurement regulations and other specific legal requirements. These regulations and other requirements increase our performance and compliance costs and risks and regularly evolve. New laws, regulations or procurement requirements or changes to current ones (including, for example, evolving and strengthening regulations related to cybersecurity, privacy, recovery of employee compensation costs, counterfeit and/or substitute parts, anti-human trafficking, organizational conflicts of interest, specialty metals and conflict minerals) can significantly increase our costs and risks and negatively affect our results of operations.

If we fail to comply with procurement regulations or other requirements we may be subject to civil and/or criminal penalties and/or administrative sanctions, which may include termination or modification of contracts, forfeiture of profits, suspension of payments, fines and suspension or prohibition from doing business with the U.S. government, any of which could have a material adverse effect on our business, financial condition and results of operations.

We (again, including our subcontractors and others with whom we do business) are also subject to, and expected to perform in compliance with, a vast array of federal laws, regulations and requirements related to our industry, our products and the businesses we operate. These laws and regulations include, but are not limited to, the Anti-Kickback Act, the Arms Export Control Act, including the ITAR, the Communications Act, the Defense Federal Acquisition Regulations, the EAR (which includes anti-boycott provisions), the False Claims Act, the Federal Acquisition Regulation, the FCPA, the Lobbying Disclosure Act, the Procurement Integrity Act, the Truthful Cost or Pricing Data Act, the Foreign Trade Regulations, the Foreign Investment Risk Review Modernization Act, the International Emergency Economic Powers Act, the Trading with the Enemy Act, and Executive Orders and regulations, administered by the U.S. Department of the Treasury, Office of Foreign Assets Control, as well as rules and regulations administered by the U.S. Customs and Border Protection and the Bureau of Alcohol, Tobacco, Firearms

and Explosives. While we have implemented compliance programs that are intended to avoid violations of these federal laws, regulations and requirements, given the nature of our operations and the constant evolution of applicable laws, regulations and requirements, we may not be able to prevent future violations. If we are found to have violated such laws, regulations or requirements, we may be subject to reductions of the value of contracts; contract modifications or termination; the withholding of payments from our customer; the loss of export privileges; administrative or civil judgments and liabilities; criminal judgments or convictions, liabilities and consent or other voluntary decrees or agreements; other sanctions; the assessment of penalties, fines, or compensatory, treble or other damages or non-monetary relief or actions; or suspension or debarment.

If we or those with whom we do business do not comply with the laws, regulations and processes to which we are subject or if U.S. government practices or requirements change significantly, including with respect to the thresholds for allowable costs, it could affect our ability to compete and adversely impact our business, financial condition and results of operations.

***The U.S. government's organizational conflict of interest rules could limit our ability to successfully compete for new contracts or may require us to exit or wind down certain existing contracts, any of which could adversely affect our business, financial condition, results of operations and prospects.***

Past efforts by the U.S. government to reform its procurement practices have focused, among other areas, on the separation of certain types of work to facilitate objectivity and avoid or mitigate organizational conflicts of interest, and the strengthening of regulations governing organizational conflicts of interest. Organizational conflicts of interest may arise from circumstances in which a contractor has:

- impaired objectivity during performance;
- unfair access to non-public information; or
- the ability to set the "ground rules" for another procurement for which the contractor competes.

A focus on organizational conflicts of interest issues has resulted in legislation and regulations aimed at increasing organizational conflicts of interest requirements, including, among other things, separating sellers of products and providers of advisory services in major defense acquisition programs. These organizational conflicts of interest regulations have led to increased bid protests related to arguments to disqualify or overturn awards based on conflict grounds.

Future legislation and regulations may increase the restrictions in current organizational conflicts of interest regulations and rules. To the extent that organizational conflicts of interest laws, regulations and rules limit our ability to successfully compete for new contracts or task orders with the U.S. government and/or commercial entities, or require us to exit certain existing contracts or wind down certain existing contracts, either because of organizational conflicts of interest issues arising from our business or because companies with which we are affiliated, including Leonardo S.p.A. and its subsidiaries (including US Holding), or with which we otherwise conduct business create organizational conflicts of interest issues for us, our business, financial condition, results of operations and prospects could be materially and adversely affected.

***The U.S. government has and may continue to implement initiatives focused on efficiencies, affordability and cost growth and other changes to its procurement practices.***

Our industry has experienced, and we expect will continue to experience, significant changes to business practices globally as a result of an increased focus on affordability, efficiencies, business systems, recovery of costs and a reprioritization of available defense funds to key areas for future defense spending. These initiatives and changes to procurement practices may change the way U.S. government contracts are solicited, negotiated and managed, which may affect whether and how we pursue opportunities to provide our products and services to the U.S. government, including the terms and conditions under which we do so. For example, in connection with these cost reduction initiatives the

U.S. government is pursuing alternatives to shift additional responsibility and performance risks to the contractor. Changes in procurement practices favoring incentive-based fee arrangements, different award criteria, non-traditional contract provisions and government contract negotiation offers also may affect our results of operations and predictability. The U.S. government has been pursuing and may continue to pursue these and other policies that could negatively impact our profitability and adversely impact our business, financial condition and results of operations.

***We use estimates in pricing and accounting for many of our programs, and changes in our estimates could adversely impact our business, financial condition and results of operations.***

We enter into forward pricing rate agreements with our U.S. government clients that establish specific direct and indirect rates to be used in pricing all contracts with the applicable government agency for a specified period of time. This requires us to estimate the costs that we will incur in connection with future contracts. Failure to accurately estimate the costs that we will incur including as a result of changes in underlying assumptions, circumstances or estimates may materially reduce our profit or cause a loss on these contracts and adversely impact our business, financial condition and results of operations.

Additionally, accounting for our contracts requires judgment relative to assessing costs, including costs associated with customer-directed delays and reductions in scheduled deliveries, unfavorable resolutions of claims and contractual matters, judgments associated with estimating contract revenue and costs and assumptions for schedule and technical issues. Due to the size, nature and performance period of many of our contracts, the estimation of total revenue and cost at completion is complicated and subject to many variables. For example, we must make assumptions regarding: (i) the length of time to complete the contract because costs also include expected increases in wages and prices for supplies and materials; (ii) whether contracts should be accounted for as having one or more performance obligations based on the goods and services promised to the customer; (iii) incentives or penalties related to performance on contracts in estimating revenue and profit rates, and recording them when there is sufficient information for us to assess anticipated performance; and (iv) estimates of award fees in estimating revenue and profit rates based on actual and anticipated awards. Because of the significance of the judgments and estimation processes involved in accounting for our contracts, materially different amounts could be recorded if we used different assumptions or if the underlying circumstances were to change. Changes in underlying assumptions, circumstances or estimates may adversely impact our business, financial condition and results of operations.

***We may not realize the full value of our total estimated remaining contract value or bookings, including as a result of reduction of funding or cancellation of our U.S. government contracts, which could have a material adverse impact on our business, financial condition and results of operations.***

Our total backlog consists of funded and unfunded amounts. Funded backlog represents the revenue value of orders for services under existing contracts for which funding is appropriated or otherwise authorized less revenue previously recognized on these contracts. Unfunded backlog represents the revenue value of firm orders for products and services under existing contracts for which funding has not yet been appropriated less funding previously recognized on these contracts. In addition to backlog, we also evaluate estimated potential remaining contract value, which represents unexercised options associated with existing firm contracts and primarily includes options and agreements with existing customers to purchase new services. Estimated potential remaining contract value together with backlog represents total estimated contract value. Lastly, we evaluate bookings which we define as the total value of contract awards received from the U.S. government for which it has appropriated funds and legally obligated such funds to the Company through a contract or purchase order, plus the value of contract awards and orders received from customers other than the U.S. government. As of December 31, 2020, our total estimated remaining contract value was approximately \$11,272 million, consisting of approximately \$7,981 million of estimated potential remaining contract value and approximately \$3,291 million of total backlog. Our bookings for the period were 3,055 million. We historically have not realized all of the revenue included in our total estimated contract value or bookings, and we may not realize all of

the revenue included in our total estimated contract value or bookings in the future. There is a higher degree of risk in this regard with respect to estimated potential remaining contract value and unfunded backlog. In addition, there can be no assurance that our total estimated contract value or bookings will result in actual revenue in any particular period. This is because the actual receipt, timing, and amount of revenue under contracts included in total estimated contract value and bookings are subject to various contingencies, including Congressional appropriations, many of which are beyond our control. The actual receipt of revenue from contracts included in total estimated contract value and bookings may never occur or may be delayed because: a program schedule could change or the program could be canceled; a contract's funding or scope could be reduced, modified, delayed, de-obligated or terminated early, including as a result of a lack of appropriated funds or cost cutting initiatives and other efforts to reduce U.S. government spending and/or the automatic federal defense spending cuts required by sequestration; in the case of funded backlog, the period of performance for the contract has expired or the U.S. government has exercised its unilateral right to cancel multi-year contracts and related orders or terminate existing contracts for convenience or default; in the case of unfunded backlog, funding may not be available or, in the case of estimated potential remaining contract value, our clients may not exercise their options. Our failure to replace canceled or reduced total estimated contract value or bookings could have a material adverse impact on our business, financial condition and results of operations. See "*We have unfunded obligations under our pension plans, and we use estimates in accounting for our pension plans and changes in our estimates could adversely affect our financial condition and results of operations.*"

***Our business may be harmed if we are unable to appropriately manage our inventory.***

We are subject to the risk that the inventory we carry may decrease in value over time due to, among other things, changes in customer priorities and needs. Any increase in the level of inventories of finished goods, components and raw materials that we carry, including due to any failure to replace cancelled or reduced backlog or other shortfalls in anticipated sales, may increase our risk of inventory obsolescence and corresponding inventory write-downs and write-offs, and such amounts could be material. If we are unable to appropriately manage our inventory balances it could have a material adverse impact on our business, financial condition and results of operations.

***Our working capital requirements and cash flows are extremely variable and subject to fluctuation, which could have a material adverse effect on our business, financial condition and results of operations.***

Our working capital requirements and cash flows have historically been, and are expected to continue to be, subject to significant fluctuations. Historically we have had negative cash flows in some quarters of the year, and we expect this pattern to continue in the future. See "Management's Discussion and Analysis of Financial Condition and Results of Operations." If we are unable to manage fluctuations in cash flow, it could have a material adverse impact on our liquidity, as well as on our business, financial condition and results of operations. Factors which could result in fluctuations in our working capital and cash flows include:

- the quantity of product and service sales revenue achieved;
- the margins achieved on sales of products and services;
- the timing and collection of receivables;
- the timing and size of inventory and related component purchases;
- the timing of payment on payables and accrued liabilities; and
- the adequacy of our current financing arrangements and access to additional financing.



***We cannot predict future capital needs, the sufficiency of our current financing or our ability to obtain additional financing if we need it.***

Our operations are capital intensive and we rely heavily on financing, including working capital financing, such as factoring and supply chain financing. We may also enter into other types of financings in the future, including bank and bond financing. Although we believe that our available cash resources, together with our retained earnings, are sufficient to meet our presently anticipated liquidity needs and capital expenditure requirements, we might in the future need to raise additional funds to, among other things:

- fund our operations;
- address fluctuations in cash flow (including negative cash flow periods);
- support more rapid growth of our business;
- develop new or enhanced products and solutions;
- respond to competitive pressures; and
- acquire companies or technologies.

We cannot guarantee that we will continue to be able to extend existing working capital financing on commercially reasonable terms or at all and we might be unable to obtain additional financing, if needed, on terms acceptable to us, if at all. In the past we have been reliant on our parent company for financing. If sufficient funds are not available or are not available on terms acceptable to us, our ability to fund our current operations, fund expansion, take advantage of acquisition opportunities, develop or enhance services or products, or otherwise respond to competitive pressures would be significantly limited. We may be required to obtain the consent of US Holding in order to obtain financing and there is no guarantee that their consent will be granted. See “—*Risks Relating to Our Status as a Controlled Company and under the Proxy Agreement—Our ultimate majority stockholder, Leonardo S.p.A., may have interests that are different from, or conflict with, those of our other stockholders, and their significant ownership in us may discourage change of control transactions.*” The existing debt obligations of Leonardo S.p.A., which contain restrictions applicable to subsidiaries of Leonardo S.p.A., including us, may also negatively impact our ability to obtain additional financing on terms acceptable to us, if at all. In addition, any decline in the ratings of our corporate credit or any indications from the rating agencies that their ratings on our corporate credit are under surveillance or review with possible negative implications could adversely impact our ability to access capital. These limitations could have a material adverse impact on our business, financial condition and results of operations.

***The agreements governing our debt contain various covenants that limit our ability to take certain actions and also require us to meet financial maintenance tests, and failure to comply with these covenants could have an adverse impact on our business, financial condition and results of operations.***

Our financing arrangements contain restrictions, covenants and events of default that, among other things, require us to satisfy certain financial tests and maintain certain financial ratios and restrict our ability to incur additional indebtedness and to refinance our existing indebtedness. Financing arrangements which we enter into in the future, including those described in the section “Recapitalization” in this prospectus, could contain similar restrictions and additionally could require us to comply with similar, new or additional financial tests or to maintain similar, new or additional financial ratios. For example, we expect to repay in full our outstanding related-party financing arrangements of \$237 million and enter into financing arrangements providing for the issuance of \$450 million of third-party debt (consisting of the Term A Loan and the Bridge Loan, in each case subject to the consummation of this offering). We anticipate that the Bridge Loan will be repaid with the net proceeds from the issuance of unsecured senior notes following this offering. Any such unsecured senior notes would be offered

pursuant to a separate offering memorandum and nothing contained in this prospectus shall constitute an offer to sell or solicitation of an offer to buy such unsecured senior notes. There is no assurance as to the launch or completion of any unsecured senior notes offering. If we are unable to complete an unsecured senior notes offering or other transaction on substantially similar terms, then we could be subject to the higher interest rates and stricter covenants under the Bridge Loan for an extended period relative to those anticipated under the unsecured senior notes. See “Recapitalization” and “Unaudited Pro Forma Consolidated Financial Information.”

The terms of our financing arrangements may impose various restrictions and covenants on us that could limit our ability to respond to market conditions, provide for capital investment needs or take advantage of business opportunities by limiting the amount of additional borrowings we may incur. These restrictions may include compliance with, or maintenance of, certain financial tests and ratios and may limit or prohibit our ability to, among other things:

- borrow money or guarantee debt;
- create liens;
- pay dividends or acquire our capital stock;
- make investments and acquisitions;
- enter into, or permit to exist, contractual limits on the ability of our subsidiaries to pay dividends to us;
- enter into new lines of business;
- enter into transactions with affiliates; and
- sell assets or merge with other companies.

Various risks, uncertainties and events beyond our control could affect our ability to comply with these restrictions and covenants. Failure to comply with any of the restrictions and covenants that may be in our financing arrangements could result in a default under those arrangements and under other arrangements that may contain cross-default provisions.

A default would permit lenders to accelerate the maturity of the debt under these arrangements and to foreclose upon any collateral securing the debt. Under these circumstances, we might not have sufficient funds or other resources to satisfy all of our obligations. In addition, the limitations imposed by financing agreements on our ability to incur additional debt and to take other actions might significantly impair our ability to obtain other financing.

***To service indebtedness and fund other cash needs, we will require a significant amount of cash, and our ability to generate cash depends on many factors beyond our control.***

Our ability to pay principal and interest on our anticipated debt obligations and to fund any planned capital expenditures and other cash needs will depend in part upon the future financial and operating performance of our company and our subsidiaries. Prevailing economic conditions and financial, business, competitive, legislative, regulatory and other factors, many of which are beyond our control, will affect our ability to make these payments.

If we are unable to make payments or we are unable to refinance the debt or obtain new financing under these circumstances, we may consider other options, including:

- sales of assets;
- equity offerings;

- reductions or delays of capital expenditures, strategic acquisitions, investments and alliances; or
- negotiations with our lenders to restructure the applicable debt.

Some of our variable-rate indebtedness, including our third-party indebtedness expected to be issued in connection with this offering as described in the section “Recapitalization,” uses LIBOR as a benchmark for establishing the rate. LIBOR is expected to be discontinued after 2021 and will be replaced with an alternative reference rate. The consequence of this development cannot be entirely predicted but could include an increase in the cost of our variable rate indebtedness. Our business may not generate sufficient cash flow from operations, and future borrowings may not be available to us in an amount sufficient, to enable us to pay our anticipated indebtedness or to fund our other liquidity needs. We may need to refinance all or a portion of our anticipated indebtedness on or before maturity. We may not be able to refinance any of our anticipated debt on commercially reasonable terms, or at all.

***We face intense competition and may suffer losses if we fail to compete efficiently.***

We operate in highly competitive markets and compete with many large, small and mid-tier defense contractors, including, at times, our customers, based on performance, cost, overall value, delivery and reputation. Our competitors continuously seek to expand their business relationships with the U.S. government and will continue these efforts in the future, and the U.S. government may choose to use other contractors. We expect that a majority of the business that we seek will be awarded through competitive bidding. The U.S. government has increasingly relied on certain types of contracts that are subject to multiple competitive bidding processes, including multi-vendor Indefinite Delivery Indefinite Quantity (“IDIQ”), Governmentwide Acquisition Contracts, General Services Administration Schedule and other multi-award contracts, which has resulted in greater competition and increased pricing pressure. Many of our larger competitors have significantly greater financial resources than we do and have more extensive or more specialized engineering, manufacturing and marketing capabilities than we do in some areas, including as a result of substantial industry consolidation, which increased the market share of certain of our competitors and enabled them to take advantage of economies of scale and develop new technologies. These larger competitors may also benefit from supply chain leverage and pricing flexibility, including, in some cases, the ability to price contracts at a loss, due to their size. Larger competitors, for example, may decide to pursue contracts typically won by mid-tier contractors, such as us. Additionally, our smaller competitors may have lower overhead rates than we do, enabling them to compete effectively on pricing against mid-tier contractors such as us. A number of these competitors are also our suppliers and customers. Additionally, some customers, including the DoD, are increasingly purchasing “off the shelf” components from commercial suppliers in lieu of using traditional defense contractors to design and manufacture such items.

We may not be able to continue to win competitively awarded contracts or to obtain task orders under multi-award contracts. Further, the competitive bidding process involves significant cost and managerial time to prepare bids and proposals for contracts that may not be awarded to us or may be split with competitors, as well as the risk that we may fail to accurately estimate the resources and costs required to fulfill any contract awarded to us. The current competitive environment has resulted in an increase of bid protests from unsuccessful bidders, which typically extends the time until work on a contract can begin. Following any contract award, we may experience significant expense or delay, contract modification or contract rescission as a result of our competitors protesting or challenging contracts awarded to us in competitive bidding.

***Preferences or set-asides for minority-owned, small and small disadvantaged businesses could impact our ability to be a prime contractor and limit our opportunity to work as a subcontractor on certain governmental procurements.***

As a result of the Small Business Administration (“SBA”) set-aside program, the federal government may decide to restrict certain procurements only to bidders that qualify as minority-owned, small, or small disadvantaged businesses. We would not be eligible to perform as a prime contractor on those programs

and in general would be restricted to no more than 49% of the work as a subcontractor on those programs. An increase in the amount of procurements under the SBA set-aside program may impact our ability to bid on new procurements as a prime contractor, limit our opportunity to work as a subcontractor or restrict our ability to compete on incumbent work that is placed in the set-aside program.

***We depend in part upon our relationships and alliances with industry participants in order to generate revenue, which involves risks and uncertainties.***

We rely on the strength of our relationships with other industry participants, including major prime contractors and small businesses, to form strategic alliances and we have entered, and expect to continue to enter, into joint venture, teaming, partnership, subcontractor and other arrangements. These activities involve risks and uncertainties, including the risk that a joint venture or applicable entity fails to satisfy its obligations, which may result in certain liabilities to us from guarantees and other commitments, the challenges in achieving strategic objectives and expected benefits of the business arrangement, the risk of conflicts arising between us and our partners and the difficulty of managing and resolving such conflicts and the business arrangements generally. In some cases, these relationships are subject to exclusivity arrangements which subject us to the risk that we may be forced to forego superior opportunities with a different partner. In addition, particularly where we act as a subcontractor and form teaming arrangements in which we and other contractors bid on particular contracts or programs, we often lack control over fulfillment of a contract and poor performance on the contract could impact our customer relationship, even when we perform as required. If partners in teaming arrangements suffer financial difficulties, face compliance or other reputational issues or fail to comply with the law, we may be adversely affected to the extent we are relying on such partners. Additionally, the U.S. Department of Justice and Federal Trade Commission have periodically and increasingly focused on ensuring competition in government acquisition and could challenge a teaming arrangement. If any of our existing relationships with our industry partners were impaired or terminated, or if we are unable to enter into future arrangements, we could also experience significant delays in the development of new products ourselves, and we would incur additional development costs. We would need to fund these costs internally or identify new industry partners.

Some of our industry partners and major customers are also potential competitors, which may impair the viability of new or continued strategic relationships. This position may create conflicts of interest and uncertainty in circumstances where we continue to operate as both a subcontractor for and a competitor to one of our industry partners or customers, potentially jeopardizing potential revenue opportunities. While we must compete effectively in the marketplace, our future alliances may depend on our industry partners' perception of us. Our ability to win new and/or follow-on contracts may be dependent upon our relationships within the defense industry.

***Contractual disputes with industry participants or the inability of our key suppliers to timely deliver our components, parts or services, could cause our products, systems or services to be produced or delivered in an untimely or unsatisfactory manner.***

We act as subcontractor on many contracts and engage subcontractors on many of our own contracts. We may have disputes with our contractual counterparts, including regarding the quality and timeliness of work performed by a subcontractor, customer concerns about a subcontract or subcontractor, our failure to extend existing task orders or issue new task orders under a subcontract, our hiring of personnel of a subcontractor or as a subcontractor or our counterpart's failure to comply with applicable law. In addition, there are certain parts, components and services for many of our products, systems and services that we source from other manufacturers or vendors. Some of our suppliers, from time to time, experience financial and operational difficulties, which may impair their ability to supply the materials, components, subsystems and services that we require. For example, we have recently witnessed shortages of electronic components that are used in automotive, cell phones and other electronics, in general, causing disruptions to multiple industries such as automotive manufacturing and personal electronics. Shortages of similar components that we use could negatively impact our supply chain and manufacturing processes, as well as our ability to deliver on our contracts. Impacts from the

COVID-19 pandemic have created or exacerbated existing materials shortages, resulted in supplier business closures and disrupted our supply chain. Future impacts from the pandemic remain highly uncertain as the situation continues to evolve, sometimes rapidly. In addition, our supply chain may be disrupted by trade conflicts and tariffs imposed on products, as well as other external events, including natural disasters, extreme weather conditions, future medical epidemics or pandemics, acts of terrorism, cyber attacks and labor disputes, governmental actions and legislative or regulatory changes, such as product certification or stewardship requirements, sourcing restrictions, product authenticity and climate change or greenhouse gas emission standards. These or any further political or governmental developments or health concerns could result in social, economic and labor instability. Any inability to develop alternative sources of supply on a cost-effective and timely basis could materially impair our ability to manufacture and deliver products, systems and services to our customers.

We may have disputes with our subcontractors or suppliers; material supply constraints or problems; or component, subsystems or services problems in the future. Also, our subcontractors and other suppliers may not be able to acquire or maintain the quality of the materials, components, subsystems and services they supply, which might result in greater product returns, service problems and warranty claims and could harm our business, financial condition and results of operations. Further, warranty claims brought by our customers related to third-party components and materials may arise after our ability to bring corresponding warranty claims against such suppliers expire, which could result in costs to us. In addition, in connection with our government contracts, we are required to procure certain materials, components and parts from supply sources approved by the U.S. government and we rely on our subcontractors and suppliers to comply with applicable laws, regulations and other requirements regarding procurement of counterfeit, unauthorized or otherwise non-compliant parts or materials, including parts or materials they supply to us, and in some circumstances, we rely on their certifications as to their compliance. From time to time, we use components for which there is only one supplier and that supplier may be unable to meet our needs. The inability of our suppliers to perform, or their inability to perform adequately, could also result in the need for us to transition to alternate suppliers, which could result in significant incremental cost and delay or the need for us to provide other resources to support our existing suppliers. Each of these subcontractor and supplier risks could have a material adverse impact on our business, financial condition and results of operations.

***We are susceptible to a security breach, through cyber attack, cyber intrusion, insider threats or otherwise, and to other significant disruptions of our IT networks and related systems or of those we operate for our customers.***

We store sensitive data, including information relating to national security and other sensitive government functions, intellectual property and technology, proprietary business information, and confidential employee information such as personally identifiable or protected health information on our servers and databases. We are subject to laws and rules issued by U.S. and non-U.S. governments and agencies concerning safeguarding and maintaining information confidentiality including extensive and evolving cyber requirements of the DoD. We face the risk of a security breach with respect to that data, whether through cyber attack, cyber intrusion or insider threat via the Internet, malware, computer viruses, attachments to e-mails, persons inside our organization or with access to systems inside our organization, threats to the physical security of our facilities and employees or other significant disruption of our IT networks and related systems or those of our suppliers or subcontractors. The risk of security breaches may be higher during times of a natural disaster or pandemic (including COVID-19) due to remote working arrangements. As an advanced technology-based solutions provider, and particularly as a government contractor with access to national security and other sensitive government information, we face a heightened risk of a security breach or disruption from threats to gain unauthorized access to our and our customers' proprietary or classified information on our IT networks and related systems and to the IT networks and related systems that we operate and maintain for certain of our customers. These types of information and IT networks and related systems are critical to the operation of our business and essential to our ability to perform day-to-day operations, and, in some cases, are critical to the operations of certain of our customers. We make significant efforts to maintain the security and integrity of these

types of information and IT networks and related systems and have implemented various measures to manage the risk of a security breach or disruption. As is the case with many other companies, we have experienced cyber security incidents in the past, including DoS attacks, ransomware, and attacks from suspected nation state actors. Our efforts and measures have not been effective in the case of every incident, but no incident has had a material negative impact on us to date. Sensitive data saved on networks, systems and facilities therefore remain vulnerable because of the risk that cybersecurity incidents, including, but not limited to, attempts to gain unauthorized access to data, potential security breaches, particularly cyber attacks and cyber intrusions, or disruptions, will occur in the future, and because the techniques used in such attempts are constantly evolving and generally are not recognized until launched against a target, and in some cases are designed not to be detected and, in fact, may not be detected. In some cases, the resources of foreign governments may be behind such attacks due to the nature of our business and the industries in which we operate. Accordingly, we may be unable to anticipate these techniques or to implement adequate security barriers or other preventative measures. Thus, it is impossible for us to entirely mitigate this risk, and there can be no assurance that future cyber security incidents will not have a material negative impact on us. A security breach or other significant disruption involving these types of information and IT networks and related systems could:

- disrupt the proper functioning of these networks and systems and, therefore, our operations and/or those of certain of our customers;
- result in the unauthorized access to, and destruction, loss, theft, misappropriation or release of, proprietary, confidential, sensitive or otherwise valuable information of ours, our customers or our employees, including trade secrets, which could be used to compete against us or for disruptive, destructive or otherwise harmful purposes and outcomes;
- result in litigation and governmental investigation and proceedings associated with cybersecurity incidents;
- compromise national security and other sensitive government functions;
- require significant management attention and resources to remedy the damages that result;
- result in costs which exceed our insurance coverage and/or indemnification arrangements;
- subject us to claims for contract breach, damages, credits, penalties or termination; and
- damage our reputation with our customers (particularly agencies of the U.S. government) and the general public.

Additionally, a failure to comply with the National Institute of Standards and Technology Special Publication 800-171 or the DoD's cybersecurity requirements, including the Cyber Security Material Model Certificate ("CMMC") which will require all contractors to receive specific third-party certifications relating to specified cybersecurity standards in order to be eligible for contract awards, whether or not resulting in a security breach or disruption, could restrict our ability to bid for, be awarded and perform on DoD contracts. The DoD expects that all new contracts will be required to comply with the CMMC by 2026, and initial requests for information and for proposal have already begun. We are in the process of evaluating our readiness and preparing for the CMMC, but to the extent we, or our subcontractors or other third parties on whom we rely, are unable to achieve certification in advance of contract awards that specify the requirement, we will be unable to bid on such contract awards or on follow-on awards for existing work with the DoD, depending on the level of standard as required for each solicitation, which could adversely impact our revenue, business, results of operations and financial condition. We will also be required to go through a recertification process every two years in order to maintain our certification. In addition, any obligations that may be imposed on us under the CMMC may be different from or in addition to those otherwise required by applicable laws and regulations, which may cause additional expense for compliance.

We must also rely on the safeguards put in place by customers, suppliers, vendors, subcontractors, partners in teaming arrangements or other third parties to minimize the impact of cyber threats, other security threats or business disruptions. These third parties may have varying levels of cybersecurity expertise and safeguards, and their relationships with government contractors, such as our company, may increase the likelihood that they are targeted by the same cyber threats, including from foreign governments, we face. In the event of a breach affecting these third parties, our business and financial results could suffer materially. With respect to our commercial arrangements with these third parties, we have processes designed to require that the third parties and their employees and agents agree to maintain certain standards for the storage, protection and transfer of confidential, personal and proprietary information. However, we remain at risk of a data breach due to the intentional or unintentional non-compliance by a third party's employee or agent, the breakdown of a third party's data protection processes, which may not be as sophisticated as ours, or a cyber attack on a third party's information network or systems.

The impact of these various factors is difficult to predict, but any of them could result in the loss of information or capabilities, harm to individuals or property, damage to our reputation, loss of business, contractual or regulatory actions and potential liabilities, any one of which could have a material adverse impact on our business, financial condition and results of operations.

Significant capital investments and other expenditures could be required to remedy cybersecurity problems and prevent future breaches, including costs associated with additional security technologies, personnel and experts. These costs, which could be material, could adversely impact our results of operations in the period in which they are incurred and may not meaningfully limit the success of future attempts to breach our information technology systems.

***We may be at greater risk from terrorism and other threats to our physical security and personnel, than other companies.***

As a defense contractor, we may be more likely than other companies to be a direct target of, or an indirect casualty of, physical attacks including by active shooters, terrorists or terrorist organizations. It is impossible to predict accurately the likelihood or impact of any attack on our industry generally or on our business. While we have implemented significant physical security protection measures, business continuity plans and established backup sites, in the event of an attack or a threat of an attack, these security measures and contingency plans may be inadequate to prevent significant disruptions in our business, technology or access to the infrastructure necessary to maintain our business. Such attack may harm our personnel, close our facilities or render our backup data and recovery systems inoperable. Damage to our facilities due to attacks may be significantly in excess of any amount of insurance recovery, and we may not be able to insure against such damage at a reasonable price or at all. The threat of attacks may also negatively affect our ability to attract and retain employees. Any of these events could have a material adverse effect on our business, financial condition and results of operations.

***Our future success will depend on our ability to respond to the rapid technological changes in the markets in which we compete, our ability to introduce new or enhanced products and to enter into new markets.***

The markets in which we compete are characterized by rapid technological developments and frequent new product introductions, enhancements and modifications. Our ability to develop new products and technologies that anticipate changing customer requirements, reduce costs and otherwise retain or enhance our competitive position in existing and new markets will be an important factor in our future results from operations. We will continue to make substantial capital expenditures and incur significant research and development costs aimed at improving our manufacturing capability, reducing costs, and developing and introducing new products and enhancements. If we fail to develop and introduce new products and technologies in a timely manner it could have a material adverse effect on our business, financial condition and results of operations. In addition, we cannot be certain that our new products and technologies will be successful or that customers will accept any of our new products.

***Many of our contracts contain performance obligations that require innovative design capabilities, are technologically complex, require state-of-the-art manufacturing expertise or are dependent upon factors not wholly within our control. Failure to meet our contractual obligations could adversely affect our business, financial condition, results of operations, reputation and future prospects.***

We design, develop and manufacture technologically advanced and innovative products and services, which are applied by our customers in a variety of environments, including some under highly demanding operating conditions, to accomplish challenging missions. Problems and delays in development or delivery, or system failures, as a result of issues with respect to design, technology, intellectual property rights, labor, inability to achieve learning curve assumptions, inability to manage effectively a broad array of programs, manufacturing materials or components, or subcontractor performance could prevent us from meeting requirements and create significant risk and liabilities. In addition, any obsolescence of components used in our products may require us to redesign our products, in whole or in part, which could cause increased costs. Similarly, failures to perform on schedule or otherwise to fulfill our contractual obligations could negatively affect our reputation and ability to win future business which could have a material adverse impact on our business, financial condition and results of operations.

In addition, our products cannot be tested and proven in all situations and are otherwise subject to unforeseen problems. Examples of unforeseen problems that could negatively affect revenue, schedule and results of operations include premature failure of products that cannot be accessed for repair or replacement, failure to perform in anticipated or unanticipated battlefield conditions, unintended explosions or similar events, problems with design, quality and workmanship, inadequate delivery of subcontractor components or services and degradation of product performance. These failures could result, either directly or indirectly, in loss of life or property. Among the factors that may affect revenue and results of operations could be inaccurate cost estimates, design issues, human factors, unforeseen costs and expenses not covered by insurance or indemnification from the customer, diversion of management focus in responding to unforeseen problems, loss of follow-on work, and, in the case of certain contracts, repayment to the government customer of contract cost and fee payments we previously received, or replacement obligations. See also “—Our results of operations and cash flows are substantially affected by our mix of fixed-price, cost-plus and time-and-material type contracts. In particular, fixed-price contracts subject us to the risk of loss in the event of cost overruns or higher than anticipated inflation.” and “—We use estimates in pricing and accounting for many of our programs, and changes in our estimates could adversely impact our business, financial condition and results of operations.”

If we are unable to meet our obligations, including due to issues regarding the design, development or manufacture of our products or services, it could have a material adverse impact on our reputation, our ability to compete for other contracts and our business, financial condition and results of operations.

***We may not be able to fully exploit or obtain patents or other intellectual property protections necessary to secure our proprietary technology.***

We seek to protect our competitive position by seeking patents, proprietary information and other intellectual property protections when possible and appropriate. However, we do not have the right to prohibit the U.S. government from using certain technologies developed by us or to prohibit third-party companies, including our competitors, from using those technologies in providing products and services to the U.S. government. The U.S. government often obtains the right to royalty-free use of technologies or intellectual property that we develop under U.S. government contracts or with funding from the U.S. government. Further, while we may retain rights over any technology, product or intellectual property that we develop under U.S. government contracts or using funding from the U.S. government, this requires us to take timely affirmative measures to preserve our rights. We are sometimes able to commercially exploit those government-funded technologies and, in many cases, may assert our intellectual property rights to seek to block other non-government users thereof, but we cannot assure you that we will always have



such rights and that when we do, that those efforts will be successful. In some cases it may not be appropriate to patent our intellectual property as this involves making the patented technology public. In such cases we may have limited means to protect our intellectual property.

While we enter into confidentiality and non-disclosure agreements with our employees, consultants, partners, customers and others to attempt to limit access to and distribution of proprietary and confidential information, it is possible that:

- some or all of our confidentiality agreements will not be honored;
- third parties will independently develop equivalent technology or misappropriate our technology or designs;
- disputes will arise with our strategic partners, customers or others concerning the ownership of intellectual property; or
- contractual provisions may not be enforceable in certain jurisdictions.

Also, despite the steps taken by us to protect our proprietary rights, it may be possible for unauthorized third parties to copy or reverse-engineer aspects of our products, develop similar technology independently or otherwise obtain and use information from our supply chain that we regard as proprietary and we may be unable to successfully identify or prosecute unauthorized uses of our technology.

***Third parties have claimed in the past and may claim in the future that we are infringing directly or indirectly upon their intellectual property rights, and third parties may infringe upon our intellectual property rights.***

Our ability to ensure a competitive market position and gain awards of contracts depends in part on our ability to ensure that our intellectual property is protected, that our intellectual property rights are not diluted or subject to misuse, that we are able to license certain third-party intellectual property on reasonable terms and that we are able to operate without infringing the intellectual property rights of others. Third parties have claimed in the past and may claim in the future that we are infringing directly or indirectly upon their intellectual property rights, and we may be found to be infringing or to have infringed directly or indirectly upon those intellectual property rights. For example, in June 2017 another defense contractor filed suit in the United States Court of Federal Claims alleging that the U.S. government had infringed upon four of its patents relating to night vision weapon systems under a contract awarded to one of our subsidiaries. Neither we nor our subsidiary were named as defendants in the case, and the U.S. government assumes all infringement liability. In 2020, we received a notification from a commercial customer claiming that, under an agreement between us and the customer relating to night vision weapon systems on a separate program, we would be required to indemnify the customer if it were to incur any costs as a result of these allegations.

Claims of intellectual property infringement might also require us to enter into costly royalty or license agreements. There can be no assurance that any of our patents and other intellectual property will not be challenged, invalidated, misappropriated or circumvented by third parties. Moreover, we may not be able to obtain royalty or license agreements on terms acceptable to us, or at all. We also may be subject to significant damages or injunctions against development and sale of certain of our products, services and solutions. Our success depends in large part on our proprietary technology. We rely on a combination of patents, copyrights, trademarks, trade secrets, know-how, confidentiality provisions and licensing arrangements to establish and protect our intellectual property rights. Our efforts, however, to protect our intellectual property and proprietary rights may not be sufficient. In addition, the laws concerning intellectual property vary among nations and the protection provided to our intellectual property by the laws and courts of foreign nations may differ from and be more limited than the protection provided in the U.S. If we fail to successfully protect and enforce these rights, our competitive position could suffer. Our pending patent and trademark registration applications may not be issued, and/or competitors may

challenge the validity or scope of our patents or trademark registrations. In addition, our patents may not provide us a significant competitive advantage. We may be required to spend significant resources to monitor and enforce our intellectual property rights. Litigation to determine the scope of intellectual property rights, even if ultimately successful, could be costly and could divert management's attention away from other aspects of our business.

***Our reputation and ability to do business may be impacted by the improper conduct of our employees, agents, affiliates, subcontractors, suppliers, business partners or joint ventures in which we participate.***

We have implemented compliance controls, training, policies and procedures designed to prevent and detect misconduct from being committed by our employees, agents or business partners that would negatively impact our ability to be a U.S. government contractor or subcontractor and/or violate the laws of the jurisdictions in which we operate, including laws governing improper payments to government officials, such as the FCPA, the protection of export-controlled information, such as the ITAR or EAR, false claims, procurement integrity, cost accounting and billing, competition, information security and data privacy and the terms of our contracts. We cannot ensure, however, that our controls, training, policies and procedures will prevent or detect all misconduct. Additionally, we may have limited ability to control the conduct of our affiliates and we have been, and may in the future be, adversely impacted by misconduct of our affiliates. For example, in May 2019 the Italian Supreme Court overturned the 2014 convictions of the former chief executive officer of our ultimate parent, Leonardo S.p.A., and another Leonardo S.p.A. executive, of international bribery. While the convictions in Italy were overturned in a final non-appealable proceeding, the case continues to be the subject of a corruption trial in India. We remain subject to reputational risk as a result of this ongoing action and restrictions on our ability to sell to the Indian government. In addition, in October 2020 an Italian court convicted Alessandro Profumo, the chief executive officer of Leonardo S.p.A., on charges of false statements and market manipulation related to his previous role as chairman of the Italian banking entity, Banca Monte dei Paschi di Siena. While we have been advised by Leonardo S.p.A. that this conviction is going to be appealed, we remain subject to reputational risk as a result of this ongoing proceeding.

This risk of improper conduct may increase as we continue to grow and expand our operations. If not prevented, improper actions by those with whom or through whom we do business (including our employees, agents, subcontractors, suppliers, business partners and joint ventures) could subject us to administrative, civil or criminal investigations and enforcement actions; monetary and non-monetary penalties; liabilities; and the loss of privileges and other sanctions, including suspension and debarment, which could negatively impact our reputation and ability to conduct business and could have a material adverse impact on our business, financial condition and results of operations. In addition, misconduct involving data security lapses resulting in the compromise of personal information or the improper use of our customers' sensitive, export-controlled, or classified information could result in remediation costs, regulatory sanctions against us and serious harm to our reputation and could adversely impact our ability to continue to contract with the U.S. government.

***We are subject to environmental laws and regulations, and our ongoing operations may expose us to environmental liabilities affecting our reputation, business, financial condition and results of operations.***

Our operations are subject to federal, state, foreign and local environmental and health and safety laws and regulations. As a result, we have been involved from time to time in administrative or legal proceedings relating to environmental matters. We cannot assure you that the aggregate amount of future clean-up costs and other environmental liabilities will not be material. We could be subject to potentially significant fines or penalties, including criminal sanctions, if we fail to comply with these requirements. Additionally, we have made and will continue to be required to make significant capital and other expenditures in order to comply with these laws and regulations. The requirements of these laws and regulations are complex, change frequently and could become more stringent in the future. We cannot predict what environmental legislation or regulations will be enacted in the future, how existing or future

laws or regulations will be administered or interpreted or what environmental conditions may be found to exist. Our products and services are also used in nuclear-related activities (including providing components for nuclear-powered platforms and sensors used in nuclear applications) and used in support of nuclear-related operations of third parties. Our business also involves the handling, transportation, storage and disposal of potentially dangerous chemicals and unstable materials and is subject to hazards inherent in such activities including chemical spills, storage tank leaks, discharges or releases of toxic or hazardous substances or gases and other hazards incident to the handling, transportation, storage and disposal of dangerous chemicals. Also, in the future, contamination may be found to exist at our current or former facilities or at off-site locations to which we or certain companies that we have acquired or previously owned may have sent waste, and we could be held liable for such contamination. For example, a government site within a national park for which we may be deemed a potentially responsible party has been subject to a government investigation since July 2000. The remediation of such contamination, or the enactment of more stringent laws or regulations or more strict interpretation of existing laws and regulations, may require us to make additional expenditures, and could decrease the amount of free cash flow available to us for other purposes, including capital expenditures, research and development and other investments and could have a material adverse impact on our business, financial condition and results of operations.

***Our business, financial condition, and results of operations could be materially adversely affected by climate change regulations.***

Climate change regulations at the federal, state, or local level or in international jurisdictions could require us to limit emissions, change our manufacturing processes, obtain substitute materials which may cost more or be less available, increase our investment in control technology for greenhouse gas emissions, fund offset projects, or undertake other costly activities. These regulations could significantly increase our costs and restrict our manufacturing operations by virtue of requirements for new equipment. New permits may be required for our current operations, or expansions thereof. Failure to timely receive permits could result in fines, suspension of production, or cessation of operations at one or more facilities. In addition, restrictions on carbon dioxide or other greenhouse gas emissions could result in significant costs such as higher energy costs and the passing down of carbon taxes, emission cap-and-trade programs, and renewable portfolio standards by utility companies. The cost of complying, or of failing to comply, with these and other climate change and emissions regulations could have an adverse impact on our business, financial condition and results of operations.

***The outcome of litigation, arbitration, investigations, claims, disputes, enforcement actions and other legal proceedings in which we are involved from time to time is unpredictable, and an adverse decision in any such matter could have a material adverse impact on our business, financial condition and results of operations.***

The size, nature and complexity of our business make us susceptible to investigations, claims, disputes, enforcement actions, litigation and other legal proceedings, particularly those involving governments. From time to time, we are and may become subject to investigations, claims, disputes, enforcement actions and administrative, civil or criminal litigation, arbitration or other legal proceedings globally and across a broad array of matters, including, but not limited to, government contracts, commercial transactions, false claims, false statements, mischarging, contract performance, fraud, procurement integrity, products liability, warranty liability, the use of hazardous materials, personal injury claims, environmental matters, shareholder-derivative actions, prior acquisitions and divestitures, intellectual property, tax, employees, export/import, anti-corruption, labor, health and safety, accidents, employee benefits and plans, including plan administration, and improper payments, as well as matters relating to our acquisition of assets or companies and other matters. These actions may divert financial and management resources that would otherwise be used to benefit our operations. No assurances can be given that the results of these or any other matters will be favorable to us. Although we maintain insurance policies, these policies may not be adequate to protect us from all material judgments and expenses related to current or future claims and may not cover the conduct that is the subject of the litigation or arbitration. Desired levels of insurance may not be available in the future at economical prices

or at all. Although we believe that we have meritorious defenses to the claims made in the litigation matters in which we have been named a party and intend to contest each lawsuit vigorously, no assurances can be given that the results of these matters will be favorable to us. An adverse resolution or outcome of any of these investigations, claims, disputes, enforcement actions, litigation and other legal proceedings could have an adverse impact on our business, financial condition and results of operations.

We cannot predict the outcome of legal proceedings and other contingencies with certainty. As required by U.S. GAAP, we estimate material loss contingencies and establish liabilities based on our assessment of contingencies where liability is deemed probable and reasonably estimable in light of the facts and circumstances known to us at a particular point in time. Subsequent developments may affect our assessment and estimates of the loss contingency recorded as a liability or as a reserve against assets in our financial statements. It is possible that the ultimate resolution of these matters could result in a material adverse impact on our financial condition, results of operations and/or cash flows from operating activities in a particular reporting period.

***Our international business exposes us to additional risks, including risks related to geopolitical and economic factors, laws and regulations.***

For the years ended December 31, 2020, 2019 and 2018, approximately 8%, 4% and 6%, respectively, of our revenue was derived from sales to customers located in foreign countries and foreign governments. We cannot assure you that we will maintain significant operations internationally or that any such operations will be successful. International business (including our participation in joint ventures and other joint business arrangements) is subject to numerous political and economic factors, legal requirements, cross-cultural considerations and other risks associated with doing business globally. These risks differ in some respects from those associated with our U.S. business and our exposure to such risks may increase if our international business continues to grow.

Our international business is subject to both U.S. and foreign laws and regulations, which may include, without limitation, laws and regulations relating to import-export controls, (such as the ITAR, EAR, and customs laws), tariffs, embargoes, technology transfer restrictions, government contracts and procurement, data privacy and protection, investment, exchange rates and controls, the FCPA and other anti-corruption laws, including the UK Bribery Act and the Canadian Corruption of Foreign Public Officials Act, the anti-boycott provisions under the EAR, U.S. economic sanctions administered by the Office of Foreign Assets Control and other federal agencies, labor and employment, works councils and other labor groups, anti-human trafficking, taxes, environment, immunity, security restrictions and intellectual property. If we or our employees, affiliates, partners or others with whom we work fail to comply with applicable laws and regulations we may be subject to administrative, civil, commercial or criminal penalties and liabilities, including suspension or debarment from government contracts or suspension of our export privileges. Our international business also exposes us to difficulties associated with repatriating cash generated or held abroad in a tax-efficient manner and changes in tax laws. Our customers outside of the U.S. generally have the ability to terminate contracts for default based on performance. Suspension or debarment, or termination of a contract due to default, in particular, could have a material adverse effect on our reputation, our ability to compete for other contracts and our financial position, results of operations and/or cash flows. New regulations and requirements, or changes to existing ones in the various countries in which we operate can significantly increase our costs and risks of doing business internationally. Any such future violations could have a material adverse impact on our reputation, business, results of operations and financial condition.

Changes in laws, regulations, political leadership and environment, or security risks may significantly affect our ability to conduct or continue to conduct business in international markets. Our international business may be impacted by changes in U.S. and foreign national policies and priorities, and geopolitical relationships, any of which may be influenced by changes in the threat environment, political leadership, geopolitical uncertainties, world events, acts of terrorism, bilateral and multi-lateral relationships, government budgets, and economic and political factors more generally, and any of which could impact funding for programs, alter export authorizations, or delay purchasing decisions or customer payments.

These changes may affect export control laws as products or markets that were not previously subject to stringent controls may become subject to greater restrictions and oversight. These changes may also affect the defense spending priorities and procurement policies of foreign governments which may affect our international military sales.

Global economic conditions and fluctuations in foreign currency exchange rates could further impact our business. For example, the tightening of credit in financial markets outside of the U.S. could adversely affect the ability of our customers and suppliers to obtain financing and could result in a decrease in or cancellation of orders for our products and services or impact the ability of our customers to make payments. In addition, the majority of our foreign costs are denominated in local currencies. Over time, an increasing portion of our contracts with paid customers outside of the United States may be denominated in local currencies. Therefore, fluctuations in the value of the U.S. dollar and foreign currencies may affect our results of operations when translated into U.S. dollars. We do not currently engage in currency-hedging activities to limit the risk of exchange rate fluctuations. However, in the future, we may use derivative instruments, such as foreign currency forward and option contracts, to hedge certain exposures to fluctuations in foreign currency exchange rates. The use of such hedging activities may not offset any or more than a portion of the adverse financial effects of unfavorable movements in foreign exchange rates over the limited time the hedges are in place. Moreover, the use of hedging instruments may introduce additional risks if we are unable to structure effective hedges with such instruments.

Our contracts with non-U.S. customers may also include terms and reflect legal requirements that create additional risks including the risk of non-payment or delayed payment by foreign customers and governments. They may include industrial cooperation agreements requiring specific in-country purchases, investments, manufacturing agreements or other operational or financial obligations, including offset obligations, and provide for significant penalties if we fail to meet such requirements. They may also require us to enter into letters of credit, performance or surety bonds, bank guarantees and/or other financial arrangements to secure our performance obligations. We also increasingly are dependent on in-country suppliers and we face risks related to their failure to perform in accordance with the contracts and applicable laws, particularly where we rely on a sole source supplier. Our ability to sell products outside the U.S. could be adversely affected if we are unable to design our products for export on a cost-effective basis or to obtain and retain all necessary export licenses and authorizations on a timely basis.

Conducting business outside of the U.S. also exposes us to the complexity and necessity of using, and disruptions involving our international dealers, distributors, sales representatives and consultants as well as the difficulties of managing a geographically dispersed organization and culturally diverse workforces, including compliance with applicable U.S. and local laws and practices, such as anti-corruption and anti-trust/competition laws. Contracts with international customers are significantly different than the contracts with our U.S. customers, and some are more complex and require different skills to manage. Our ability to conduct business outside of the U.S. also depends on our ability to attract and retain sufficient qualified personnel with the skills and/or security clearances in the markets in which we do business.

The products and services we provide internationally, including those provided by subcontractors and joint ventures in which we have an interest, are sometimes in countries with unstable governments, economic or fiscal challenges, military or political conflicts and/or developing legal systems. This may increase the risk to our employees, subcontractors or other third parties, and/or increase the risk of a wide range of liabilities, as well as loss of property or damage to our products.

The occurrence and impact of these factors is difficult to predict, but one or more of them could negatively impact our business, financial condition and results of operations.

***We may not be successful in obtaining the export licenses necessary to conduct certain operations abroad, and Congress may prevent proposed sales to certain foreign governments.***

We must obtain export and other licenses and authorizations from various U.S. and foreign government agencies before we are permitted to undertake certain activities including selling certain products and technologies outside of the U.S. For example, the U.S. Department of State must notify Congress at least 15 to 30 days, depending on the size and location of the proposed sale, prior to authorizing certain sales of defense equipment and services to some foreign governments. During that time, Congress may take action to block the proposed sale. We can give no assurance that we will continue to be successful in obtaining the necessary licenses or authorizations or that Congress will not prevent or delay certain sales. Additionally, in some cases our ability to source components and products in foreign jurisdictions may require licenses or approvals from foreign governments. Our ability to obtain these licenses and authorizations in a timely fashion or at all is subject to risks and uncertainties, including changing U.S. government policies or laws or delays in Congressional action due to geopolitical and other factors. If we are not successful in obtaining or maintaining the necessary licenses or authorizations in a timely manner, our sales relating to those approvals may be reversed, prevented or delayed, and any significant impairment of our ability to sell products or technologies outside of the U.S. could negatively impact our business, financial condition and results of operations.

***A failure to attract and retain technical and other key personnel could reduce our revenues and our operational effectiveness.***

Our success depends largely upon the continued services of our executive officers and other key employees. We rely on our leadership team in the areas of research and development, operations, security, marketing, sales, customer experience, general and administrative functions, and on individual contributors in our research and development and operations. In addition, the relationships and reputation that many members of our senior management team have established and maintain with U.S. government personnel contribute to our ability to maintain strong customer relationships and to identify new business opportunities. From time to time, there may be changes in our executive management team resulting from the hiring or departure of executives, which could disrupt our business. We do not have employment agreements with our executive officers or other key personnel that require them to continue to work for us for any specified period and, therefore, they could terminate their employment with us at any time. The loss of one or more of our executive officers, especially our chief executive officer, or key employees could impair our ability to identify and secure new contracts, disrupt customer relations, cause us to be in breach of contracts that require us to maintain key personnel or otherwise harm our business. Changes in our executive management team may also cause disruptions in, and harm to, our business.

There is a high demand for qualified technical and other key personnel, and we believe that our future growth and success will depend upon our ability to attract, train and retain such personnel. Competition for personnel in the defense industry is intense, and there is a limited number of persons with knowledge of and experience in this industry. Additionally, some of our businesses are located in regions where competition for personnel is particularly intense. Although we currently experience manageable rates of turnover for our technical personnel the rate of turnover may increase in the future. Our ability to hire personnel in specific sectors may also be limited by non-disclosure or non-solicit agreements that we have entered into. An inability to attract or maintain a sufficient number of technical and other key personnel could have a material adverse effect on our contract performance or on our ability to capitalize on market opportunities.

Our operating results and growth opportunities are heavily dependent upon our ability to attract and retain sufficient personnel with security clearances and requisite skills in multiple areas, including science, technology, engineering and math. Additionally, as we grow our international business, it is increasingly important that we are able to attract and retain personnel with relevant local qualifications and experience. In addition, in a tightened labor market, we are facing increased competition for talent, both with traditional defense companies and commercial companies. If qualified personnel are scarce or difficult to attract or retain or if we experience a high level of attrition, generally or in particular areas, or if

such personnel are unable to obtain security clearances on a timely basis, we could experience higher labor, recruiting or training costs in order to attract and retain necessary employees.

Approximately 476 (or 8%) of our employees are covered by collective agreements which will expire in March and April of 2021. We generally have been able to renegotiate renewals to expiring agreements without significant disruption of operating activities. If we experience difficulties with renewals and renegotiations of existing collective agreements or if our employees pursue new collective representation, we could incur additional expenses and may be subject to work stoppages, slow-downs or other labor-related disruptions. Any such expenses or delays could adversely affect our programs served by employees who are covered by such agreements or representation.

If we are unable to attract and retain a qualified workforce, we may be unable to maintain our competitive position and it could have a material adverse impact on our business, reputation, financial condition and results of operations.

***Our business could be harmed in the event of a prolonged work stoppage.***

As of March 15, 2021, approximately 476 (or 8%) of our employees were represented by labor unions. If we encounter difficulties with renegotiations or renewals of collective bargaining arrangements or are unsuccessful in those efforts, we could incur additional costs and experience work stoppages. Union actions at our suppliers could also affect us. We cannot predict how stable our union relationships will be or whether we will be able to successfully negotiate successor collective bargaining agreements without impacting our financial condition. In addition, the presence of unions may limit our flexibility in dealing with our workforce. While a relatively small percentage of our employee base is unionized, work stoppages could negatively impact the specific business segments in which our unionized employees are employed including our ability to manufacture products or provide services on a timely basis, which could negatively impact our business, financial condition and results of operations.

***Our insurance coverage, customer indemnifications or other liability protections may be unavailable or inadequate to cover all of our significant risks or our insurers may deny coverage of or be unable to pay for material losses we incur, which could adversely affect our business, financial condition and results of operations.***

We provide products and services related to hazardous and high-risk operations. Among such operations, our products and services are used in nuclear-related activities (including providing components for nuclear-powered platforms and sensors used in nuclear applications) and used in support of nuclear-related operations of third parties. Our business also involves the handling, transportation, storage and disposal of potentially dangerous chemicals and unstable materials and is subject to hazards inherent in such activities including chemical spills, storage tank leaks, discharges or releases of toxic or hazardous substances or gases and other hazards incident to the handling, transportation, storage and disposal of dangerous chemicals. We endeavor to obtain insurance agreements from financially solid, responsible, highly rated counterparties in established markets to cover significant risks and liabilities (including, for example, natural disasters, hazardous operations and products liability). Not every risk or liability can be insured, and for risks that are insurable, the policy limits and terms of coverage reasonably obtainable in the market may not be sufficient to cover all actual losses or liabilities incurred. Even if insurance coverage is available, we may not be able to obtain it or renew existing coverage at a price or on terms acceptable to us. Disputes with insurance carriers, including over policy terms, reservation of rights, the applicability of coverage (including exclusions), compliance with provisions (including notice) and/or the insolvency of one or more of our insurers may significantly affect the availability or timing of recovery, and may impact our ability to obtain insurance coverage at reasonable rates in the future.

In some circumstances we may be entitled to certain legal protections or indemnifications from our customers through contractual provisions, laws, regulations or otherwise. However, these protections are not always available, can be difficult to obtain, are typically subject to certain terms or limitations, including the availability of funds, and may not be sufficient to cover all losses or liabilities incurred.

If insurance coverage, customer indemnifications and/or other legal protections are not available or are not sufficient to cover our risks or losses, it could have a material adverse impact on our business, reputation, financial condition and results of operations.

***We have unfunded obligations under our pension plans, and we use estimates in accounting for our pension plans and changes in our estimates could adversely affect our financial condition and results of operations.***

We have unfunded obligations under our pension, postretirement and supplemental retirement plans, see “*Note 12: Pension and Other Postretirement Benefits*” to the Consolidated Financial Statements. The process of determining the funded status of these plans and our pension plan expense or income involves significant judgment, particularly with respect to our long-term return on pension assets and discount-rate assumptions. If our discount-rate assumption or long-term return on assets (“ROA”) (which is used to determine the funded status of our pension plans) is decreased due to changes in our assumptions or other reasons, our pension plan funded status and expense could increase which would negatively impact our results of operations. In addition, if our actual return on assets differs from our long-term ROA assumption, our pension plan funded status and pension expense would be impacted.

***Changes to financial accounting standards may affect our results of operations and cause us to change our business practices.***

We prepare our financial statements in accordance with U.S. GAAP. These accounting principles are subject to interpretation by the Financial Accounting Standards Board, the SEC and various bodies formed to interpret and create appropriate accounting policies. A change in these accounting standards or the questioning of current reporting practices may adversely affect our reported financial results or the way we conduct our business.

***Changes in future business or other market conditions could cause business investments and/or recorded goodwill or other long-term assets to become impaired, resulting in substantial losses and write-downs that would adversely affect our business, financial condition and results of operations.***

As of December 31, 2020 and 2019, we had goodwill and other intangible assets of \$1,117 and \$1,126 million, respectively, net of accumulated amortization, which represented 38% and 39%, respectively, of our total assets. Our goodwill is subject to an impairment test on an annual basis and is also tested whenever events and circumstances indicate that goodwill may be impaired. Any excess goodwill resulting from the impairment test must be written off in the period of determination. Intangible assets (other than goodwill) are generally amortized over the useful life of such assets. In addition, from time to time, we may acquire or make an investment in a business which will require us to record goodwill based on the purchase price and the value of the acquired assets. We may subsequently experience unforeseen issues with such business which adversely affect the anticipated returns of the business or value of the intangible assets and trigger an evaluation of the recoverability of the recorded goodwill and intangible assets for such business. Future determinations of significant write-offs of goodwill or intangible assets as a result of an impairment test or any accelerated amortization of other intangible assets could have a negative impact on our results of operations and financial condition.

***Our ability to use our net operating losses to offset future taxable income may be subject to certain limitations.***

In general, under Section 382 of the U.S. Internal Revenue Code of 1986, as amended (the “Tax Code”), a corporation that undergoes an “ownership change” is subject to limitations on its ability to utilize its pre-change net operating losses (“NOLs”) to offset future taxable income. Future changes in our stock ownership, some of which are beyond our control, could result in an ownership change under Section 382 of the Tax Code. Furthermore, our ability to utilize NOLs of any companies that we may acquire in the future may be subject to limitations. For these reasons, we may not be able to utilize a material portion of the NOLs reflected on our balance sheet, even if we attain profitability.



***We could be liable for certain tax liabilities, including tax liabilities of US Holding and its subsidiaries, under tax law and the tax allocation agreement.***

In connection with this offering, we and US Holding have entered into a tax allocation agreement with members of an affiliated group, as defined in Section 1504(a) of the Tax Code, members of one or more consolidated, combined, unitary or similar state tax groups and additional parties who are part of an “expanded affiliated group” for certain tax purposes. Under the tax allocation agreement, we are responsible for U.S. federal and state tax liability attributable to us or any of our subsidiaries, as determined under the tax allocation agreement, for prior taxable periods beginning with the first consolidated taxable year of US Holding that included DRS (i.e., the taxable year ended December 31, 2008) and for future taxable periods in which we are a member of any consolidated, combined or unitary tax return with US Holding or its subsidiaries. In addition, to the extent US Holding fails to pay taxes imposed with respect to any consolidated, combined or unitary tax return of US Holding or any of its subsidiaries that includes us or any of our subsidiaries, the relevant taxing authority could seek to collect such taxes (including taxes for which US Holding or any of its subsidiaries is responsible under the tax allocation agreement) from us or our subsidiaries. For a description of the tax allocation agreement, see “Certain Relationships and Related-Party Transactions—Relationship with Leonardo S.p.A. Following this Offering—Tax Allocation Agreement.”

***Acquisitions could result in operating difficulties, dilution and other harmful consequences.***

We have evaluated in the past, and expect to continue to evaluate in the future, potential strategic transactions. Any of these transactions could be material to our financial condition and results of operations. The acquisition and the integration of an acquired company, business or technology may create unforeseen operating difficulties and expenditures and involves risks, including:

- the need to implement or remediate controls, procedures, policies and compliance programs appropriate for a larger public company at companies that prior to the acquisition lacked these controls, procedures and policies;
- diversion of management time and focus from operating our business to acquisition integration challenges;
- cultural challenges associated with integrating employees from the acquired company into our organization;
- retaining employees and customers from the businesses we acquire;
- the need to integrate each company’s accounting, management information, human resource and other administrative systems to permit effective management; and
- litigation related to acquisitions.

Foreign acquisitions involve unique risks in addition to those mentioned above, including those related to integration of operations across different cultures and languages, currency risks and the particular economic, political and regulatory risks associated with specific countries.

In addition, the anticipated benefit of many of our acquisitions may not materialize. Future acquisitions or dispositions could result in potentially dilutive issuances of our equity securities, the incurrence of debt, contingent liabilities or amortization expenses, or write-offs of goodwill, any of which could harm our financial condition and results of operations. Future acquisitions may require us to obtain additional equity or debt financing, which may not be available on favorable terms or at all.

Finally, we may be required to obtain the consent of US Holding in order to pursue certain material transactions and there is no guarantee that their consent will be granted See “—Risks Relating to Our Status as a Controlled Company and under the Proxy Agreement—Our ultimate majority stockholder,

*Leonardo S.p.A., may have interests that are different from, or conflict with, those of our other stockholders, and their significant ownership in us may discourage change of control transactions."*

***We have significant operations in locations that could be materially and adversely impacted in the event of a natural disaster or other significant disruption.***

Our operations and the operations of our suppliers and customers could be subject to natural disasters or other significant disruptions, including hurricanes, typhoons, tsunamis, floods, earthquakes, fires, water shortages, other extreme weather conditions, medical epidemics, pandemics (including COVID-19), acts of terrorism, power shortages and blackouts, telecommunications failures and other natural and manmade disasters or disruptions. We have significant business operations located in areas that are subject to these risks, for example our facilities in Florida and Texas. In the event of such a natural disaster or other disruption, we could experience disruptions or interruptions to our operations or the operations of our suppliers, subcontractors, distributors, resellers or customers, including inability of employees to work; destruction of facilities; and/or loss of life, all of which could materially increase our costs and expenses, delay or decrease orders and revenue from our customers and have a material adverse impact on our business, financial condition and results of operations.

***Our leases may be terminated or we may be unable to renew our leases on acceptable terms and if we wish to relocate, we may incur additional costs if we terminate a lease.***

We have made significant capital expenditures to improve several of our leased facilities in order to make them suitable for our purposes as well as to meet requirements that we are subject to as a U.S. government contractor and obtain facility security clearances. However, at the end of the lease term and during any renewal period for a facility, we may be unable to renew the lease without substantial additional cost, if at all. If we are unable to renew our facility leases, we may close or relocate a facility, which could subject us to construction and other costs and risks, which in turn could have a material adverse effect on our business, financial condition and results of operations, including significant capital expenses that may materially impact our results of operations and ability to meet certain contractual schedule commitments. Additionally, we may have to seek qualification of any new facilities in order to meet customer or contractual requirements. We would also have to obtain facility security clearances for the new facility in order to continue to perform on classified contracts. Further, we may not be able to secure a replacement facility in a location that is as commercially viable as that of the lease we are unable to renew, due to contracts that may require us to have facilities in certain locations. Having to close a facility, even briefly to relocate, would reduce the sales that such facility would be able to contribute to our revenues. Additionally, a relocated facility may generate less revenue and profit, if any, than the facility it was established to replace.

Additionally, many of our facilities are located on leased premises subject to non-cancellable leases. Typically, our leases have initial terms ranging from five to 20 years, with options to renew for specified periods of time. We believe that our future leases will likely also be long-term and non-cancellable and have similar renewal options. If we close or stop fully utilizing a facility, we will most likely remain obligated to perform under the applicable lease, which would include, among other things, making the base rent payments, and paying insurance, taxes and other expenses on the leased property for the remainder of the lease term. Our inability to terminate a lease when we stop fully utilizing a facility could negatively impact our business, financial condition and results of operations.

***We cannot predict the consequences of future geo-political events, but they may adversely affect the markets in which we operate, our ability to insure against risks, our operations or our results of operations.***

Ongoing instability and current conflicts in global markets, including in the Middle East and Asia, and the potential for other conflicts and future terrorist activities and other recent geo-political events throughout the world, including new or increased tariffs and potential trade wars have created and continue to create economic and political uncertainties and impacts that could have a material adverse

impact on our business, financial condition and results of operations. These matters cause uncertainty in the world's financial and insurance markets and may significantly increase the political, economic and social instability in the geographic areas in which we operate. Such instability and any resulting changes in laws, regulations or security risks may dramatically affect our ability to conduct or continue to conduct business in the impacted international markets. If credit in financial markets outside of the U.S. tightened, it could adversely affect the ability of our customers and suppliers to obtain financing and could result in a decrease in or cancellation of orders for our products, systems and services or impact the ability of our customers to make payments. These matters may cause us to incur increased costs or experience difficulty with future borrowings under our credit facilities or in the debt capital markets, future issuances of common stock or other equity securities or otherwise with financing our operating, investing (including any future acquisitions) or financing activities. These matters also may cause our insurance coverages to increase in cost, or in some cases, to be unavailable altogether.

#### **Risks Relating to Our Status as a Controlled Company and under the Proxy Agreement**

***We operate under a proxy agreement with the DoD that regulates significant areas of our governance. If we fail to comply with the proxy agreement our classified U.S. government contracts could be terminated, which could have a material adverse impact on our business, financial condition and results of operations.***

Following this offering, Leonardo S.p.A., an Italian company listed on the Milan Stock Exchange, will continue to own the entire share capital of our immediate parent US Holding which, in turn, will beneficially own 78.0% of the voting power of our outstanding common stock (or 74.7% if the underwriters exercise their option to purchase additional shares in full). As a result, we are deemed to be controlled by a foreign company and to be under FOCI, as defined in the NISPOM, which establishes procedures and requirements for government contractors, such as our company, with regard to classified information. See "*Risks Relating to Our Business—We are subject to the U.S. government's requirements, including the DoD's National Industrial Security Program Operating Manual, for our facility security clearances, which are prerequisites to our ability to perform on classified contracts for the U.S. government.*" Furthermore, the combination of the Italian state beneficially owning approximately 30.2% of Leonardo S.p.A.'s voting power (through its ownership of approximately 30.2% of the outstanding ordinary shares of Leonardo S.p.A.), and the governance of Leonardo S.p.A. itself, has led DRS to be deemed to be controlled by a foreign government by certain U.S. regulatory authorities. In order to be permitted to maintain our security clearances and our access to classified data and to perform or bid on classified programs, we are required to mitigate FOCI through a proxy agreement. We have therefore entered into a proxy agreement, dated as of October 26, 2017, with the DoD. Following this offering, we expect to enter into an amended and restated proxy agreement and the parties to the proxy agreement have entered into a commitment letter, dated as of February 26, 2021, as to the form and content of the amended and restated proxy agreement which allows us to operate as if the amended and restated proxy agreement were already in effect. The description of the proxy agreement in this prospectus therefore reflects the terms of the proxy agreement as it will be amended and restated, in accordance with the commitment letter, following this offering. Among other things, the proxy agreement:

- provides that the shares of our common stock owned directly by US Holding and indirectly by Leonardo S.p.A. are voted through proxy holders, who must be independent from current and prior affiliation with Leonardo S.p.A. and its subsidiaries (including US Holding and us) (subject to limited exceptions) and must maintain adequate security clearance;
- provides that the proxy holders are appointed by our immediate parent US Holding (in consultation with Leonardo S.p.A.), but the appointment is subject to approval of the DCSA, an agency of the DoD, and that the proxy holders must be members of our board of directors;
- restricts our ability to share facilities and personnel with and receive certain services from any Leonardo S.p.A. or its other subsidiaries;

- requires us to maintain a government security committee of our board of directors; and
- regulates meetings, visits and communications that are not deemed to be routine business visits between us and Leonardo S.p.A. or its other subsidiaries (including US Holding).

Compliance with the proxy agreement requires a significant commitment of resources and management and board oversight, and the DoD may impose additional security safeguards that it believes necessary to adequately safeguard classified and controlled unclassified information, which could make it more difficult for us to comply with the proxy agreement. Under the proxy agreement we are required to prepare and submit an annual implementation and compliance report to the DCSA including detailed information with respect to the manner in which we comply with the proxy agreement including with respect to classified information, any acts of noncompliance and other matters specified by DCSA. We are subject to regular audits of our FOCI compliance and have at times been found to not have strictly complied with our proxy agreement or relevant security requirements but have not to date been sanctioned for any such noncompliance. Additionally, the restrictions imposed by the proxy agreement on our communications and ability to share facilities, personnel and services with Leonardo S.p.A. or its other subsidiaries mean that we cannot benefit from the full range of synergies and cost savings typically enjoyed by a majority-owned subsidiary.

In the event of a material breach of the proxy agreement, the DoD may (i) novate our classified contracts to a company not under FOCI at our expense, (ii) terminate our classified contracts and deny us new classified contracts, (iii) revoke our facility security clearance and/or (iv) suspend or debar us from participation in all U.S. government contracts. We depend on revenues from contracts and subcontracts with the U.S. government, including defense-related programs with the DoD and a broad range of programs with the U.S. Army and U.S. Navy. See “—Risks Relating to Our Business—We depend on U.S. defense spending for the vast majority of our revenues. Disruptions or deteriorations in our relationships with the relevant agencies of the U.S. government could have a material adverse impact on our business, financial condition and results of operations.” Therefore, if we fail to comply with the terms of the proxy agreement and the DoD imposes any of the above remedies, this could have a material adverse impact on our business, financial condition and results of operations. For further information about the proxy agreement, see “Certain Relationships and Related-Party Transactions—Relationship with Leonardo S.p.A. Following this Offering—Proxy Agreement.”

**CFIUS may modify, delay or prevent our future acquisition or investment activities.**

We are considered a “foreign person” under the regulations administered by CFIUS and will continue to be considered as such in the future for so long as Leonardo S.p.A. has the ability to exercise control over us for purposes of CFIUS’s regulations. As such, acquisitions of or investments in U.S. businesses or foreign companies with U.S. businesses that we may wish to pursue may be subject to CFIUS review, the scope of which was recently expanded by the Foreign Investment Risk Review Modernization Act of 2018 (“FIRRMA”), to include certain non-passive, non-controlling investments in sensitive U.S. businesses and certain acquisitions of real estate even with no underlying U.S. business. FIRRMA, and subsequent implementing regulations that are now in force, also subjects certain categories of investments to mandatory filings. If a particular proposed acquisition or investment in a U.S. business falls within CFIUS’s jurisdiction, we may determine that we are required to make a mandatory filing or that we will submit a voluntary notice to CFIUS, or to proceed with the transaction without notifying CFIUS and risk CFIUS intervention, before or after closing the transaction. CFIUS may decide to block or delay an acquisition or investment by us, impose conditions to mitigate national security concerns with respect to such acquisition or investment or order us to divest all or a portion of a U.S. business that we acquired without first obtaining CFIUS clearance, which may limit the attractiveness of or prevent us from pursuing certain acquisitions or investments that we believe would otherwise be beneficial to us and our stockholders. We may therefore be adversely affected in terms of competing with other companies in our industry which do not have similar foreign ownership issues. Furthermore, because the Italian state beneficially owns approximately 30.2% of the voting power of the outstanding ordinary shares of, and exercises certain governance rights over, Leonardo S.p.A. (through its ownership of approximately 30.2%

of Leonardo S.p.A.'s ordinary shares), which in turn has the ability to exercise control over us for purposes of CFIUS's regulations, we are considered to be foreign government controlled under the regulations administered by CFIUS. Foreign-government-controlled investors may be subject to a higher level of CFIUS scrutiny than non-foreign-government-controlled investors. Additionally, future foreign investments in us could be within the jurisdiction of CFIUS and, given the nature of our business, may trigger a mandatory CFIUS notification requirement or warrant voluntary notification to CFIUS, impacting our ability to attract such investment. Further, CFIUS may decide to block, delay, or impose material conditions on any such future foreign investment in us that it reviews.

Because we are deemed to be controlled by a foreign company, we are required to mitigate FOCI through our proxy agreement. See "Certain Relationships and Related-Party Transactions—Relationship with Leonardo S.p.A. Following this Offering—Proxy Agreement."

***Our ultimate majority stockholder, Leonardo S.p.A., may have interests that are different from, or conflict with, those of our other stockholders, and their significant ownership in us may discourage change of control transactions.***

The proxy agreement provides that the shares of our common stock owned directly by US Holding and indirectly by Leonardo S.p.A. are voted through proxy holders, who must be independent from current and prior affiliation with Leonardo S.p.A. and its subsidiaries (including US Holding and us) (subject to limited exceptions) and must maintain adequate security clearance. The proxy holders have the right to vote US Holding's shares of our common stock in the same manner and to the same extent as if they were the absolute owners of such shares in their own right. In exercising their power as proxy holders, the proxy holders are directed to act to protect the legitimate economic interests of our shareholders and in a manner consistent with their fiduciary duties, but they are not generally required to follow instructions of Leonardo S.p.A., US Holding or us.

The proxy agreement provides that the proxy holders may vote for or consent to in, their sole and absolute discretion, without consultation with US Holding or Leonardo S.p.A., the election of additional directors who are not proxy holders (and who are selected from candidates proposed by US Holding after reasonable consultation with our nominating and corporate governance committee, and subject to DCSA's approval in certain circumstances), any changes or amendments to our certificate of incorporation or by-laws, the sale or disposal of our property, assets or business, our incurrence of debt or any pledge, mortgage or encumbrance of any of our assets, or any other matter affecting us, other than as described below.

However, the proxy holders may only vote for or consent to the following matters with the express written approval of US Holding:

- other than in the ordinary course of business with vendors, customers and suppliers, the sale or disposition of any of our subsidiaries, property, assets or business or those of our subsidiaries or the purchase by us or our subsidiaries of any business, properties, assets or entities, other than in the ordinary course of business, in any individual transaction where our investment (based on our share of the enterprise value) exceeds two percent (2%) of our revenues for the immediately preceding year or where our investment, in the aggregate for all such sales or dispositions in a calendar year, exceeds an amount equal to five percent (5%) of our revenues for the immediately preceding year;
- the incurrence of debt or pledge, mortgage, lease or other encumbrance of our assets or those of our subsidiaries in connection with the incurrence of debt if such incurrence would cause the aggregate outstanding principal amount of all debt of us and our subsidiaries to exceed a target leverage ratio set forth in our then-current operating plan, excluding current debt incurred for purposes of funding day-to-day working capital requirements in the ordinary course of business;
- any merger, consolidation, reorganization or dissolution of us or any of our subsidiaries except as permitted above and excluding transactions solely among our wholly owned subsidiaries; and

- the filing or making of any petition by us or our subsidiaries under the federal bankruptcy laws or any similar law or statute of any state or any foreign country.

In addition, the proxy holders may only vote to declare or suspend dividends after prior consultation with US Holding.

Conflicts of interest may arise between our majority stockholder and us. Affiliates of our majority stockholder engage in transactions with us. Further, Leonardo S.p.A. and its affiliates may, from time to time, acquire and hold interests in businesses that compete directly or indirectly with us, and they may either directly, or through affiliates, also maintain business relationships with companies that may directly compete with us. In general, Leonardo S.p.A. or its affiliates could pursue business interests that are detrimental to us but beneficial to themselves or to other companies in which they invest or with whom they have a material relationship. Conflicts of interest could also arise with respect to business opportunities that could be advantageous to Leonardo S.p.A., and they may pursue acquisition opportunities that may be complementary to our business. As a result, those acquisition opportunities may not be available to us. Under the terms of our amended and restated certificate of incorporation, neither Leonardo S.p.A. nor US Holding will have an obligation to offer us corporate opportunities.

As a result of these relationships the interests of our ultimate parent, Leonardo S.p.A., may not coincide with our interests or the interests of the other holders of our common stock. So long as Leonardo S.p.A. continues to indirectly control a significant amount of the outstanding shares of our common stock, Leonardo S.p.A. and the proxy holders will continue to be able to strongly influence or effectively control our decisions, including potential mergers or acquisitions, asset sales and other significant corporate transactions. This influence, including the requirement in our proxy agreement for approval by the proxy holders and our majority stockholder of mergers and consolidations, may also discourage change of control transactions.

***Following this offering, we expect to be a “controlled company” within the meaning of the NYSE rules and, as a result, we will qualify for exemptions from certain corporate governance requirements. You may not have the same protections afforded to stockholders of companies that are subject to such requirements.***

Following this offering, we expect to be a “controlled company” within the meaning of the NYSE corporate governance standards. Under these rules, a company of which more than 50% of the voting power is held by an individual, group or another company is a “controlled company” and may elect not to comply with certain NYSE corporate governance standards, including:

- the requirement that a majority of the Board consist of independent directors;
- the requirement that we have a compensation committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities;
- the requirement that our nominating and corporate governance committee be composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities, or otherwise have director nominees selected by vote of a majority of the independent directors; and
- the requirement for an annual performance evaluation of the nominating and corporate governance and compensation committees.

While we do not currently intend to use these exemptions, we may in the future decide to do so. Consequently, you may not be entitled to the same protections afforded to stockholders of companies that are subject to all NYSE corporate governance rules and requirements. Our status as a controlled company could make our common stock less attractive to some investors or otherwise harm our stock price.

***Our amended and restated certificate of incorporation provides that we waive any interest or expectancy in corporate opportunities presented to Leonardo S.p.A.***

Our amended and restated certificate of incorporation provides that we, on our behalf and on behalf of our subsidiaries, renounce and waive any interest or expectancy in, or in being offered an opportunity to participate in, corporate opportunities that are from time to time presented to Leonardo S.p.A., or its officers, directors, agents, stockholders, members, partners, affiliates or subsidiaries, with the exception of the proxy holders, even if the opportunity is one that we or our subsidiaries might reasonably have pursued or had the ability or desire to pursue if granted the opportunity to do so. None of Leonardo S.p.A. or its agents, stockholders, members, partners, affiliates or subsidiaries, with the exception of the proxy holders, will generally be liable to us or any of our subsidiaries for breach of any fiduciary or other duty by reason of the fact that such person pursues, acquires or participates in such corporate opportunity, directs such corporate opportunity to another person or fails to present such corporate opportunity, or information regarding such corporate opportunity, to us or our subsidiaries. To the fullest extent permitted by law, by becoming a stockholder in our company, stockholders will be deemed to have notice of and consented to this provision of our amended and restated certificate of incorporation. This will allow Leonardo S.p.A. and its affiliates to compete with us. Strong competition for investment opportunities could result in fewer such opportunities for us. We likely will not always be able to compete successfully with our competitors and competitive pressures or other factors may also result in significant price competition, particularly during industry downturns, which could have a material adverse impact on our business, financial condition and results of operations.

***If US Holding sells a controlling interest in our company to a third party in a private transaction, you may not realize any change of control premium on shares of our common stock and we may become subject to the control of a presently unknown third party.***

US Holding will have the ability, should it choose to do so, to sell some or all of its shares of our common stock in a privately negotiated transaction, subject to the terms of the lock-up agreements described in the section “Shares Eligible For Future Sale”. If such a transaction were to be sufficient in size, it could result in a change of control of DRS. The ability of US Holding to privately sell such shares of our common stock, with no requirement for a concurrent offer to be made to acquire all of the shares of our common stock that will be publicly traded hereafter, could prevent you from realizing any change-of-control premium on your shares of our common stock that may otherwise accrue to US Holding upon its private sale of our common stock. Additionally, if US Holding privately sells a significant equity interest in us, we may become subject to the control of a presently unknown third party. Such third party may have conflicts of interest with the interests of other stockholders. For additional information on the tax implications of a change in ownership, see “—Risks Relating to Our Business—Our ability to use our net operating losses to offset future taxable income may be subject to certain limitations.”

***Following this offering, we will continue to be obligated to provide certain services to Leonardo S.p.A., which may divert human and financial resources from our business, and to rely on provision of certain services from Leonardo S.p.A., which we may be unable to replicate should the need arise.***

Although we operate largely independently from Leonardo S.p.A. and the proxy agreement contains limitations on services that we may provide to and receive from Leonardo S.p.A. and its affiliates, we have historically provided, and expect to continue to provide, certain services to Leonardo S.p.A. and its affiliates to support its U.S. operations (aside from us) and have historically received and expect to continue to receive certain services from Leonardo S.p.A., including services related to group training support, subject in all cases to the proxy agreement. Following this offering, we will continue to provide or procure certain services to or from Leonardo S.p.A. and its affiliates and Leonardo S.p.A. and its affiliates will continue to provide or procure certain services to or from us pursuant to the tax allocation agreement and existing Affiliated Operations Plan (“AOP”) services agreements which will continue pursuant to the terms of such contracts. The tax allocation agreement will remain in effect until terminated upon the written agreement of the parties.

Under our existing AOP services agreements we will continue to provide Leonardo S.p.A. and its affiliates with services in support of its U.S. operations (aside from us), including services related to tax, financial and accounting support, legal support, trade compliance, marketing, communications, media and advertising, and security, on an arm's-length basis. Under the tax allocation agreement, we are responsible for administering certain U.S. federal and state tax matters on behalf of Leonardo S.p.A. and its subsidiaries (including US Holding). The provision of such services may divert human and financial resources from focus on our business, and may expose us to additional risks and liabilities. Under our existing AOP services agreements, Leonardo S.p.A. and its affiliates will continue to provide us with services, including services related to group training support. We will work to replicate or replace these services; however we cannot assure you that we will be able to obtain the services at the same or better levels or at the same or lower costs directly from third-party providers. As a result, when Leonardo S.p.A. or its affiliates cease providing these services to us, either as a result of the termination of the relevant agreements or individual services thereunder or a failure by Leonardo S.p.A. or its affiliates to perform their respective obligations under these agreements, our costs of procuring these services or comparable replacement services may increase.

***We will have obligations in favor of Leonardo S.p.A. after this offering.***

We and Leonardo S.p.A. are party to, or will enter into, certain agreements, including a cooperation agreement, registration rights agreement, trademark license agreement, a tax allocation agreement and our existing AOP services agreements, that will govern our and Leonardo S.p.A.'s obligations to one another following this offering in respect of, among other things, taxes, financial and transition services, information sharing and our respective indemnification obligations. The amounts payable by us pursuant to such indemnification obligations could be significant. Under the registration rights agreement, Leonardo S.p.A., and its affiliated entities including US Holding will have the right to require us to register shares of common stock for resale in some circumstances. For additional information on the potential risks of resale, see "*Risks Relating to Our Common Stock and This Offering—Future sales of shares by existing stockholders could cause our stock price to decline.*" Under the cooperation agreement, among other things, Leonardo S.p.A. and US Holding will be entitled to certain consent rights, and we will be required to provide Leonardo S.p.A. with information and data relating to our and our subsidiaries' business and financial results and reasonable access to our personnel, data and systems. Satisfying our obligations to Leonardo S.p.A. under these agreements may require a significant commitment of resources and management oversight.

**Risks Relating to Our Common Stock and This Offering**

***We will incur increased costs and obligations as a result of being a public company.***

As a privately held company, we were not required to comply with certain corporate governance and financial reporting practices and policies required of a publicly traded company. As a publicly traded company, we will incur significant legal, accounting and other expenses that we were not required to incur in the recent past. After this offering, we will be required to file with the SEC annual and quarterly information and other reports that are specified in Section 13 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). We will also be required to ensure that we have the ability to prepare financial statements that are fully compliant with all SEC reporting requirements on a timely basis. We will also become subject to other reporting and corporate governance requirements, including the requirements of the NYSE, and certain provisions of the Sarbanes-Oxley Act ("SOX") and the regulations promulgated thereunder, which will impose significant compliance obligations upon us. As a public company, we will, among other things:

- prepare and distribute periodic public reports and other stockholder communications, including proxy statements, in compliance with our obligations under the federal securities laws and applicable NYSE rules;
- hold annual shareholder meetings;



- create or expand the roles and duties of our board of directors and committees of the board;
- institute more comprehensive financial reporting and disclosure compliance functions;
- supplement our internal accounting, internal controls, auditing and reporting function, including hiring additional staff with expertise in accounting and financial reporting for a public company, in compliance with Section 404 of SOX;
- enhance and formalize closing procedures at the end of our accounting periods;
- enhance our internal audit and tax functions;
- enhance our investor relations function;
- establish new internal policies, including those relating to disclosure controls and procedures; and
- involve and retain to a greater degree outside counsel and accountants in the activities listed above.

These changes will require a significant commitment of additional resources and many of our competitors already comply with these obligations. Although we had previously been a public company until 2008, we became privately owned following our acquisition by Finmeccanica – *Società per azioni* (now Leonardo S.p.A.). Given the significant passage of time that followed, we no longer benefit from the prior infrastructure we had in place as a publicly held company. In connection with preparing for this offering and operating as a stand-alone public company following the closing of this offering, we expect to incur one-time and recurring expenses. We estimate that the aggregate amount of the one-time expenses described above will be between approximately \$11 million and \$14 million, of which \$9 million had been incurred in the year ended December 31, 2020 and approximately \$2 million to \$4 million is expected to be incurred in the year ended December 31, 2021. This does not include bank fees related to the securing of third party financing or amounts paid by US Holding out of the proceeds of this offering including underwriting discounts and commissions. In addition, for so long as our parent company, Leonardo S.p.A., consolidates our financial position and results of operations in its consolidated financial statements, we expect to engage the same auditing firm to act as our independent registered public accounting firm. Leonardo S.p.A. will be required to change its auditing firm in 2021 in light of European mandatory audit firm rotation rules, which we expect will require us to change our audit firm. A new auditing firm may apply certain auditing standards or accounting practices differently, which, among other factors, may result in additional costs, delays or other issues in preparing our audited financial statements.

We may not be successful in implementing all of the going-public requirements described above and the significant commitment of resources required for implementing them could adversely affect our business, financial condition and results of operations. In addition, if we fail to implement the requirements with respect to our internal accounting and audit functions, our ability to report our results of operations on a timely and accurate basis could be impaired and we could suffer adverse regulatory consequences or violate NYSE listing standards. There could also be a negative reaction in the financial markets due to a loss of investor confidence in us and the reliability of our financial statements.

The changes necessitated by becoming a public company require a significant commitment of resources and management oversight that has increased and may continue to increase our costs and might place a strain on our systems and resources. As a result, our management's attention might be diverted from other business concerns. Some members of our management team have limited experience managing a publicly traded company, interacting with public company investors and complying with the increasingly complex laws pertaining to public companies. Our management team may not successfully or efficiently manage our transition to being a public company that is subject to significant regulatory oversight and reporting obligations under the federal securities laws and the continuous scrutiny of securities analysts and investors.

If we are unable to offset these costs through other savings then it could have a material adverse impact on our business, financial condition and results of operations.

***Some of our contracts with the U.S. government are classified, which may limit investor insight into portions of our business.***

We derive a portion of our revenues from programs with the U.S. government that are subject to security restrictions that preclude the dissemination of information that is classified for national security purposes. We are limited in our ability to provide details about these classified programs, their risks or any disputes or claims relating to such programs, and may not disclose such information pursuant to SEC rules permitting confidential treatment of certain information. As a result, investors and others might have less insight into our classified programs than our other businesses and, therefore, less ability to fully evaluate the risks related to our classified business.

***Future sales of shares by existing stockholders could cause our stock price to decline.***

Sales of substantial amounts of our common stock in the public market following this offering, or the perception that these sales could occur, could cause the market price of our common stock to decline. These sales, or the possibility that these sales may occur, also might make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate. Immediately after this offering, Leonardo S.p.A. through US Holding will own 78.0% of our outstanding common stock (or 74.7% if the underwriters exercise their option to purchase additional shares in full).

As of March 15, 2021, we have 145,000,000 outstanding shares of common stock. All of the shares sold pursuant to this offering will be immediately tradable without restriction under the Securities Act of 1933, as amended (the "Securities Act,"), except for any shares held by "affiliates," as that term is defined in Rule 144 under the Securities Act, or "Rule 144." The remaining shares of common stock outstanding as of March 15, 2021 will be restricted securities within the meaning of Rule 144, but will be eligible for resale subject, in certain cases, to applicable volume, manner of sale, holding period and other limitations of Rule 144 subject to the terms of the lock-up agreements described below.

Upon or prior to the closing of this offering, we intend to file a registration statement on Form S-8 under the Securities Act to register the shares of common stock to be issued under our equity compensation plans and, as a result, these shares and all shares of common stock acquired upon exercise of any stock options granted under our plans will also be freely tradable under the Securities Act, subject to the terms of the lock-up agreements, unless purchased by our affiliates. As of March 15, 2021, 3,511,400 shares of our common stock are reserved for future issuances under our Omnibus Plan adopted in connection with this offering.

In connection with this offering, we, US Holding and all of our directors and executive officers will enter into lock-up agreements under which, subject to certain exceptions, we and they will agree not to dispose of or hedge any of our common stock or securities convertible into or exchangeable for shares of our common stock for a period of 180 days after the date of this prospectus, except with the prior written consent of Goldman Sachs & Co. LLC, BofA Securities, Inc. and J.P. Morgan Securities LLC. Following the expiration of this 180-day lock-up period, approximately 113,100,000 shares of our common stock (or 108,315,000 shares if the underwriters exercise their option to purchase additional shares of common stock from the selling stockholder in full) will be eligible for future sale, subject to the applicable volume, manner of sale, holding period and other limitations of Rule 144. As resale restrictions end, the market price of our common stock could decline if US Holding sells its shares or is perceived by the market as intending to sell them. Goldman Sachs & Co. LLC, BofA Securities, Inc. and J.P. Morgan Securities LLC may, in their sole discretion and at any time, release all or any portion of the securities subject to lock-up agreements entered into in connection with this offering. Furthermore, subject to the expiration or waiver of the lock up agreements, Leonardo S.p.A. and its affiliated entities, including US Holding, will have the right to require us to register shares of common stock for resale in some circumstances pursuant to the registration rights agreement we will enter into with Leonardo S.p.A. and US Holding. For a description of

the registration rights agreement, see “Certain Relationships and Related-Party Transactions—Relationship with Leonardo S.p.A. Following this Offering—Registration Rights Agreement.”

In the future, we may issue additional shares of common stock or other equity or debt securities convertible into or exercisable or exchangeable for shares of our common stock in connection with a financing, strategic investment, litigation settlement or employee arrangement or otherwise. Any of these issuances could result in substantial dilution to our existing stockholders and could cause the trading price of our common stock to decline.

***Our common stock has no prior public market, and the market price of our common stock may be volatile and could decline after this offering.***

Prior to this offering, there has been no public market for our common stock, and an active market for our common stock may not develop or be sustained after this offering. We have been approved to list our common stock on the NYSE. We and US Holding negotiated the initial public offering price per share with the representatives of the underwriters and, therefore, that price may not be indicative of the market price of our common stock after this offering. We cannot assure you that an active public market for our common stock will develop after this offering or, if one does develop, that it will be sustained. In the absence of an active public trading market, you may not be able to sell your shares. An inactive market may also impair our ability to raise capital to continue to fund operations by selling shares and may impair our ability to make strategic investments by using our shares as consideration. In addition, the market price of our common stock may fluctuate significantly. Among the factors that could affect our stock price are:

- industry or general market conditions;
- domestic and international economic factors unrelated to our performance;
- announcements as to a Congressional or Presidential initiative with respect to changes in spending priorities and defense spending levels, sequestration, the appropriations process, use of continuing resolutions (with restrictions, e.g., on starting new programs) and the permissible level of federal debt;
- changes in our customers' preferences;
- new regulatory pronouncements and changes in regulatory guidelines;
- lawsuits, enforcement actions and other claims by third parties or governmental authorities;
- adverse publicity related to us or another industry participant;
- actual or anticipated fluctuations in our operating results;
- changes in securities analysts' estimates of our financial performance or lack of research coverage and reports by industry analysts;
- action by institutional stockholders or other large stockholders, including future sales of our common stock;
- failure to meet any guidance given by us or any change in any guidance given by us, or changes by us in our guidance practices;
- announcements by us of significant impairment charges;
- speculation in the press or investment community;
- investor perception of us and our industry;

- changes in market valuations or earnings of similar companies;
- announcements by us or our competitors of significant contracts, acquisitions, dispositions or strategic partnerships;
- war, terrorist acts and a pandemic or epidemic disease;
- any future sales of our common stock or other securities;
- additions or departures of key personnel; and
- misconduct or other improper actions of our employees.

In particular, we cannot assure you that you will be able to resell your shares at or above the initial public offering price. Stock markets have experienced extreme volatility in recent years that has been unrelated to the operating performance of particular companies. These broad market fluctuations may adversely affect the trading price of our common stock. In the past, following periods of volatility in the market price of a company's securities, class action litigation has often been instituted against the affected company. Any litigation of this type brought against us could result in substantial costs and a diversion of our management's attention and resources, which could materially and adversely affect our business, results of operations or financial condition.

***If securities or industry analysts do not publish research or publish misleading or unfavorable research about our business, our stock price and trading volume could decline.***

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us or our business. We do not currently have, and may never obtain, research coverage for our common stock. If there is no research coverage of our common stock, the trading price for our common stock may be negatively impacted. In the event we obtain research coverage for our common stock, if one or more of the analysts downgrades our stock or publishes misleading or unfavorable research about our business, our stock price would likely decline. If one or more of the analysts ceases coverage of our common stock or fails to publish reports on us regularly, demand for our common stock could decrease, which could cause our common stock price or trading volume to decline.

***Future offerings of debt or certain equity securities which would rank senior to our common stock may adversely affect the market price of our common stock.***

If, in the future, we decide to issue debt or equity securities that rank senior to our common stock, it is likely that such securities will be governed by an indenture or other instrument containing covenants restricting our operating flexibility. Our amended and restated certificate of incorporation also authorizes the issuance of "blank check" preferred stock that could be issued by our board. Additionally, any convertible or exchangeable securities that we issue in the future may have rights, preferences and privileges more favorable than those of our common stock and may result in dilution to owners of our common stock. We and, indirectly, our stockholders, will bear the cost of issuing and servicing such securities. Because our decision to issue debt or equity securities in any future offering will depend on market conditions and other factors beyond our control, we cannot predict or estimate the amount, timing or nature of our future offerings. Thus, holders of our common stock will bear the risk of our future offerings reducing the market price of our common stock and diluting the value of their stock holdings in us.

***We do not expect to declare any dividends in the near term.***

We do not anticipate declaring any cash dividends to holders of our common stock in the near term. Consequently, investors may need to rely on sales of their common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investment. Investors seeking cash

dividends should not purchase our common stock. In addition, the proxy holders may only vote to declare or suspend dividends after prior consultation with US Holding.

***Anti-takeover provisions in our amended and restated certificate of incorporation and amended and restated bylaws and Delaware law could discourage, delay or prevent a change of control of our company and may affect the trading price of our common stock.***

Our amended and restated certificate of incorporation and our amended and restated bylaws include a number of provisions that may discourage, delay or prevent a change in our management or control over us that stockholders may consider favorable. For example, our amended and restated certificate of incorporation and amended and restated bylaws collectively:

- authorize the issuance of shares of our common stock so as to create voting impediments or to frustrate persons otherwise seeking to effect a takeover or gain control;
- authorize the issuance of “blank check” preferred stock that could be issued by our board to thwart a takeover attempt;
- provide that vacancies on our board, including vacancies resulting from an enlargement of our board, may be filled only by a majority vote of directors then in office following termination of the proxy agreement;
- prohibit stockholders from calling special meetings of stockholders following the later of the termination of the proxy agreement and such date as Leonardo S.p.A. is no longer required under IFRS to consolidate the financial statements of the Company with its financial results;
- prohibit stockholder action by written consent, thereby requiring all actions to be taken at a meeting of the stockholders, following the later of the termination of the proxy agreement and such date as Leonardo S.p.A. is no longer required under IFRS to consolidate the financial statements of the Company with its financial results;
- establish advance notice requirements for nominations of candidates for election as directors or to bring other business before an annual meeting of our stockholders; and
- require the approval of holders of at least 66 2/3% of the outstanding shares of our common stock to amend our amended and restated bylaws and certain provisions of our amended and restated certificate of incorporation following the earlier of the termination of the proxy agreement and such date as Leonardo S.p.A. is no longer required under IFRS to consolidate the financial statements of the Company with its financial result.

These provisions may prevent our stockholders from receiving the benefit from any premium to the market price of our common stock offered by a bidder in a takeover context. In addition, the requirement in our proxy agreement for approval by the proxy holders and our majority stockholder of mergers and consolidations also may discourage change of control transactions. Even in the absence of a takeover attempt, the existence of these provisions may adversely affect the prevailing market price of our common stock if the provisions are viewed as discouraging takeover attempts in the future.

Our amended and restated certificate of incorporation and amended and restated bylaws may also make it difficult for stockholders to replace or remove our management. Furthermore, the existence of the foregoing provisions, as well as the significant amount of common stock that US Holding will beneficially own following this offering, could limit the price that investors might be willing to pay in the future for shares of our common stock. These provisions may facilitate management entrenchment that may delay, deter, render more difficult or prevent a change in our control, which may not be in the best interests of our stockholders.

***Our amended and restated certificate of incorporation includes provisions limiting the personal liability of our directors for breaches of fiduciary duty under the Delaware General Corporation Law.***

Our amended and restated certificate of incorporation contains provisions permitted under the General Corporation Law of the State of Delaware, or the “DGCL,” relating to the liability of directors. These provisions will eliminate a director’s personal liability to the fullest extent permitted by the DGCL for monetary damages resulting from a breach of fiduciary duty, except in circumstances involving:

- any breach of the director’s duty of loyalty;
- acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law;
- under Section 174 of the DGCL (unlawful dividends); or
- any transaction from which the director derives an improper personal benefit.

The principal effect of the limitation on liability provision is that a stockholder will be unable to prosecute an action for monetary damages against a director unless the stockholder can demonstrate a basis for liability for which indemnification is not available under the DGCL. These provisions, however, should not limit or eliminate our rights or any stockholder’s rights to seek non-monetary relief, such as an injunction or rescission, in the event of a breach of a director’s fiduciary duty. These provisions will not alter a director’s liability under federal securities laws. The inclusion of this provision in our amended and restated certificate of incorporation may discourage or deter stockholders or management from bringing a lawsuit against directors for a breach of their fiduciary duties, even though such an action, if successful, might otherwise have benefited us and our stockholders.

***Our amended and restated certificate of incorporation designates the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain litigation that may be initiated by our stockholders, and federal district courts as the exclusive forum for Securities Act claims, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us or our directors, officers or stockholders.***

Our amended and restated certificate of incorporation provides that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware will, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed to us or our stockholders by any of our directors, officers, other employees, agents or stockholders, (iii) any action asserting a claim arising out of or under the DGCL, or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware (including, without limitation, any action asserting a claim arising out of or pursuant to our amended and restated certificate of incorporation or our amended and restated bylaws) and (iv) any action asserting a claim that is governed by the internal affairs doctrine. The foregoing provision does not apply to claims arising under the Securities Act or the Securities Exchange Act or other federal securities laws for which there is exclusive federal or concurrent federal and state jurisdiction. Our stockholders cannot waive compliance with the federal securities laws and the rules and regulations thereunder.

Furthermore, unless we select or consent to the selection of an alternative forum, our amended and restated certificate of incorporation provides that the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act.

By becoming a stockholder in our company, you will be deemed to have notice of and have consented to the provisions of our amended and restated certificate of incorporation related to choice of forum. The choice of forum provision in our amended and restated certificate of incorporation may limit

our stockholders' ability to obtain a favorable judicial forum for disputes with us or any of our directors, officers, other employees, agents or stockholders, which may discourage lawsuits with respect to such claims. Alternatively, if a court were to find the choice of forum provision contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could materially and adversely affect our business, results of operations or financial condition.

## **USE OF PROCEEDS**

The selling stockholder is selling all of the shares of common stock in this offering, and we will not receive any proceeds from the sale of the common stock in the offering.



## CAPITALIZATION

The following table sets forth our anticipated cash and cash equivalents and capitalization on a consolidated basis and on a pro forma basis as of December 31, 2020 to reflect:

- the repayment of \$237 million of related-party borrowings; and
- the expected issuance of \$450 million of third-party debt (consisting of the Term A Loan and the Bridge Loan).

The selling stockholder is selling all of the shares of common stock in this offering and we will not receive any proceeds from the sale of shares.

We currently have related-party borrowings of \$237 million outstanding that bear a weighted average interest rate of 6.5%. Additionally, we have access to a related-party revolving credit facility with a capacity of \$450 million that bears interest at a rate of LIBOR plus 3.5%, for which there were no borrowings outstanding as of December 31, 2020. In connection with this offering, we expect to repay our related-party borrowings of \$237 million in full and enter into financing arrangements providing for the issuance of \$450 million of third-party debt (consisting of the Term A Loan and the Bridge Loan), as described in the section "Recapitalization." We believe these transactions are probable as the material terms have been agreed, although there is no assurance as to the completion of these transactions. Such transactions are conditioned on the consummation of this offering.

You should read the following table in conjunction with "Selected Historical Consolidated Financial Data," "Unaudited Pro Forma Consolidated Financial Information," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Recapitalization" and our consolidated financial statements included elsewhere in this prospectus.

(Dollars in millions)	As of December 31, 2020	
	Historical <sup>(2)</sup>	Pro Forma
Cash and cash equivalents	\$ 61	\$ 270
Debt:		
4.0% Term loan due December 31, 2021 <sup>(1)</sup>	—	—
7.5% Term loan due November 30, 2022 <sup>(1)</sup>	139	—
5.0% Daylight term loan due October 15, 2024 <sup>(1)</sup>	98	—
LIBOR +2.25% term loan <sup>(3)</sup>	—	99
Bridge loan <sup>(3)</sup>	—	348
Finance lease and other	163	163
Short-term borrowings	27	27
Total debt	\$ 427	\$ 637
Shareholder's equity		
Preferred Stock, \$0.01 par value: 10,000,000 shares authorized; none issued	\$ —	\$ —
Common stock, \$0.01 par value: 300,000,000 shares authorized; 145,000,000 shares issued and outstanding <sup>(4)</sup>	1	1
Additional paid-in capital <sup>(4)</sup>	4,633	4,633
Accumulated deficit	(3,137)	(3,137)
Accumulated other comprehensive loss	(70)	(70)
Total shareholder's equity	1,427	1,427
Total capitalization	\$ 1,854	\$ 2,064

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- (1) The Company's debt with related parties consists of two term loans and a working capital credit facility with US Holding, as described under "Certain Relationships and Related Party Transactions—Transactions with Leonardo S.p.A. Affiliates—Financing Arrangements."
  - (2) Does not reflect \$115 million of related party note receivables included in our leverage ratio. Refer to "Non-GAAP Financial Measures" within "Management's Discussion and Analysis of Financial Condition and Results of Operations" for further discussion of the related party note receivable.
  - (3) Net of unamortized debt issuance costs.
  - (4) Gives effect to a 1,450,000-for-1 forward stock split on our common stock effected on February 25, 2021.

## **DIVIDEND POLICY**

We do not currently anticipate declaring or paying regular cash dividends on our common stock in the near term. We expect that we will retain all of our future earnings for use in the operation and expansion of our business. Subject to the foregoing, the payment of cash dividends in the future, if any, will be at the discretion of our board and will depend upon such factors as our financial condition, earnings, liquidity and capital requirements, level of indebtedness, general business conditions, applicable Delaware law, which provides that dividends are only payable out of surplus or current net profits, and any other factors that our board deems relevant in making such a determination. In addition, the terms of the agreements governing the debt we have incurred or may incur may limit or prohibit the payment of dividends. Further, the proxy holders, in their capacity as directors, may vote to declare or suspend dividends only after prior consultation with US Holding. Therefore, there can be no assurance that we will pay any dividends to holders of our common stock, or as to the amount of any such dividends. See “Risk Factors—Risks Relating to Our Common Stock and This Offering—We do not expect to declare any dividends in the near term.”

## RECAPITALIZATION

We have historically operated with a capital structure that reflected our status as a wholly owned indirect subsidiary of Leonardo S.p.A. Our debt with related parties currently consists of two term loans and a working capital credit facility with US Holding, as described in “Certain Relationships and Related Party Transactions—Transactions with Leonardo S.p.A. Affiliates—Financing Arrangements.” To prepare for this offering and operation as a stand-alone public company, we have undertaken recapitalization initiatives to align our capital structure more closely with other U.S. public companies (the “Recapitalization”). In undertaking the Recapitalization, we are focused on several goals:

- Maintaining and strengthening our credit ratings; and
- Providing increased financial flexibility at the DRS level.

In December 2020, US Holding contributed \$300 million to us by converting an equal amount of borrowings outstanding under our 7.5% Term Loan (as defined in “Certain Relationships and Related Party Transactions—Transactions with Leonardo S.p.A. Affiliates—Financing Arrangements”) into additional paid in capital.

In connection with the consummation of this offering, we expect to implement the following additional financing arrangements as part of our efforts to align our capital structure more closely with other U.S. public companies and achieve the goals described above:

- the repayment of \$237 million of related-party borrowings; and
- the expected issuance of \$450 million of third-party debt (consisting of the Term A Loan and the Bridge Loan).

We believe these transactions are probable as the material terms have been agreed, although there is no assurance as to the completion of these transactions. Such transactions are conditioned on the consummation of this offering. See the sections “Capitalization” and “Unaudited Proforma Consolidated Financial Information” in this prospectus.

### **Repayment of Related-Party Borrowings**

In connection with this offering, we expect to repay all outstanding related-party borrowings including those under the credit agreement dated January 20, 2009, as amended, by and among us, certain of our subsidiaries and US Holding, and amounts outstanding under the Daylight Term Loan.

### **Third-Party Indebtedness Following this Offering**

#### ***Senior Facilities***

In connection with this offering, we expect to enter into a credit agreement providing for \$300 million of senior unsecured credit facilities, consisting of a \$100 million term loan facility (the Term A Loan), and a \$200 million revolving credit facility. Initial borrowings under the credit facilities are subject to satisfaction of certain closing conditions, including the consummation of this offering.

Loans under the credit facilities will bear interest at an annual rate equal to, at our option, a base rate plus a margin ranging from 0.75% to 1.75%, or LIBOR plus a margin ranging from 1.75% to 2.75%, in either case based on our credit ratings. The credit agreement contains customary LIBOR replacement provisions for syndicated loans. We will also pay a commitment fee on the undrawn balance under the revolving credit facility at an annual rate ranging from 0.375% to 0.500% based on our credit ratings.

The principal of the term loan will be repaid in quarterly installments and at final maturity on the fifth anniversary of the closing date. The revolving credit facility will mature on the fifth anniversary of the closing date.

Loans under the credit facilities may be voluntarily prepaid and commitments reduced in whole or in part at any time and from time to time without premium or penalty. The loans will be subject to mandatory prepayment upon a change of control.

The credit agreement contains a number of covenants, including but not limited to, a maximum total net leverage ratio of 3:75 to 1:00 as of the last day of any fiscal quarter and a minimum net interest coverage ratio of 3:25 to 1:00 as of the last day of any fiscal quarter, which restrict our ability to incur additional debt; pay dividends or make other distributions; prepay, redeem or repurchase certain debt; make loans and investments; sell, transfer or otherwise dispose of assets; incur or permit to exist certain liens; enter into certain types of transactions with affiliates; enter into agreements restricting their respective subsidiaries' ability to pay dividends; and consolidate, amalgamate, merge or sell all or substantially all of their respective assets.

Our obligations under the credit facilities will be guaranteed by all of our U.S. subsidiaries.

A form of the credit agreement governing the credit facilities has been filed as an exhibit to the registration statement of which this prospectus forms a part.

### **Bridge Facilities**

In connection with this offering, we expect to enter into a credit agreement providing for the Bridge Loan, a \$350 million bridge loan facility. Borrowings under the Bridge Loan will be subject to satisfaction of certain closing conditions, including the consummation of this offering.

The interest rate on the Bridge Loans will initially be equal to LIBOR plus 2.25% and will increase by at least 0.25% every three months after the closing date. The credit agreement contains customary LIBOR replacement provisions for syndicated loans. The Bridge Loan will also be subject to customary fees.

The Bridge Loan will mature on the date that is 364 days after the closing date. The Bridge Loan is subject to mandatory prepayment with the proceeds of certain issuances of debt and equity securities, certain asset sales and certain insurance and condemnation events, and upon a change of control.

The credit agreement will contain a number of covenants, including but not limited to, a maximum total net leverage ratio of 3:75 to 1:00 as of the last day of any fiscal quarter and a minimum net interest coverage ratio of 3:25 to 1:00 as of the last day of any fiscal quarter, which restrict our ability to incur additional debt; pay dividends or make other distributions; prepay, redeem or repurchase certain debt; make loans and investments; sell, transfer or otherwise dispose of assets; incur or permit to exist certain liens; enter into certain types of transactions with affiliates; enter into agreements restricting their respective subsidiaries' ability to pay dividends; and consolidate, amalgamate, merge or sell all or substantially all of their respective assets.

Our obligations under the Bridge Loan will be guaranteed by all of our U.S. subsidiaries.

We anticipate that the Bridge Loan will be repaid with the net proceeds from the issuance of unsecured senior notes in an aggregate principal amount of \$350 million with an estimated maturity of five to eight years following this offering. Any such unsecured senior notes would be offered pursuant to a separate offering memorandum and nothing contained in this prospectus shall constitute an offer to sell or solicitation of an offer to buy such unsecured senior notes.

A form of the credit agreement governing the bridge loan facilities has been filed as an exhibit to the registration statement of which this prospectus forms a part.

For more information, see the sections "Capitalization," "Unaudited Pro Forma Consolidated Financial Information" and "Certain Relationships and Related Party Transactions—Transactions with Leonardo S.p.A. Affiliates—Financing Arrangements" in this prospectus.

## SELECTED HISTORICAL CONSOLIDATED FINANCIAL DATA

### Summary Historical Consolidated Financial Information of DRS

The following tables present our selected consolidated financial data. The selected Consolidated Statements of Earnings (Loss) data for the years ended December 31, 2020, 2019 and 2018 and the selected Consolidated Balance Sheet data as of December 31, 2020 and 2019 are each derived from our audited Consolidated Financial Statements that are included elsewhere in this prospectus. The selected Consolidated Statements of Earnings (Loss) data for the years ended December 31, 2017 and 2016 and the selected Consolidated Balance Sheet data as of December 31, 2018, 2017 and 2016 are each derived from our unaudited Consolidated Financial Statements not included in this prospectus. The unaudited Consolidated Financial Statements have been prepared on the same basis as the audited Consolidated Financial Statements and, in the opinion of management, reflect all adjustments, consisting only of normal recurring adjustments, that are necessary for the fair presentation of our unaudited Consolidated Financial Statements. Our historical results are not necessarily indicative of the results that may be expected in the future. You should read the selected historical financial data below in conjunction with the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the financial statements and related notes included elsewhere in this prospectus.

(Dollars in millions, except per share amounts)	Year Ended December 31,				
	2020	2019	2018	2017	2016
<b>Consolidated Statements of Earnings (Loss)</b>					
<b>Data:</b>					
Total revenues	\$ 2,778	\$ 2,714	\$ 2,333	\$ 1,947	\$ 1,753
Operating earnings	181	163	45	49	3
Net earnings (loss)	85	75	(10)	(91)	(162)
Net earnings (loss) per share <sup>(1)</sup>	0.59	0.52	(0.07)	(0.63)	(1.12)
<b>Consolidated Balance Sheet Data:</b>					
Cash and cash equivalents	61	85	79	52	51
Total assets	2,956	2,888	2,429	2,431	2,320
Long-term debt	374	656	552	577	1,175
Total shareholder's equity	1,427	1,019	956	972	341
<b>Consolidated Statements of Cash Flows</b>					
<b>Data:</b>					
Net cash provided by operating activities	125	157	105	3	12
<b>Other Financial Data:</b>					
Adjusted EBITDA <sup>(2)</sup>	268	234	187	181	151
Adjusted EBITDA Margin <sup>(2)</sup>	9.6 %	8.6 %	8.0 %	9.3 %	8.6 %
Free cash flow <sup>(2)</sup>	74	110	65	(34)	(10)
Backlog <sup>(3)</sup>	3,291	2,844	2,684	2,183	2,147

(1) Gives effect to a 1,450,000-for-1 forward stock split on our common stock effected on February 25, 2021.

(2) Adjusted EBITDA, Adjusted EBITDA Margin and free cash flow are non-GAAP measures. Refer to "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Financial and Operating Measures—Non-GAAP Financial Measures" for definitions and additional discussion of management's use of non-GAAP measures as supplemental financial measures. Adjusted EBITDA, Adjusted EBITDA Margin and free cash flow may not be comparable to similarly titled non-GAAP measures of other companies as other companies may have calculated the measures differently. The reconciliations of net earnings (loss) to Adjusted EBITDA and net cash provided by operating activities to free cash flow are provided below.

- (3) Refer to “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Key Financial and Operating Measures” for the definition and additional discussion of management’s use of backlog as a key operating and financial measure.

The reconciliation between Net earnings (loss) and Adjusted EBITDA is shown below:

<i>(in millions)</i>	Year Ended December 31,				
	2020	2019	2018	2017	2016
Net earnings (loss)	\$ 85	\$ 75	\$ (10)	\$ (91)	\$ (162)
Income tax provision (benefit)	27	20	(7)	31	(61)
Amortization of intangibles	9	9	93	89	85
Depreciation	44	42	35	34	37
Restructuring costs	12	20	14	10	26
Interest expense	64	65	58	101	97
Transaction costs related to this offering	9	—	—	—	—
Acquisition and disposition related costs	—	—	—	1	—
Foreign exchange	1	—	3	1	(1)
COVID-19 response costs	12	—	—	—	—
Non-service pension expense	5	3	1	5	40
Other one-time non-operational events <sup>(1)</sup>	—	—	—	—	90
Adjusted EBITDA	\$ 268	\$ 234	\$ 187	\$ 181	\$ 151

- (1) Other one-time non-operational events for the year ended December 31, 2016 consists of a \$64 million non-cash goodwill impairment charge in our Network Computing & Communication segment and a \$26 million loss on the disposal of a business.

The reconciliation between Net cash provided by operating activities and Free cash flow is shown below:

<i>(in millions)</i>	Year Ended December 31,				
	2020	2019	2018	2017	2016
Net cash provided by operating activities	\$ 125	\$ 157	\$ 105	\$ 3	\$ 12
Capital expenditures	(56)	(55)	(40)	(38)	(32)
Proceeds from sales of assets	5	8	—	1	10
Free cash flow	\$ 74	\$ 110	\$ 65	\$ (34)	\$ (10)

## UNAUDITED PRO FORMA CONSOLIDATED FINANCIAL INFORMATION

The following unaudited pro forma consolidated financial information of DRS consists of the unaudited pro forma consolidated statement of earnings for the year ended December 31, 2020 and an unaudited pro forma consolidated balance sheet as of December 31, 2020, which have been derived from our historical consolidated financial statements included elsewhere in this information statement.

The unaudited pro forma consolidated statement of earnings gives effect to the Pro Forma Transactions (as defined below) as if they occurred on January 1, 2020, the beginning of the most recently completed fiscal year. The unaudited pro forma consolidated balance sheet gives effect to the Pro Forma Transactions as if they occurred as of December 31, 2020, our latest balance sheet date.

The pro forma financial information has been prepared in accordance with Regulation S-X Article 11, Pro Forma Financial Information, as amended by the final rule, *Release No.33-10786; Amendments to Financial Disclosures About Acquired and Disposed Businesses*, as adopted by the U.S. Securities and Exchange Commission (the "SEC") on May 21, 2020 ("Article 11"). The pro forma adjustments include transaction accounting adjustments that reflect the accounting for transactions in accordance with U.S. GAAP. The following unaudited pro forma consolidated financial information illustrates the effects of the following transactions (collectively, the "Pro Forma Transactions"):

- the expected issuance of approximately \$450 million of third-party debt (consisting of the Term A Loan and the Bridge Loan) at an expected weighted-average interest rate of 2.9%;
- the expected repayment of all of our outstanding related-party borrowings;
- the anticipated issuance of share-based awards upon the closing of this offering to certain individuals, including members of our senior management ("IPO Grants"); and
- the transaction costs expected to be incurred as a result of the offering that are not yet reflected in the historical financial statements.

The unaudited pro forma consolidated financial information is for illustrative purposes only and does not purport to represent what DRS's financial position and results of operations actually would have been had the offering and related transactions occurred on the dates indicated, or to project DRS's financial performance for any future period. The unaudited pro forma consolidated financial information is based on information and assumptions which are described in the accompanying notes.

The unaudited pro forma consolidated financial information and the related notes should be read in conjunction with "Risk Factors," "Use of Proceeds," "Capitalization," "Selected Historical Consolidated Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Certain Relationships and Related Party Transactions" and our audited consolidated financial statements and the related notes included elsewhere in this prospectus.



**LEONARDO DRS, INC.**  
**UNAUDITED PRO FORMA CONSOLIDATED BALANCE SHEET**  
**As of December 31, 2020**

(Dollars in millions)	Historical DRS	Transaction Accounting Adjustments	Footnote Reference	Other Transaction Accounting Adjustments	Footnote Reference	Pro Forma Total
<b>ASSETS</b>						
<b>Current assets:</b>						
Cash and cash equivalents	\$ 61	\$ (4)	(a)	\$ 208	(a)	\$ 265
Accounts receivable, net	102	—		—		102
Contract assets	672	—		—		672
Inventories	247	—		—		247
Related party note receivable	115	—		—		115
Prepaid expenses	33	—		—		33
Other current assets	33	—		—		33
Total current assets	<u>1,263</u>	<u>(4)</u>		<u>208</u>		<u>1,467</u>
<b>Noncurrent assets:</b>						
Property plant and equipment, net	355	—		—		355
Intangible assets, net	60	—		—		60
Goodwill	1,057	—		—		1,057
Deferred tax assets	87	—		—		87
Other noncurrent assets	134	—		2	(b)	136
Total noncurrent assets	<u>1,693</u>	<u>—</u>		<u>2</u>		<u>1,695</u>
Total assets	<u>\$ 2,956</u>	<u>\$ (4)</u>		<u>\$ 210</u>		<u>\$ 3,162</u>
<b>LIABILITIES AND SHAREHOLDER'S EQUITY</b>						
<b>Current liabilities:</b>						
Short-term borrowings and current portion of long-term debt	\$ 53	\$ —		\$ 328	(c)	\$ 381
Accounts payable	478	—		—		478
Contract liabilities	177	—		—		177
Other current liabilities	267	—		—		267
Total current liabilities	<u>975</u>	<u>—</u>		<u>328</u>		<u>1,303</u>
<b>Noncurrent liabilities:</b>						
Long-term debt	\$ 374	\$ —		\$ (118)	(c)	\$ 256
Pension and other postretirement benefit plan liabilities	88	—		—		88
Other noncurrent liabilities	92	—		—		92
Total noncurrent liabilities	<u>554</u>	<u>—</u>		<u>(118)</u>		<u>436</u>
<b>Shareholder's equity:</b>						
Preferred Stock, \$0.01 par value, 10,000,000 shares authorized; none issued	\$ —	\$ —		\$ —		\$ —
Common stock, \$0.01 par value: 300,000,000 shares authorized; 145,000,000 shares issued and outstanding	1	—		—		1
Additional paid-in capital	4,633	—		—		4,633
Accumulated deficit	(3,137)	(4)	(d)	—		(3,141)
Accumulated other comprehensive loss	(70)	—		—		(70)
Total shareholder's equity	<u>1,427</u>	<u>(4)</u>		<u>—</u>		<u>1,423</u>
Total liabilities and shareholder's equity	<u>\$ 2,956</u>	<u>\$ (4)</u>		<u>\$ 210</u>		<u>\$ 3,162</u>

**LEONARDO DRS, INC.**  
**UNAUDITED PRO FORMA CONSOLIDATED STATEMENT OF EARNINGS**  
**For the year ended December 31, 2020**

(Dollars in millions, except per share amounts)	Historical DRS	Transaction Accounting Adjustments	Footnote Reference	Other Transaction Accounting Adjustments	Footnote Reference	Pro Forma Total
<b>Revenues:</b>						
Products	\$ 2,412	\$ —		\$ —		\$ 2,412
Services	366	—		—		366
Total revenues	2,778	—		—		2,778
<b>Cost of revenues:</b>						
Products	(2,000)	—		—		(2,000)
Services	(284)	—		—		(284)
Total cost of revenues	(2,284)	—		—		(2,284)
<b>Gross profit</b>	<b>494</b>	<b>—</b>		<b>—</b>		<b>494</b>
General and administrative expenses	(283)	(4)	(e)	(5)	(f)	(292)
Amortization of intangibles	(9)	—		—		(9)
Other operating expenses, net	(21)	—		—		(21)
<b>Operating earnings</b>	<b>181</b>	<b>(4)</b>		<b>(5)</b>		<b>172</b>
Interest expense	(64)	—		39	(g)	(25)
Other, net	(5)	—		—		(5)
<b>Earnings (loss) before taxes</b>	<b>112</b>	<b>(4)</b>		<b>34</b>		<b>142</b>
Income tax provision (benefit)	27	(1)	(h)	9	(h)	35
<b>Net earnings (loss)</b>	<b>\$ 85</b>	<b>\$ (3)</b>		<b>\$ 25</b>		<b>\$ 107</b>
<b>Net earnings per share of common stock</b>						
Basic earnings per share	0.59					0.74
Diluted earnings per share	0.59					0.74
<b>Weighted-average common shares outstanding:</b>						
Basic	145,000,000	—		—	(i)	145,000,000
Diluted	145,000,000	—		125,000	(i)	145,125,000

## NOTES TO THE UNAUDITED PRO FORMA CONSOLIDATED FINANCIAL INFORMATION

The unaudited pro forma consolidated financial information as of and for the year ended December 31, 2020 include the following adjustments:

### Adjustments to Unaudited Pro Forma Consolidated Balance Sheet

#### (a) Cash and Cash Equivalents

The following table presents the pro forma adjustments to cash and cash equivalents:

(Dollars in millions)	As of December 31, 2020
Cash received from proceeds of the New Debt, as described in <sup>(c)</sup>	\$ 450
Cash paid for the New Debt financing transaction costs, as described in <sup>(c)</sup>	(5)
Cash paid to settle related party borrowings, as described in <sup>(c)</sup>	(237)
Net adjustment related to the New Debt and repayment of related party borrowings	208
Cash paid for costs associated with the transaction, as described in <sup>(e)</sup>	(4)
Net adjustment to cash and cash equivalents	\$ 204

#### (b) Other Noncurrent Assets

The following table presents the pro forma adjustments to Other noncurrent assets:

(Dollars in millions)	As of December 31, 2020
Capitalization of Revolver commitment fees related to the New Debt <sup>(1)</sup>	2
Net adjustment to other noncurrent assets	2

(1) Estimated annual amortization of this balance is immaterial. Therefore, no pro forma adjustment has been made to the Pro Forma Statement of Earnings.

#### (c) Incurrence of Third-Party Indebtedness and Repayment of Related Party Borrowings

In connection with this offering, we expect to repay our related-party borrowings of \$237 million in full and enter into financing arrangements providing for the issuance of \$450 million of third-party debt, as described in the section "Recapitalization." This adjustment reflects the repayment of the related party debt and the incurrence of third-party indebtedness. An adjustment to the unaudited pro forma consolidated balance sheet as of December 31, 2020 has been made to reflect the incurrence of \$450 million indebtedness consisting of (i) \$100 million of Term A debt at a rate of LIBOR plus 2.25% (the "Term A Loan") and (ii) a bridge loan in an aggregate principal amount of \$350 million with an annual average interest rate of 2.9% following this offering (the "Bridge Loan," and together with the Term A Loan, our "New Debt"), of which we will retain approximately \$208 million in cash, with the remainder to be used to repay \$237 million of related party borrowings and \$5 million in estimated fees to establish the New Debt including access to the \$200 million revolving credit facility. The Bridge Loan is classified as current debt based on its term of one year. We believe these transactions are probable as the material terms have been agreed, although there is no assurance as to the completion of these transactions. Such transactions are conditioned on the consummation of this offering. The Company expects to repay the Bridge Loan with the net proceeds from the issuance of unsecured senior notes in an aggregate principal amount of \$350 million with an estimated maturity of five to eight years following this offering. Any such unsecured senior notes would be offered pursuant to a separate offering memorandum and nothing

contained in this prospectus shall constitute an offer to sell or solicitation of an offer to buy such unsecured senior notes.

A sensitivity analysis on the interest expense has been performed to assess the effect that a hypothetical 0.125% change in the interest rate would have on the Term A and Bridge Loan debt. A 0.125% change in interest rates would cause a corresponding increase or decrease to interest expense of approximately \$0.8 million for the year ended December 31, 2020.

The following table presents the pro forma adjustments to the current portion of long-term debt and long-term debt:

(Dollars in millions)	As of December 31, 2020
<b>Short-term borrowings and current portion of long-term debt:</b>	
Incurrence of debt under the New Debt, net of deferred financing fees	\$ 348
Extinguishment of the related party borrowings	(20)
<b>Net adjustment to short-term borrowings and current portion of long-term debt</b>	<b>328</b>
<b>Long-term debt:</b>	
Incurrence of debt under the New Debt, net of deferred financing fees	99
Extinguishment of the related party borrowings	(217)
<b>Net adjustment to long-term debt</b>	<b>\$ (118)</b>

*(d) Changes in Equity*

The following table presents the adjustments to our equity after giving effect to the Pro Forma Transactions as of December 31, 2020.

(Dollars in millions)	Common stock	Additional paid-in capital	Accumulated other comprehensive loss	Accumulated Deficit
Transaction Costs, as described in <sup>(e)</sup>	\$ —	\$ —	\$ —	\$ (4)
Net adjustment	\$ —	\$ —	\$ —	\$ (4)

**Adjustments to Unaudited Pro Forma Consolidated Statement of Earnings**

*(e) Transaction Costs*

Represents an adjustment to include additional transaction costs of \$4 million, which are expected to be incurred in connection with this offering. Total transaction costs recorded in the historical statement of earnings were \$9 million for the year ended December 31, 2020. An adjustment of \$4 million was also made to increase accumulated deficit as described in (d) above.

*(f) Restricted stock unit awards—Founders Awards*

Adjustments have been made related to the proposed grant of equity awards to certain of our employees in connection with the consummation of this offering. The awards are classified as an equity-settled stock-based payment arrangement and will cliff vest on the second anniversary of the grant date. This adjustment reflects the recognition of costs related to the first year of the requisite service period which resulted in an increase in general and administrative expenses of \$5 million for the year ended December 31, 2020.

(g) Interest Expense

The following table presents the pro forma adjustments to interest expense associated with the pro forma adjustments to short-term and long-term debt described above in note (c). In addition, the interest expense associated with the New Debt below, includes \$5 million related to the historical usage of the Company's related party revolving credit facility that would've been incurred based on the interest rate applicable to the new \$200 million revolving credit facility with third parties. An adjustment has been made to also eliminate the interest expense related to our related party borrowings as if they had been settled on January 1, 2020.

(Dollars in millions)	Year ended December 31, 2020
Interest expense, New Debt <sup>(1)</sup>	\$ (18)
Incremental amortization of deferred financing transaction costs, New Debt <sup>(2)</sup>	(2)
Elimination of interest expense, loans from related parties <sup>(3)</sup>	59
Net adjustment to interest expense	\$ 39

(1) Represents an adjustment to recognize the interest expense related to the New Debt incurred.

(2) Represents an increase related to the amortization of deferred financing fees related to the New Debt incurred.

(3) Represents an adjustment to eliminate the historical interest expense for the settlement of loans from related parties, including interest expense attributable to \$300 million of loans from related parties that were forgiven as of December 31, 2020 and accounted for as a capital transaction in contemplation of this offering.

(h) Resulting Tax Effects

Adjustments to the Unaudited Pro Forma Consolidated Statement of Earnings have been made to reflect the income tax expense for the items described in (e), (f) and (g), calculated at a blended effective tax rate of 28%, which incorporates the nondeductible nature of IPO related expenditures.

(i) Earnings Per Share

The unaudited pro forma consolidated basic and diluted earnings per share calculations are based on the consolidated basic and diluted weighted average shares of DRS, and reflect the potentially dilutive impact of the IPO Grants issued at closing of this offering that cliff vest on the second anniversary of the grant date.

(Dollars in millions, except per share amounts)	Year Ended December 31, 2020
Pro forma net earnings	\$ 107
Historical weighted-average number of common shares outstanding	
Basic	145,000,000
Diluted	145,000,000
Potentially dilutive impact of common shares issued as part of the IPO Grants	125,000
Pro forma weighted-average number of common shares outstanding	
Basic	145,000,000
Diluted	145,125,000
Pro forma net earnings per common share	
Basic	\$ 0.74
Diluted	\$ 0.74

**Other Non-recurring Costs**

The unaudited pro forma consolidated statement of earnings includes certain non-recurring items including, among other things, costs related to legal, accounting and other professional fees totaling approximately \$13 million that we do not expect to recur in the next 12 months. Additionally the Company will incur additional expenditures to operate as an independent company; however, we have operated principally independently prior to this offering under our existing operating structure.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read this discussion together with "Selected Historical Consolidated Financial Data" and our consolidated financial statements and related notes thereto included elsewhere in this prospectus.

This discussion and other parts of this prospectus include forward-looking statements such as those relating to our plans, objectives, expectations and beliefs, which involve risks, uncertainties and assumptions. These forward-looking statements are subject to numerous risks and uncertainties, including, but not limited to, the risks and uncertainties described in "Risk Factors" and "Special Note Regarding Forward-Looking Statements and Information." Actual results may differ materially from those contained in any forward-looking statements.

### Business Overview and Considerations

#### General

We are a leading provider of defense products and technologies that are used across land, air, sea, space and cyber domains. Our diverse array of defense systems and solutions is offered to all branches of the U.S. military, major aerospace and defense prime contractors, government intelligence agencies and international military customers for deployment on a wide range of military platforms. We focus our capabilities in areas of critical importance to the U.S. military within three segments, Advanced Sensor Technologies, Network Computing & Communications and Integrated Mission Systems. Our revenue, earnings and cash flows are generated by a combination of developing, manufacturing and servicing advanced technology solutions that are designed to address mission critical challenges for the defense industry.

Our overall strategy is to be a balanced and diversified company, less vulnerable to any one budgetary platform or service decision with a specific focus on establishing strong technical and market positions in areas of priority for the Department of Defense ("DoD"). The DoD is our largest customer and, for the years ended December 31, 2020 and 2019, both years accounted for approximately 84% and 89%, respectively, of our business as an end-user, with revenues principally derived directly or indirectly from contracts with the U.S. Army and U.S. Navy, which represented 43% and 32%, and 40% and 36%, respectively, of our total revenues for the years ended December 31, 2020 and 2019. We use our technical capabilities, customer relationships and product quality to drive our financial performance, evidenced by a 12% CAGR in revenue from the year ended December 31, 2016 through the year ended December 31, 2020, which drove our annual revenue to \$2.8 billion for the year ended December 31, 2020. During the same period, net earnings (loss) improved by \$247 million to \$85 million, our operating earnings grew \$178 million to \$181 million, and our Adjusted EBITDA grew \$117 million to \$268 million (CAGR of 15%). Adjusted EBITDA is a non-GAAP measure, see "—Key Financial and Operating Measures—Non-GAAP Financial Measures" below for a reconciliation of Adjusted EBITDA to net earnings.

Our operations and reporting are structured into the following three technology driven segments based on the capabilities and solutions offered to our customers:

*Advanced Sensor Technologies ("AST")*: Our Advanced Sensor Technologies segment provides world-class electro-optical sensor technologies, laser systems, EW systems and intelligence and surveillance solutions to U.S. military and intelligence community customers. We are a leading provider of ground vehicle targeting and surveillance sensors, including electro-optical and advanced detection systems. We are also a leading provider of soldier sensor systems in high priority modernization areas such as infrared imaging and precision targeting systems. Our infrared focal plane array foundry is recognized as a leading provider of high performance and small sized cryogenically cooled and uncooled detector arrays. We are also a leading and world-recognized provider of signals intelligence high-performance radio frequency receivers and transceivers for U.S. and international customers. Our quantum cascade laser technology has promising military and

commercial medical applications. Collectively, these sensor technologies provide our warfighters with a distinct battlefield advantage.

*Network Computing & Communications ("NC&C"):* Our Network Computing & Communications segment provides advanced defense electronics solutions across warfare domains. Our technologies and products are used on legacy and new military platforms, end-to-end network communication systems, network services and cyber solutions. We are a leading provider of ruggedized computing equipment, having provided advanced tactical computing units for ground combat vehicles and command post operations for more than two decades. During this period we have delivered more than 125,000 units. For the U.S. Navy and its allies, we provide naval computing infrastructure, network and data distribution, radar and rugged naval control systems, which are present on naval surface and subsurface combatant vessels. Across the full spectrum of our network computing capabilities, we have leadership positions at both the product and sub-systems levels. Our global communications network is a worldwide network of terrestrial and satellite bandwidth that ensures our customers' data is secure and reliable. As a result of this capability, we are positioned as one of the leading providers of secured commercial satellite communications to the U.S. military.

*Integrated Mission Systems ("IMS"):* Our Integrated Mission Systems segment provides critical force protection, vehicle integration, transportation and logistics and electrical conversion and ship propulsion systems to the U.S. military. Our force protection systems protect service members and military assets from evolving threats and include solutions for counter-unmanned aerial systems, short-range air defense systems and active protection systems on ground vehicles. In 2018, we were awarded the Expedited Active Protection System program by bringing the TROPHY™ Active Protection System ("APS") to the U.S. market, making us the leading U.S. provider of active protection systems for the U.S. Army. We were also awarded the Initial Maneuver Short-Range Air Defense ("IM-SHORAD") Mission Equipment Package Program for the U.S. Army that year, culminating an 18-month cycle from development to customer delivery. We have military transportation and logistics offerings and ground vehicle integration capabilities to support U.S. forces in a wide range of operational environments. We provide power conversion and propulsion systems for the U.S. Navy's top priority shipbuilding programs, building on our legacy of providing power components and systems for nearly all naval combat vessels for three decades, positioning us to continue as a leading provider of electrical ship propulsion systems and components for the U.S. Navy.

#### **Focus on Customer and Execution**

DRS and its employees focus on our end-customers – the men and women of the armed forces in the U.S. and its allies. We seek to provide high-quality equipment and services to support their mission success. We strive for excellence in everything we do, in every job in our Company, in order to satisfy our customers' needs embedded in our contractual commitments. We seek to ensure that we learn from every lesson experienced in our Company and insist that these lessons affect all elements of our businesses. This approach permeates through the Company with a focus on continuous improvement at every level.

Part of this learning has resulted in institutionalizing our continuous improvement process through our APEX program. The APEX program's goal is to strive for continuous improvement through unification of our business practices, tools and metrics, ongoing employee training and innovation. We believe that excellence is not a destination, but by constantly challenging ourselves to be better, we will improve, and ultimately approach excellence. We challenge ourselves to exceed our customers' expectations and we partner with them to work to ensure that our execution meets their needs.

Continuous improvement, through the APEX program also allows us to improve our efficiency, which contributes to increased margins, helps us to remain competitive and allows us to make strategic investments, all while maintaining our focus on customer satisfaction. In these elements, our goals are aligned with those of our customers. We are humbled by the dedication and sacrifice that our ultimate customers have made to serve and we work to perform for them with excellence in everything we do.



### **Impacts of COVID-19 On Our Business**

Since the emergence of the novel coronavirus known as COVID-19, DRS has responded to ensure business continuity and we believe our innovative culture has enabled us to perform in difficult circumstances. DRS has been deemed an essential business due to our mission to provide products and services to the military. Our COVID-19 plan focuses on three factors: keeping our employees and their families safe; mitigating risk associated with interruption of suppliers' materials; and maintaining our commitment to our customers. This response included maximizing work from home, physical separation of the remaining employees into small zones, frequent CEO level communications to employees, intra-shift sanitization of facilities, Company-paid healthcare leave and quarantining of zones where a concern of exposure arises. We remain committed to the safety and health of our employees while ensuring continuity of our operations.

The proactive management to mitigate the impact of COVID-19 has enabled our business to remain operational. However, we incurred \$12 million of expenditures from March 1, 2020 through December 31, 2020 to ensure a safe work environment for our employees. These costs include paid leave, personal protective equipment and other cleaning measures, facility filtration systems and social and physical distancing efforts, including the use of zones and subzones for manufacturing facilities. Costs to combat the COVID-19 pandemic have been excluded from our Adjusted EBITDA results. See “—Key Financial and Operating Measures—Non-GAAP Financial Measures.”

Despite the increase in expenditures, DRS did offset a portion of the cash impacts of our COVID-19 response through COVID-19 related stimulus including allowable deferral of social security payroll tax payments to 2021 and 2022 and pension related contributions to 2021. This largely offset increases in our working capital levels due to COVID-19 impacts on certain programs driven by delays stemming from restrictions in customer test facility access and supplier delays. Additionally, we benefited from the DoD decision to increase the rate for certain progress payments from 80% to 90% for costs incurred and work performed on relevant contracts as a response to COVID-19. We believe these actions should continue to mitigate some COVID-19 related negative impacts to our operating cash flows. To date, DRS has not issued any material contractual request for equitable adjustments attributed to COVID-19 related expenditures discussed above and pursuant to the Section 3610 of the CARES Act.

### **Business Environment**

Revenues derived directly, as a prime contractor, or indirectly, as a subcontractor, from contracts with the U.S. government represented 84%, 89% and 86% of our total revenues for the years ended December 31, 2020, 2019 and 2018, respectively. Our U.S. government sales are highly concentrated within our DoD customers, which made up the overwhelming majority of our U.S. government revenue for the year ended December 31, 2020 and are principally derived directly or indirectly from contracts with the U.S. Army and U.S. Navy, which represented 43% and 32%, respectively, of our total revenues for the year ended December 31, 2020. Therefore, our revenue is highly correlated to changes in U.S. government spending levels, especially within the DoD.

Fiscal year 2020 began with the U.S. government responding to the on-going COVID-19 global pandemic. To address the COVID-19 pandemic, the federal government passed four different coronavirus stimulus bills in 2020 totaling nearly \$3 trillion that were designed to help stimulate the economy and provide relief to the American people.

In addition to COVID-19 response legislation, Congress alleviated the need for a long-term continuing resolution to fund the federal government by passing both the fiscal year 2021 National Defense Authorization Act (“NDAA”) and accompanying Consolidated Appropriations Act. The NDAA passed both the House and Senate became law on January 1, 2021. The bill includes \$740.5 billion total for national defense discretionary programs, including \$130.6 billion for procurement of advanced weapons systems, an increase of \$1.9 billion relative to the prior administration's request, and \$106.2 billion for research development test and evaluation, an increase of \$475.5 million relative to the prior administration's

request. The companion \$1.4 trillion fiscal year 2021 Consolidated Appropriations Act, which currently funds the federal government, passed Congress on December 21, 2020 and was signed into law on December 27, 2020. The bill includes \$695.9 billion for various defense accounts and \$68.7 billion for the Overseas Contingency Operations fund and largely tracks with the policy priorities set forth in the NDAA.

When the COVID-19 pandemic began, we were designated as an essential business in each of the jurisdictions in which we operate and we worked to ensure continuity of our operations to meet our contractual obligations and we remained at an approximately 98% staffing level throughout the year. Our people have risen to the challenge and performed with distinction during this time period, and as a result our performance has been strong.

Future DoD budgets and spending levels are determined by a number of factors beyond our control, including changes to U.S. government procurement policies, current and future domestic and international budget conditions, presidential and congressional priorities and changing national security and defense requirements but we believe the applications of our technology aligns well with the modernization priorities of the DoD.

## Key Financial and Operating Measures

### Overview

We measure our business using both key financial and operating data including key performance indicators (“KPIs”) and non-GAAP financial measures and use the following metrics to manage our business, monitor results of operations and ensure proper allocation of capital: (i) Revenue, (ii) Bookings, (iii) Backlog, (iv) Adjusted EBITDA, (v) Adjusted EBITDA Margin, (vi) Adjusted Earnings Per Share (“EPS”), (vii) Leverage Ratio, and (viii) Free Cash Flow. We believe that these financial performance metrics represent the primary drivers of value enhancement, balancing both short and long-term indicators of increased shareholder value. These are the metrics we use to measure our results and evaluate our business and related contract performance. See “—Results from Operations” for further detail.

### Financial and Operating Data

	Year Ended Year Ended December 31,		
	2020	2019	2018
<i>(Dollars in millions, except per share amounts)</i>			
Total revenues	\$ 2,778	\$ 2,714	\$ 2,333
Bookings	3,055	2,923	2,879
Backlog	3,291	2,844	2,684
Estimated potential remaining contract value	7,981	8,198	8,054
Adjusted EBITDA <sup>(1)</sup>	268	234	187
Adjusted EBITDA Margin <sup>(1)</sup>	9.6 %	8.6 %	8.0 %
Adjusted EPS <sup>(1)(2)</sup>	\$ 0.73	\$ 0.52	\$ (0.07)
Leverage Ratio <sup>(1)</sup>	0.9 x	2.3x	3.0x
Free Cash Flow <sup>(1)</sup>	\$ 74	\$ 110	\$ 65

(1) Note on non-GAAP financial measures: Throughout the discussion of our results of operations we use non-GAAP financial measures including Adjusted EBITDA, Adjusted EBITDA Margin, Adjusted EPS, Leverage Ratio and Free Cash Flow, as measures of our overall performance. Definitions and reconciliations of these measures to the most directly comparable financial measure calculated and presented in accordance with U.S. GAAP are included below.

(2) Gives effect to a 1,450,000-for-1 forward stock split on our common stock effected on February 25, 2021.

**Bookings** - We define bookings as the total value of contract awards received from the U.S. government for which it has appropriated funds and legally obligated such funds to the Company through

a contract or purchase order, plus the value of contract awards and orders received from customers other than the U.S. government.

*Backlog* - We define Backlog to include the following components:

- (1) **Funded** - Funded backlog represents the revenue value of orders for services under existing contracts for which funding is appropriated or otherwise authorized less revenue previously recognized on these contracts.
- (2) **Unfunded** - Unfunded backlog represents the revenue value of firm orders for products and services under existing contracts for which funding has not yet been appropriated less funding previously recognized on these contracts.

*Estimated Potential Remaining Contract Value* - In addition to backlog, we also evaluate estimated potential remaining contract value, which represents unexercised options associated with existing firm contracts and other contract commitments where items are visible in the DoD budget estimates and are void of competitive risks, including options on IDIQ type contracts and follow-on orders with existing customers.

*Total Estimated Remaining Contract Value* - Estimated potential remaining contract value together with backlog represents total estimated contract value remaining to be realized in revenue.

The following table summarizes the value of our backlog, estimated potential remaining contract value and total estimated contract value at the respective dates presented:

*Backlog:*

<i>(Dollars in millions)</i>	December 31,		
	2020	2019	2018
<b>Backlog:</b>			
Funded <sup>(1)</sup>	\$ 2,847	\$ 2,547	\$ 2,338
Unfunded <sup>(1)</sup>	444	297	346
<b>Total backlog<sup>(1)</sup></b>	<b>\$ 3,291</b>	<b>\$ 2,844</b>	<b>\$ 2,684</b>
Estimated potential remaining contract value <sup>(1)</sup>	7,981	8,198	8,054
<b>Total estimated remaining contract value</b>	<b>\$ 11,272</b>	<b>\$ 11,042</b>	<b>\$ 10,738</b>

(1) See "Risk Factors—Risks Relating to Our Business—We may not realize the full value of our total estimated contract value or bookings, including as a result of reduction of funding or cancellation of our U.S. government contracts, which could have a material adverse impact on our business, financial condition and results of operations."

#### **Non-GAAP Financial Measures**

We believe the non-GAAP financial measures presented in this prospectus will help investors understand our financial condition and operating results and assess our future prospects. We believe these non-GAAP financial measures, each of which is discussed in greater detail below, are important supplemental measures because they exclude unusual or non-recurring items as well as non-cash items that are unrelated to or may not be indicative of our ongoing operating results. Further, when read in conjunction with our U.S. GAAP results, these non-GAAP financial measures provide a baseline for analyzing trends in our underlying businesses and can be used by management as a tool to help make financial, operational and planning decisions. Finally, these measures are often used by analysts and other interested parties to evaluate companies in our industry by providing more comparable measures that are less affected by factors such as capital structure.

We recognize that these non-GAAP financial measures have limitations, including that they may be calculated differently by other companies or may be used under different circumstances or for different purposes, thereby affecting their comparability from company to company. In order to compensate for these and the other limitations discussed below, management does not consider these measures in isolation from or as alternatives to the comparable financial measures determined in accordance with U.S. GAAP. Readers should review the reconciliations below and should not rely on any single financial measure to evaluate our business.

We define these non-GAAP financial measures as:

*Adjusted EBITDA and Adjusted EBITDA Margin* - We define Adjusted EBITDA as our net earnings before income taxes, amortization of acquired intangible assets, depreciation, restructuring costs, interest, transaction costs related to this offering, acquisition and divestiture related expenses, foreign exchange, COVID-19 response costs, non-service pension expenditures and other one-time non-operational events. Adjusted EBITDA Margin is calculated by dividing Adjusted EBITDA by revenue. Adjusted EBITDA and Adjusted EBITDA Margin are not measures calculated in accordance with U.S. GAAP, and they should not be considered an alternative to any financial measures that were calculated under U.S. GAAP. Adjusted EBITDA and Adjusted EBITDA Margin are used to facilitate a comparison of the ordinary, ongoing and customary course of our operations on a consistent basis from period to period and provide an additional understanding of factors and trends affecting our business. Adjusted EBITDA and Adjusted EBITDA Margin are driven by changes in volume, performance, contract mix and general and administrative expenses and investment levels. Performance, as used in this definition, refers to changes in profitability and is primarily based on adjustments to estimates at completion on individual contracts. These adjustments result from increases or decreases to the estimated value of the contract, the estimated costs to complete the contract, or both. These measures therefore assist management and our board and may be useful to investors in comparing our operating performance consistently over time as they remove the impact of our capital structure, asset base and items outside the control of the management team and expenses that do not relate to our core operations. Adjusted EBITDA and Adjusted EBITDA Margin may not be comparable to similarly titled non-GAAP measures used by other companies as other companies may have calculated the measures differently. The reconciliation of Adjusted EBITDA to net earnings (loss) is provided below:

*Consolidated Entity Adjusted EBITDA Reconciliation:*

<i>(Dollars in millions)</i>	Year Ended December 31,		
	2020	2019	2018
Net earnings (loss)	\$ 85	\$ 75	\$ (10)
Income tax provision (benefit)	27	20	(7)
Amortization of intangibles	9	9	93
Depreciation	44	42	35
Restructuring costs	12	20	14
Interest expense	64	65	58
Transaction costs related to this offering	9	—	—
Foreign exchange	1	—	3
COVID-19 response costs	12	—	—
Non-service pension expense	5	3	1
Other one-time non-operational events	—	—	—
Adjusted EBITDA	<u>\$ 268</u>	<u>\$ 234</u>	<u>\$ 187</u>

*Adjusted EPS* – We calculate Adjusted EPS by excluding transaction costs related to this offering, acquisition and divestiture related expenses and COVID-19 response costs from our net earnings (loss) to arrive at Adjusted EPS. We believe that Adjusted EPS allows investors to effectively compare our core

performance from period to period by excluding items that are not indicative of, or are unrelated to, results from our ongoing business operations such as our capital structure, significant non-cash expenses, the impacts of financing decisions on earnings, and items incurred outside the ordinary, ongoing and customary course of our business. Adjusted EPS has limitations as an analytical tool and does not represent, and should not be considered an alternative to basic or diluted EPS as determined in accordance with U.S. GAAP. The reconciliation of Adjusted EPS to U.S. GAAP EPS is shown below:

*Consolidated Entity Reconciliation of Adjusted EPS:*

<i>(Dollars in millions, except per share amounts)</i>	Year Ended December 31,		
	2020	2019	2018
Net earnings (loss)	\$ 85	\$ 75	\$ (10)
Transaction costs related to this offering	9	—	—
COVID-19 response costs	12	—	—
Adjusted net earnings (loss)	\$ 106	\$ 75	\$ (10)
Adjusted EPS <sup>(1)</sup>	\$ 0.73	\$ 0.52	\$ (0.07)

(1) Gives effect to a 1,450,000-for-1 forward stock split on our common stock effected on February 25, 2021.

*Leverage Ratio* - We define our leverage ratio as total net debt divided by Adjusted EBITDA. Net debt includes debt related to financing lease obligations net of balance sheet cash and cash equivalents and related party note receivables.

The table below provides the calculation of the Leverage Ratio as of December 31, 2020, 2019 and 2018.

<i>(Dollars in millions)</i>	Year End December 31,		
	2020	2019	2018
Long-term debt	\$ 374	\$ 656	\$ 552
Short-term borrowings and current portion of long-term debt	53	56	87
Cash and cash equivalents	(61)	(85)	(79)
Related party note receivable	(115)	(100)	—
Total net debt	\$ 251	\$ 527	\$ 560
Adjusted EBITDA	\$ 268	\$ 234	\$ 187
Leverage Ratio	0.9 x	2.3 x	3.0 x

*Free Cash Flow* – We define free cash flow as the sum of the cash flows provided by operating activities and the cash flows provided by (used in) investment activities pertaining to capital expenditures and proceeds generated from the sale of assets.

We believe that free cash flow provides management and investors with an important measure of our ability to generate cash on a normalized basis. Free cash flow also provides insight into our flexibility to allocate capital and pursue opportunities that may enhance shareholder value. We believe that while expenditures and dispositions of property plant and equipment will fluctuate period to period, we seek to ensure that we have adequate capital on hand to maintain ongoing operations and enable growth of the business. Additionally, free cash flow is of limited usefulness, in that it does not represent residual cash flows available for discretionary expenditures, due to the fact the measures do not deduct the payments required for debt service and other contractual obligations or payments. The reconciliation between free cash flow and net cash provided by operating activities (the most comparable U.S. GAAP measure) is shown below:

## Consolidated Entity Reconciliation of Free Cash Flow:

(Dollars in millions)	Year Ended December 31,		
	2020	2019	2018
Net cash provided by operating activities	\$ 125	\$ 157	\$ 105
Capital expenditures	(56)	(55)	(40)
Proceeds from sales of assets	5	8	—
Free cash flow	\$ 74	\$ 110	\$ 65

### Factors Impacting Our Performance

#### **U.S. Government Spending and Federal Budget Uncertainty**

Changes in the volume and relative mix of U.S. government spending as well as areas of spending growth could impact our business and results of operations. In particular, our results can be affected by shifts in strategies and priorities on homeland security, intelligence, defense-related programs, infrastructure and urbanization and continued increased spending on technology and innovation, including cybersecurity, artificial intelligence, connected communities and physical infrastructure. Cost-cutting and efficiency initiatives, current and future budget restrictions, spending cuts and other efforts to reduce government spending and shifts in overall priorities (for example, in response to the COVID-19 pandemic) could cause our government customers to reduce or delay funding or invest appropriated funds on a less consistent basis or not at all, and demand for our solutions or services could diminish. Furthermore, any disruption in the functioning of government agencies, including as a result of government closures and shutdowns, could have a negative impact on our operations and cause us to lose revenue or incur additional costs due to, among other things, our inability to maintain access and schedules for government testing or deploy our staff to customer locations or facilities as a result of such disruptions.

There is also uncertainty around the timing, extent, nature and effect of Congressional and other U.S. government actions to address budgetary constraints, caps on the discretionary budget for defense and non-defense departments and agencies, and the ability of Congress to determine how to allocate the available budget authority and pass appropriations bills to fund both U.S. government departments and agencies that are, and those that are not, subject to the caps. Additionally, budget deficits and the growing U.S. national debt, including as a result of legislative actions in response to the COVID-19 pandemic, may increase pressure on the U.S. government to reduce federal spending across all federal agencies, with uncertainty about the size and timing of those reductions. Furthermore, delays in the completion of future U.S. government budgets could in the future delay procurement of the federal government services we provide. A reduction in the amount of, or reductions, delays, or cancellations of funding for, services that we are contracted to provide to the U.S. government as a result of any of these impacts or related initiatives, legislation or otherwise could have a material adverse effect on our business and results of operations. See "Risk Factors—Risks Related to Our Business—Significant delays or reductions in appropriations for our programs and changes in U.S. government priorities and spending levels more broadly may negatively impact our business and could have a material adverse impact on our business, financial condition and results of operations" and "Risk Factors—Risks Related to Our Business—The COVID-19 pandemic and related impacts have had and are likely to continue to have an adverse impact on our business, financial condition and results of operations." Please see also "—Business Overview and Considerations—Business Environment" for further details on U.S. government spending's impact on our business.

#### **Operational Performance on Contracts**

Revenue, earnings (margin) and the timing of our cash flows depend on our ability to perform on our contracts. When agreeing to contractual terms, our management team makes assumptions and

projections about future conditions and events. The accounting for our contracts and programs requires assumptions and estimates about these conditions and events. These projections and estimates assess:

- the productivity and availability of labor;
- the allocation of indirect costs to labor and material costs incurred
- the complexity of the work to be performed;
- the cost and availability of materials and components; and
- schedule requirements.

If there is a significant change in one or more of these circumstances, estimates or assumptions, or if the risks under our contracts are not managed adequately, the profitability of contracts could be adversely affected. This could affect earnings and margin materially.

In particular, profitability can fluctuate predicated on the type of contract awarded. Typically fixed-price development programs on complex systems represent a higher risk profile to complete on-budget. To the extent our fixed-price development efforts create a larger portion of our revenue output, this may result in reduced operating margins given the higher risk profile. The following represents the impact that changing certain of our estimates, particularly those regarding our fixed-price development programs, would have had on our revenues:

*Impact of Change in Estimates on our Revenue Results*

<i>(Dollars in millions)</i>	Year Ended December 31,		
	2020	2019	2018
Revenue	\$ (77)	\$ (55)	\$ (26)
Total % of Revenue	3 %	2 %	1 %

Additionally, the timing of our cash flows is impacted by the timing of achievement of billable milestones on contracts. Historically, this has resulted and could continue to result in fluctuations in working capital levels and quarterly free cash flow results. As a result of such quarterly fluctuations in free cash flow results, we believe that quarter-to-quarter comparisons of our results of operations may not necessarily be meaningful and should not be relied upon as indicators of future performance.

**Regulations**

Increased audit, review, investigation and general scrutiny by U.S. government agencies of performance under government contracts and compliance with the terms of those contracts and applicable laws could affect our operating results. Negative publicity and increased scrutiny of government contractors in general, including us, relating to government expenditures for contractor services and incidents involving the mishandling of sensitive or classified information as well as the increasingly complex requirements of the DoD and the United States intelligence community, including those related to cybersecurity, could impact our ability to perform in the markets we serve.

**International Sales**

International revenue, including foreign military sales, foreign military financing, and direct commercial sales, accounted for approximately 8%, 4% and 6% of our revenue for the years ended December 31, 2020, 2019 and 2018, respectively. Since our focus is primarily with the DoD and our investments are focused as such, we anticipate that international sales will continue to account for a similar percentage of revenue in the future. We remain subject to the spending levels, pace and priorities of the U.S. government as well as international governments and commercial customers, and to general economic conditions that could adversely affect us, our customers and our suppliers.

Additionally, international sales may expose us to foreign exchange fluctuations and changing dynamics of foreign competitiveness based on variations in the value of the U.S. dollar relative to other currencies. The impact of those fluctuations is reflected throughout our Consolidated Financial Statements, but in the aggregate, did not have a material impact on our results of operations for the years ended December 31, 2020, 2019 and 2018.

### **Acquisitions**

We consider the acquisition of businesses and investments that we believe will expand or complement our current portfolio and allow access to new customers or technologies. We also may explore the divestiture of businesses that no longer meet our needs or strategy or that could perform better outside of our organization.

## **Components of Operations**

### **Revenue**

Revenue consists primarily of product related revenue, generating 87% ,82% and 78% of our total revenues for the periods ended December 31, 2020, 2019 and 2018, respectively. The remaining revenue is generated from service related contracts. Additionally, 87%, 86% and 82% of our revenue generation for December 31, 2020, 2019 and 2018, respectively, is derived from firm-fixed priced contracts. For a firm-fixed price contract, customers agree to pay a fixed amount, negotiated in advance, for a specified scope of work. Revenue on fixed price contracts is generally recognized over time using costs incurred to date relative to total estimated costs at completion to measure progress toward satisfying our performance obligations. Incurred costs represent work performed that corresponds with and thereby best depicts the transfer of control to the customer.

Under flexibly priced contracts, which consists of 13%,14% and 18% of our total revenues for December 31, 2020, 2019 and 2018, respectively, we are reimbursed for allowable or otherwise defined total costs (defined as cost of revenues plus allowable general and administrative expenses) incurred, plus a fee. The contracts may also include incentives for various performance criteria, including quality, timeliness, cost-effectiveness or other factors. In addition, costs are generally subject to review by clients and regulatory audit agencies, and such reviews could result in costs being disputed as non-reimbursable under the terms of the contract. Revenue for flexibly priced contracts are generally recognized as services are performed and are contractually billable.

Please refer to “—Critical Accounting Policies and Estimates” and “Note 2: Revenue from Contracts with Customers” in the Notes to our Consolidated Financial Statements.

### **Cost of Revenues**

Cost of revenues includes materials, labor and overhead costs incurred in the manufacturing, design, and provision of products and services sold in the period as well as warranty costs. Material costs include raw materials, purchased components and sub-assemblies and outside processing and inbound freight. Labor and overhead costs consist of direct and indirect manufacturing costs, including wages and fringe benefits, operating supplies, depreciation and amortization, occupancy costs, and purchasing, receiving, inspection costs and inbound freight costs.

### **General and Administrative Expenses**

General and administrative expenses include general and administrative expenses not included within cost of revenues such as salaries, wages and fringe benefits, facility costs and other costs related to these indirect functions. Additionally, general and administrative expenses include internal research and development costs as well as expenditures related to bid and proposal efforts. We expect general and administrative expenses will be impacted by the costs associated with being a publicly-traded company.



## Results from Operations

The following discussion of operating results is intended to help the reader understand the results of operations and financial condition of the Company, as well as individual segments, for the year ended December 31, 2020 as compared to the year ended December 31, 2019, and for the year ended December 31, 2019 compared to December 31, 2018. Given the nature of our business, we believe revenue and earnings from operations are most relevant to an understanding of our performance at a business and segment level. Our operating cycle is lengthy and involves various types of production contracts and varying delivery schedules. Accordingly, operating results in a particular year may not be indicative of future operating results.

	Year Ended December 31,			2020 vs. 2019 Variance		2019 vs. 2018 Variance	
	2020	2019	2018	\$	%	\$	%
(Dollars in millions, except per share amounts)							
Total revenues	\$2,778	\$2,714	\$2,333	\$64	2.4%	\$381	16.3%
Total cost of revenues	(2,284)	(2,255)	(1,919)	(29)	1.3%	(336)	17.5%
Gross profit	\$494	\$459	\$414	35	7.6%	\$45	10.9%
Gross margin	17.8%	16.9%	17.7%	0.9%	5.1%	(0.8)%	(4.7)%
General and administrative expenses	(283)	(277)	(268)	(6)	2.2%	(9)	3.4%
Amortization of intangibles	(9)	(9)	(93)	—	—%	84	(90.3)%
Other operating expenses, net	(21)	(10)	(8)	(11)	110.0%	(2)	25.0%
Operating earnings	\$181	\$163	\$45	18	11.0%	\$118	262.2%
Interest expense	(64)	(65)	(58)	1	(1.5)%	(7)	12.1%
Other, net	(5)	(3)	(4)	(2)	66.7%	1	(25.0)%
Earnings (loss) before taxes	\$112	\$95	\$(17)	17	17.9%	\$112	NM
Income tax provision (benefit)	27	20	(7)	7	35.0%	27	NM
Net earnings (loss)	\$85	\$75	\$(10)	10	13.3%	\$85	NM
Shares outstanding <sup>(1)</sup>	145	145	145	\$—	—%	\$—	—%
Basic EPS <sup>(1)</sup>	\$0.59	\$0.52	\$(0.07)	\$0.07	13.3%	\$0.59	NM
Diluted EPS <sup>(1)</sup>	\$0.59	\$0.52	\$(0.07)	\$0.07	13.3%	\$0.59	NM
Adjusted EPS <sup>(1)(2)</sup>	\$0.73	\$0.52	\$(0.07)	\$0.21	41.3%	\$0.59	NM
Adjusted EBITDA <sup>(2)</sup>	\$268	234	187	34	14.5%	47	25.1%
Adjusted EBITDA Margin <sup>(2)</sup>	9.6%	8.6%	8.0%	1.0%	11.9%	0.6%	7.6%
Backlog <sup>(2)</sup>	\$3,291	2,844	2,684	447	15.7%	160	6.0%
Estimated potential remaining contract value <sup>(3)</sup>	7,981	8,198	8,054	(217)	(2.6)%	144	1.8%
Total net debt	251	527	560	(276)	(52.4)%	(33)	(5.9)%
Leverage Ratio <sup>(2)</sup>	0.9x	2.3x	3.0x	(1.4x)	(60.9)%	(0.7x)	(23.4)%
Bookings <sup>(2)</sup>	3,055	2,923	2,879	132	4.5%	44	1.5%
Free cash flow <sup>(2)</sup>	\$74	\$110	\$65	\$(36)	(32.7)%	\$45	69.2%

NM- percentage change not meaningful

(1) Gives effect to a 1,450,000-for-1 forward stock split on our common stock effected on February 25, 2021.

(2) See “—Non-GAAP Financial Measures” above for definitions of these measures. Adjusted EPS, Adjusted EBITDA, Adjusted EBITDA Margin, Leverage Ratio, and free cash flow are non-GAAP measures. See “—Key

Financial and Operating Measures—Non-GAAP Financial Measures” above for reconciliations of these measures to the most directly comparable financial measure calculated and presented in accordance with U.S. GAAP.

- (3) See “Risk Factors—Risks Relating to Our Business—We may not realize the full value of our total estimated contract value or bookings, including as a result of reduction of funding or cancellation of our U.S. government contracts, which could have a material adverse impact on our business, financial condition and results of operations.”

## **Year Ended December 31, 2020 Compared to the Years Ended December 31, 2019 and 2018**

### ***Year Ended December 31, 2020 Compared With Year Ended December 31, 2019***

Our operating results for the year ended December 31, 2020 are highlighted by another successful year of revenue growth and margin expansion despite COVID-19 related operational challenges throughout the year. Revenue of \$2,778 million for the year ended December 31, 2020 represented year over year growth of \$64 million (2.4%) while our operating earnings and net earnings grew \$18 million (11.0%) and \$10 million (13.3%) from the year ended December 31, 2019, respectively. Along with our net earnings expansion, Adjusted EBITDA, one of our key operational evaluation metrics, increased \$34 million, or 14.5%, from the prior year to \$268 million, representing our second straight year of double digit Adjusted EBITDA annual growth. The Adjusted EBITDA growth drove Adjusted EBITDA margins to 9.6%, a 1.0% increase from 2019. For more detailed operational explanations, please see financial analysis below.

In addition, our diversified, balanced portfolio supported by foundational programs with strong, visible backlog aligned in areas of, in our view, growing importance within the DoD budget priorities, resulted in \$11.3 billion of total estimated remaining contract value as of December 31, 2020. Our total estimated remaining contract value consists of backlog of \$3.3 billion and potential remaining contract value of \$8.0 billion, driven by our awards and positions on existing platforms. Our recent awards include supporting Counter Unmanned Aircraft Systems (“CUAS”) efforts with the U.S. Army and continued success in receiving next generation Force Protection and Dismounted Soldier Sensing programs with both the U.S. Army and U.S. Navy at our AST segment. Our positions include providing propulsion systems components on the Columbia-class submarine at our IMS segment and our legacy positions on our Mounted Family of Computer Systems (“MFoCS”) and Global Access Network programs at our NC&C segment. We believe these programs will support continued revenue and margin growth as programs transition from development efforts to production, continuing our trend of earnings growth and margin expansion.

### ***Year Ended December 31, 2019 Compared With Year Ended December 31, 2018***

For the year ended December 31, 2019 we realized the impact of our cost-effective solutions, strong customer relationships and ability to remain nimble and quick-to-market when it comes to addressing current and future customer needs. During the year we demonstrated the benefit of our flexibility with awards on various urgent operational needs programs across each of our segments, highlighted by a production ramp on our active protection system (“APS”) program within our IMS segment. These programs illustrate our ability to rapidly deploy complex solutions to solve our customers’ evolving requirements. Such ability coupled with our diverse existing installed base of product offerings resulted in revenue of \$2,714 million for the year ended December 31, 2019 representing year over year growth of \$381 million, or 16.3%, compared to December 31, 2018.

Double digit revenue growth, along with new bookings exceeding revenue, and a robust backlog of \$2.844 billion as of year ended December 31, 2019, created a foundation for continued revenue growth. Our profit growth continued to expand in excess of our revenue, driving an operating earnings increase of 262.2% to \$163 million in 2019 from our 2018 results of \$45 million. The operating earnings growth is attributed to expanding revenue and the associated contribution margin coupled with a reduction in acquired asset amortization. The reduction in acquired asset amortization in 2019 compared to 2018 is a result of the completion of amortization of the intangible assets established when US Holding acquired

DRS in 2008, resulting in a year-over-year reduction in amortization expense of \$84 million. The increase in revenue was partially offset by an increase in general and administrative expenses of 3.4% driven by compliance and quality infrastructure expansion to support the revenue growth. Offsetting the general and administrative expenditure increase was a reduction in bid and proposal expenditures on a jet aircraft training program within our AST segment of \$24 million. As a consequence, net earnings improved to \$75 million for the year ended December 31, 2019 from a loss of \$10 million for the year ended December 31, 2018. Adjusted EBITDA and Adjusted EBITDA Margin, our key financial operating metrics, also improved in line with these results. Adjusted EBITDA increased by 25.1% to \$234 million from \$187 million and Adjusted EBITDA Margin increased by 60 basis points to 8.6% from year ended December 31, 2019. The increase in 2019 was primarily related to the aforementioned jet aircraft training program pursuit, offset in part by additional costs incurred on development programs at our IMS segment.

## **Revenue**

### **Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Revenue increased by \$64 million, or 2.4%, to \$2,778 million for year ended December 31, 2020 from \$2,714 million for year ended December 31, 2019. The revenue growth in 2020 was primarily due to an increase of \$159 million at our AST segment, driven by programs transitioning from development to production and increased deliveries in our Dismounted Soldier Sensing and Targeting Systems programs, resulting in a \$109 million increase as compared to the prior year. Additionally our AST segment also realized annual revenue expansion through progress on our recently awarded program to provide electric control systems for the U.S. Navy's shipboard launch system (\$22 million) and pilot training programs (\$29 million). At our IMS segment, our continued market penetration on CUAS opportunities drove \$28 million of incremental revenue during 2020 as compared to 2019. In addition, our recently awarded programs to provide power solutions on the CVN 80/81 carriers and logistics support equipment to the Israel Ministry of Defense contributed revenue of \$14 million and \$13 million, respectively. However, despite this success, our IMS revenue growth was more than offset by a decline of \$160 million compared to 2019 attributable to accelerated deliveries of our TROPHY™ APS program in the prior year. At our NC&C segment we had continued progress in our Satellite & Network Communications programs and ruggedized maintenance support hardware programs contributed \$28 million and \$29 million, respectively, of incremental revenue as compared to 2019. These contributions were partially offset in certain naval common network services equipment programs in which we made strategic decisions to allocate capital in what we believe are more profitable opportunities.

### **Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

For the year ended December 31, 2019 revenue increased by \$381 million, or 16.3%, to \$2,714 million as compared to 2018. Revenue growth was primarily due to the rapid development and sale of desired capabilities within our IMS segment, highlighted by the APS and our CUAS programs. The APS and CUAS programs generated revenue growth of \$245 million and \$29 million, respectively, to support urgent operational needs as compared to 2018. Additionally, revenue in our AST segment revenue increased \$56 million as a result of the production award for the next generation weapon sight program. Our NC&C Segment also experienced revenue growth as compared to 2018, including a \$40 million increase attributed to a newly awarded radar manufacturing program. However, the increases in NC&C revenue as compared to 2018 were partially offset by decreases as a result of the production transition on our MFOCS ruggedized computing program as we migrated from our mature full rate production contract to our newly awarded five-year indefinite delivery, indefinite quantity contract modernizing the system capability and cyber protection. The new MFOCS program required achievement of certain certifications prior to progressing into full rate production, which resulted in a decline in program revenues by \$52 million as compared to 2018.

## **Cost of Revenues**

### **Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Cost of revenues increased \$29 million, or 1.3%, from \$2,255 million to \$2,284 million for the year ended December 31, 2020, primarily due to increased revenue as described above. The cost of revenues growth was favorably offset by improved program mix, with our higher profit segment, AST, driving the year over year revenue expansion as noted above. Please see “—Review of Operating Segments” below for further discussion. The favorable impact of program mix was partially offset by changes in estimates to complete certain development related programs at our IMS segment of \$46 million and at our NC&C segment of \$19 million; see *Note 2: Revenue from Contracts with Customers* for further detail.

### **Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

For the year ended December 31, 2019 cost of revenue increased by \$336 million, or 17.5%, from \$1,919 million for the year ended December 31, 2018 to \$2,255 million, driven primarily by the 16.3% increase in revenue described above. The increase in cost of revenues was further impacted by increased costs realized on certain fixed-price development efforts at our IMS segment primarily related to our on-the-move surveillance program for an international customer of \$9 million and to certain newly awarded transportation and logistics programs totaling \$8 million.

## **Gross Profit**

### **Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Gross profit increased \$35 million, or 7.6%, from \$459 million for the year ended December 31, 2019 to \$494 million for the year ended December 31, 2020, primarily driven by revenue growth and favorable program mix as noted above, offset by the charges realized on development type programs at our IMS segment of \$47 million and a reduction in the estimated amount of variable consideration related to certain claims on electronics programs with the U.S. Navy totaling \$11 million.

### **Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

Gross profit increased \$45 million, or 10.9%, from \$414 million for the year ended December 31, 2018 to \$459 million for the year ended December 31, 2019, primarily driven by year over year revenue growth, partially offset by the impact of cost growth on certain design programs within our IMS segment noted above.

## **General and Administrative Expenses**

### **Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

General and administrative expenses increased by \$6 million, or 2.2%, from \$277 million for the year ended December 31, 2019 to \$283 million for the year ended December 31, 2020, resulting from increases in discretionary investment of \$9 million for both Independent Research and Development (IR&D) and Bid and Proposal (B&P) costs, as well as \$9 million in expenses related to our planned initial public offering. These costs were partially offset by reductions in corporate, employee medical and travel expenditures related to certain of the impacts of COVID-19 on our business.

### **Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

General and administrative expenses increased \$9 million, or 3.4%, from \$268 million for the year ended December 31, 2018 to \$277 million for the year ended December 31, 2019, primarily as a result of:

- \$20 million increase in compliance costs and quality infrastructure to support our expanding revenue; and

- \$5 million increase in bid proposal and internal research and development expenditures (\$2 million and \$3 million, respectively) to promote future growth opportunities.

This cost growth was largely offset by a reduction in proposal expenditures of \$24 million on an aircraft training jet program pursuit in our AST segment that did not recur in 2019.

Despite the increase in general and administrative expenses, our general and administrative expenses as a percentage of revenue decreased 1.3%, from 11.5% to 10.2%, contributing to our overall margin expansion.

#### ***Other Operating Expenses, Net***

##### **Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Other operating expenses increased by \$11 million to \$21 million for the year ended December 31, 2020 from \$10 million for the year ended December 31, 2019, mainly due to costs incurred in response to impacts of the COVID-19 pandemic. In total we incurred \$12 million of expenditures from March 1, 2020 through December 31, 2020 to ensure a safe work environment for our employees. These costs included paid leave, personal protective equipment and other cleaning measures, facility filtration systems and social and physical distancing efforts, including the use of zones and subzones for manufacturing facilities. Please see “—Business Overview and Considerations—Impacts of COVID-19 On Our Business” for further details on COVID-19 impact on our business.

##### **Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

Other operating expenses increased \$2 million from \$8 million for the year ended December 31, 2018 to \$10 million for the year ended December 31, 2019, as a result of facility consolidation efforts implemented within our IMS segment.

#### ***Amortization of Intangibles***

##### **Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Amortization of intangibles for the year ended December 31, 2020 of \$9 million were consistent with the year ended December 31, 2019.

##### **Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

For the year ended December 31, 2019, amortization of Intangibles decreased \$84 million, or 90.3%, from \$93 million for the year ended December 31, 2018 to \$9 million for the year ended December 31, 2019, related to the completion of the amortization of the intangible asset recorded in connection with the 2008 acquisition of DRS by US Holding in December 2018. The remaining intangible asset amortization is primarily attributed to our intangibles assets recorded in connection with our 2017 acquisition of Daylight Solutions Inc. (“Daylight Solutions”), which operates within our AST segment.

#### ***Operating Earnings***

##### **Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Operating earnings increased by \$18 million to \$181 million, or 11.0%, for the year ended December 31, 2020 from \$163 million for the year ended December 31, 2019, driven by the increased revenue output and related contribution margin resulting from our AST segment financial contributions noted above, offset by the aforementioned changes in estimates to complete at our IMS and NC&C segments, which led to an increase in general and administrative expenses and other operating expenditures.

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

Operating earnings increased by \$118 million, or 262.2%, from \$45 million for the year ended December 31, 2018 to \$163 million for the year ended December 31, 2019, primarily attributable to increased gross profit driven by higher revenue within our IMS segment as well as a reduction in the amortization of acquired intangibles.

***Interest Expense***

**Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Interest expense decreased by \$1 million to \$64 million for year end December 31, 2020 from \$65 million for the year ended December 31, 2019. The reduction in annual interest was attributed to the lower interest rates on our variable rate borrowings. The weighted average interest rate on our revolving credit facility was 4.36% in 2020 compared to 5.93% in 2019.

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

Interest expense increased by \$7 million, or 12.1%, from \$58 million for the year ended December 31, 2018 to \$65 million for the year ended December 31, 2019, primarily driven by the commencement of certain financing leases to enhance our capacity within our NC&C and IMS segments as well as an increase in revolver borrowings to fund increases in working capital requirements, predominately on fixed price development programs.

***Other, Net***

**Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Other, net increased to \$5 million for the year ended December 31, 2020 from \$3 million for the year ended December 31, 2019. This was primarily related to a loss of the termination on one of our international defined benefit pension plans.

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

There was no meaningful change from the year ended December 31, 2019 to the year ended December 31, 2018.

***Earnings (Loss) Before Taxes***

**Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Earnings (loss) before taxes increased by \$17 million to \$112 million for the year ended December 31, 2020 from \$95 million for the year ended December 31, 2019. This was primarily due to increased operating earnings of \$18 million, the reduction of \$1 million in interest expenditures offset in part by the \$2 million increase of other, net costs as described above.

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

In year ended December 31, 2019 earning before taxes increased by \$112 million from a loss of \$17 million for the year ended December 31, 2018 to earnings of \$95 million for the year ended December 31, 2019, primarily due to increased revenue and related gross profit, coupled with the reduction of amortization of acquired intangibles.

### ***Income Tax Provision (Benefit)***

#### **Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Income tax provision (benefit) increased by \$7 million to \$27 million for the year ended December 31, 2020 from \$20 million for the year ended December 31, 2019. This was primarily due to an increase in earnings before taxes. Our effective tax rate for 2020 was 24.1% compared to 21.1% in 2019. The increase in the effective tax rate is primarily attributable to non-deductible costs in connection with our planned initial public offering of \$9 million incurred during 2020.

As of December 31, 2020 the Company had \$131 million of Federal net operating loss carryforwards and \$22 million of net tax credit carry-forwards that can be utilized to reduce approximately \$50 million of future tax liabilities prior to their expiration commencing in 2025.

#### **Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

The income tax provision (benefit) increased by \$27 million from an income tax benefit of \$7 million for the year ended December 31, 2018 to an income tax provision of \$20 million for the year ended December 31, 2019 due to our loss before taxes in 2018 as compared to earnings before taxes in 2019. Our effective tax rate for 2019 was 21.1% compared to 41.2% in 2018, driven by our earnings (loss) before tax realized in 2018.

### ***Net Earnings (Loss)***

#### **Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Net earnings (loss) increased by \$10 million to \$85 million for the year ended December 31, 2020 when compared to the year ended December 31, 2019. This was driven by increased earnings before taxes of \$17 million offset by increased income tax provision of \$7 million as described above.

#### **Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

In year ended December 31, 2019 net earnings increased by \$85 million from a loss of \$10 million for the year ended December 31, 2018 to earnings of \$75 million for the year ended December 31, 2019, primarily due to the increase in revenue and decrease in amortization of acquired intangibles in 2019 as compared to 2018 described above.

### ***Basic and Diluted EPS***

#### **Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

For the year ended December 31, 2020, there were no changes in the number of basic and diluted shares. No equity awards were issued during such year. As of December 31, 2020 and 2019, there were 145,000,000 shares of common stock outstanding (after giving effect to a 1,450,000-for-1 forward stock split on our common stock effected on February 25, 2021), resulting in a basic and diluted EPS of \$0.59 and \$0.52 per share, respectively. The increase in EPS is attributed to the net earnings growth described above.

#### **Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

For the years ended December 31, 2019 and 2018, there were no changes in the number of basic and diluted shares. No equity awards were issued during such years. As of December 31, 2019 and 2018, there were 145,000,000 shares of common stock outstanding (after giving effect to a 1,450,000-for-1 forward stock split on our common stock effected on February 25, 2021), resulting in a basic and diluted EPS of \$0.52 and a loss of \$0.07 per share, respectively. The improvement in EPS from the loss in 2018 is attributed to the net earnings growth described above.

## **Adjusted EBITDA**

### **Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Adjusted EBITDA increased \$34 million, or 14.5%, from \$234 million for the year ended December 31, 2019 to \$268 million for the year ended December 31, 2020, primarily due to the increased gross profit contribution attributed to revenue growth and favorable revenue mix.

### **Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

For year ended December 31, 2019, Adjusted EBITDA increased \$47 million, or 25.1%, from \$187 million for the year ended December 31, 2018 to \$234 million for the year ended December 31, 2019, primarily due to revenue growth offset in part by increased costs expected on fixed-priced development programs within our IMS sector and an increase in general and administrative expenses.

## **Adjusted EBITDA Margin**

### **Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Adjusted EBITDA Margin increased from 8.6% for the year ended December 31, 2019 to 9.6% for year ended December 31, 2020. This was primarily due to gross margin expansion attributable to favorable mix from increased revenues from our higher margin AST segment.

### **Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

Adjusted EBITDA Margin increased from 8.0% for the year ended December 31, 2018 to 8.6% for the year ended December 31, 2019, primarily due to improved performance from revenue growth outpacing growth in our general and administrative expenses, offset in part by cost growth on certain of our development programs described above.

## **Adjusted EPS**

### **Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

For the year ended December 31, 2020, there were no changes in the number of basic and diluted shares. No equity awards were issued during such year. As of December 31, 2020 and 2019, there were 145,000,000 shares of common stock outstanding (after giving effect to a 1,450,000-for-1 forward stock split on our common stock effected on February 25, 2021), resulting in adjusted EPS of \$0.73 and \$0.52 per share, respectively. The increase in EPS is attributed to the net earnings growth noted above as well as COVID-19 response expenses and IPO related expenditures incurred in 2020.

### **Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

For the year ended December 31, 2019, there were no changes in the number of basic and diluted shares. No equity awards were issued during such year. As of December 31, 2019 and 2018, there were 145,000,000 shares of common stock outstanding (after giving effect to a 1,450,000-for-1 forward stock split on our common stock effected on February 25, 2021), resulting in adjusted EPS of \$0.52 and a loss per share of \$0.07, respectively.

## **Backlog**

### **Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Backlog increased by \$447 million, or 15.7%, from \$2,844 million as of December 31, 2019 to \$3,291 million as of December 31, 2020. The backlog increase was driven by our IMS segment, primarily attributed to the receipt of multi-year funding awards received on our naval power and propulsion programs. Please see “—Review of Operating Segments” below for a detailed analysis.



**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

Backlog increased by \$160 million, or 6.0%, from \$2,684 million as of December 31, 2018 to \$2,844 million as of December 31, 2019 due to our bookings exceeding our revenue recognized during the year, driving an increase in our funded backlog of \$209 million. The backlog increase was driven by our AST and NC&C segments as detailed in our analysis of our reportable segments below. These increases were offset by a decrease in unfunded backlog of \$49 million, primarily due to additional funding allocation on our Columbia-class submarine program within our IMS segment.

***Estimated Potential Remaining Contract Value***

**Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Estimated potential remaining contract value of \$7,981 million as of December 31, 2020 declined by \$217 million, or 2.6%, as compared to December 31, 2019. This decrease was due to the receipt of incremental funding on legacy programs including active protection systems (\$279 million), Satellite & Network Communications programs (\$97 million) and ruggedized computing hardware (\$111 million). These reductions were offset by the receipt of long-term contracts that will be incrementally funded including CUAS programs (\$170 million) and naval computing and displays awards (\$114 million).

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

The estimated potential remaining contract value increased \$144 million to \$8,198 million as of December 31, 2019 as compared to December 31, 2018. The increase was attributed to a contract award to provide at least five years of technology upgrades on Naval Submarines totaling \$700 million and a MFoCS support contract received to facilitate hardware installation capabilities totaling \$233 million. These increases were partially offset by incremental funding received on certain of our long-term IDIQ and follow-on programs, totaling \$254 million, \$384 million and \$150 million for AST, NC&C and IMS segments, respectively.

***Leverage Ratio***

**Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

For year ended December 31, 2020, our leverage ratio decreased to 0.9x from 2.3x for the year ended December 31, 2019. This was driven by improved Adjusted EBITDA of \$34 million as compared to 2019 and the reduction in our net debt of \$276 million as compared to the prior year. The net debt reduction was a result of the forgiveness of \$300 million related party debt by US Holding and the repayment of certain related party debt obligations of \$65 million, partially offset by the commencement of certain long-term finance leases and other financing obligations of \$83 million.

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

For the year ended December 31, 2019, our leverage ratio decreased to 2.3x from 3.0x for the year ended December 31, 2018. The decrease can be attributed to an increase in Adjusted EBITDA of \$47 million in 2019 as compared to 2018 as well as a decrease in our net debt of \$33 million from December 31, 2018 as compared to December 31, 2019. Net debt declined as a result of improved cash flows and the issuance of a related party note receivable of \$100 million. These reductions in net debt were partially offset by an increase in finance lease obligations related to commencement of facility leases at our NC&C and IMS segments.

***Bookings***

**Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Bookings increased to \$3,055 million, or 4.5%, for the year ended December 31, 2020 from \$2,923 million for the year ended December 31, 2019. The increase was driven by significant awards in our IMS

segment including the receipt of multi-year funding awards received on our naval power and propulsion programs to support the CVN 80/81 carriers program (\$212 million). Additionally, our AST segment received production awards for next generation Dismounted Soldier Sensing and Airborne Force Protection programs generating \$30 million and \$40 million of incremental bookings, respectively. This was offset by the significant TROPHY™ APS award received in 2019 (\$195 million) that did not recur in 2020.

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

Bookings increased by \$44 million, or 1.5%, to \$2,923 million for the year ended December 31, 2019 from \$2,879 million for the year ended December 31, 2018, primarily due to the enhanced scope received on our Columbia-class submarine programs at our IMS segment, largely offset by a reduction in bookings related to certain competitive C4I U.S. Navy network hardware programs.

***Free cash flow***

**Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Free cash flow decreased by \$36 million, or 32.7%, to \$74 million for the year ended December 31, 2020 from \$110 million for the year ended December 31, 2019. This was primarily attributable to increases in operating working capital relating to timing and the ongoing transition of development programs to production.

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

Free cash flow increased by \$45 million to \$110 million for the year ended December 31, 2019 from \$65 million for the year ended December 31, 2018. The increase can be attributed to the increase in net earnings and Adjusted EBITDA as compared to 2018 as well as an increase in accounts payable to mitigate the impacts of increases in working capital on certain design programs for which we had not yet achieved billing milestones as of year-end.

**Review of Operating Segments**

The following is a discussion of operating results for each of our operating segments. We have elected to use Revenue, Adjusted EBITDA, Adjusted EBITDA Margin, Bookings and Backlog to provide

detailed information on our segment performance. Additional information regarding our segments can be found in *Note 17: Segment information* within the Consolidated Financial Statements.

(Dollars in millions)	Year Ended December 31,			2020 vs. 2019		2019 vs. 2018		
	2020	2019	2018	Variance		Variance		
<b>Revenue:</b>								
AST	\$ 940	\$ 781	\$ 659	\$ 159	20.3 %	\$ 122	18.5 %	
NC&C	1,026	1,053	1,111	\$ (27)	(2.6) %	(57)	(5.2) %	
IMS	834	917	610	\$ (83)	(9.1) %	307	50.3 %	
Corporate & Eliminations	(22)	(37)	(47)	\$ 16	(41.9) %	10	(21.3) %	
Total revenue	\$ 2,778	\$ 2,714	\$ 2,333	\$ 64	2.3 %	\$ 382	16.4 %	
<b>Adjusted EBITDA:</b>								
AST	\$ 123	\$ 94	\$ 73	\$ 29	30.7 %	\$ 21	28.8 %	
NC&C	90	75	72	15	19.6 %	3	4.2 %	
IMS	55	63	41	(8)	(12.2) %	22	53.7 %	
Corporate & Eliminations	—	2	1	(2)	(85.0) %	1	NM	
Total Adjusted EBITDA	\$ 268	\$ 234	\$ 187	\$ 34	14.5 %	\$ 47	25.1 %	
<b>Adjusted EBITDA Margin:</b>								
AST	13.1 %	12.0 %	11.1 %	1.1 %	8.7 %	0.9 %	8.1 %	
NC&C	8.7 %	7.1 %	6.5 %	1.6 %	22.8 %	0.6 %	9.2 %	
IMS	6.6 %	6.9 %	6.7 %	(0.2) %	(3.5) %	0.2 %	3.0 %	
<b>Bookings:</b>								
AST	\$ 898	\$ 953	\$ 915	\$ (55)	(5.8) %	\$ 38	4.2 %	
NC&C	1,121	1,068	1,158	53	4.9 %	(90)	(7.8) %	
IMS	1,036	902	806	134	14.9 %	96	11.9 %	
Total bookings	\$ 3,055	\$ 2,923	\$ 2,879	\$ 132	4.5 %	\$ 44	1.5 %	
<b>Backlog:</b>								
AST	\$ 1,274	\$ 1,294	\$ 1,098	\$ (20)	(1.6) %	\$ 196	17.9 %	
NC&C	792	776	752	16	2.1 %	24	3.2 %	
IMS	1,225	774	834	451	58.3 %	(60)	(7.2) %	
Total backlog	\$ 3,291	\$ 2,844	\$ 2,684	\$ 447	15.7 %	\$ 160	6.0 %	
<b>Estimated Potential Remaining Contract Value:</b>								
AST	\$ 2,480	\$ 2,429	\$ 2,683	\$ 51	2.1 %	\$ (254)	(9.5) %	
NC&C	2,839	2,991	2,443	\$ (152)	(5.1) %	\$ 548	22.4 %	
IMS	2,662	2,777	2,928	\$ (115)	(4.1) %	\$ (151)	(5.2) %	
Total Estimated Contract Value	\$ 7,981	\$ 8,198	\$ 8,054	\$ (217)	(2.6) %	\$ 143	7.8 %	

#### Year Ended December 31, 2020 Compared to the Year Ended December 31, 2019 and 2018

##### AST

###### Revenue:

##### Year Ended December 31, 2020 Compared With Year Ended December 31, 2019

The revenue growth at our AST segment was driven principally by programs transitioning from development to production and increased deliveries in our next generation dismantled Soldier Sensing and Targeting Systems programs, resulting in \$109 million of additional revenue as compared to the prior year. Additionally, our AST segment also realized annual revenue expansion through progress on our recently awarded electronic control systems program for the U.S. Navy shipboard launch system (\$22 million) and Pilot Training (\$29 million) programs. This revenue growth was offset in part by lower Airborne Force Protection programs revenue resulting from the transition from our accelerated production

efforts under the Urgent Operational Needs (“ONS”) program with the U.S. Navy in 2019 to development efforts to expand program capabilities in 2020, reducing revenue by \$30 million. In total, segment revenue increased \$159 million, or 20%, from \$781 million for the year ended December 31, 2019 to \$940 million for the year ended December 31, 2020.

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

AST’s revenue increased \$122 million, or 18.5%, from \$659 million for the year ended December 31, 2018 to \$781 million for the year ended December 31, 2019. This growth was primarily attributed to revenue realized from program awards received in 2018 and 2019 including progress related to the following:

- \$56 million due to ramp up efforts on our newly awarded next generation weapon sight program;
- \$12 million from ramp up efforts on our newly awarded Mobile Protected Firepower (“MPF”) program;
- \$30 million attributed to increased demand for legacy sensing programs on ground vehicles; and
- \$10 million due to incremental effort on our pilot training systems programs.

This was offset in part by program delays on certain fixed-price sensors and precision targeting development programs, reducing revenue by \$15 million.

*Adjusted EBITDA and Adjusted EBITDA Margin:*

**Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

AST’s Adjusted EBITDA increased by \$29 million, or 30.7%, from \$94 million for the year ended December 31, 2019 to \$123 million for the year ended December 31, 2020. Adjusted EBITDA Margin increased from 12.0% for the year ended December 31, 2019 to 13.1% for the year ended December 31, 2020. This increase in Adjusted EBITDA is primarily attributed to the revenue increase noted above coupled with a favorable program mix with revenue growth in our higher margin program areas, including pilot training. The favorable program mix and revenue growth in excess of general and administrative costs growth contributed to the Adjusted EBITDA margin expansion of 1.1 basis points to 13.1%.

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

AST’s Adjusted EBITDA increased by \$21 million, or 28.8%, from \$73 million for the year ended December 31, 2018 to \$94 million for the year ended December 31, 2019. Adjusted EBITDA Margin increased from 11.1% for the year ended December 31, 2018 to 12.0% for the year ended December 31, 2019. The increase in Adjusted EBITDA and margin expansion are attributable to the \$122 million increase in revenue combined with a reduction in general and administrative expenses as a percentage of sales related to costs for our pursuit of a training jet aircraft training program totaling \$24 million that did not recur in 2019. Partially offsetting this Adjusted EBITDA expansion was cost growth on certain sensors and precision targeting fixed-price development programs of \$5 million.

*Bookings:*

**Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

AST’s bookings decreased by \$55 million, or 5.8%, from \$953 million for the year ended December 31, 2019 to \$898 million for the year ended December 31, 2020. The bookings results were highlighted by production awards received for our Next Generation Thermal Weapon Sight and Limited Interim Warning System programs, which had significant bookings of \$168 million and \$74 million, respectively, an increase of \$30 million and \$67 million, respectively, compared to the prior year ended December 31, 2019. The bookings growth was more than offset by the previously disclosed transition from Airborne

Force Protection ONS production awards received in 2019 to development programs resulting in a year over year bookings reduction of \$72 million.

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

AST's bookings increased \$38 million, or 4.2%, from \$915 million as of December 31, 2018 to \$953 million as of December 31, 2019 as a result of incremental awards received on next generation weapon sight programs and increased sensor upgrades on legacy ground vehicle sensing programs as well as awards received supporting naval radar systems. These programs generated incremental orders of \$67 million, \$23 million and \$37 million, respectively. These expansions were offset in part by accelerated program awards in 2018 related to Airborne Force Protection programs totaling \$80 million.

*Backlog:*

**Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

AST's backlog decreased by \$20 million, or 1.6%, from \$1,294 million for the year ended December 31, 2019 to \$1,274 million for the year ended December 31, 2020. This was attributed to revenue slightly outpacing new bookings.

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

AST's backlog increased \$196 million, or 17.9%, from \$1,098 million as of December 31, 2018 to \$1,294 million as of December 31, 2019, primarily due to our bookings performance out-pacing revenue by \$172 million coupled with additional unfunded backlog increases. The backlog expansion was highlighted by our awards on the next generation weapon sight program noted above which generated backlog of \$52 million in 2019.

*Estimated Potential Remaining Contract Value:*

**Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

AST's estimated potential remaining contract value increased by \$51 million from \$2,429 million for the year ended December 31, 2019 to \$2,480 million for the year ended December 31, 2020. This was primarily due to additional long term positions secured on EW opportunities (\$123 million), long-term contracts received to provide next generation Tactical Terminal (\$120 million) and awards to provide support to the U.S. Navy's launch system program (\$66 million). The increases were largely offset by continued contractual funding on next generation weapon sight programs (\$76 million) and awards received on our Airborne Force Protection programs (\$134 million).

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

AST's estimated potential remaining contract value declined \$254 million attributed to funding received on our long-term contractual positions including our aircraft survivability programs of \$151 million, soldier sensing programs of \$55 million and legacy sensing programs of \$31 million.

**NC&C**

*Revenue:*

**Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

NC&C revenue decreased by \$27 million or, 2.6%, from \$1,053 million for the year ended December 31, 2019 to \$1,026 million for the year ended December 31, 2020. This decrease was attributed to a management decision focus on program pursuits that better fit our strategic investment profile, lowering Naval common network services equipment by \$64 million and lower throughput on antenna programs with the U.S. Navy of \$16 million. This was largely offset by newly awarded advanced combat networking

hardware and ruggedized maintenance support programs which generated \$41 million and \$29 million of additional revenue, respectively.

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

NC&C revenue decreased \$57 million, or 5.2%, from \$1,111 million for the year ended December 31, 2018 to \$1,053 million for the year ended December 31, 2019 as a result of production transition on our foundational program, MFoCS migrated from our mature full rate production contract to our newly awarded contracts. The new program required achievement of certain certifications prior to progressing into full rate production, which resulted in a reduction of revenues of \$52 million as compared to the prior year. This was largely offset by progress on newly awarded naval radar production program received in 2018, which generated additional revenue of \$40 million.

*Adjusted EBITDA and Adjusted EBITDA Margin:*

**Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

NC&C's Adjusted EBITDA increased by \$15 million, or 19.6%, from \$75 million for the year ended December 31, 2019 to \$90 million for the year ended December 31, 2020. Adjusted Margin increased from 7.1% for the year ended December 31, 2019 to 8.7% for the year ended December 31, 2020. This increase in Adjusted EBITDA and margin expansion was attributed to program mix, including the reduction in revenue from our Naval common network services equipment by \$64 million. This was offset in part by changes in our assumed recovery for certain requests for equitable adjustments in certain electronics programs with the U.S. Navy impacting EBITDA by \$11 million.

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

NC&C's Adjusted EBITDA increased \$3 million, or 4.2%, from \$72 million for the year ended December 31, 2018 to \$75 million for the year ended December 31, 2019. Adjusted EBITDA Margin increased from 6.5% for the year ended December 31, 2018 to 7.1% for the year ended December 31, 2019. The year over year profitability increase was primarily attributable to the successful production transition to the newly awarded MFoCS program, which generated incremental \$8 million of margin contribution despite the reduction in revenues noted above.

*Bookings:*

**Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

NC&C's bookings increased by \$53 million, or 4.9%, to \$1,121 million for the year ended December 31, 2020 from \$1,068 million for the year ended December 31, 2019. Our bookings are highlighted by the continuance of our foundational programs including follow on Global Network program awards with Special Operations Command ("SOCOM") and the U.S. Army and incremental funding on our MFoCS ruggedized computing hardware programs for \$164 million and \$180 million, respectively. The increase as compared to the prior year is attributed to the recently awarded advanced combat networking hardware with the U.S. Navy, increasing bookings \$78 million against the prior year. This was offset in part by the strategic decision to focus our efforts and capacity on program pursuits that better fit our strategic investment profile, lowering our exposure to Naval common network services equipment by \$37 million.

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

NC&C's bookings decreased \$90 million, or 7.8%, from \$1,158 million as of December 31, 2018 to \$1,068 million as of December 31, 2019, due to a reduction in competitive awards on certain U.S. Navy hardware programs resulting in a decline of \$102 million and the completion of existing submarine hardware upgrade programs in 2018. Despite being successful in our pursuit for the follow-on submarine hardware upgrade program, funding levels in 2019 were limited to initial funding values, which were \$51 million lower than the 2018 levels. This was offset in part by our ruggedized computing battle

management modernization programs awarded in 2019, contributing an incremental \$23 million in bookings for the year.

*Backlog:*

**Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

NC&C's backlog increased by \$16 million, or 2%, from \$776 million as of December 31, 2019 to \$792 million as of December 31, 2020. This was primarily due to bookings of \$1,158 million slightly exceeding revenues of \$1,026 million.

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

NC&C's backlog increased by \$24 million, or 3.2%, from \$752 million as of December 31, 2018 to \$776 million as of December 31, 2019, due to bookings of \$1,068 million slightly exceeding our revenues recognized of \$1,053 million. This increase is due to our ruggedized computing and diagnostics programs on land vehicles offset in part by the reduction in bookings received on competitive naval hardware programs.

*Estimated Potential Remaining Contract Value:*

**Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

NC&C's estimated potential remaining contract value decreased by \$152 million to \$2,839 million for the year ended December 31, 2020 from \$2,991 million for the year ended December 31, 2019. This decrease was primarily due to funding received on long-term contracts in our Global Network program for \$129 million and MFoCS ruggedized computing program for \$111 million. These reductions were offset in part by the recently awarded long-term advanced combat networking hardware program with the U.S. Navy, increasing estimated potential remaining contract value \$85 million.

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

NC&C's estimated potential remaining contract value increased \$548 million driven by contract awards to provide technology upgrades on submarines for the U.S. Navy totaling \$700 million and the contract received to provide installation support for our MFoCS computing hardware of \$233 million, offset by funding received on our long-term contract positions. The funding received includes \$228 million on naval computing efforts, \$126 million on satellite network programs and \$30 million on land based computing awards.

***IMS***

*Revenue:*

**Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

IMS revenue decreased by \$83 million, or 9%, from \$917 million for the year ended December 31, 2019 to \$834 million for the year ended December 31, 2020. This decrease was mostly attributed to the acceleration of \$161 million of revenue on the APS program in 2019. Offsetting this decrease is incremental revenue generated from our recently awarded position on the Submarine Power Conversion program of \$14 million and the receipt of our full rate production award for CUAS programs with the U.S. Army generating incremental \$28 million of revenue as compared to 2019.

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

IMS revenue increased \$307 million, or 50.3%, from \$610 million for the year ended December 31, 2018 to \$917 million for the year ended December 31, 2019. The increase in revenue was predominantly attributable to our successful rapid development and deployment of our urgent operational needs force

protection programs including our APS programs as well as CUAS systems. In total, our force protection programs generated incremental revenue of \$274 million as compared to 2018 results.

*Adjusted EBITDA and Adjusted EBITDA Margin:*

**Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

IMS's Adjusted EBITDA decreased by \$8 million, or 12.2%, from \$63 million for the year ended December 31, 2019 to \$55 million for the year ended December 31, 2020. Adjusted Margin decreased from 6.9% for the year end December 31, 2019 to 6.6% for the year ended December 31, 2020. This decrease in Adjusted EBITDA and margin reduction was attributed to cost growth on fixed price development program efforts including submarine power and propulsion system components for the U.S. Navy impacting EBITDA margins by \$37 million.

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

IMS's Adjusted EBITDA increased \$22 million, or 53.7%, from \$41 million for the year ended December 31, 2018 to \$63 million for the year ended December 31, 2019. The increase in Adjusted EBITDA was primarily driven by the increased revenue contribution resulting from our force protection programs. Adjusted EBITDA Margin increased from 6.7% for the year ended December 31, 2018 to 6.9% for the year ended December 31, 2019. The increase was driven by a reduction in general and administrative expenses as a percentage of revenue in 2019 as compared to 2018, creating volume leverage that increased overall profitability.

*Bookings:*

**Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Bookings increased by \$134 million, or 14.9%, from \$902 million as of December 31, 2019 to \$1,036 million as of December 31, 2020. This increase was driven by awards received to support the CVN 80/81 carriers generating incremental bookings of \$212 million as compared to the prior year. Further, our CUAS programs generated \$19 million of additional awards as those programs transitioned from development into full rate production. These increases were largely offset by a reduction of awards received on our TROPHY™ APS programs of \$195 million.

**Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

Bookings increased \$96 million, or 11.9%, from \$806 million as of December 31, 2018 to \$902 million as of December 31, 2019. The increase was driven by increased content awarded on our submarine programs with the U.S. Navy of \$60 million and incremental funding on the APS program with the U.S. Army generating \$16 million of additional bookings. This was offset in part by certain transport and logistics program transitions, including our bridging program which saw reduced order quantity as we transitioned from development to low-rate initial production awards reducing bookings by \$19 million.

*Backlog:*

**Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Backlog increased by \$451 million, or 58.3%, to \$1,225 million for the year ended December 31, 2020 from \$774 million for the year ended December 31, 2019. This was due to strong bookings driven principally by our awards to support the CVN 80/81 program (\$212 million) and increased unfunded backlog on our submarine power and propulsion system components and other hybrid drive programs by \$101 million.



### **Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

Backlog decreased \$60 million, or 7.2%, from \$834 million as of December 31, 2018 to \$774 million as of December 31, 2019, primarily due to revenue exceeding bookings on our APS program as we accelerated progress to rapidly deploy force protection capability to the U.S. Army. This was offset in part by incremental funding received on our submarine programs as noted above.

*Estimated Potential Remaining Contract Value:*

### **Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

IMS's estimated potential remaining contract value decreased by \$115 million, from \$2,777 million as of December 31, 2019 to \$2,662 million as of December 31, 2020. This was primarily attributed to receiving awards on our long-term contractual positions including our APS programs, which received funding of \$279 million during the year. The decrease was offset by our successful long-term contract awards for CUAS programs adding \$169 million to our estimated potential contract value.

### **Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

IMS's estimated potential remaining contract value decreased \$151 million attributed to funding received on our long-term contractual positions including on our military transportation and logistics programs of \$62 million, force protection programs of \$36 million and \$34 million on naval power programs.

## **Quarterly Results**

The following table sets forth selected unaudited quarterly results of operations data for each of the eight quarters in the period ended December 31, 2020. This data should be read in conjunction with our audited Consolidated Financial Statements and related notes included elsewhere in this prospectus. These quarterly operating results are not necessarily indicative of our operating results for a full year or any future period.

(Dollars in millions, except per share amounts)	2020				2019			
	Q4	Q3	Q2	Q1	Q4	Q3	Q2	Q1
Total revenues	\$ 826	\$ 719	\$ 650	\$ 583	\$ 906	\$ 685	\$ 602	\$ 521
Interest expense	15	17	17	15	20	16	15	14
Net earnings	47	15	13	10	43	21	5	6
Adjusted EBITDA <sup>(1)</sup>	117	56	45	50	91	63	45	35
Free cash flow <sup>(1)</sup>	339	1	43	(309)	283	23	(19)	(177)

(1) See “—Key Financial and Operating Measures—Non-GAAP Financial Measures” above for definitions of these measures. Adjusted EBITDA, Adjusted EBITDA Margin, Adjusted EPS, Leverage Ratio and free cash flow are non-GAAP measures. See “—Key Financial and Operating Measures—Non-GAAP Financial Measures” above for reconciliations of these measures to the most directly comparable financial measure calculated and presented in accordance with U.S. GAAP.

## **Liquidity and Capital Resources**

We endeavor to ensure the most efficient conversion of operating income into cash for deployment in our business and to maximize shareholder value through cash deployment activities. In addition to our cash position, we use various financial measures to assist in capital deployment decision-making, including cash provided by operating activities and free cash flow, a non-GAAP measure described in more detail below. We believe that the combination of our existing cash, access to credit facilities as described in *Note 11: Debt* and future cash that we expect to generate from our operations will be sufficient to meet our short and long-term liquidity needs. There can be no assurance, however, that our

business will continue to generate cash flow at current levels or that anticipated operational improvements will be achieved. We may also pursue acquisitions or other strategic priorities that will require additional liquidity beyond the liquidity we generate through our operations. Our cash balance as of December 31, 2020 was \$61 million compared to \$85 million as of December 31, 2019.

The following table summarizes our cash flows for the periods presented:

(Dollars in millions)	Year ended December 31,		
	2020	2019	2018
Net cash provided by operating activities	\$ 125	\$ 157	\$ 105
Net cash used in investing activities	(70)	(151)	(46)
Net cash used in financing activities	(80)	(1)	(30)
Effect of exchange rate changes on cash and cash equivalents	1	1	(2)
Net increase (decrease) in cash and cash equivalents	\$ (24)	\$ 6	\$ 27
Free cash flow <sup>(1)</sup>	\$ 74	\$ 110	\$ 65

(1) Free cash flow is a Non-GAAP measure. The reasons we use this Non-GAAP financial measure and its reconciliation to the most directly comparable U.S. GAAP financial measure is provided above under “—Key Financial and Operating Measures—Non-GAAP Financial Measures.”

#### Year Ended December 31, 2020 Compared to the Years Ended December 31, 2019 and 2018

##### *Operating Activities*

##### **Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

We generated cash from operating activities of \$125 million for the year ended December 31, 2020 as compared to \$157 million for the year ended December 31, 2019. This decrease was primarily attributed to an increase in working capital resulting from a reduction in our vendor payable obligations in December 31, 2020 as compared to the prior year. This resulted in cash usage of \$58 million. Additionally, we also generated higher accounts receivables driving a cash usage of \$35 million. This increase in working capital was partially offset by a \$65 million reduction in contract assets in connection with the achievement of billable milestones on development type programs, including our APS, which reduced contract assets by \$60 million during the year. In addition to the contract asset reduction, we also decreased working capital through the social security payroll tax deferral offered as part of the COVID-19 relief efforts.

##### **Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

We generated cash from operating activities of \$157 million for the year ended December 31, 2019 and \$105 million for the year ended December 31, 2018. The primary driver of cash inflow improvement is attributed to the increase in operating earnings noted above coupled with an increase in current liabilities including accounts payable of \$156 million as of December 31, 2019 as compared to December 31, 2018, generating additional cash from operating activities. This was largely offset by a \$166 million increase in contract assets related primarily to certain design programs for which we had not yet achieved billable milestones as of year end. The cash increase was further offset by our payments on finance interest-related expenditures which increased \$4 million from 2018 to a total of \$59 million in 2019, the majority of which were to our parent company, US Holding.

## ***Investing Activities***

### **Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Investing activities used \$70 million of cash during the year ended December 31, 2020 as compared to \$151 million during the year ended December 31, 2019. The \$81 million reduction in investing cash outflows is attributed to the 2019 loan of \$100 million issued to US Holding. The loan was repaid during the 2020 fiscal year and a subsequent loan was issued totaling \$115 million in December of 2020. The net cash outflow of the intercompany loans was \$15 million in 2020 compared to \$100 million in 2019.

### **Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

Cash used in investing activities was \$151 million for the year ended December 31, 2019 and \$46 million for the year ended December 31, 2018. The primary use of cash for investing activities is driven by a \$100 million intercompany loan to our parent company US Holding generated from excess cash on hand as of December 31, 2019, which was subsequently repaid in January of 2020. Additionally, we increased capital expenditures attributed to capacity expansions to support our recent program awards at our AST segment.

## ***Financing Activities***

### **Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Cash used in financing activities for the year ended December 31, 2020 and December 31, 2019 was \$80 million and \$1 million, respectively. Cash used in financing activities increased primarily as a result of the principal payment of our 4% term debt of \$50 million and \$15 million of principal reduction of the Daylight Term Loan.

### **Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

Cash used in financing activities for the year ended December 31, 2019 and December 31, 2018 was \$1 million and \$30 million, respectively. Cash used in financing activities was for principal payments on the term loan used to acquire Daylight Solutions of \$15 million and \$10 million, respectively, for 2019 and 2018. Additionally, in 2018 we paid \$13 million of contingent consideration to the former owners of Daylight Solutions predicated on the achievement of prenegotiated operational targets. These outflows were partially offset by additional borrowings made during the year.

## ***Free Cash Flow***

### **Year Ended December 31, 2020 Compared With Year Ended December 31, 2019**

Free cash flow decreased by \$36 million, or 32.7%, to \$74 million for the year ended December 31, 2020 as compared to \$110 million for the year ended December 31, 2019. This was primarily due to growth in operating working capital driven from a reduction in accounts payable of \$58 million and accounts receivable growth of \$35 million year over year. This was largely offset by reduction in contract assets of \$65 million as we completed development programs and transitioned them to production programs.

### **Year Ended December 31, 2019 Compared With Year Ended December 31, 2018**

Free cash flow increased \$45 million, or 69.2%, from \$65 million for the year ended December 31, 2018 to \$110 million for the year ended December 31, 2019. The increase in free cash flow was mainly due to the increases in cash provided by operating activities noted above partially offset by an increase in capital expenditures.

## Contractual Obligations

As of December 31, 2020, our contractual obligations were as follows:

(Dollars in millions)	Payments Due by Period				
	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Borrowings with related parties <sup>(1)</sup>	\$ 272	\$ 36	\$ 201	\$ 35	\$ —
Loans from banks	27	27	—	—	—
Operating leases	113	26	48	25	14
Finance leases and other <sup>(2)</sup>	252	14	28	28	182
Post-retirement obligations <sup>(3)</sup>	133	12	25	27	69
Purchase commitments <sup>(4)</sup>	1,062	937	115	10	—
<b>Total</b>	<b>\$ 1,859</b>	<b>\$ 1,052</b>	<b>\$ 417</b>	<b>\$ 125</b>	<b>\$ 265</b>

(1) Includes scheduled interest payments. For a discussion of certain recapitalization transactions that Leonardo S.p.A. and its affiliates will enter into in connection with this offering, see "Recapitalization."

(2) Finance leases and other includes a build-to-suit, failed sale leaseback asset obligation of \$49 million as of December 31, 2020. See *Note 11: Debt* of our Notes to Consolidated Financial Statements.

(3) Post-retirement obligations include those amounts we expect to pay out in benefits payments and are further explained in *Note 12: Pension and Other Postretirement Benefits* of our Notes to Consolidated Financial Statements.

(4) Purchase commitments include open purchase orders with vendors for which the Company is contractually obligated.

## Off-Balance Sheet Arrangements

As of December 31, 2020 and 2019, we had no significant off balance sheet arrangements.

## Recapitalization

To prepare for this offering and operation as a stand-alone public company, we have undertaken recapitalization initiatives to align our capital structure more closely with other U.S. public companies, including the expected repayment in full of our outstanding related-party borrowings of \$237 million and entry into financing arrangements providing for the issuance of \$450 million of third-party debt. The third-party debt is expected to consist of (i) the Term A Loan and (ii) the Bridge Loan, in each case subject to the consummation of this offering. We anticipate that the Bridge Loan will be repaid with the net proceeds from the issuance of unsecured senior notes following this offering. Any such unsecured senior notes would be offered pursuant to a separate offering memorandum and nothing contained in this prospectus shall constitute an offer to sell or solicitation of an offer to buy such unsecured senior notes. See "Recapitalization" and "Unaudited Pro Forma Consolidated Financial Information."

## Critical Accounting Policies and Estimates

The following is not intended to be a comprehensive list of all of our accounting policies. Our significant accounting policies are more fully described in *Note 1: Summary of Significant Accounting Policies* to the Consolidated Financial Statements. In many cases, the accounting treatment of a particular transaction is dictated by accounting principles generally accepted in the United States of America. Other areas require management's judgment to make estimates and assumptions that affect the reported amounts of assets and liabilities and the reported amounts of revenues and costs and expenses during the reporting period. Ultimately, actual amounts may differ from these estimates. We believe that critical accounting estimates have the following attributes: (1) they require management to make assumptions about matters that are uncertain at the time of the estimate; and (2) different estimates we

reasonably could have used, or changes in the estimates that are reasonably likely to occur, that would have a material effect on our consolidated financial condition or results of operations.

We believe the following critical accounting policies contain the more significant judgments and estimates used in the preparation of our Consolidated Financial Statements.

- Revenue Recognition and Contract Estimates
- Reviews for Impairment of Goodwill and Long-Lived Assets
- Pension Assumptions
- Income Taxes

#### ***Revenue Recognition on Contracts and Contract Estimates***

We recognize revenue from contracts with customers using the five-step model prescribed in ASC 606. Substantially all of our contracts are accounted for using the over time, cost-to-cost accounting method as determined by the ratio of cumulative costs incurred to date to estimated total contract costs at completion. We believe this is an appropriate measure of progress toward satisfaction of performance obligations as this measure most accurately depicts the progress of our work and transfer of control to our customers.

Revenue and cost estimates for substantially all over time contract performance obligations are reviewed and updated quarterly. Contract estimates are based on various assumptions to project the outcome of future events that can span multiple years. These assumptions include labor productivity and availability, the complexity of the work to be performed, the cost and availability of materials, the performance of subcontractors and the availability and timing of funding from the customer. Changes in estimates affecting sales, costs and profits are recognized in the period in which the change becomes known using the cumulative catch-up method. Under this method, the impact of the adjustment on profit recorded to date on a contract is recognized in the period the adjustment is identified. Revenue and profit in future periods of contract performance are recognized using the adjusted estimate. The aggregate impact of adjustments in contract estimates are \$77 million, \$55 million, and \$26 million for 2020, 2019, and 2018, respectively. The changes in estimates are primarily attributed to changes in our firm-fixed-priced development type programs. As changes happen in the design to meet required specifications, those changes often result in changes to the overall profitability of the programs. Our contract reviews are conducted at least quarterly in which we incorporate our best estimate to complete the program known at that point in time.

For further discussion, see *Note 2: Revenue from Contracts with Customers* to the Consolidated Financial Statements.

#### ***Reviews for Impairment of Goodwill and Long-lived Assets***

Goodwill represents the excess purchase price paid to acquire a business over the fair value of net assets acquired. We review goodwill for impairment annually at each of our reporting units or when changes in circumstances indicate that the carrying value may not be recoverable. Such circumstances include a significant adverse change in the business climate for one of our reporting units or a decision to dispose of a reporting unit or a significant portion of a reporting unit.

We use both qualitative and quantitative approaches when testing goodwill for impairment. When determining the approach to be used, we consider the current facts and circumstances of each reporting unit as well as the excess of each reporting unit's estimated fair value over its carrying value based on our most recent quantitative assessments. Our qualitative approach evaluates the business environment and various events impacting the reporting unit including, but not limited to, macroeconomic conditions (e.g., impact of COVID-19), changes in the business environment and reporting unit-specific events. If, based on the qualitative assessment, we determine that it is more likely than not that the fair value of a reporting

unit is greater than its carrying value, then a quantitative assessment is not necessary. However, if a quantitative assessment is determined to be necessary, we estimate the fair value of the reporting unit and compare that to its carrying value. To the extent the carrying value exceeds the fair value of a reporting unit, an impairment is recorded for the amount equal to this excess.

Our estimate of fair value is based primarily on the discounted projected cash flows of the underlying operations and requires the use of judgment by management. The process requires numerous assumptions, including the timing of work embedded in our backlog, our performance and profitability under our contracts, our success in securing future business and the appropriate risk adjusted interest rate used to discount the projected cash flows. Due to the variables inherent in our estimates of fair value, differences in assumptions may have a material effect on the result of our impairment analysis.

As of December 31, 2020 and 2019, we completed quantitative assessments for our reporting units and the fair value of each reporting unit exceeded its carrying value. As a result, no impairments to goodwill were recorded.

Long-lived assets held for use, which primarily includes finite-lived intangible assets and property, plant and equipment, are evaluated for impairment whenever events or circumstances indicate that the undiscounted net cash flows to be generated by their use over their expected useful lives and eventual disposition are less than their carrying value. The long-term nature of these assets requires the estimation of their cash inflows and outflows several years into the future and only takes into consideration technological advances known at the time of the impairment test.

### ***Pension Assumptions***

Our defined-benefit pension and other post-retirement benefit costs and obligations depend on several assumptions and estimates. The key assumptions include interest rates used to discount estimated future liabilities and projected long-term rates of return on plan assets. The expected long-term rate of return is based on the market expectations at the beginning of the period for returns over the entire life of the related obligation. These retirement plan assumptions are based on our best judgment, including consideration of current and future market conditions. In the event any of the assumptions change, pension and other post-retirement benefit cost could increase or decrease. For further discussion about our retirement plan assumptions, see *Note 12: Pension and Other Postretirement Benefits* to the Consolidated Financial Statements.

### ***Income Taxes***

We account for income taxes under the asset and liability method in accordance with the accounting standard for income taxes. The asset and liability method requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the carrying amounts and tax bases of assets and liabilities. Under this method, changes in tax rates and laws are recognized in income in the period such changes are enacted.

We record net deferred tax assets to the extent we believe these assets will more likely than not be realized. In making such determination, we consider all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, tax planning strategies and recent results of operations. If we were to determine that we would be able to realize our deferred income tax assets in the future in excess of their net recorded amount or would no longer be able to realize our deferred income tax assets in the future as currently recorded, we would make an adjustment to the valuation allowance which would decrease or increase the provision for income taxes.

The provision for federal, state, foreign and local income taxes is calculated on income before income taxes based on current tax law and includes the cumulative effect of any changes in tax rates from those used previously in determining deferred tax assets and liabilities. Such provision differs from the amounts

currently payable because certain items of income and expense are recognized in different reporting periods for financial reporting purposes than for income tax purposes.

We recognize liabilities for uncertain tax positions when it is more likely than not that a tax position will not be sustained upon examination and settlement with various taxing authorities. Liabilities for uncertain tax positions are measured based upon the largest amount of benefit that is greater than 50% likely to be realized upon ultimate settlement. We recognize interest and penalties related to uncertain tax positions in our income tax expense.

As of December 31, 2020 and December 31, 2019, we had gross deferred tax assets of \$154 million and \$178 million, respectively, and deferred tax asset valuation allowances of \$11 million and \$14 million, respectively. The deferred tax assets principally relate to benefit accruals, inventory obsolescence, tax benefit carryforwards and contract reserves. The deferred tax assets as of December 31, 2020 and December 31, 2019 include \$39 million and \$69 million, respectively, related to tax benefit carryforwards associated with net operating losses.

### ***Accounting Standards Updates (ASU)***

See *Note 1: Summary of Significant Accounting Policies* to the Consolidated Financial Statements for information regarding accounting standards we adopted in 2019 and other new accounting standards that have been issued by the Financial Accounting Standards Board but are not effective until after December 31, 2020.

## **Quantitative and Qualitative Disclosure of Market Risks**

### ***Equity Risk***

We currently have limited risk related to fluctuations in marketable securities. Outside of pension assets which are disclosed in *Note 12: Pension and Other Postretirement Benefits* to the Consolidated Financial Statements, the only investments the Company holds are overnight money market accounts. Fluctuations are unlikely and would have limited impact on the financial statements of the Company.

### ***Interest Rate Risk***

We are exposed to interest rate risk on variable-rate borrowings under our revolving credit facilities, for which no amounts were outstanding as of December 31, 2020. Our remaining debt facilities are fixed rate obligations and not subject to fluctuations in interest rates.

### ***Foreign Currency Risk***

In certain circumstances, we may be exposed to foreign currency risk. However, as the overwhelming majority of our revenue is derived from U.S. sources directly as a prime contractor or indirectly as a subcontractor for the U.S. government as end-customer, we have limited foreign currency exposure. Currently our exposure is primarily with the Canadian dollar and limited to receivables owed of \$53 million as of December 31, 2020. A 10% fluctuation in exchange rates would not have a material impact on our financial statements. We do not enter into or issue derivative instruments for trading purposes.

### ***Inflation Risk***

We have generally been able to anticipate increases in costs when pricing our contracts. Bids for longer-term firm fixed-price contracts typically include assumptions for labor and other cost escalations in amounts that historically have been sufficient to cover cost increases over the period of performance.

## BUSINESS

### Overview

DRS is a leading provider of defense products and technologies that are used across land, air, sea, space and cyber domains. Our diverse array of defense systems and solutions is offered to all branches of the U.S. military, major aerospace and defense prime contractors, government intelligence agencies and international military customers for deployment on a wide range of military platforms. We focus our capabilities in areas of critical importance to the U.S. military, such as sensing, electronic warfare (“EW”), cyber security, network computing, communications, force protection and electrical power conversion and propulsion. As a mid-tier defense company with a portfolio that includes internally developed proprietary intellectual property (“IP”) and offerings at the component, sub-system and system level, we are able to serve as either prime contractor or a sub-contractor on key contracts, affording us flexibility in how we approach the market.

Our alignment with the nation’s top defense priorities has allowed us to achieve a 12% compounded annual growth rate (“CAGR”) in revenues from the year ended December 31, 2016 through the year ended December 31, 2020. This growth, which exceeded the DoD budget CAGR of 5.3% during such period and drove our annual revenue to approximately \$2.8 billion for the year ended December 31, 2020, was driven by organic growth. During the same period, our net earnings (loss) improved by \$247 million to \$85 million, our operating earnings grew \$178 million to \$181 million and our Adjusted EBITDA grew \$117 million to \$268 million (CAGR of 16%). Adjusted EBITDA is a non-GAAP measure. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Key Financial and Operating Measures—Non-GAAP Financial Measures” for a reconciliation of Adjusted EBITDA to net earnings.

We have a 50-year legacy of designing and manufacturing innovative and differentiated products and solutions for military applications. From our earliest sonar systems that were instrumental in detecting enemy submarines, to today’s best-in-class electro-optical sensors, we have continually developed advanced technologies to address complex military challenges. Throughout much of our history, we have targeted our investments towards the highest growth areas of the DoD defense budgets. Today, we employ approximately 6,500 people including a substantial number of highly trained engineers and personnel with security clearances to support classified programs for the U.S. military.

We focus on products, systems and solutions that can be adapted for installation on a wide range of military platforms. This allows us to leverage our technology investments to expand revenue opportunities. Our high-technology solutions are designed to transition from one military platform to another. In addition, we have a significant installed base of products and solutions, which allows us to enhance revenue opportunities by providing upgrades to existing platforms. This gives us a resilient position to offer new solutions and technology in changing budget environments. Our growth has been facilitated by our longstanding relationships and position as a trusted partner with the U.S. military, intelligence community and industry customers. Together, these characteristics allow us to pivot quickly to address emerging needs for our customers and generate growth opportunities in today’s dynamic defense market.

We operate in three segments: Advanced Sensor Technologies, Network Computing & Communications and Integrated Mission Systems. We have achieved significant growth over the past five years by aligning our investments and technology development to address the greatest threats to U.S. defense interests.

**Advanced Sensor Technologies:** Our Advanced Sensor Technologies segment provides world-class electro-optical sensor technologies, laser systems, EW systems and intelligence and surveillance solutions to U.S. military and intelligence community customers. We are a leading provider of ground vehicle targeting and surveillance sensors, including electro-optical and advanced detection systems. We are also a leading provider of soldier sensor systems in high priority modernization areas such as infrared imaging and precision targeting systems. Our infrared focal plane array foundry is recognized



as a leading provider of high performance and small sized cryogenically cooled and uncooled detector arrays. We are also a leading and world-recognized provider of signals intelligence high-performance radio frequency receivers and transceivers for U.S. and international customers. Our quantum cascade laser technology has promising military and commercial medical applications. Collectively, these sensor technologies provide our warfighters with a distinct battlefield advantage.

**Network Computing & Communications:** Our Network Computing & Communications segment provides advanced defense electronics solutions across warfare domains. Our technologies and products are used on legacy and new military platforms, end-to-end network communication systems, network services and cyber solutions. We are a leading provider of ruggedized computing equipment, having provided advanced tactical computing units for ground combat vehicles and command post operations for more than two decades. During this period we have delivered more than 125,000 units. For the U.S. Navy and its allies, we provide naval computing infrastructure, network and data distribution, radar and rugged naval control systems, which are present on naval surface and subsurface combatant vessels. Across the full spectrum of our network computing capabilities, we have leadership positions at both the product and sub-systems levels. Our global communications network is a worldwide network of terrestrial and satellite bandwidth that ensures our customers' data is secure and reliable. As a result of this capability, we are positioned as one of the leading providers of secured commercial satellite communications to the U.S. military.

**Integrated Mission Systems:** Our Integrated Mission Systems segment provides critical force protection, vehicle integration, transportation and logistics and electrical conversion and ship propulsion systems to the U.S. military. Our force protection systems protect service members and military assets from evolving threats and include solutions for counter-unmanned aerial systems, short-range air defense systems and active protection systems on ground vehicles. In 2018, we were awarded the Expedited Active Protection System program by bringing the TROPHY™ Active Protection System ("APS") to the U.S. market, making us the leading U.S. provider of active protection systems for the U.S. Army. We were also awarded the Initial Maneuver Short-Range Air Defense ("IM-SHORAD") Mission Equipment Package Program for the U.S. Army that year, culminating an 18-month cycle from development to customer delivery. We have military transportation and logistics offerings and ground vehicle integration capabilities to support U.S. forces in a wide range of operational environments. We provide power conversion and propulsion systems for the U.S. Navy's top priority shipbuilding programs, building on our legacy of providing power components and systems for nearly all naval combat vessels for three decades, positioning us to continue as a leading provider of electrical ship propulsion systems and components for the U.S. Navy.

## **U.S. Defense Market Trends and Market Opportunities**

Our core markets have experienced strong growth. The DoD defense budget has grown at a CAGR of 5.3% from 2016 to 2020, reflecting the shift of the DoD's priorities from a focus on global terrorism to emerging threats from more sophisticated and technologically advanced adversaries requiring enhanced capabilities across the DoD. Additionally, we foresee growth opportunities in foreign military sales and direct commercial sales, particularly as international allies require similar force modernization.

The DoD is our largest customer and, for the year ended December 31, 2020, accounted for approximately 84% of our business as an end-user, with revenues principally derived directly or indirectly from contracts with the U.S. Army and U.S. Navy, which represented 43% and 32%, respectively, of our total revenues for the year ended December 31, 2020. The stated U.S. National Defense Strategy is to "compete, win and deter" in a challenging and complex international security environment. The current landscape is defined by rapid technological change and competition from emerging peer and near-peer adversaries who are nation states that are becoming great powers. Every domain of U.S. military advantage is expected to be contested, including air, land, sea, space and cyberspace. U.S. forces facing these new threats are in need of modernization as readiness has been strained following nearly two decades of continuous conflict with both traditional and novel adversaries. In order to face these

challenges, the U.S. military will likely need to balance limited resources between new high-cost technological capabilities and upgrades of existing equipment.

In today's threat environment, the U.S. military is positioning itself for non-stop, continuous competition against these rising nation state threats. Military services are increasingly moving towards multi-domain operations that now include both space and cyberspace domains in addition to the air, land and sea domains. The creation of the U.S. Space Force is also expected to drive new requirements for high technology defense capabilities, including increased space sensing and evolution of communications approaches. Even as new spending priorities shift towards addressing high-end threats, the U.S. military knows that it cannot compete with yesterday's weapons or equipment. Military modernization programs and priorities are expected to provide both opportunities for new solutions and for upgrades to existing platforms. We believe that companies with an existing installed base of hardware will be able to perform upgrades to provide modernization solutions at a lower cost. Companies with strong customer relationships and outstanding execution will more effectively maintain program positions.

In this new military environment, U.S. forces are seeking the ability to sense further from a greater distance and enhance their reach across the spectrum of warfare. Increased use of sensor technologies enables forces to detect threats further and more quickly and deliver rapid, forceful responses. Sensors and laser systems are expected to enable optionally manned and autonomous platforms for the future.

The need for greater situational understanding for the warfighter also drives the need for increased data and communications bandwidth to and from command centers to forward-positioned military platforms and dismounted soldiers. Network computing and communications systems need to provide deployed forces with access to secure data to promote information-sharing and situational understanding for faster decision-making. Battlefield management systems and individual soldier communications systems require secure rugged computing solutions and are becoming increasingly interoperable with current combat air forces and naval computing infrastructure. Encrypted data and cyber protection capabilities aim to ensure that the data U.S. forces receive is trusted and protected from enemies. This capability is intended to allow forces to be more mobile and geographically dispersed while operating with immediate access to trusted information. Satellite communications systems also provide data to U.S. warfighters around the globe and are projected to increasingly utilize satellite constellations at all altitudes for redundancy, lower latency, expanded bandwidth and security.

U.S. forces are in need of greater force protection technologies. Emerging requirements for counter-unmanned aerial systems, active protection, infrared countermeasures and air defense systems require rapid deployment to keep U.S. military platforms and personnel safe from growing threats. The U.S. military is also focusing efforts on transportation and logistics capabilities, ensuring that their trained and equipped personnel and supplies can make it to the battlefield wherever that may be. All of the increased sensing, self-protection, directed energy, communications and computing needs for the warfighter require significantly higher levels of mobile power than in the past. Electrical power generation, conversion, storage and distribution and on-board vehicle power solutions will provide U.S. forces the energy they need in the future to win in this era of competition.

The U.S. military budget accounts for nearly 40% of the world's defense spending and foreign military allies often select U.S. military solutions to train, equip and modernize their forces to enhance interoperability. Beyond the opportunity for direct commercial and foreign military sales to these foreign countries, many allies leverage U.S. funding and equipment, providing opportunities for U.S. defense contractors offering solutions that can be sold internationally.

The global community is in a period of rapid technological change and new commercial technologies may change society and, ultimately, the character of conflicts. We believe that investing in high technological capabilities, developing proprietary intellectual capability, as well as integrating leading-edge commercial technology into our solutions will provide us with a competitive advantage. New acquisition programs are expected to seek innovative solutions. The need for innovation is more critical than ever, and to accelerate innovation, the DoD has deployed more rapid acquisition methods. We

believe that these methods will provide greater opportunities for companies with proven abilities to quickly develop and deploy new technologies. The DoD has placed a high priority on defense procurement reform to speed up the development of new key capabilities, increase responsibility and accountability for major acquisition programs and reduce acquisition risk. As a result, we believe that mid-tier companies, such as DRS, with proven technological capabilities and an agile decision-making structure are positioned to rapidly respond to emerging requirements.

## **Our Products and Solutions**

The DoD is placing its focus and investment priorities in several platforms and capabilities where we have compelling offerings and market share. These offerings include: Ground Vehicle Sensors; Soldier Sensor Systems; EW & Cyber; Network Computing; Communications; Force Protection; Transportation and Logistics; and Electrical Power & Propulsion. These directly align with our three segments: Advanced Sensor Technologies, Network Computing & Communications, and Integrated Mission Systems. In these areas, we have distinguishing capabilities, core technologies and IP underlying our product portfolio that we believe provide us with a sustainable differentiation from our competitors. We believe that our installed base of existing products and platform-agnostic offerings provide an opportunity for our business to continue to grow.

### ***Advanced Sensor Technologies***

Our Advanced Sensor Technologies segment provides world-class cryogenically cooled and uncooled infrared sensor technologies, laser systems, EW systems and intelligence and surveillance solutions to the U.S. military and intelligence community customers. Our products and solutions have significant capabilities and core technologies to meet the warfighter's need for increased battlefield awareness and longer range sensing. Our infrared focal plane array foundry produces cooled and uncooled infrared sensors and our IP provides us with key technology differentiators and builds upon our long legacy of market-leading technology.

*Ground Vehicle Sensors* – The U.S. military has identified specific needs for advanced sensor technology for ground vehicles, including electro-optical and advanced detection capabilities to enhance battlefield understanding, vehicle protection and vehicle targeting capabilities. Our market-leading sensor products include third-generation infrared sensing, fused sensing and sensors for threat detection and situational awareness, which we believe position us well for these opportunities. We are a leading provider of uncooled focal plane arrays and brownout solutions (which are sensors that can see through blowing sand). We are also a leader in ground vehicle sensor sighting systems led by our third-generation infrared imaging systems.

*Soldier Sensors* – Our complement of soldier sensor systems employs state-of-the-art sensors, precision targeting capabilities and optics designed to improve infantry combat effectiveness. We have produced a family of innovative electro-optical and infrared systems for soldiers, from our legacy imaging system, the Thermal Weapons Sight, to the next generation of thermal weapon sights being produced today. We believe that our current position on next-generation soldier precision targeting programs will enable us to compete effectively in this area of growing need. Our uncooled sensor technology also positions us well to support the future of soldier goggle systems.

*EW & Cyber* – We have significant technological capabilities and program experience in EW & Cyber and offer integrated capabilities for multi-domain operations to supplement kinetic warfare. We have developed mounted and dismounted EW systems, EW software and training systems and intelligence solutions across a broad range of platforms. We believe that our capabilities in integrated mounted and dismounted ground EW, exploitation and cyber-based multi-domain operations position us well in this area of growing DoD priority. We have leveraged international EW programs to develop our capabilities for DoD offerings and have invested to meet developing U.S. Army and U.S. Marine Corps requirements for integrated solutions to address threats which are emanating from peer and near-peer adversaries.

*Force Protection – Aircraft Survivability* – Our Advanced Sensors Technology segment also features quantum cascade laser (“QCL”) technology which, along with our advanced two-color infrared sensors, have enabled us to support a high-profile U.S. Navy contract for advanced systems to protect aircraft from ground-launch missiles. We are also a critical partner on the U.S. Army’s common infrared countermeasures program and the next generation missile warning program.

*Other Advanced Sensor Technologies Capabilities* – Our aircraft training instrumentation systems were selected for the high-profile Joint Strike Fighter program that has been the leading U.S. and allied forces military air platform in development over the past two decades. We are also a leading provider of the aircraft training instrumentation which deploy on both legacy and modern aircraft and are required for aircraft training programs.

### **Network Computing & Communications**

Our Network Computing & Communications segment provides an array of network computing products and sub-systems that bring trusted and resilient communications and computational resources to U.S. and international military forces, allowing them to rapidly share data and improve situational understanding. We provide trusted computing systems for ground vehicles, naval computing infrastructure, network and data distribution programs, rugged naval computational and control systems and networked communications. We also provide terrestrial and satellite communications for the U.S. Army, U.S. Navy, U.S. Special Forces, and intelligence communities.

*Network Computing* – The U.S. military has recently shifted its computing paradigm for command, control, communications, computers, intelligence, surveillance and reconnaissance to include cyber capabilities. Our Mounted Family of Computing Systems (“MFoCs”) and MFoCs-II have earned us a reputation as a leading provider of mounted battle management systems hardware in the U.S. We have invested in cyber defense and trusted computing capabilities over the past several years to protect information at the edge of the battlefield. We have also transformed our legacy of naval display and computing equipment over the past several years, to secure a position as a leading provider of surface combat system components, submarine combat systems and command and control system components. We are a leading provider of naval ship communications, integrated logistics support and sustainment and manufacturing services to U.S. and allied military customers. We hold a leading market share in Command, Control, Communications, Computers and Intelligence (“C4I”) programs for the U.S. Navy, including those that will be upgraded as the fleet continues to modernize. For submarines, we provide hardware which is planned to be upgraded continuously over a two-year cycle. In addition, our joint venture, Advanced Acoustic Concepts, LLC (“AAC”), focuses on underwater products, acoustic training systems, and related products and services.

*Communications* – We are contracted on two of the U.S. military’s top five satellite communications programs, including its largest, serving special operations forces with terrestrial and space bandwidth. This long-standing program provides secure and reliable communications for the U.S.’s forward-deployed military forces across the globe, and is well positioned to meet future needs. Our contracts on these programs make us one of the largest satellite communications providers for the U.S. military. We believe that our legacy and outstanding reputation with the U.S. military will enable us to continue to be a leading communications provider for all DoD services.

### **Integrated Mission Systems**

Our Integrated Mission Systems segment supports the U.S. military’s need to deter and defend against increasingly lethal adversaries through a wide range of force protection solutions, integrated mission equipment, transportation and logistics products, naval power technologies and forward-deployed electrical power solutions. This segment enables us to maximize our customer offerings by integrating our products and systems onto platforms. We believe that our leading position in naval electrical power and propulsion will position us to help meet the U.S. military’s future electrical power needs as it increasingly deploys high technology capabilities to its forces.

*Force Protection* – DRS is an integrator of systems in ground vehicles, including reconnaissance and surveillance, mission support and vehicle survivability and protection. Protecting U.S. service members and valuable defense assets is always a top DoD priority. To help accomplish this mission, we have a family of key force protection systems, including counter-unmanned aerial systems and portable ground radar, active protection systems, modular combat vehicle turrets and stabilized sensor suites. We believe that our record providing the TROPHY™ APS to the U.S. Army enhances our reputation and positions us well to provide future vehicle protection systems. Our short-range air defense mission equipment package and mounted counter-unmanned aerial systems integrate market-leading technologies that are ready to rapidly deploy to the field in upcoming competitive pursuits.

*Transportation and Logistics* – DRS is a provider of transportation and logistics solutions for the DoD, including bridging systems, cargo loaders and trailers. Our Tunner and Halvorsen programs have provided the U.S. Air Force with rapidly deployable, high-reach mechanized aircraft loaders that can lift up to 60,000 and 25,000 pounds, respectively, of cargo onto military aircraft. The Joint Assault Bridge program positions us well as the U.S. Army is looking to expand its tactical bridging capabilities. We believe that our legacy position in heavy military trailers will allow us to win new opportunities as the U.S. Army looks for increased solutions. We also have capabilities in military fuel and water handling and distribution which can support U.S. military forces in a variety of challenging forward deployed environments.

*Electrical Power & Propulsion* – DRS is a leading provider of next generation electrical propulsion components and systems for the U.S. Navy, with significant capabilities to service the fleet's future needs, including on the Columbia-class submarine program which is integral to the United States' deterrence strategy and among its highest priority programs. Beyond electrification of its fleet, the U.S. Navy will require increased power to expand and modernize its vessels, including for the introduction of laser weapons. This increased power demand will require improved power generation, storage, conversion, management and distribution, which align with the core competencies of this segment.

## **Our Competitive Strengths**

As a diverse, defense technology company that is primarily focused on U.S. military programs, we have significant attributes that make us well positioned in the market. With a heritage of excellence in defense products, systems and solutions, we have transformed ourselves into a leading defense technology company with capabilities in sensing, electro-optics and laser systems, a critical provider of trusted network computing and communications systems and a key leader in integrated mission systems. We believe that we are positioned to grow our market position as a leading mid-tier U.S. defense technologies provider.

### ***Our innovative portfolio is well positioned for core platform wins.***

Over the past five decades, DRS has advanced its portfolio through focused innovation, targeted investments, selective partnerships and mergers and acquisitions. DRS has solutions for a number of military platforms and serves the branches of the U.S. military, and competes at the prime contractor, systems, supplier, or component level. Our core set of defense technologies and capabilities have applications that cross our three segments, allowing us to leverage research and development (“R&D”) and IP across multiple product lines, platforms and end markets. We also provide higher-value integrated sub-systems and systems and have a goal of increasing scope and market share by integrating our own products and technologies.

### ***Our portfolio of defense technologies is strategically aligned with key DoD priorities.***

We believe that our product and technology portfolio aligns with rising great power competition needs and modernization efforts, which are high priorities for DoD spending. Our technology portfolio and knowledge of the U.S. military enable us to win positions on key programs and adapt quickly to changing

customer dynamics. Our size and lean management structure allow us to shift our focus to changing priorities rapidly to best serve our customers' growing needs. Our recent execution performance in short-range air defense exemplifies this ability, as we were able to rapidly develop and field new technology to address urgent needs of the warfighter in an extremely short procurement cycle.

***We hold an embedded position on key defense platforms and with prime contractors, supported by our installed base of existing products spanning U.S. Army, U.S. Navy and U.S. Air Force platforms.***

Our current installed base of existing products spans over 300,000 computer and display systems that are fielded globally, approximately 60,000 enhanced driver vision systems for military combat vehicles, over 50,000 thermal weapon systems and critical naval computing infrastructure and technology on every U.S. naval combatant vessel in service. The notable platforms for this installed base include: surface ships, submarines, tracked and wheeled ground vehicles, fixed and rotary wing aircraft, unmanned aircraft, operating bases, and commercial vehicles and facilities. This installed base of existing products provide us opportunities for upgrades and new business that leverages these solutions.

***Our record of growth should drive profitability due to program lifecycle evolution, sole source positions and operational efficiencies.***

Over the past five years through 2020, we have had a revenue CAGR of 12%, operating earnings expanded by \$178 million and our Adjusted EBITDA Margin has increased to 9.6%. We have accomplished this through key program wins and sole-source positions, including prominent positions on the Columbia-class submarine program, MFoCS ruggedized computing battle management program, next generation of thermal weapon sights and our active protection system awards. Going forward, we anticipate that recent investments will drive profitability expansion and corresponding cash flow generation. As our program lifecycle in several key programs shifts from lower-margin, fixed-price development efforts to production, and topline growth brings more operational efficiencies, we expect to improve margin. Across our business, our continuous improvement culture is embodied in our Operational Excellence initiative called "Always Performing For Excellence," or "APEX," which strives to reduce cost and improves efficiencies while increasing the quality of our products and services.

***Our highly experienced management team and talented workforce have transformed DRS.***

Our management team has transformed DRS into the market-leading, high-growth, technology company it is today by focusing attention and investment on the fastest growing areas of the DoD budget. We have done this through an active portfolio management process that targeted investment to growing technological capabilities and acquisitions of smaller accretive companies that fill key strategic gaps in our portfolio, and by creating partnerships or joint ventures to supplement our own IP. The result of these efforts has led DRS to be well positioned in the U.S. defense market. Our management team has an average tenure of 15 years with the Company and nearly 30 years in the industry.

Our work force of approximately 6,500 people is highly innovative and we maintain a culture that fosters and rewards growth, problem-solving, technology development and process improvements. We have approximately 1,350 world-class engineers highly trained to work on programs in sensing, electro-optical infrared systems, laser systems, network computing, communications systems, integration and power propulsion. Our employees maintain over 2,000 security clearances to allow engineers and management to carry on business activities for our customers' classified programs. Our strong commitment to diversity, inclusion, succession planning and training has fostered a highly collaborative and motivated work force. Our human resources policies and benefits have been designed to allow us to recruit and retain top talent.

***We are focused on sustainability and diversity.***

We strongly believe that in order to succeed as a company, we must remain a strong and positive contributor to the communities where we do business, and the greater world around us. Sustainability to

us means taking important steps towards protecting the environment, engaging in corporate social responsibility, ensuring a safe work force and promoting diversity. We have enacted a sustainability risk management model to take action towards responsible consumption. We have focused our corporate giving program on military veterans and have initiated a program called MyCommunity that matches donations to local charities and provides paid volunteer hours to employees. We created a Diversity Advisory Group to improve our diversity and inclusiveness so that we look like the communities in which we operate. We have targeted increases in minority hiring and women in management and overall women in the workforce, which is 2.6% higher than our industry average.

## **Our Growth Strategy**

Our growth strategy is focused on four pillars: targeting investment to drive organic growth; executing on our programs to enhance profitability; actively managing our portfolio for optimization; and taking care of our people. Our goal is to grow and increase margins faster than the overall defense market through focused market selection, technology differentiation and operational excellence. Our vision is to be the best mid-tier defense technology company in the U.S. market.

### ***Targeting Investment to Drive Organic Growth***

We strategically select the markets where we compete and the programs on which we bid.

- We target programs in markets where we have strong core technology and where the DoD is focused. We seek to compete only in the areas in which we have a technological or market advantage, and which will attract funding. As an example, our core technology in high-performance receivers/transceivers is sought after by our customers for their wide-bandwidth and high signal dynamic range. These features are required for modern EW systems being developed for the U.S. Army, U.S. Marine Corp. and other customers to capture, exploit and/or disrupt modern signals.
- We target our investments in core technologies in areas of high market growth. Our investments fill gaps, create leading market offerings and make capital improvements to our business. We are also awarded, and leverage, significant customer research and development funding to complement our investments.

### ***Executing on Our Programs to Enhance Profitability***

We remain focused on continuing to drive operational enhancements and efficiencies, which we believe will result in improved profitability over time. We believe that our world-class technology and innovative solutions coupled with the transition of development programs into production will serve as the foundation for continued profitable growth.

- We believe that outstanding performance and timely execution on our programs will win us new business and lead to profitable growth, including new opportunities for follow-on orders which will add to our growing production base. Our recent short-range air defense program is an example of a program that we were able to win because of our reputation with the customer and our ability to quickly react to their needs.
- Integrated systems offerings of our products and systems should further expand margins as we continue to grow the topline. Our Integrated Missions Systems business, for example, has strong integration capabilities which will enable us to grow content on programs as we increase our role from smaller sub-systems into full systems integration.
- Successful execution on key development programs in early phases is expected to drive a transition to higher margin business in production, bringing sustained profitable success. Our Columbia-class submarine program is an example of a fixed-price development program that we

invested in while recognizing that it will deliver long-term profitable growth, beginning in 2021, when it transitions into production.

- Our APEX program focuses on the achievement of operational savings in production, supply chain and our overall cost structure. The APEX program's goal is to strive for continuous improvement through unification of our business practices, tools and metrics, ongoing employee training and innovation. Commitment to excellence requires us to challenge ourselves to exceed our customers' expectations. A culture of continuous improvement will allow us to improve our efficiency and increase our margins.

#### ***Actively Managing our Portfolio for Optimization***

We manage our portfolio to optimize our growth in areas where we have the strongest core technology base, where we have a competitive cost structure and where the defense market is growing.

- DRS has a portfolio of products and services that we believe are positioned to move up the value chain to provide sub-systems and integrated systems and solutions. We regularly assess our portfolio to ensure strong alignment with our customers' needs and priorities and consider accretive acquisitions in areas where we have strategic gaps to address our customer's needs.
- We employ a strategy of active IP management to acquire technologies and IP through partnerships, teaming arrangements, strategic licenses and other business arrangements. This active IP management strategy allows us access to new technologies in a disciplined manner to maintain the strength of our diversified portfolio.

#### ***Continue to Take Care of Our People***

We seek to recruit and retain the highest caliber of talent through competitive pay and benefits packages, diverse and inclusive personnel policies and fostering an innovative and modern workforce.

- We strive to maintain the highest ethical standards and foster a collaborative workplace to ensure a strong culture in our people.
- We constantly assess and make thoughtful changes to our personnel practices, including changes to our pay and benefits packages and increased training and growth opportunities, to ensure that we attract and retain top talent.
- We have implemented a strong diversity and inclusion program to ensure that our workforce looks like the communities in which they operate. This helps us to bring diverse ideas and perspectives to decision-making and problem-solving and allows us to draw from the largest pool of available talent.

#### **History of the Company**

DRS was founded in 1969, in Mount Vernon, New York, as Diagnostic Retrieval Systems, and soon became best known by its acronym, DRS. In 1981, we first became a publicly traded company. Over the subsequent decades, DRS experienced a period of rapid growth driven in large part by numerous acquisitions. In 2008, our stock ceased to be publicly traded when we were acquired by the Italian-headquartered Finmeccanica S.p.A. (now known as Leonardo S.p.A.) and we subsequently rebranded ourselves as Leonardo DRS. Since the Leonardo acquisition, we have operated under agreements with the DoD and related security policies in order to limit our foreign parent's ability to control our business operations.

#### **Governance Structure**

Following completion of this offering, we expect that Leonardo S.p.A. will indirectly hold 78.0% of our common stock through US Holding (or 74.7% if the underwriters exercise their option to purchase



additional shares from the selling stockholder). As a U.S. defense contractor with high level personal and facility security clearances, DRS, US Holding and Leonardo S.p.A. have entered into an agreement with the DoD to mitigate against the potential for undue foreign ownership control and influence ("FOCI") on the performance of classified programs by implementing various limitations on US Holding's and Leonardo S.p.A.'s rights as the direct stockholder and ultimate foreign parent company of DRS, respectively. Specifically, US Holding has authorized certain cleared US persons to operate as its proxies and exercise the key prerogatives of stock ownership. The proxy agreement requires that DRS have the financial and operational ability to operate as an independent entity under an independent board of directors, subject to certain limited, enumerated consent rights of the majority stockholder (including material mergers and acquisitions and incurrence of debt). For additional information, see "Certain Relationships and Related Party Transactions—Transactions with Leonardo S.p.A. Affiliates—Proxy Agreement."

### **Our Ultimate Parent**

Leonardo S.p.A., a global high-technology company, is among the top ten world players in Aerospace, Defense and Security and Italy's main industrial company. Organized into five business divisions, Leonardo S.p.A. has a significant industrial presence in Italy, the United Kingdom, Poland and the USA, where it also operates through subsidiaries such as Leonardo DRS (defense electronics), and joint ventures and partnerships: ATR, MBDA, Telespazio, Thales Alenia Space and Avio. Leonardo S.p.A. competes in the most important international markets by leveraging its areas of technological and product leadership (Helicopters, Aircraft, Aerostructures, Electronics, Cyber Security and Space). Listed on the Milan Stock Exchange (LDO), in 2020 Leonardo S.p.A. recorded consolidated revenues of €13.4 billion and invested €1.6 billion in Research and Development. The group has been part of the Dow Jones Sustainability Index ("DJSI") since 2010 and is named as sustainability global leader in the Aerospace & Defense sector of DJSI for the second year in a row in 2020.

### **Development**

We conduct research and development ("R&D") activities using our own funds (referred to as company-funded R&D or independent research and development ("IR&D")) and under contractual arrangements with our customers (referred to as customer-funded R&D) to enhance existing products and services and to develop future technologies. R&D costs include basic research, applied research, concept formulation studies, design, development, and related test activities. IR&D costs are allocated to customer contracts as part of the general and administrative overhead costs and generally recoverable on our customer contracts with the U.S. Government. Customer-funded R&D costs are charged directly to the related customer contract. Substantially all R&D costs are charged to cost of revenues as incurred.

We recorded revenues for customer-funded R&D of approximately \$247 million, \$177 million and \$148 million for the years ended December 31, 2020, 2019 and 2018, respectively. Such customer-funded activities are primarily the result of contracts directly or indirectly with the U.S. government. We also invest in internal R&D. Expenditures for internal R&D amounted to approximately \$41 million, \$31 million and \$29 million for the years ended December 31, 2020, 2019 and 2018, respectively. Additionally, we employ a strategy of active IP management to acquire technologies and IP through partnerships, teaming arrangements, strategic licenses and other business arrangements. This active IP management strategy allows us access to new technologies in a disciplined manner.

We are currently involved in research and development programs and investment projects in each segment. These include, but are not limited to, systems and components for naval propulsion and electrical conversion, soldier sensors, force protection, electronic warfare and computing and networking. We also invest in research and development of disruptive technologies in the fields of artificial intelligence, autonomy, and quantum sensing.

## Competition

We operate in a highly competitive environment. In the military sector, we compete with large, mid-tier and smaller defense contractors as well as some non-traditional contractors on the basis of product performance, cost, overall value, delivery schedule, embedded positions and reputation. Our products are sold in markets in which several of our competitors are substantially larger than we are, enabling them to devote substantially greater resources to research and development, and they, generally, have greater financial resources, allowing them to better withstand challenging operating conditions. We face a variety of competitors which vary across our segments and specific products. Although we compete with different competitors in each of our segments, our competitors include Raytheon Technologies, L3-Harris, BAE Systems, FLIR, Cubic and Elbit Systems, among others. We frequently partner with or are involved in subcontracting, teaming, supplier and customer relationships with companies that are, from time to time, competitors on other programs. Depending on the project or product, we may depend on parties with whom we compete vigorously on other projects and products. The extent of competition for any single project generally varies according to the complexity of the product and the dollar value of the anticipated award. We generally compete on the basis of:

- The performance, adaptability and price of our products;
- Our reputation for prompt, flexible, and responsive contract performance;
- Our installed base of existing products and track record as a trusted partner;
- Our ability to react to customer and market trends;
- Our strong core technology capabilities and accumulated technical knowledge and expertise;
- The breadth of our product lines;
- Our highly experienced management team and talented workforce; and
- The capabilities of our facilities, equipment and personnel to undertake the programs for which we compete.

Our future success will depend in large part upon our ability to improve existing product lines and to develop new products and technologies in the same or related fields.

Since a number of consolidations and mergers of defense suppliers have occurred, the number of participants in the defense industry has decreased in recent years. We expect this consolidation trend to continue. As the industry consolidates, the large defense contractors are narrowing their supplier base, awarding increasing portions of projects to strategic mid- and lower-tier suppliers, and, in the process, are becoming oriented more toward systems integration and assembly. We believe that while this defense industry trend presents challenges, it also presents opportunities in certain markets.

## Manufacturing and Supplies

Our manufacturing processes for our products include the assembly of purchased components and subsystems and testing of products at various stages in the assembly process. Purchased components include integrated circuits, circuit boards, metal fabricated into cabinets, resistors, capacitors, semiconductors, silicon wafers and other materials, wire and cables and subsystems including, but not limited to, off-the-shelf components such as servers, computers and peripherals. In addition, many of our products use castings and machined housings.

The manufacturing process for certain of our optic products includes the grinding, polishing and coating of various optical materials and the machining of metal components. Although materials and purchased components generally are available from a number of different suppliers, several suppliers are our sole source of certain components. If a supplier should cease to deliver such components we expect

that other sources would be available; however, added cost and manufacturing delays might result. We occasionally experience delays attributable to supply shortages and quality and other related problems with respect to certain components, such as semiconductors and connectors. In addition, for our optical products, certain materials, such as rare earth materials, germanium, and zinc sulfide may not always be readily available.

### Intellectual Property

We have patents on certain of our technologies and methods, semiconductor devices, rugged computer-related items and electro-optical and infrared focal plane array products, in addition to other technologies and methods. We and our subsidiaries have certain registered trademarks, none of which are considered material to our current operations. We also hold certain trade secrets without formal patent filings in order to protect them from disclosure. We believe our patent position and intellectual property portfolio in the aggregate are valuable to our operations. We do not believe that the conduct of our business as a whole is materially dependent on any single patent, trade secret, trademark or copyright.

When we work on U.S. government contracts or use funding of the U.S. government, the U.S. government may have contractual rights to data for our technologies, source code and other developments associated with such government contracts. Records of our data rights are typically maintained in order to claim these rights as our proprietary technology, but it may not always be possible to delineate our proprietary developments from those developed under U.S. government contracts. The protection of our data from use by other U.S. government contractors is subject to negotiation from time to time between us and the U.S. government. The extent of the U.S. government's data rights to any particular product generally depends upon whether the product was developed under a government contract and the degree of government funding for the development of such product. While we may retain rights over any technology, product or intellectual property that we develop under U.S. government contracts or using funding of the U.S. government, this requires us to take timely affirmative measures to preserve our right.

### Contracts

We derive a significant portion of our revenue from long-term programs and programs for which we are the incumbent supplier or have been the sole or dual supplier for many years. A significant percentage of our revenue is derived from programs that are in the production phase. We also derive revenue from contracts on which we serve as either prime contractor or subcontractor. For the years ended December 31, 2020, 2019, and 2018, revenues were approximately even between contracts on which we served as prime contractor and subcontractor in our AST and IMS segments, whereas in our NC&C segment approximately 61%, 64%, and 64%, respectively, of revenues were attributable to contracts on which we served as prime contractor and 39%, 36%, and 36%, respectively, were attributable to contracts on which we served as subcontractor, with the remainder attributable to intersegment sales.

While the majority of our revenue is derived from the U.S. government and DoD, within this we have a diverse business mix with limited dependence on any single contract. No single contract represented more than 10% of revenues for the years ended December 31, 2020, 2019 and 2018.

The amount of our revenues attributable to our contracts by contract type during the years ended December 31, 2020, 2019 and 2018 were as follows:

(\$ in millions)	December 31,		
	2020	2019	2018
Firm fixed price	\$ 2,408	\$ 2,334	\$ 1,910
Flexibly priced <sup>(1)</sup>	370	381	423

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(1) Includes revenue derived from time-and-materials contracts.

Typically we enter into three types of contracts: fixed price contracts, cost-plus contracts and time and material ("T&M") contracts (cost-plus contracts and T&M contracts are aggregated above as flexibly priced contracts). and our contracts are normally for production, services or development. Production contracts are typically the fixed-price type, development contracts are sometimes of the cost-plus-type, and service contracts are sometimes of the time and materials type. We believe continued predominance of fixed-price contracts is reflective of the significant portion of production contracts in our U.S. government contract portfolio. Fixed-price contracts may provide for a fixed price or they may be fixed-price-incentive-fee contracts. Under fixed-price contracts, we agree to perform for an agreed-upon price. Accordingly, we derive benefits from cost savings, but bear the risk of cost overruns. Under fixed-price-incentive-fee contracts, if actual costs incurred in the performance of the contracts are less than estimated costs for the contracts the savings are apportioned between the customer and us. If actual costs under such a contract exceed estimated costs, however, excess costs are apportioned between the customer and us, up to a ceiling. We bear all costs that exceed the ceiling, if any.

Cost-plus type contracts typically provide for reimbursement of allowable costs incurred plus a fee (profit). Under cost-plus-fixed-fee contracts, we are reimbursed for allowable costs and receive a fixed fee, which is negotiated and specified in the contract. Such fees have statutory limits. Unlike fixed-price contracts in which we are committed to deliver without regard to cost, cost-plus contracts normally obligate us to use our best efforts to accomplish the scope of work within a specified time and a stated contract dollar limitation. In addition, U.S. government procurement regulations typically result in lower profits for cost type contracts because of our reduced risk. Under cost-plus-incentive-fee contracts, an additional incentive fee awarded may be based on cost or performance. When the incentive is based on cost, the contract specifies that we are reimbursed for allowable incurred costs plus a fee adjusted by a formula based on the ratio of total allowable costs to target cost. Target cost, target fee, minimum and maximum fee, and adjustment formulae are agreed upon when the contract is negotiated. In the case of performance-based incentives, we are reimbursed for allowable incurred costs plus an incentive, contingent upon meeting or surpassing stated performance targets. The contract provides for increases in the fee to the extent that such targets are surpassed and for decreases to the extent that such targets are not met. In some instances, cost-plus-incentive-fee contracts also may include a combination of both cost and performance incentives. Under cost-plus-fixed-fee contracts, we are reimbursed for costs and receive a fixed fee, which is negotiated and specified in the contract. Time-and-material type contracts provide for reimbursement of labor hours expended at a contractual fixed labor rate per hour, plus the actual costs of material and other direct non-labor costs. The fixed labor rates on time-and-material type contracts include amounts for the cost of direct labor, indirect contract costs and profit.

For the majority of our contracts, revenues are recognized using an over time, cost-to-cost accounting method, with revenue recognized based on the ratio of cumulative costs incurred to date to estimated total contract costs at completion. For contracts accounted for in this way, our reported revenues may contain amounts which we have not billed to customers if we have incurred costs, and recognized related profits, in excess of billed progress payments.

Under U.S. GAAP, contract costs, including allowable general and administrative expenses on certain government contracts, are charged to work-in-progress inventory and are written off to costs and expenses as revenues are recognized. The Federal Acquisition Regulations ("FAR") and the defense supplement ("DFARS"), incorporated by reference in U.S. government contracts, provide that internal research and development costs are allowable general and administrative expenses. Unallowable costs, pursuant to the FAR, are excluded from costs accumulated on U.S. government contracts.

Our defense contracts and subcontracts that require the submission of cost or pricing data are subject to audit, various profit and cost controls, and standard provisions for termination at the convenience of the customer. The DCAA performs these audits on behalf of the U.S. government. The DCAA has the right to perform audits on our incurred costs on cost-type or price redeterminable-type

contracts on a yearly basis. Approval of an incurred cost submission can take from one to three years from the date of the submission of the contract cost.

U.S. government contracts are, by their terms, subject to termination by the U.S. government for either convenience or default by the contractor. Fixed-price contracts provide for payment upon termination for items delivered to and accepted by the U.S. government and, if the termination is for convenience, for payment of fair compensation of work performed plus the costs of settling and paying claims by terminated subcontractors, other settlement expenses and a reasonable profit on the costs incurred. Cost-plus contracts provide that, upon termination, the contractor is entitled to reimbursement of its allowable costs and, if the termination is for convenience, a total fee proportionate to the percentage of the work completed under the contract. If a contract termination is for default, however, the contractor is paid an amount agreed upon for completed and partially completed products and services accepted by the U.S. government. In these circumstances, the U.S. government is not liable for excess costs incurred by us in procuring undelivered items from another source.

In addition to the right of the U.S. government to terminate U.S. government contracts, such contracts are conditioned upon the continuing availability of Congressional appropriations. Congress usually appropriates funds for a given program on a September 30 fiscal year basis, even though contract performance may take many years. Consequently, at the outset of a major program, the contract is typically only partially funded, and additional funds normally are committed to the contract by the procuring agency only as appropriations are made by Congress for future fiscal years.

### **Product Warranties**

Product warranty costs generally are accrued in proportion to product revenue realized in conjunction with our over-time revenue recognition policy. Product warranty expense is recognized based on the term of the product warranty, generally one to three years, and the related estimated costs, considering historical claims expense. Accrued warranty costs are reduced as these costs are incurred and as the warranty period expires, and otherwise may be modified as specific product performance issues are identified and resolved.

### **Joint Ventures, Strategic Investments and Mergers and Acquisitions**

From time to time we enter into strategic joint ventures, investments and mergers and acquisitions. We hold a 51% ownership interest in Advanced Acoustic Concepts ("AAC"), a joint venture with a subsidiary of Thales S.A., which provides sonar systems and components, acoustic training systems, and other underwater systems. AAC engages in development of technology, products, and systems and also licenses technology and products from Thales for adaptation to the U.S. market when the opportunities are present. DRS provides support to AAC in the areas of security, export control, human resources, information technology, and at times, financing, among others. DRS chairs the joint management committee and, together with Thales, reviews and approves their business, financials, and business plans, including investments. AAC provided no cash dividends to DRS for the year ended December 31, 2020 and approximately \$3 million and \$5 million for the years ended December 31, 2019 and 2018, respectively.

In June 2017, we acquired Daylight Solutions for a purchase price of \$150 million in cash. Daylight Solutions designs and manufactures infrared Quantum Cascade Laser solutions that supplement the infrared sensors already in DRS' portfolio. Together these two capabilities address the growing force protection needs for aircraft and ground vehicles by allowing them to sense threats and then enact countermeasures for certain classes of enemy missiles, thus saving lives. The acquisition of Daylight also allowed DRS to address markets unrelated to force protection, again by combining the infrared lasers with infrared sensors. To address the growing demands to sense further, and to increase situational understanding, these two capabilities allow for longer-range threat detection.

We also hold an approximately 7% interest in Hoverfly Technologies, Inc. ("Hoverfly"), which designs, develops and manufactures power-tethered unmanned aerial systems and related products. Pursuant to

the terms of our agreement with Hoverfly, we will increase our investment in Hoverfly to up to 10% if Hoverfly hits certain sales milestones and may increase our investment beyond 10%, at our option. We have also entered into an exclusive manufacturing and teaming agreement with Hoverfly.

### **Seasonality**

We do not consider any material portion of our business to be seasonal. However, our cash flows lack linearity with a majority of cash receipts generally occurring in the fourth quarter of our fiscal year. Various factors can affect the distribution of our revenues and cash flows between accounting periods, including the federal government's budget cycle based on its October-to-September fiscal year, the timing of government awards, the availability of government funding, the timing of costs incurred (including when materials are received), product deliveries and customer acceptance.

### **Legislation and Regulation**

As a U.S. government contractor, we (and our subcontractors and others with whom we do business) must comply with many significant procurement regulations and other specific legal requirements. These regulations and other requirements increase our performance and compliance costs and risks and regularly evolve. New laws, regulations or procurement requirements or changes to current ones (including, for example, regulations related to cybersecurity, privacy, recovery of employee compensation costs, counterfeit parts, anti-human trafficking, specialty metals and conflict minerals) can significantly increase our costs and risks and reduce our profitability. If we fail to comply with procurement regulations or other requirements we may be subject to civil and/or criminal penalties and/or administrative sanctions, which may include termination or modification of contracts, forfeiture of profits, suspension of payments, fines and suspension or prohibition from doing business with the U.S. government, any of which could have a material adverse effect on our business, financial condition and results of operations. See "Risk Factors—Risks Relating to Our Business—We are subject to a number of procurement, international trade, and other rules regulations and requirements related to our industry, our products, and the businesses we operate. If we fail to comply with such rules, regulations or other requirements we may be subject to civil and/or criminal penalties and/or administrative sanctions."

We (again, including our subcontractors and others with whom we do business) also are subject to, and expected to perform in compliance with, a vast array of federal laws, regulations and requirements related to our industry, our products and the businesses we operate. These laws and regulations include, but are not limited to the Anti-Kickback Act, the Arms Export Control Act, including the ITAR, the Communications Act, the Defense Federal Acquisition Regulations, the Export Control Reform Act, including the EAR (which includes anti-boycott provisions), the False Claims Act, the Federal Acquisition Regulation, the FCPA, the Lobbying Disclosure Act, the Procurement Integrity Act, the Truthful Cost or Pricing Data Act, the Foreign Trade Regulations, the Foreign Investment Risk Review Modernization Act, the International Emergency Economic Powers Act, the Trading with the Enemy Act, and Executive Orders and regulations, administered by the U.S. Department of the Treasury, Office of Foreign Assets Control, as well as rules and regulations administered by the U.S. Customs and Border Protection and the Bureau of Alcohol, Tobacco, Firearms and Explosives. If we are found to have violated such requirements, we may be subject to reductions of the value of contracts; contract modifications or termination; the withholding of payments from our customer; the loss of export privileges; administrative or civil judgments and liabilities; criminal judgments or convictions, liabilities and consent or other voluntary decrees or agreements; other sanctions; the assessment of penalties, fines, or compensatory, treble or other damages or non-monetary relief or actions; or suspension or debarment.

Our operations include the use, generation and disposal of hazardous materials. We are subject to various U.S. federal, state, local and foreign laws and regulations relating to the protection of the environment, including those governing the discharge of pollutants into the air and water, the management and disposal of hazardous substances and wastes, the cleanup of contaminated sites and the maintenance of a safe workplace. See "Risk Factors—Risks Relating to Our Business—We are subject to environmental laws and regulations, and our ongoing operations may expose us to

environmental liabilities affecting our reputation, business, financial condition and results of operations.” Except as described under “Legal Proceedings” below, we believe that we have been and are in material compliance with environmental laws and regulations and that we have no liabilities under environmental requirements that would be expected to have a material adverse effect on our business, results of operations, financial condition or liquidity. It is possible, however, that the ultimate resolution of the matters discussed under “—Legal Proceedings” below could result in a material adverse effect on our results of operations for a particular reporting period, any of which could have a material adverse effect on our business.

## Backlog

Our total backlog consists of funded and unfunded amounts. Funded backlog represents the revenue value of orders for services under existing contracts for which funding is appropriated or otherwise authorized less revenue previously recognized on these contracts. Unfunded backlog represents the revenue value of firm orders for products and services under existing contracts for which funding has not yet been appropriated less funding previously recognized on these contracts. In addition to backlog, we also evaluate estimated potential remaining contract value, which represents unexercised options associated with existing firm contracts and primarily includes options and agreements with existing customers to purchase new services. Estimated potential remaining contract value together with backlog represents total estimated contract value. The following table summarizes the value of our backlog, estimated potential remaining contract value and total estimated contract value at the respective dates presented.

(Dollars in millions)	December 31,		
	2020	2019	2018
<b>Backlog:</b>			
Funded <sup>(1)</sup>	\$ 2,847	\$ 2,547	\$ 2,338
Unfunded <sup>(1)</sup>	444	297	346
<b>Total backlog<sup>(1)</sup></b>	<b>3,291</b>	<b>2,844</b>	<b>2,684</b>
Estimated potential remaining contract value <sup>(1)</sup>	7,981	8,198	8,054
<b>Total estimated remaining contract value</b>	<b>\$ 11,272</b>	<b>\$ 11,042</b>	<b>\$ 10,738</b>

(1) See “Risk Factors—Risks Relating to Our Business—We may not realize the full value of our total estimated contract value or bookings, including as a result of reduction of funding or cancellation of our U.S. government contracts, which could have a material adverse impact on our business, financial condition and results of operations.”

## Human Capital Resources

As of March 15, 2021, we employed approximately 6,500 people. Approximately 255 of our employees at our West Plains, Missouri facility are represented by a labor union and are covered by a collective bargaining agreement that expires in April 2021 and approximately 221 employees at our Milwaukee, Wisconsin facility are represented by a union and are covered by a collective bargaining agreement that expires in March 2021. We consider our relations with our employees to be good.

Our human capital resources objectives include identifying, recruiting, retaining, incentivizing and integrating our existing and additional employees. The principal purposes of our compensation program are to attract, retain and motivate selected employees through competitive base pay and cash-based performance bonus awards.

We created a Diversity Advisory Group to improve our diversity and inclusiveness so that we look like the communities in which we operate. We have targeted increases in minority hiring and women in management and overall women in the workforce, which is 2.6% higher than our industry average.

## Properties

We are headquartered in Arlington, Virginia. Our principal executive offices are leased under a lease agreement expiring in March 31, 2027 with an option to extend for five years thereafter. We also lease space in 17 other states and the District of Columbia in the United States and in one city in Canada and we own properties in three states in the United States and in one city in Canada. We believe that our facilities are adequate for our intended use and sufficient for our immediate needs, including to meet any security certification requirements or requirements for locating facilities in certain locations. It is not certain whether we will negotiate new leases as existing leases expire or whether we will be able to negotiate new leases without substantial cost or at all. Such determinations will be made as existing leases approach expiration and will be based on an assessment of our requirements at that time. Further, we believe that we can obtain additional space, if necessary, based on prior experience and current real estate market conditions. The table below provides additional information about our significant leased and owned facilities and properties.

Location	Activities	Operating Segment	Approximate Square Footage	Owned / Leased
4265 North 30th Street, Milwaukee, WI	Manufacturing, Engineering, Warehouse, Office	Integrated Mission Systems	610,800	Leased
1 McDaniel Street, West Plains, MO	Manufacturing, Engineering, Warehouse, Office	Integrated Mission Systems	447,067	Owned
Good Hope Rd., Menomonee Falls, WI	Manufacturing, Engineering, Warehouse	Integrated Mission Systems	372,856	Leased
100 North Babcock Street, Melbourne, FL	Manufacturing, Engineering, Warehouse, Office	Network Computer & Communications	311,287	Leased
6060 Highway, High Ridge, MO	Manufacturing, Engineering, Office	Integrated Mission Systems	183,600	Owned
4545 N. Lindbergh Blvd, Bridgeton, MO	Manufacturing, Engineering, Warehouse, Office	Integrated Mission Systems	171,500	Leased
One Milestone Center Court, Germantown, MD	Engineering, Office	Advanced Sensor Technologies	133,140	Leased
7200 Redstone Gateway, Huntsville, AL	Manufacturing, Engineering, Office	Network Computer & Communications	131,498	Leased



246 Airport Road, Johnstown, PA	Manufacturing, Engineering, Warehouse, Office	Network Computer & Communications	129,716	Leased
500 Palladium Drive, Ottawa, ON, Canada	Manufacturing, Engineering, Warehouse, Office	Network Computer & Communications	127,334	Leased
401 Flint Drive, Menomonee Falls, WI	Engineering, Office	Integrated Mission Systems	118,620	Leased
166 Boulder Drive, Building #2, Fitchburg, MA	Manufacturing, Warehouse	Integrated Mission Systems	114,454	Leased
6200 118th Avenue North, Largo, FL	Manufacturing, Engineering, Office	Network Computer & Communications	113,329	Owned
10600 Valley View Street, Cypress, CA	Engineering, Office	Advanced Sensor Technologies	91,506	Leased
13532 N Central Expressway, Dallas, TX	Manufacturing, Engineering, Office	Advanced Sensor Technologies	89,982	Leased
645 Anchors Street, Ft. Walton Beach, FL	Manufacturing, Engineering, Office	Advanced Sensor Technologies	74,304	Owned
21 South Street, Danbury, CT	Manufacturing, Engineering, Warehouse, Office	Integrated Mission Systems	74,300	Owned
1200 Sherman Street, Dallas, TX	Engineering, Office	Advanced Sensor Technologies	73,646	Leased
16465 Via Esprillo, San Diego, CA	Manufacturing, Engineering, Office	Advanced Sensor Technologies	67,762	Leased
650 Lovejoy, Ft. Walton Beach, FL	Engineering, Office	Advanced Sensor Technologies	53,045	Owned
2345 Crystal Drive, Arlington, VA	Office	Corporate	49,048	Leased

13544 N Central Expressway, Dallas, TX	Manufacturing, Engineering, Office	Advanced Sensor Technologies	48,374	Leased
2601 Mission Point Blvd, Beavercreek, OH	Engineering, Office	Advanced Sensor Technologies	46,637	Leased
150 Bluewater Road, Bedford, NS, Canada	Manufacturing, Engineering, Office	Network Computer & Communications	41,750	Owned
21345 Ridgetop Circle, Dulles, VA	Engineering, Office	Network Computer & Communications	40,412	Leased
825 Greenbrier Circle, Chesapeake, VA	Manufacturing, Engineering, Office	Network Computer & Communications	34,299	Leased
651 Anchors Street, Ft. Walton Beach, FL	Manufacturing, Engineering, Office	Advanced Sensor Technologies	32,107	Owned
1057 South Sherman, Richardson, TX	Engineering, Office	Advanced Sensor Technologies	26,696	Leased
590 Territorial Drive, Bolingbrook, IL	Manufacturing, Engineering, Office	Advanced Sensor Technologies	26,460	Leased
166 Boulder Drive, Fitchburg, MA	Engineering, Office	Integrated Mission Systems	22,000	Leased
640 Lovejoy West, Ft. Walton Beach, FL	Engineering, Office	Advanced Sensor Technologies	11,226	Owned

### Legal Proceedings

From time to time, we are subject to certain legal proceedings and claims in the ordinary course of business. These matters are subject to many uncertainties and it is possible that some of these matters ultimately could be decided, resolved or settled in a manner adverse to us. Although the precise amount of liability that may result from these matters is not ascertainable, we believe that any amounts exceeding our recorded accruals should not materially adversely affect our financial condition or liquidity. It is possible, however, that the ultimate resolution of those matters could result in a material adverse effect on our results of operations and/or cash flows from operating activities for a particular reporting period. We establish reserves for specific legal matters when we determine that the likelihood of an unfavorable outcome is probable and the loss is reasonably estimable.

Some environmental laws, such as the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (also known as "CERCLA" or the "Superfund law") and similar state statutes, can impose liability upon former owners or operators for the entire cost of investigating and remediating contaminated sites regardless of the lawfulness of the original activities that led to the contamination. In July 2000, an entity which later became a subsidiary of the Company received a Section 104(e) Request for Information ("RFI") from the National Park Service ("NPS"), pursuant to CERCLA, regarding the presence of radioactive material at a site within a national park, which site was operated by an alleged

predecessor to our subsidiary over 50 years ago. Following our subsidiary's response to the RFI, the NPS directed it and another alleged former operator to perform an Engineering Evaluation and Cost Analysis ("EE/CA") of a portion of the site. Our subsidiary made a good faith offer to conduct an alternative EE/CA work plan, but the NPS rejected this offer and opted to perform the EE/CA itself. The NPS previously posted its intention to open a formal public comment period regarding the EE/CA at the end of 2019. To our knowledge, the EE/CA has not been released and a public comment period has yet to be opened.

Following completion of the EE/CA, the NPS may seek reimbursement for its investigative and remedial efforts to date, or direct one or more of the potentially responsible parties to perform any remediation that may be required by CERCLA or may enter an alternative dispute resolution proceeding to attempt to resolve each party's share. In addition, the NPS may seek to recover damages for loss of use of certain natural resources. We believe that we have legitimate defenses to our subsidiary's potential liability and that there are other potentially responsible parties for the environmental conditions at the site, including the U.S. government as owner, operator and arranger at the site. The potential liability associated with this matter could change substantially due to such factors as additional information on the nature or extent of contamination, methods of remediation that might be recommended or required, changes in the apportionment of costs among the responsible parties, whether the NPS seeks to recover additional damages, whether the NPS's plans to investigate additional areas to identify a need for further remedial action for which the Company may be identified as a potentially responsible party and other actions by governmental agencies or private parties.

## MANAGEMENT

The following table sets forth certain information concerning our directors and executive officers. The respective age of each individual in the table below is as of March 15, 2021.

Name	Age	Position
William J. Lynn III	67	Chief Executive Officer and Chairman
David W. Carey*	76	Lead Independent Director
General George W. Casey, Jr. (Ret.)	72	Director
Kenneth J. Krieg*	60	Director
Peter A. Marino*	79	Director
Philip A. Odeen*	85	Director
Frances F. Townsend*	59	Director
Gail Baker	58	Prospective Director
Mary E. Gallagher	55	Prospective Director
John A. Baylouny	59	Executive Vice President, Chief Operating Officer
Michael D. Dippold	40	Executive Vice President, Chief Financial Officer
Mark A. Dorfman	47	Executive Vice President, General Counsel & Secretary
Sally A. Wallace	54	Executive Vice President, Business Operations

\* Proxy holder. See "Certain Relationships and Related-Party Transactions—Relationship with Leonardo S.p.A. Following this Offering—Proxy Agreement."

### Directors

#### *William J. Lynn III*

Mr. Lynn has been a director since 2012 and has been our Chief Executive Officer since January 2012. Mr. Lynn will also serve as chairman of our board upon the effective date of the registration statement of which this prospectus forms a part. Prior to joining DRS in January 2012, Mr. Lynn served as the 30th United States Deputy Secretary of Defense from 2009 to 2011. From 2002 to 2009, Mr. Lynn was Senior Vice President of Government Operations and Strategy at the Raytheon Company. In this position, he directed strategic planning, oversaw merger and acquisition activities and supervised government relations. Previously, he served as the Chief Financial Officer and Under Secretary of Defense (Comptroller) from 1997 to 2001. From 1993 to 1997, he led strategic planning for DoD as Director of Program Analysis and Evaluation. Mr. Lynn worked for Senator Ted Kennedy as counsel to the Senate Armed Services Committee from 1987 to 1993.

Mr. Lynn is a member of the boards of Accenture Federal Services, the United Service Organizations, the Atlantic Council, the Marshall Legacy Institute and the Center for a New American Security. He has been recognized for numerous professional and service contributions, including four DoD Distinguished Public Service medals and the Distinguished Civilian Service Award from the Chairman of the Joint Chiefs of Staff. A graduate of Dartmouth College, Mr. Lynn holds a law degree from Cornell Law School and a master's degree from the Princeton School of Public and International Affairs. Mr. Lynn brings to the board his extensive experience in national security, both in government and in industry.

#### *David W. Carey*

Mr. Carey has been a director since 2009, and a member of our Audit Committee since 2012. Mr. Carey will also serve as lead independent director upon the effective date of the registration statement of which this prospectus forms a part. Since 2008, Mr. Carey has operated a consulting practice providing business development and strategic advice to U.S. and foreign firms engaged in defense and intelligence

electronics. From 2005 to 2008, he was an Executive Director with Blackbird Technologies Inc., and from 2001 to 2005 served as Vice President, Information Assurance for Oracle Corporation where he built and directed Oracle's Information Assurance Center. Prior to 2001, Mr. Carey held several senior positions during a 32-year career at the Central Intelligence Agency including serving as Executive Director. In this capacity, he oversaw all of the Agency's strategic planning, budgetary, procurement, financial, logistics and research and development activities as well as day-to-day operations.

In addition to serving on the board of DRS, Mr. Carey serves on the boards of OnPoint Consulting, Inc., Informatica Federal Operations Corp., and the CIA Officers Memorial Foundation Board. He previously served on the boards of ImageWare Systems, Inc. from 2006 to 2020 and Qinetiq North America from 2014 to 2019, and on the advisory board of Recorded Future Inc. from 2011 to 2019. Mr. Carey is a graduate of Cornell University and the University of Delaware. We consider Mr. Carey's experience in key operational and leadership positions dealing with critical national security threats and challenges as a significant asset to our board. Mr. Carey is a proxy holder and was appointed to our board in accordance with the proxy agreement.

***General George W. Casey, Jr. (Ret.)***

Gen. Casey has been a director since 2020. Gen. Casey is a published author, and currently serves as a Distinguished Senior Lecturer of Leadership at the SC Johnson College of Business, Cornell University, and as the Rice Family Professor of Practice at the Korbel School, University of Denver. He has lectured on leadership internationally at business schools and to numerous organizations, including Coca-Cola, Caterpillar, the National Australian Bank, Amazon, TD Ameritrade, Pentagon Federal Credit Union and General Electric. Before joining DRS, Gen. Casey served 41-years in the U.S. Army including from 2007 to 2011 as the 36th Chief of Staff of the U.S. Army where he led arguably the world's largest and most complex organization with over 1.1 million personnel and an annual budget of over \$200 billion. From 2004 to 2007 he commanded the Multi-National Force – Iraq, a coalition of more than 30 countries, and in that role worked to build-up Iraqi security institutions while battling an insurgency and sectarian violence.

Gen. Casey also serves as the Chairman of the Board of Governors of the United Service Organizations, and as a director of Colt Holding Company, LLC. In addition, he serves as a member of the board of advisors for StreetShares, RallyPoint, Techwerks and Sarcos. Gen. Casey holds a master's degree in international relations from Denver University. Gen. Casey brings to the board a deep knowledge of the military and a demonstrated history of leadership in the armed forces, academia, the non-profit sector and industry.

***Kenneth J. Krieg***

Mr. Krieg has been a director since 2008. Mr. Krieg serves as the head of Samford Global Strategies, an advisory and consulting practice which he founded in 2007. Since 2010, Mr. Krieg has also held the position of Executive in Residence with Renaissance Strategic Advisors, one of the leading consultancies supporting premier firms in the aerospace, defense, space, intelligence and government services industry. From 2001 to 2007, Mr. Krieg served in several positions within the DoD, including as the Undersecretary of Defense for Acquisition, Technology and Logistics from 2005 to 2007 where he had overall responsibility for the DoD's procurement, research and development programs. Prior to joining the DoD, he spent 11 years working for the International Paper Company, most recently as Vice President and General Manager of the Office and Consumer Papers Division.

Mr. Krieg currently serves as chair of the board of Logistics Management Institute, and is a director with BWX Technologies, Inc. He has previously served on the boards of Tempus Applied Solutions Holdings, Inc. (2014 to 2016) and API Technologies Corp. (2011 to 2016). Mr. Krieg has a bachelor of arts degree in history from Davidson College and a master's degree in public policy from the Kennedy School of Government at Harvard University. Mr. Krieg has significant experience overseeing major research, development and procurement programs for the DoD. His background provides our board with

valuable insight into acquisition priorities and considerations of the U.S. government and he has significant experience in FOCI mitigation and public company governance. Mr. Krieg is a proxy holder and was appointed to our board in accordance with the proxy agreement.

***Peter A. Marino***

Mr. Marino has been a director, chair of our Government Security Committee and member of our Audit Committee since 2012. Since 1999, Mr. Marino has operated a sole proprietorship as a private consultant for government and industry on defense and intelligence issues. His clients have included the DoD, Department of Homeland Security, CIA, the Director of National Intelligence and both small and large defense and aerospace companies. From 1996 to 1999, he was CEO and President of Firearms Training Systems, from 1991 to 1996 was Senior VP E-Systems, Inc., from 1988 to 1991 was President and Chief Operating Officer of Fairchild Industries, Inc., and from 1986 to 1988 was President and Chief Operating Office of Lockheed Electronics. Prior to that, Mr. Marino served in several positions with the CIA from technical officer and manager responsible for the design of electronic, mechanical and communications equipment, to senior executive official with responsibility for the support of worldwide technical operations of people and equipment for the Directorate of Operations.

Mr. Marino currently serves on the boards of QTS Realty Trust, Inc., System & Technology Research, Inmarsat US and RADA Electronic Industries Ltd., as well as several government and non-profit advisory boards. He previously served on the board of Engility Corporation from 2015 to 2018. Mr. Marino has a bachelor of science degree in physics from Rollins College, and a master's degree from Pennsylvania State University. He also currently serves as a Senior Executive Fellow at Harvard University. Mr. Marino's broad experience in leadership roles in the defense industry and intelligence community help him bring a valuable perspective to our board. Mr. Marino is a proxy holder and was appointed to our board in accordance with the proxy agreement.

***Philip A. Odeen***

Mr. Odeen has been a director since 2012. Prior to joining DRS, Mr. Odeen served as a director for numerous public companies including Booz Allen Hamilton, from 2008 to 2019, ASC Signal Corporation, from 2009 to 2015, AES Corporation from 2003 to 2013, and Northrop Grumman from 2003 to 2008. From 2005 to 2006, Mr. Odeen served as CEO of QinetiQ North America, and from 2004 to 2005 was Chairman and CEO of Reynolds & Reynolds, a provider of software and management services to automotive retailers. Mr. Odeen also held several positions from 1997 to 2002 with TRW Inc. including serving as Chairman and CEO. Mr. Odeen previously served as a senior official with the Office of the Secretary of Defense and the National Security Council. He is a former member of the Defense Science Board, the Defense Business Board and the Chief of Naval Operations Executive Panel.

In addition to serving on the board of DRS, Mr. Odeen currently serves as a director with Globant, an international information technology and software development company. Mr. Odeen received a bachelor of arts degree in government from the University of South Dakota, is a Fulbright scholar, and earned a master's degree from the University of Wisconsin. Mr. Odeen provides invaluable guidance to our board from his decades of experience in leadership positions across industry and government. Mr. Odeen is a proxy holder and was appointed to our board in accordance with the proxy agreement.

***Frances F. Townsend***

Ms. Townsend has been a director and chair of our Compensation Committee since 2009. Presently, she is working as the EVP of Corporate Affairs, Corporate Secretary and Chief Compliance Officer at Activision Blizzard. From 2010-2020, Ms. Townsend worked at MacAndrews & Forbes Inc. and concluded her tenure there as Vice Chairman, General Counsel and Chief Administrative Officer. Before that she was Executive Vice President for Worldwide Government, Legal and Business Affairs working across MacAndrew's portfolio companies focusing on international, legal, compliance and business development issues. Since 2016, Ms. Townsend has also been an on-air senior national security analyst for CBS News. From April 2009 to October 2010, Ms. Townsend was a corporate partner with the law firm of

Baker Botts, LLP. Prior to that, Ms. Townsend served as Assistant to President George W. Bush for Homeland Security and Counterterrorism and chaired the Homeland Security Council from 2004 to 2008. She also served as Deputy National Security Advisor for Combatting Terrorism from May 2003 to May 2004. Ms. Townsend also spent 13 years at the U.S. Department of Justice under the administrations of President George H. W. Bush, President Bill Clinton and President George W. Bush.

Ms. Townsend currently serves as a director with Chubb Limited, and Freeport-McMoRan Inc. She previously served on the boards of SciPlay Corporation (2019 to 2020), Scientific Games Corporation (2010 to 2020), and Western Union (2013 to 2020). Ms. Townsend serves on several non-profit boards including the Council on Foreign Relations, the Atlantic Council, the Center for Strategic and International Studies, the McCain Institute and the New York City Police Foundation. Ms. Townsend received a bachelor of arts degree in political science and a bachelor of science degree in psychology from American University. She also received a juris doctor degree from the University of San Diego School of Law. Ms. Townsend brings to our board a deep understanding of national security issues and broad experience providing strategic advice in law, business and government. Ms. Townsend is a proxy holder and was appointed to our board in accordance with the proxy agreement.

#### ***Gail Baker***

Ms. Baker has agreed to become a member of our board as of the effective date of the registration statement of which this prospectus is a part. Ms. Baker served as the President, Aftermarket services for Collins Aerospace from 2019 until her retirement in 2020. In this role, she led the worldwide commercial and military aftermarket business and customer service organizations, and her responsibilities included customer-tailored solutions, long-term aftermarket programs, spares planning and delivery, asset management, technical and strategic planning and management of 14 global maintenance, repair and overhaul facilities. From 2017 to 2019, Ms. Baker served as the President, Intelligence, Surveillance, Reconnaissance and Space at Collins Aerospace. From 2015 to 2017, she served as the Vice President, Air Management Systems, European Entities and Aftermarket for UTC Aerospace Systems, a predecessor of Collins Aerospace. From 2011 to 2015 she also served as the President, Aerospace Customers and Business Development for UTC Aerospace Systems.

Ms. Baker is a member of the Wings Club, the Association of the United States Army, the Air Force Association and is the executive chair for the audit committee on the board of directors for the Hartford Bishop's Foundation. Ms. Baker received her bachelor's degree in mechanical engineering from Worcester Polytechnic Institute and a master's degree in mechanical engineering from Rensselaer Polytechnic Institute. Ms. Baker's experience in key business and operational leadership roles within the defense industry make her a valuable addition to our board.

#### ***Mary E. Gallagher***

Ms. Gallagher has agreed to become a member of our board as of the effective date of the registration statement of which this prospectus is a part. Ms. Gallagher served as Chief Financial Officer for Wheels Up, a membership-based private aviation company, from 2016 to 2018. From 2004 to 2016, Ms. Gallagher held a variety of top financial roles at United Technologies Corporation (now Raytheon Company), a global leader in aerospace and building technologies, most recently serving as Chief Financial Officer of Sikorsky Aircraft from November 2013 through June 2016. From 1996 to 2004, Ms. Gallagher served as the Vice President Controller and Chief Accounting Officer of Olin Corporation, a global manufacturer and distributor of chemical products and a leading U.S. manufacturer of ammunition. Prior to joining Olin, Ms. Gallagher spent nine years with KPMG in various positions in the audit, mergers/acquisitions, consulting and training groups.

Ms. Gallagher also serves as a director of Novaria, and as a director and Chair of the audit committee for both American Outdoor Brands and LGL Systems Acquisition Corp., a special purpose acquisition company formed for the purpose of entering into a business combination with one or more businesses or entities. Ms. Gallagher graduated from the University of Vermont in 1987 with a bachelor's degree in

accounting and earned her masters of business administration from the Massachusetts Institute of Technology in 2008. Ms. Gallagher is a Certified Public Accountant in New York. We believe Ms. Gallagher is well-qualified to join our board based on her prior leadership roles within the defense industry, as well as her background as a Certified Public Accountant.

### **Executive Officers**

The current executive officers (other than our chief executive officer, whose biography is included above in the directors information) are as follows:

#### ***John A. Baylouny***

Mr. Baylouny has been our Executive Vice President and Chief Operating Officer since October 2018. In that role, Mr. Baylouny is responsible for overseeing the business operations and technical strategy of the Company. He is also currently the chairman of the AAC joint venture management committee. Prior to assuming the position of Chief Operating Officer, Mr. Baylouny served as our Chief Technology Officer from January 2017 to October 2018. Prior to that, Mr. Baylouny served as Vice President and General Manager of the Company's Land Systems and Advanced ISR businesses from January 2014 to January 2017, among other leadership roles. Mr. Baylouny has more than 30 years of experience in the aerospace and defense industry with diverse experience in operational responsibility, general management, technology, product and system design and development, and program management.

Mr. Baylouny has a master's degree in electrical engineering from Stevens Institute of Technology, and a bachelor of science degree in electrical engineering from Fairleigh Dickinson University.

#### ***Michael D. Dippold***

Michael Dippold has been our Executive Vice President and Chief Financial Officer since January 2017. As the Chief Financial Officer, Mr. Dippold is responsible for overseeing our financial activities and operations, controllership, treasury functions, and economic and business-related strategies. In addition, he is currently treasurer of AAC. Throughout his fifteen years at DRS, Mr. Dippold has held a variety of roles of increasing responsibility. Prior to assuming the position of CFO, Mr. Dippold served as Senior Vice President, Corporate Controller from December 2015 to January 2017, and Vice President, Assistant Controller from December 2010 to December 2015. Prior to joining DRS in 2006, Mr. Dippold spent three years at KPMG where he worked primarily on defense industry client accounts, including DRS.

Mr. Dippold received a bachelor of science degree in accounting from Pennsylvania State University.

#### ***Mark A. Dorfman***

Mr. Dorfman has been our Executive Vice President, General Counsel and Secretary since February 2011. Mr. Dorfman is responsible for providing advice and counsel to the Company's board of directors and executive leadership of the Company on legal and business matters. As the Company's chief legal officer, Mr. Dorfman oversees the Company's legal and regulatory affairs, including transactions, litigation, corporate governance, internal audit, contracts, insurance, intellectual property protection, and ethics and compliance programs (including environmental health and safety, international trade, and industrial and cyber security). Mr. Dorfman joined the Company in 2005 as corporate counsel and was promoted multiple times between 2006 and 2011 to his current executive leadership position. Prior to assuming the position of Executive Vice President, General Counsel and Secretary, Mr. Dorfman served as Senior Vice President, General Counsel and Secretary from December 2009 to February 2011; Vice President, Corporate Counsel from March 2006 to December 2009; and Corporate Counsel from September 2005 to March 2006.

Prior to joining DRS, from 1999 to 2005, Mr. Dorfman was a corporate attorney first at Chadbourne & Parke and then Lowenstein Sandler PC, where his practice included representation of corporate and other clients in connection with mergers and acquisitions, divestitures, public and private securities



offerings, joint ventures and other complex transactions and providing advice and counsel on a variety of matters, including securities law and corporate governance.

Mr. Dorfman holds a bachelor of arts degree in political science from Emory University and a juris doctor degree from New York University School of Law.

#### ***Sally A. Wallace***

Ms. Wallace has been our Executive Vice President, Operations since December 2016. As EVP Operations, Ms. Wallace is responsible for overseeing the policies and standards required for effective program execution. Ms. Wallace has more than 30 years' experience, in roles of increasing responsibility, within the defense industry. Prior to assuming the position of Executive Vice President, Operations, Ms. Wallace was President of the C4ISR Group within DRS from April 2014 to December 2016, Vice President of Business Operations for DRS Maritime and Combat Support Systems Group from July 2008 to April 2014, as well as the Vice President and General Manager of DRS Power and Control Technologies from 2004 to July 2008.

Ms. Wallace has a master's degree in business from the University of Chicago, a master's degree in mechanical engineering from the University of Connecticut and a bachelor of science degree in engineering physics from Grove City College.

#### **Family Relationships**

There are no family relationships among any of our directors or executive officers.

#### **Corporate Governance**

##### ***Board Composition and Director Independence***

Our board will be composed of nine directors as of the effective date of the registration statement of which this prospectus forms a part. Our directors will be elected annually to serve until the next annual meeting of stockholders or until their successors are duly elected and qualified. Pursuant to the proxy agreement, Leonardo S.p.A., US Holding, the DCSA and the proxy holders will have specified board designation and/or approval rights following this offering. The proxy agreement requires that our board include the five proxy holders appointed by US Holding after consultation with Leonardo S.p.A. and approval by the DCSA. The proxy agreement also requires that our board include four additional directors consisting of our chief executive officer and three additional candidates, selected by the proxy holders in their sole discretion from candidates proposed by US Holding, after reasonable consultation with the nominating and corporate governance committee, subject to approval of the DCSA in certain circumstances. See "Certain Relationships and Related-Party Transactions—Relationship with Leonardo S.p.A Following this Offering—Proxy Agreement."

While the proxy agreement remains in effect, the number of members on our board will be determined in accordance with the proxy agreement and therefore a fully constituted board will consist of nine directors. During any period when the proxy agreement is not in effect, the number of members on our board may be fixed by majority vote of the members of our board. While the proxy agreement remains in effect, any vacancy in the board that results from the death, disability, resignation, disqualification or removal, or expiration of the term of (i) any proxy holder shall be filled by the new proxy holder appointed to take such proxy holder's place in accordance with the proxy agreement and (ii) any director who is not a proxy holder shall be filled by candidates determined in accordance with the proxy agreement, by the majority vote of the proxy holders, subject to approval of the DCSA in certain circumstances. During any period when the proxy agreement is not in effect, any vacancy in the board shall be filled by an affirmative vote of at least a majority of the directors then in office, even if less than a quorum, or by a sole remaining director. Each director shall hold office until his or her successor has been duly elected and qualified, or until his or her earlier death, resignation or removal.

Our board has determined that the proxy holders, Gen. Casey, Ms. Baker and Ms. Gallagher are “independent” as defined under the rules and the Exchange Act rules and regulations.

### ***Controlled Company***

Leonardo S.p.A., through US Holding, will own 78.0% of our common stock following this offering (or 74.7% if the underwriters exercise in full their option to purchase additional shares from the selling stockholder). Accordingly, we expect to be a “controlled company” within the meaning of the NYSE corporate governance standards. Under NYSE rules, a company of which more than 50% of the voting power is held by an individual, group or another company is a “controlled company” and may elect not to comply with certain NYSE corporate governance standards, including:

- the requirement that a majority of the board consist of independent directors;
- the requirement that we have a compensation committee that is composed entirely of independent directors;
- the requirement that our nominating and corporate governance committee be composed entirely of independent directors; and
- the requirement for an annual performance evaluation of the nominating and corporate governance and compensation committees.

While we do not currently intend to use these exemptions, we may in the future decide to do so. Accordingly, you may not have the same protections afforded to stockholders of companies that are subject to all of the NYSE corporate governance rules and requirements. The “controlled company” exception does not modify audit committee independence requirements of Rule 10A-3 under the Exchange Act and NYSE rules.

### ***Board Committees***

Prior to the completion of this offering, our board will maintain an audit committee, a compensation committee, a nominating and corporate governance committee and a government security committee. Under NYSE rules, our audit committee will be required to be composed entirely of independent directors within one year from the date of this prospectus. As a controlled company, we are not required to have independent compensation or nominating and corporate governance committees. The composition of our government security committee is governed by the proxy agreement. The following is a brief description of our committees.

#### ***Audit Committee***

The primary purposes of the audit committee will be to: (i) to assist the board in overseeing (a) the quality and integrity of our financial statements, (b) the qualifications, independence and performance of our independent auditor, (c) our accounting, financial and external reporting policies and practices, (d) the performance of our internal audit function and (e) our compliance with legal and regulatory requirements, including without limitation any requirements promulgated by the Public Company Accounting Oversight Board and the Financial Accounting Standards Board; and (ii) to prepare the report of the audit committee required to be included in our annual proxy statement. The charter of our audit committee will be available without charge on the investor relations portion of our website upon the listing of our common stock.

Upon the completion of this offering, the members of our Audit Committee will be Mr. Carey, Ms. Gallagher, Mr. Krieg and Mr. Marino, with Ms. Gallagher serving as Chair of the committee. Our board has designated Ms. Gallagher as an “audit committee financial expert” and each of Mr. Carey, Ms. Gallagher, Mr. Krieg and Mr. Marino has been determined to be “financially literate” under NYSE rules. Our board has also determined that Mr. Carey, Ms. Gallagher, Mr. Krieg and Mr. Marino are “independent” as defined under NYSE and Exchange Act rules and regulations.

### *Compensation Committee*

The primary purpose of the compensation committee will be to: (i) be responsible for general oversight of compensation and compensation-related matters; (ii) prepare any report on executive compensation required by the rules and regulations of the SEC for inclusion in our annual proxy statement or Annual Report on Form 10-K; and (iii) take such other actions relating to our compensation and benefits structure as the compensation committee deems necessary or appropriate. The charter of our compensation committee will be available without charge on the investor relations portion of our website upon the listing of our common stock.

Upon the completion of this offering, the members of our compensation committee will be Ms. Baker, Gen. Casey, Mr. Odeen and Ms. Townsend, with Ms. Townsend serving as Chair of the committee. Our board has also determined that Ms. Baker, Gen. Casey, Mr. Odeen and Ms. Townsend are “independent” as defined under NYSE and Exchange Act rules and regulations. In light of our status as a “controlled company” within the meaning of the corporate governance standards of the NYSE following this offering, we are exempt from the requirement that our compensation committee be composed entirely of independent directors under listing standards applicable to membership on the compensation committee. We do not currently intend to use this exemption, but we may in the future decide to do so.

### *Nominating and Corporate Governance Committee*

Our nominating and corporate governance committee will be responsible, among its other duties and responsibilities, for: (i) identifying individuals qualified and suitable to become board members and recommending to the board the director nominees for each annual meeting of stockholders; (ii) regularly review our corporate governance policies and practices, including compliance with existing laws and regulations, corporate governance developments, emerging trends and best practices and recommend any proposed changes to the board of directors; and (iii) otherwise taking a leadership role in shaping our corporate governance policies. While the proxy agreement is in effect, (x) the nominating and corporate governance committee will consist solely of proxy holders, each of whom will be appointed by US Holding after reasonable consultation with Leonardo S.p.A. and subject to DCSA approval, and (y) US Holding, in consultation with the nominating and corporate governance committee (and subject to approval of DCSA in certain circumstances), will have the right to identify non-proxy holder director candidates. The charter of our nominating and corporate governance committee will be available without charge on the investor relations portion of our website following this offering.

Upon the completion of this offering, the the members of our nominating and corporate governance committee will be Mr. Carey, Mr. Krieg, and Mr. Marino, with Mr. Krieg serving as Chair of the committee. Our board has also determined that Mr. Carey, Mr. Krieg and Mr. Marino are “independent” as defined under NYSE and Exchange Act rules and regulations. In light of our status as a “controlled company” within the meaning of the corporate governance standards of the NYSE following this offering, we are exempt from the requirement that our nominating and corporate governance committee be composed entirely of independent directors. We do not currently intend to use this exemption, but we may in the future decide to do so.

### *Government Security Committee*

The proxy agreement requires our board to establish a government security committee (the “GSC”), consisting of all proxy holders, our chief executive officer, our general counsel, our corporate facility security officer (“CFSO”) and our technology control officer (“TCO”), to the extent that such officers have adequate security clearances. The primary purpose of the GSC is to ensure that we maintain policies and procedures, including a technology control plan, to safeguard classified information in our possession and to ensure that we comply with the proxy agreement, the ITAR, the EAR, and the NISPOM.

Upon the completion of this offering, the members of the GSC will be Mr. Carey, Mr. Krieg, Mr. Marino, Mr. Odeen, Ms. Townsend, and our Chief Executive Officer, General Counsel, Corporate

Facility Security Officer and Technology Control Officer, with Mr. Marino serving as Chair of the committee.

#### *Compensation Committee Interlocks and Insider Participation*

None of our executive officers serves, or in the past has served, as a member of the board of directors or compensation committee, or other committee serving an equivalent function, of any entity that has one or more executive officers who serve as members of our board of directors or our compensation committee. None of the members of our compensation committee is, or has ever been, an officer or employee of our company.

#### **Lead Independent Director**

Our board of directors has designated Mr. Carey to serve as our lead independent director upon the effective date of the registration statement of which this prospectus forms a part.

#### **Board Oversight of Risk Management**

Our board believes that effective risk management and control processes are critical to our safety and soundness, our ability to predict and manage the challenges that we face and, ultimately, our long-term corporate success. Our board, both directly and through its committees, is responsible for overseeing our risk management processes, with each of the committees of our board assuming a different and important role in overseeing the management of the risks we face.

Our audit committee is responsible for overseeing risks associated with financial matters including financial reporting, accounting practices and policies, disclosure controls and procedures and internal control over financial reporting. The compensation committee of our board has primary responsibility for risks and exposures associated with our compensation policies, plans and practices, regarding both executive compensation and the compensation structure generally. The nominating and corporate governance committee of our board of directors oversees risks associated with the independence of our board of directors, potential conflicts of interest and overall enterprise risk. The government security committee of our board oversees risks associated with our obligation to safeguard classified information in our possession and our compliance with the proxy agreement and applicable law and regulation including ITAR, EAR, and NISPOM.

Our senior management is responsible for implementing and reporting to our board regarding our risk management processes, including by assessing and managing the risks we face on a day-to-day basis. The role of our board in our risk oversight is consistent with our leadership structure, with our Chief Executive Officer and the other members of senior management having responsibility for assessing and managing our risk exposure, and our board of directors and its committees providing oversight in connection with those efforts. We believe this division of risk management responsibilities presents a consistent, systemic and effective approach for identifying, managing and mitigating risks throughout our operations.

#### **Code of Ethics**

Upon completion of this offering, our board will adopt a code of business conduct and ethics that will apply to all of our directors, officers and employees and is intended to comply with the relevant NYSE requirements for a code of conduct as well as qualify as a "code of ethics" as defined by the rules of the SEC. The code will contain general guidelines for conducting our business consistent with the highest standards of business ethics. We intend to disclose future amendments to certain provisions of our code of business conduct and ethics, or waivers of such provisions applicable to any principal executive officer, principal financial officer, principal accounting officer and controller, or persons performing similar functions, and our directors, on our website at <https://www.leonardodrs.com/> as required by applicable law or NYSE requirements. The code of business conduct and ethics will be available without charge on the investor relations portion of our website following this offering.

## EXECUTIVE COMPENSATION

### COMPENSATION DISCUSSION AND ANALYSIS

#### INTRODUCTION

The Compensation Discussion and Analysis provides the details of our executive compensation program and the decisions made as they relate to the Company's Named Executive Officers ("NEOs"). The discussion below relates to compensation programs in effect for 2020.

#### Compensation Program Overview

##### *Executive Compensation Philosophy*

Our executive compensation philosophy is to provide market-based competitive total compensation to support our strategic plan for growth and success, attract and retain executives and other key employees to drive a superior performance culture, and closely link pay to the performance of our executives. Our management team strives to deliver optimal results through focused operational excellence, management of costs and investments, optimization of human capital, leadership, and driving collaboration across our businesses to achieve our strategic goals. The executive compensation and benefit programs are guided by the following principles:

- **Pay for Performance.** Our program is intended to reward superior past performance and create incentives for future exemplary performance that will create long-term value. To achieve these objectives, our compensation program is designed to reward long-term strategic management and to create a performance-oriented environment.
- **Competitive Pay.** We generally target NEO total direct compensation, base salary, annual incentive compensation, and long-term incentive compensation at or around the median of our peers, although we do not target a specific level and give consideration to a number of other factors. Our program provides the opportunity for above-median pay for above-median performance and below-median pay for below-median performance.
- **Strategic Goals and Metrics.** Annual Incentive Compensation (IC) metrics and targets are driven by the Company's strategic, financial, and operational business goals. Long-Term Incentives (LTI) provide NEOs with a significant personal stake in the long-term success of the business by tying earned amounts to three-year financial performance cycles, facilitating retention of key talent, and aligning incentives with our long-term strategic goals.
- **Leadership Recruitment and Retention.** Compensation is designed to be competitive within our industry and to retain top talent. Our compensation program is designed to recruit, motivate, retain, and reward NEOs for delivering operational and strategic performance over time.

The compensation committee of the Company's board of directors (the "compensation committee") intends to provide a balanced mix of short- and long-term compensation. When the compensation committee considers any component of the NEOs' compensation, the aggregate value and mix of all components are taken into consideration. The compensation committee believes that each component of compensation is important and that it is the appropriate combination of these components that enable us to appropriately compensate and retain executives.

##### *Compensation Components*

To support our compensation philosophy, our NEO compensation program for 2020 provided a mix of fixed and variable compensation components that based the majority of each executive's compensation on the success of the Company's operating performance as measured by the financial metrics of bookings, revenue, adjusted earnings before interest, taxes and amortization (EBITA), and free cash flow

from continuing operations, as well as the executive's individual performance relative to the Company's business goals of execution of our strategic operating plan, growth, and taking care of our people.

Compensation Components	Purpose	Description
Annual Base Salary	Provides competitive, fixed-rate cash compensation.	Base Salary is set based on market comparables, level of responsibility, position held, job performance, years of experience in the position, and market value.
Annual Incentive Compensation	Designed to provide a cash incentive based on annual business performance aligned with our financial, strategic, and operational goals.	<ul style="list-style-type: none"> <li>• 2020 annual incentives were tied to financial metrics (75%) and individual performance objectives (25%).               <ul style="list-style-type: none"> <li>◦ Financial metrics were based on bookings (25%), revenue (25%), adjusted earnings before interest, taxes and amortization (25%), and free cash flow (25%).*</li> <li>◦ Individual performance objectives (25%) were aligned with 2020 strategic and operational objectives.</li> </ul> </li> </ul>

<p>Long-Term Incentive Plan (“LTIP”) Compensation</p>	<p>Provides our NEOs with a significant personal stake in the long-term success of the business, aligns the incentive to support our long-term strategic goals, and facilitates the retention of key talent over the long-term.</p>	<ul style="list-style-type: none"> <li>• The LTIP provides participants with an annual award target distributed over a three-year performance cycle, with earned awards paid on an annual basis.</li> <li>• The LTIP awards earned in 2020 were based on participants’ target awards granted in 2018, 2019, and 2020.</li> <li>• The LTIP is comprised of two components: Company performance (70%) and retention (30%). <ul style="list-style-type: none"> <li>◦ Company performance component of the annual target is distributed equally over the three-year cycle and is based on bookings (60% weighting) and economic value added (40% weighting).*</li> <li>◦ Retention component requires continued employment for three years.</li> </ul> </li> <li>• Entirely cash-based plan prior to the Company’s initial public offering.</li> </ul>
<p>Retirement Benefits</p>	<p>A 401(k) Plan provides all eligible employees, including executive officers, with the ability to set aside compensation on a pre-tax or Roth basis and receive competitive matching contributions.</p> <p>Certain employees participate in a legacy frozen defined benefit pension plan from a prior acquisition.</p>	<ul style="list-style-type: none"> <li>• 401(k) Plan provides a discretionary Company match contribution, which is immediately vested.</li> <li>• Benefit accruals under the legacy frozen defined benefit pension plan for eligible employees were frozen at the end of 2011.</li> </ul>
<p>Limited Executive Perquisites</p>	<p>Eligible executives participate in the Executive Allowance Program. This allowance program was designed to provide limited benefits to assist with costs associated with personal, physical, and fiscal fitness.</p>	<ul style="list-style-type: none"> <li>• In 2020, participating executives received an annual fixed amount, paid on a bi-weekly basis.</li> <li>• The allowance covered expenses associated with such needs as executive physical exams, life insurance, disability and/or liability insurance, tax preparation services, financial planning.</li> </ul>

Double-Trigger Change in Control Benefits	The Change in Control Agreement is intended to retain qualified executives, maintain a stable work environment, and provide economic security in the event of certain terminations of employment as a result of a change in control.	• The Change in Control Agreements provide “double-trigger” severance if an executive’s employment is terminated by the Company without cause or by the executive for good reason within two years following a change in control.
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\* Certain of the Company performance metrics are non-GAAP measures, as discussed in more detail under “Components of Compensation Program” below.

CEO			Other NEOs - Average		
Base Salary	Annual Cash Incentive (target)	Long-Term Incentive (target)	Base Salary	Annual Cash Incentive (target)	Long-Term Incentive (target)
23%	26%	51%	33%	23%	44%
<b>Performance-Based</b>			<b>Performance-Based</b>		
<b>77% At Risk</b>			<b>67% At Risk</b>		

### Executive Compensation Practices

#### WHAT WE DO

- ü External compensation consultant to review and advise on executive compensation with annual reporting to the compensation committee
- ü Conduct annual proactive engagement with the compensation committee to discuss executive pay program
- ü Align pay and performance using annual and multi-year measures of financial, operational, and business objectives
- ü Short and long-term incentives based on clear, measurable goals tied to key financial and operational metrics that drive current and future business performance and value creation
- ü Place maximum caps on incentive payouts consistent with market competitive practice
- ü Include a clawback in all incentive compensation
- ü Double-trigger change in control agreements
- ü Thoughtfully selected peer group consisting of other aerospace and defense firms as well as other mid/large-cap companies in related industries with annual compensation committee review

#### WHAT WE DON'T DO

- û Do not engage in executive compensation practices that encourage excessive risk
- û No excessive perquisites
- û No excise tax gross-ups
- û No excessive change in control provisions
- û No deferred compensation offerings



## THE COMPENSATION PROCESS

### ***Role of the Compensation Committee***

The board of directors has delegated its authority to the compensation committee for certain compensation related matters. The compensation committee approves and is actively engaged in the design and implementation of the Company's executive compensation program, with the support of the compensation consultant and Company management. In performing its duties, the compensation committee:

- Oversees the administration of the Company's executive compensation program.
- Reviews, determines and approves the compensation levels for all NEOs annually.
- Receives advice from Willis Towers Watson, the Company's compensation consultant.
- Reviews peer group and benchmarking data and other survey input from the compensation consultant.
- Evaluates the competitiveness of each executive officer's total compensation package.
- Oversees and approves the cost and design of the Company's retirement plans.
- Reviews and approves the individual and Company annual and long-term goals and objectives for the NEOs, evaluates the Company's strategic, financial, and operational performance against those goals and objectives, and determines and approves all annual and long-term compensation earned by the NEOs based on this evaluation.
- Reviews competitiveness and business fit of overall executive compensation plans, philosophies, and policies.

### ***Role of the Compensation Consultant***

The Company retains Willis Towers Watson as its compensation consultant to provide advice on executive compensation matters. The role of the compensation consultant includes:

- Provides information on competitive market data in general executive compensation as it impacts NEOs.
- In consultation with management, develops peer group proxy data and provides survey data from likely sources of competition for executive talent to assess competitive levels and target positioning.
- Reviews and advises the compensation committee on executive compensation philosophy and programs, pay and performance alignment, and program design.
- Identifies market trends and practices and advises the compensation committee on program design implications.
- Advises compensation committee on other topics as the compensation committee deems appropriate.

The Company retained Willis Towers Watson to provide perspectives about market practices for executive compensation, peer Company analysis and selection, the levels and structure of the

compensation program and compensation governance. During 2020, Willis Towers Watson performed the following specific services:

- Attended compensation committee meeting held in January for review and discussion of the compensation processes and to present the market benchmarking analysis.
- Provided regulatory education to the compensation committee.
- Provided information and advice relating to executive compensation matters.

Willis Towers Watson also provided communication services and consulting and broker services to the Company in 2020. In 2020, the Company paid fees to Willis Towers Watson for its services as a compensation consultant of approximately \$147,000, for its communication services of approximately \$102,500 and for its consulting and broker services of approximately \$390,000.

#### ***Role of Management***

The Company's chief executive officer evaluates the performance of other NEOs and makes recommendations to the compensation committee regarding base salary, annual compensation targets, and long-term cash incentive compensation targets for the NEOs other than himself. Other members of the Company's management, including the chief financial officer; chief operating officer; general counsel; and senior vice president, human resources, make recommendations to the chief executive officer regarding annual and long-term incentive plan design and performance metrics, provide NEO analysis in collaboration with the compensation consultant and provide information and recommendations regarding board of director pay with guidance from the compensation consultant.

#### ***Use of Competitive Compensation Data***

We demonstrate our commitment to aligning compensation with Company performance by strongly linking compensation to the strategic, financial and operational performance of the Company. The Company generally targets NEO total direct compensation at or around the median percentile of the peer group by component, although we do not target a specific level and give consideration to a number of other factors including level of responsibility, position held, job performance, years of experience in the position, internal pay equity, and market value. Realized compensation from other factors of wealth accumulation are not considered in setting current compensation levels. Our program provides for above-median pay for above-median performance and below-median pay for below-median performance. To the extent total compensation exceeds targeted levels, it is directly attributable to performance that increases Company value and exceeds measurable, clearly defined performance goals. Conversely, total compensation can be substantially less than target for performance that falls significantly short of pre-established targets.

The compensation committee analyzed competitive market data utilizing peer group and industry survey data when evaluating NEO compensation levels. The peer group is representative of competitors within similar markets and industries and with comparable annual revenue. Peer group performance is a key relative measure for the Company's annual incentive plan and performance-based LTIP metrics. The compensation committee, with guidance from Willis Towers Watson and management, used a 2019 peer group consisting of the following 16 companies:

Peer Group Companies	Revenue (in millions)	Employee Population	Market Capitalization (in millions)
AAR Corp.	\$ 2,051.8	5,650	\$ 1,537.3
Aerjet Rocketdyne Holdings, Inc.	\$ 1,895.9	5,004	\$ 3,409.7
CACI International Inc.	\$ 4,986.3	22,100	\$ 5,885.1
Crane Co.	\$ 3,345.5	12,000	\$ 4,968.7
Cubic Corporation	\$ 1,496.5	6,200	\$ 2,302.1
Curtiss-Wright Corporation	\$ 2,411.8	9,000	\$ 5,962.8
FLIR Systems, Inc.	\$ 1,775.7	3,649	\$ 7,145.0
ManTech International Corporation	\$ 1,958.6	7,800	\$ 3,225.8
Moog Inc.	\$ 2,904.7	12,809	\$ 3,031.3
QinetiQ Group plc	\$ 911.1	6,061	\$ 1,912.3
SAIC, Inc.	\$ 4,659.0	23,000	\$ 4,863.1
Teledyne Technologies Inc.	\$ 2,901.8	10,850	\$ 12,635.5
Triumph Group, Inc.	\$ 3,364.9	10,776	\$ 1,421.9
Unisys Corporation	\$ 2,825.0	21,700	\$ 675.7
Viasat, Inc.	\$ 2,068.3	5,600	\$ 4,540.1
Woodward, Inc.	\$ 2,900.2	9,023	\$ 6,888.4
Leonardo DRS, Inc.	\$ 2,714.0	6,700	n/a

Note: Data from Standard & Poor's Capital IQ database and reflects the 2018 fiscal year.

<sup>1</sup>Engility Holdings, Inc. was acquired by SAIC, Inc. in 2019.

For purposes of evaluating market pay for 2020, an alternative peer group for benchmarking purposes was used as a source of supplemental information for the chief executive officer position only, utilizing the Division President level of larger aerospace and defense companies. This additional peer group consisted of BAE Systems Plc, The Boeing Company, General Dynamics Corporation, Honeywell International, Inc., Huntington Ingalls Industries, Inc., L3Harris Technologies, Inc., Leidos Holdings, Inc., Lockheed Martin Corporation, Northrop Grumman Corporation, Raytheon Company, and United Technologies Corporation.

## COMPONENTS OF COMPENSATION PROGRAM

### Annual Base Salary

The goal of our base salary is to provide a competitive, fixed rate of cash compensation. Base salaries are reviewed annually, and increases, when they occur, are driven primarily by changes in the market. For 2020, we adjusted the salaries for all of our NEOs. We believe that organizations perform well over the long term when they make an effort to pay salaries at or near the market median and create opportunities for executives to earn above-median compensation through annual and long-term incentives that are awarded based on performance relative to challenging and clear performance goals. The base salary earned by each NEO was:

Name	Base Salary
William J. Lynn	\$ 1,134,558
John Baylouny	\$ 475,000
Mike Dippold	\$ 425,000
Mark Dorfman	\$ 418,000
Sally Wallace	\$ 428,000

### **Annual Incentive Compensation**

The NEOs were eligible to earn an annual cash incentive award under our Incentive Compensation Plan (the "ICP") for performance in 2020. The ICP is designed to make a significant portion of each NEO's total cash compensation contingent upon the successful achievement of certain annual company financial and individual strategic and operational goals. For that reason, 75% of the NEOs' annual incentive target is tied to financial performance, while the remaining 25% is tied to significant individual strategic and operational goals. The incentive received is based on both Company and individual performance against specific, measurable goals established at the beginning of the year and approved by the compensation committee. For individual performance, the chief executive officer assesses the other NEOs' individual contributions, and the compensation committee assesses and approves the chief executive officer's contributions and approves the chief executive officer's assessment of each NEO's contributions.

#### *Targets for Annual Incentive*

Each NEO's target annual incentive, as a percentage of base salary, was determined during our annual compensation benchmarking process and is generally designed to provide total cash compensation at or around the market median and balances other considerations such as Company performance, complexity of the role, length of service, future expected contributions, and impact to the Company's annual growth and profitability. Consistent with peer and market practice, the maximum incentive award that can be earned under the ICP is two times the target amount. For performance that falls significantly short of the pre-established target, there may be no payout.

<b>Name</b>	<b>Base Salary</b>	<b>Target Incentive (% of Base)</b>	<b>Target Incentive</b>	<b>Maximum Incentive (% of Base)</b>	<b>Maximum Incentive \$</b>
William J. Lynn	\$ 1,134,558	110%	\$ 1,248,014	200%	\$ 2,496,028
John Baylouny	\$ 475,000	75%	\$ 356,250	150%	\$ 712,500
Mike Dippold	\$ 425,000	70%	\$ 297,500	140%	\$ 595,000
Mark Dorfman	\$ 418,000	65%	\$ 271,700	130%	\$ 543,400
Sally Wallace	\$ 428,000	65%	\$ 278,200	130%	\$ 556,400

#### *Performance Metrics for Annual Incentive*

For 2020, the annual incentive for each NEO was determined based on two categories of performance metrics: four equally weighted financial metrics totaling 75% of the award opportunity; and individual strategic and operational goals, both strategic and operational, weighted at 25% of the award opportunity. At the beginning of 2020, the Company performance objectives were approved by the compensation committee to align our annual operating plan, reflect the Company's strategic plan, and to ensure challenging goal-setting. Individual strategic and operational goals were developed independently between the respective NEO and chief executive officer. The individual strategic and operational goals for the chief executive officer's annual incentive were developed by the chief executive officer and presented to the compensation committee for consideration and approval. All goals are tied to strategic business needs for the coming year and are pushed down through the organization to align all incentive pay participants with Company goals and objectives. The compensation committee determines the final payout by considering the NEOs' achievements and contributions during the year as well as Company performance, market conditions and difficulty of achieving the goals.

## 2020 Financial and Individual Performance Targets and Achievement for Annual Incentive

**Financial Performance Metric.** Each financial performance metric is weighted equally at 25%, with the performance thresholds and payout ranges shown in the table below and no payout earned for performance below the minimum threshold:

### Payout Ranges for Financial Performance Metrics

Performance Thresholds*	BOOKINGS	REVENUE	EBITA-ADJUSTED	FCF
Minimum (90%)	40%	40%	40%	40%
Target (100%)	100%	100%	100%	100%
Maximum (125%)	200%	200%	200%	200%

\* Interpolation used between these points.

The 2020 Company financial performance objectives are set forth in the table below:

Performance Metric <sup>(1)</sup>	Weighting	Minimum (in millions)	2020 Target (in millions)	Maximum (in millions)
Bookings <sup>(2)</sup>	25 %	\$ 2,340.00	\$ 2,600.0	\$ 3,250.00
Revenue <sup>(3)</sup>	25 %	\$ 2,520.00	\$ 2,800.0	\$ 3,500.00
Adjusted EBITA <sup>(4)</sup>	25 %	\$ 220.90	\$ 245.4	\$ 306.80
Free Cash Flow <sup>(5)</sup>	25 %	\$ 108.00	\$ 120.0	\$ 150.00

- (1) Targets calculated in accordance with International Financial Reporting Standards (IFRS). The Company used IFRS as its principal method of accounting.
- (2) "Bookings" is calculated as the total value of contract awards received from the U.S. government for which it has appropriated funds and legally obligated such funds to the Company through a contract or purchase order, plus the value of contract awards and orders received from customers other than the U.S. government.
- (3) For purposes of the ICP, Revenue is calculated as the revenue results achieved during 2020 as reported in the Company's audited financials.
- (4) Adjusted EBITA is calculated as our net earnings before income taxes, amortization of acquired intangible assets, restructuring costs, interest, transaction costs related to this offering, acquisition and divestiture related expenses, foreign exchange, non-service pension expenditures and other one-time non-operational events.
- (5) "Free Cash Flow" is calculated as cash flows provided by operating activities and the cash flows provided by (used in) investing activities pertaining to capital expenditures and proceeds generated from the sale of assets.

The ICP financial performance objectives were subject to adjustment by the compensation committee, as recommended by the chief executive officer, for any of the following events: asset write-downs; significant litigation or claim judgments or settlements; the effect of changes in tax laws, accounting standards or principles, or other laws or regulatory rules affecting reporting results; any reorganization and restructuring programs; extraordinary nonrecurring items; acquisitions or divestitures; foreign exchange gains and losses; a change in the Company's fiscal year; and any other nonrecurring events. The chief executive officer, with the approval of the compensation committee, had the discretion to determine that no award would be earned by a participant if the Company's Adjusted EBITA for the year did not exceed 50% of the Adjusted EBITA target established for the 2020 ICP.

**Individual Performance Objectives (25% of Incentive Opportunity).** The individual strategic and operational goals are specific, measurable goals, can be quantitative or more subjective, and are evaluated based on their relative importance to the strategic and operational performance, solid execution, and success of the Company. The chief executive officer provides a goal rating from 0% to 200% for each of the other NEO's individual strategic and operational goals, and the goal ratings are averaged to determine each NEO's overall goal rating. The compensation committee is presented with each NEO's achievement of his or her individual strategic and operational goals, and the overall goal rating for review and approval. For the chief executive officer, the compensation committee reviews the individual strategic and operational goal performance, and approves an overall goal rating.

**Earned Awards.** In January 2021, the level at which each of the NEOs earned the award opportunity under the ICP was recommended by the chief executive officer (for NEOs other than the chief executive officer) and approved by the compensation committee, and determined by the compensation committee for the chief executive officer. The 2020 ICP awards were paid in March 2021.

The chief executive officer, with compensation committee consent, has the ability to apply an additional factor to the ICP earned award for the other NEOs, referred to as a discretionary factor, which is an increase or decrease to an ICP earned award. The discretionary factor adjusts the ICP earned award under the ICP performance objectives (Company and individual) for an NEO when there is outstanding performance, or when an NEO has fallen short of expectations in the plan year. The compensation committee has the sole authority to apply a discretionary factor to the chief executive officer's ICP earned award.

The compensation committee approved the final ICP earned award for each of the NEOs, based on Company and individual performance, and any discretionary factor. In no event may the ICP final earned award exceed 200% of the NEO's target award opportunity.

#### *2020 Incentive Performance Achievement*

**Company Performance (75% of Incentive Opportunity).** The compensation committee determined that the achieved ICP company performance objectives for 2020 were as follows, reflecting above-target achievement of bookings, slightly below target level achievement of revenue, and below minimum level achievement of the Adjusted EBITA and free cash flow metrics:

Performance Objective	2020 Plan (in millions)	Actual 2020 Performance (in millions) <sup>1</sup>	% Performance Achieved	ICP Performance Factor <sup>(2)</sup>	Weighting	Weighted Performance Factor <sup>(3)</sup>
Bookings	\$ 2,600	\$ 3,055	117 %	168 %	25 %	42 %
Revenue	\$ 2,800	\$ 2,757	98 %	88 %	25 %	22 %
Adjusted EBITA <sup>(4)</sup>	\$ 245	\$ 203	83 %	— %	25 %	0 %
Free Cash Flow	\$ 120	\$ 97	81 %	— %	25 %	0 %
<b>Total Financial Performance Achievement</b>					<b>100 %</b>	<b>0.64</b>

(1) Actual performance was calculated in accordance with IFRS. The company used IFRS as its principal method of accounting.

(2) After the Percentage of Performance Achieved is calculated for each metric, an interpolation table is used to determine the ICP Performance Factor.

(3) The Weighted Performance Factor is calculated for each metric based on applying the Weighting to the ICP Performance Factor. The Financial Performance Achievement is the total of the Weighted Performance Factors, and is used along with the Individual Performance Achievement to determine the Calculated Award.

**Individual Performance (25% of Incentive Opportunity).** The individual strategic and operational goals for each NEO were designed to reflect the significant individual performance expectations for the NEO and reward notable achievements that exceeded expectations. Each NEO is expected to contribute to the financial performance of the Company beyond that specifically recognized in the financial performance metrics listed in the table above. The NEO's results of their individual strategic and operational goals were taken into consideration by the compensation committee to determine the individual performance achievement. for each NEO and are reflected in the level at which the individual performance metric was achieved.

Name	Individual Performance Achievement <sup>(1)</sup>	Individual Performance Summary
William J. Lynn	200%	<ul style="list-style-type: none"> <li>• Prepared for an Initial Public Offering (IPO) for Leonardo DRS by leading our team through intensive organizational, financial, and legal processes.</li> <li>• Achieved bookings of over \$3 billion, which was \$550 million or about 21 percent above plan. Our book-to-bill ratio was over 1.1 to 1.</li> <li>• Implemented mitigation plans for COVID-19 that minimized risk to our employees, continued the delivery of critical product to customers, and reduced the financial impact to our business.</li> <li>• Managed succession planning through several senior leadership transitions and provided key guidance and oversight to new leaders.</li> <li>• Expanded our diversity and inclusion program by instituting action teams at each of our locations, and continued to progress our hiring and promotion of women and minorities.</li> </ul>
John Baylouny	200%	<ul style="list-style-type: none"> <li>• Improved key customer relationships, leading to new awards, by retiring legacy issues and improving program performance and execution.</li> <li>• Together with Human Resources and Legal, developed and implemented the company's COVID-19 plans to maintain business continuity while prioritizing employee's safety.</li> <li>• Improved our risk and opportunity management and bid processes to reduce the risk on new and existing programs.</li> <li>• Led the company's operational excellence program to increase quality and uniformity across the business in execution with the goal of increased margins.</li> <li>• Provided significant direction to ensure succession-planning efforts were timely executed without management disruption.</li> <li>• Led the operational leadership team for the Company, and provided guidance and removed barriers to enable the team to succeed.</li> </ul>

Mike Dippold	200%	<ul style="list-style-type: none"> <li>• Drove and implemented financial business operations strategies and managed financial resources to ensure the achievement of the Company's business plans</li> <li>• Led the financial direction of cost reduction and cash maximization efforts across the company to achieve margin and net profit improvement.</li> <li>• Converted our restatement of financial statements under GAAP standards, modified the financial reporting structure, updated financial processes, and worked closely with the chief executive officer in preparation to become a public company.</li> <li>• Provided the leadership, oversight, and succession planning guidance to the finance function.</li> </ul>
Mark Dorfman	200%	<ul style="list-style-type: none"> <li>• Prepared for an Initial Public Offering (IPO) for Leonardo DRS by leading our team through intensive organizational, financial, and legal processes.</li> <li>• Supported the chief executive officer's strategic and business priorities by providing stellar advice, counsel and leadership.</li> <li>• Led the DRS legal team to achieve outstanding results in critical business engagements and negotiations.</li> <li>• Favorably resolved Company litigation and other significant legal matters.</li> <li>• Reduced overall enterprise risk through active engagement with Company leaders and innovative problem-solving.</li> <li>• Provided exceptional oversight of our internal audit, international trade compliance, and industrial and cyber security functions, including an industrial security team that was awarded five Cogswell Awards.</li> <li>• Fostered and cultivated a strong culture of ethics, compliance and integrity across the enterprise.</li> </ul>



Sally Wallace	180%	<ul style="list-style-type: none"> <li>Led the efforts to standardize planning, risk and opportunity management and EAC development.</li> <li>Led the program analysis for the company to allow better insight into the Company's key business drivers, and analyzed and developed roadmap to mitigate impact and achieve the financial operating plan.</li> <li>Instrumental in bringing our management processes to the next level by working with IT, Enterprise Resource Planning and Program teams to better align with the strategic initiatives of the Company.</li> <li>Supported the transition of a new business leader to include strategy, customer relationships, and negotiations of new contracts.</li> <li>Provided leadership guidance as the executive sponsor for the company's Diversity Advisory Group.</li> </ul>
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(1) Individual Performance Achievement can range from 0% to 200%. As referenced in the Individual Performance Objectives section, this component is weighted at 25%, and when multiplied by the Individual Performance Achievement determines an Individual's Performance Achievement Factor.

#### *Annual Incentive Plan (ICP) Earned Award Payment*

The table below summarizes the NEOs' targets and the compensation committee's determination of ICP earned awards based on financial and individual performance achievement.

Name	Target Incentive (% of Base)	Target Incentive	Financial Achievement	Individual Achievement	Calculated Award <sup>(3)</sup>	Discretionary Factor Award <sup>(4)</sup>	Earned Award <sup>(5)</sup>	Overall Achievement <sup>(6)</sup>
William J. Lynn	110%	\$ 1,248,014	\$ 599,047	\$ 624,007	\$ 1,223,054	1.2	\$ 1,467,700	117%
John Baylouny	75%	\$ 356,250	\$ 171,000	\$ 178,125	\$ 349,125	1.2	\$ 419,000	117%
Mike Dippold	70%	\$ 297,500	\$ 142,800	\$ 148,750	\$ 291,550	1.2	\$ 349,900	117%
Mark Dorfman	65%	\$ 271,700	\$ 130,416	\$ 135,850	\$ 266,266	1.2	\$ 319,600	117%
Sally Wallace	65%	\$ 278,200	\$ 133,536	\$ 125,190	\$ 258,726	1.2	\$ 310,500	111%

(1) Financial Achievement is based on Company Performance Factor of .64, and weighted at 75%.

(2) Individual Achievement is based on the Individual Performance Achievement Percentage and weighted at 75%.

(3) Calculated Award is the Sum of the Financial and Individual Achievement.

(4) A Discretionary Factor Award may be applied at the discretion of the Committee, and is a multiplier on the Calculated Award.

(5) The Earned Award is the Calculated Award with the Discretionary Factor applied. The Earned Award Amounts are rounded to the nearest \$100.

(6) The Overall Achievement represents the percentage achievement of the Target Incentive.

#### *Long-Term Incentive*

We historically have awarded cash-based long-term incentive opportunities to the NEOs under our 2014 Long-Term Incentive Plan ("LTIP"), rather than equity-based opportunities, because we were privately held. The purpose of the LTIP is to motivate participants by making a portion of their compensation contingent on the achievement of certain multi-year Company performance goals and a retention component to enable the Company to attract and retain key talent, and promote effective use of the Company's resources to achieve expected and superior performance. The LTIP comprises more than 40% of each NEO's target total direct compensation. This provides our executives with a significant personal stake in the long-term success of Leonardo DRS. As delegated by the board of directors, the LTIP is administered by the compensation committee. Each NEO's annual target and earned award recommendation are approved by the compensation committee.

### Targets for Long-Term Incentive

The aggregate target opportunity for each NEO under the LTIP was established using competitive benchmarking at or around the market median and balances other considerations such as Company performance, complexity of the role, length of service, future expected contributions, and impact to long-term growth and profitability. We believe the LTIP allows for the consideration of other factors in addition to the quantitative metrics that drive annual incentive payments. Earned awards provided under the LTIP may range from 0% to 200% of the target award opportunity. The annual LTIP target awards for the NEOs are shown in the table below.

Name	LTIP Target
William J. Lynn	\$ 2,500,000
John Baylouny	\$ 750,000
Mike Dippold	\$ 600,000
Mark Dorfman	\$ 470,000
Sally Wallace	\$ 470,000

### Vesting Terms for Long-Term Incentive

The 2020 LTIP target awards were comprised of two components, a Company financial performance component designed to tie compensation opportunities to achievement of certain company performance goals over a three year performance cycle; and a retention component to encourage the retention of key employees. The two components combined provided a total compensation opportunity competitive with the businesses with which the Company competes.

Component	END OF YEAR 1	END OF YEAR 2	END OF YEAR 3
Performance (70%)	33.3%	33.3%	33.3%
Retention (30%)	0%	0%	100%

**Company Performance.** The Company performance component comprised 70% of each NEO's 2020 target LTIP award, vesting in three equal annual installments over the period from 2020 through 2022. In order to be eligible for payment of any portion of the Company performance component of the LTIP award, the NEO must be actively employed by the Company and in good standing on the date of payment.

The Company performance metrics for the 2020 LTIP, comprising metrics for each of 2020, 2021 and 2022, were approved in March of 2020 by the compensation committee. Performance is measured based on bookings weighted at 60%, and economic value added (EVA) weighted at 40%, with the performance thresholds and payout ranges shown in the table below and no payout earned for performance below the minimum threshold:

#### Company Performance Goal Weighting

Metric	
<b>Bookings</b>	60%
Awards or contracts	
<b>EVA</b>	40%
Economic Value Added	

#### Payout Ranges for Company Performance Component

Performance Thresholds**	BOOKINGS	EVA
Minimum (80%)	50%	50%
Target (100%)	100%	100%
Maximum (120%)	150%	200%

\* Performance Metrics, Thresholds and percentages are for illustrative purposes only.

\*\* Interpolation used between these points.

“Bookings” has the same meaning as used for purposes of the ICP. See “Annual Incentive Compensation” above.

“Economic Value Added” or “EVA” is calculated as net operating profit after taxes (NOPAT) minus the Company’s average invested capital multiplied by the Company’s weighted average cost of capital. NOPAT is calculated as EBITA minus tax expenses.

**Retention.** The retention component comprised 30% of each NEO’s target LTIP award and will be payable after the end of the three-year performance cycle. In order to be eligible for the retention component of the LTIP award, the NEO must be actively employed by the Company and in good standing on the date of payment.

*Approval of Performance Achievement for the Long-Term Incentive*

Earned award recommendations for each of the NEOs are approved by the compensation committee. The compensation committee has the authority to adjust the LTIP performance objectives for any of the following events: asset write-downs; significant litigation or claim judgments or settlements; the effect of changes in tax laws, accounting standards or principles, or other laws or regulatory rules affecting reporting results; any reorganization and restructuring programs; extraordinary nonrecurring items; acquisitions or divestitures; foreign exchange gains and losses; a change in the Company’s fiscal year; and any other nonrecurring events. The LTIP permits the compensation committee to exercise negative discretion to reduce or eliminate an award that would have been earned under the performance objectives as the compensation committee determines appropriate.

*2020 Long-Term Incentive Performance Component Achievement (2018, 2019, 2020 Performance Awards)*

Consistent with the long-term incentives awarded for 2020, each of the NEOs was granted long-term incentive awards in 2019 and 2018 under the LTIP. The Company performance targets were established for bookings and EVA for each performance cycle (2018, 2019 and 2020) in February of each Performance Year. A portion of the performance component for the NEOs’ 2020, 2019, and 2018 awards vested based on the level at which 2020 performance metrics were achieved.

LTIP Award	Metric	Weighting	Revised Target (in millions) <sup>(1)</sup>	Actual (in millions)	Achievement %	Financial Award Factor %
2020	Bookings	60 %	\$ 2,600	\$ 3,055	142.5 %	29 %
	EVA	40 %	\$ (6)	\$ (38)	0 %	0 %
2019	Bookings	60 %	\$ 2,405	\$ 3,055	150.0 %	30 %
	EVA	40 %	\$ (9)	\$ (38)	0 %	0 %
2018	Bookings	60 %	\$ 2,242	\$ 3,055	150.0 %	30 %
	EVA	40 %	\$ 12	\$ 38	0 %	0 %
<b>2019 (3-Year Performance Cycle) Total Performance Award Factor</b>						<b>89 %</b>

**Important Note:**

(1) All plan years adjusted to reflect the changes from the debt redemption that occurred in December 2020.

*2020 Long-Term Incentive Achievement for the Retention Component*

The retention component, 30% of the LTIP annual target, under the LTIP is payable after three-years subject to the NEO’s continued employment with the Company as of the LTIP award payment date.

The table below reflects the achievement of the two LTIP components for the 2019 LTIP Earned Award.

LTIP Components	% Achieved	Target Weight	Achievement Factor
Company Performance <sup>(1)</sup>	70 %	89 %	62 %
Retention <sup>(2)</sup>	30 %	100 %	30 %
<b>Total</b>			<b>92 %</b>

(1) Company Performance component represents the 2020 performance year for each of the 2018, 2019 and 2020 awards.

(2) Retention component represents the portion of the 2018 LTIP award that vested in 2020.

As a result of the achievement for the components shown above, each NEO earned the following 2020 LTIP Total Payment, which were approved in February 2021 (vested portion of 2018, 2019 and 2020 Company performance component, and the 2018 retention component), and will be paid in March 2021:

Executive	LTIP Award		
	LTIP Target	% Target Earned	Total Payment <sup>(1)</sup>
William J. Lynn	\$ 2,500,000	92 %	\$ 2,300,000
John Baylouny	\$ 750,000	92 %	\$ 690,000
Mike Dippold	\$ 600,000	92 %	\$ 552,000
Mark Dorfman	\$ 470,000	92 %	\$ 432,400
Sally Wallace	\$ 470,000	92 %	\$ 432,400

(1) 2020 LTIP payment reflect the LTIP amounts for 2018 Cycle Year & Retention Award (30%), 2019 Cycle Year, and the 2020 Cycle Year (collectively, 70%).

### **Benefits and Perquisites**

The benefits provided by the Company are an important tool used to attract and retain executive talent. These benefits are designed to be competitive, cost-effective, and support the overall needs of our employees. The NEOs are eligible to participate in health and welfare benefits, retirement benefits, and executive perquisites.

#### *Company-Sponsored Retirement Plans*

**Leonardo DRS 401(k) Plan.** We sponsor a 401(k) Plan, a tax-qualified defined contribution plan, for our eligible employees, including the NEOs. Each NEO is eligible to make before-tax contributions to the 401(k) Plan, and after-tax contributions through a Roth 401(k) (or any combination of the foregoing), up to plan and tax law limits. The 401(k) Plan also provides participants with the opportunity to earn a Company match contribution. During 2020, the 401(k) Plan provided for a Company-matching contribution of 100% on contributions up to the first 5% of eligible pay for NEOs.

**Defined-Benefit Retirement Plan.** Certain employees participate in the Pension Plan for Employees of DRS Naval Power Systems, Inc., a Company-sponsored, tax-qualified, noncontributory defined-benefit plan (the "Pension Plan"). The Pension Plan was amended in October 2011 to freeze benefits for participants as of December 31, 2011. Benefits under the Pension Plan are accrued benefits calculated using the final average pay formula, with an early retirement option at age 55, and normal retirement at age 65. Final average monthly pay takes into account base salary and certain variable pay programs, but excludes non-recurring bonuses and executive incentive plans and any amount paid after December 31, 2011. Additional payment options may be available including a lump sum, period certain, and social security adjustment options if the participant retires early. Early retirement benefits, after age 55, are subject to a reduction schedule based on the participant's age at commencement and credited service. This projected benefit is not subject to cost-of-living adjustments.

### *Health and Welfare Benefits*

Our chief executive officer is the beneficiary of an individual term life insurance policy. We pay the required premiums for the policy on an annual basis. The policy was effective October 17, 2019, and is for a ten-year period. All NEOs, including our chief executive officer, are provided Company-funded group term life coverage of two times their annual base salary up to a maximum amount of \$500,000 with reductions starting at age 65. The life benefit under the term life coverage will reduce by 35% at the age of 65 and will reduce by 50% at the age of 70.

All of our current NEOs are eligible to participate in our employee benefit plans, including our medical, dental, vision, life, disability and accidental death and dismemberment insurance plans, in each case on the same basis as all of our other employees. The senior leadership of the Company, including the NEOs, receive an enhanced short-term disability benefit of 70% of coverage with a weekly maximum of \$3,500.00, and an enhanced long-term disability benefit of 66 2/3% of coverage with a monthly maximum of \$15,000.00.

Pursuant to our vacation policy, on an annual basis we pay eligible employees, including each of the NEOs, for any accrued and unused vacation benefits in excess of 240 hours, up to a maximum of 40 hours of base pay.

### *Executive Perquisites*

We provide our NEOs with an annual fixed perquisite allowance under the Executive Allowance Program that the compensation committee believes is reasonable yet competitive to attract and retain key talent. The Company provides perquisites to the NEOs for purposes of recruitment, retention and security and to ensure the personal, physical, and fiscal fitness of our executives to facilitate the transaction of business. The annual perquisite allowance in 2020 was \$39,200 for Mr. Lynn and \$29,400 for the other NEOs. The Company consulted with Willis Towers Watson regarding the market practice of our peers when considering the perquisite allowance.

The perquisite allowance provided to our NEOs was designed to be used at their discretion for such items as financial planning and tax preparation services, physical examinations, home security systems, personal liability and supplemental accidental death and dismemberment insurance, and the personal use of automobiles owned or leased by the NEO. The executive allowance is paid to NEOs on a bi-weekly basis.

### *Severance and Change in Control Benefits*

#### **Incentive Awards**

*Termination under the ICP.* Annual incentive awards earned under the ICP generally were only payable subject to the NEO's continued employment through the date on which awards are paid; however the compensation committee has the discretion to pay a prorated earned award in the event of a NEO's involuntary separation of employment for reasons other than cause after September 1 of a plan year, or due to death or disability.

*Termination under the LTIP.* Long-term incentive awards earned under the LTIP are payable subject to the NEO's continued employment through the date on which awards are paid. In the event of a NEO's involuntary separation of employment for reasons other than cause after December 31 of a plan year, the compensation committee may, in its sole discretion, authorize an award payment subject to achievement of any performance conditions for the plan year or portion of the performance cycle of which the plan year is a part. If the NEO's employment was terminated due to death or disability, then the compensation committee, in its sole discretion, may authorize a prorated award payment subject to achievement of any performance conditions.

*Clawback Provision.* The ICP and LTIP include executive compensation recoupment, or “clawback,” provisions. The clawback would apply in the event that the Company subsequently discovers facts that, if known earlier, would have constituted grounds for termination of employment for “cause” (as defined in the ICP or LTIP as applicable) prior to the payment of the earned award. Additionally, in the event of a restatement of the Company’s financial results (other than a restatement caused by a change in applicable accounting rules or interpretations), the result of which is that an earned award would have been lower if calculated based on the restated results, the compensation committee will review each earned award during the period in question. If the compensation committee determines that the restatement is the result of the negligence, misconduct, deception, non-disclosure, policy violation or fraud by a NEO, the compensation committee in its discretion may require repayment of all or a portion of the award.

### **Change in Control Benefits**

The Company has entered into a change in control agreement with each of the NEOs pursuant to the Leonardo DRS, Inc. Amended and Restated Executive Change in Control Plan (the “Change in Control Plan”) as in effect as of September 2016. The Company believes these agreements are an important tool for recruiting talent, maintaining a stable work environment, and retaining highly qualified executives. In 2016, the Change in Control Plan was entered into to protect the interests of the Company by including a “double-trigger” mechanism that results in a severance payout only when (a) change of control (as defined in the Change in Control Plan) is consummated, and (b) the executive’s employment is terminated by the Company without cause or by the executive for good reason within two years following the change in control. The compensation committee periodically evaluates and reviews payment and benefit levels under the Change in Control Plan and related agreements against the practices of our peer group companies. Upon the consummation of the offering, this plan will be terminated and replaced with the Executive Severance Plan described below in “Compensation Discussion and Analysis—Post-Offering Executive Compensation”.

### **Other Considerations**

#### ***Compensation and Risk Management***

With the support of management and the compensation consultant, the compensation committee evaluates the Company’s overall risk profile relative to the incentive components of compensation. The use of long-term incentive awards as a significant portion of total direct compensation is structured to ensure management is focused on the long term and not incentivized to take excessive risk.

#### ***Tax Considerations***

Code Section 162(m) limits tax deductions relating to executive compensation of certain executives of publicly held companies. For taxable years ended prior to this offering, the Company was not deemed to be publicly held for purposes of Code Section 162(m). Accordingly, these limitations were not applicable to the executive compensation program described above and were not taken into consideration in making compensation decisions. For future years, we expect to review and consider the deductibility of executive compensation under Internal Revenue Code Section 162(m), taking into account the changes to Code Section 162(m) effective for taxable years after 2017. However, in light of these changes, it is expected that we may pay compensation that is not deductible for federal income tax purposes when the board of directors (or a committee of the board of directors) believes that such payments are appropriate to attract, retain and incentivize executive talent.

### **SUMMARY COMPENSATION TABLE**

The following table presents the compensation of our Named Executive Officers for services performed for the year ended December 31, 2020.

## 2020 SUMMARY COMPENSATION TABLE

Name and Principal Position	Fiscal Year	Salary	Non-Equity Incentive Compensation <sup>(1)</sup>	Change in Pension Value and Nonqualified Deferred Compensation Earnings <sup>(2)</sup>	All Other Compensation <sup>(3)</sup>	Total
William Lynn, CEO	2020	\$ 1,137,185	\$ 3,767,700	n/a	\$ 77,624	\$ 4,982,509
John Baylouny, COO	2020	\$ 470,346	\$ 1,109,000	n/a	\$ 43,876	\$ 1,623,222
Michael Dippold, CFO	2020	\$ 420,885	\$ 901,900	n/a	\$ 43,876	\$ 1,366,661
Mark Dorfman, EVP, Gen Counsel	2020	\$ 418,717	\$ 752,000	n/a	\$ 44,326	\$ 1,215,043
Sally Wallace, EVP, Bus Ops	2020	\$ 428,914	\$ 742,900	\$ 28,991	\$ 43,876	\$ 1,244,681

(1) The amounts in this column reflect the annual incentive cash awards earned under the Company's Incentive Compensation Plan and long-term cash awards earned under the Company's Long-Term Incentive Plan. See "Compensation Discussion and Analysis—Components of Compensation Program—Annual Incentive Compensation" and "—Long-Term Incentives" for a description of these programs and the amounts earned by each NEO under each program for 2020.

(2) This column represents the increase during 2020 in the present value of the NEO's accumulated benefit under the Pension Plan for Employees of DRS Naval Power Systems, Inc. For more information regarding the NEO's pension benefits, please see the Pension Benefits table below.

(3) The amounts shown in the "All Other Compensation" column for 2020 include the amounts detailed in the table below as well as certain gym benefits with a value for each NEO that does not exceed the greater of \$25,000 or 10% of the total amount of perquisites and personal benefits for the NEO. See "Compensation Discussion and Analysis—Components of Compensation Program—Benefits and Perquisites" for a description of the benefits discussed in the table below.

## 2020 ALL OTHER COMPENSATION

Name	Fiscal Year	401(k) Plan Contributions <sup>(a)</sup>	Life Insurance <sup>(b)</sup>	Executive Allowance Program <sup>(c)</sup>	Other Benefits <sup>(d)</sup>
Lynn, William CEO	2020	\$13,992	\$23,680	\$39,501	n/a
Baylouny, John COO	2020	\$14,250	n/a	\$29,626	n/a
Dippold, Michael CFO	2020	\$14,250	n/a	\$29,626	n/a
Dorfman, Mark, EVP, General Counsel	2020	\$14,250	n/a	\$29,626	n/a
Wallace, Sally EVP, Bus Ops	2020	\$14,250	n/a	\$29,626	n/a

(a) This column reflects Company contributions under the Company's 401(k) Plan.

(b) This column reflects Company paid insurance premiums with respect to an individual term life insurance policy.

(c) This column reflects the annual fixed perquisite allowance under the Company's Executive Allowance Program.

(d) This column reflects the payout of accrued and unused vacation benefits in accordance with the Company's vacation policy.

## 2020 GRANTS OF PLAN-BASED AWARDS

The following table provides additional information about plan-based compensation disclosed in the Summary Compensation Table. This table includes non-equity awards granted during 2020. No equity awards in respect of Company stock were granted in 2020.

### 2020 GRANTS OF PLAN-BASED AWARDS TABLE

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards			
		Threshold (\$)	Target (\$)	Maximum (\$)	
William J. Lynn	January 1, 2020 <sup>(1)</sup>	\$ 499,206	\$ 1,248,014	\$ 2,496,028	
William J. Lynn	January 1, 2020 <sup>(2)</sup>	\$ 2,875,000	\$ 5,750,000	\$ 9,775,000	
John Baylouny	January 1, 2020 <sup>(1)</sup>	\$ 142,500	\$ 356,250	\$ 712,500	
John Baylouny	January 1, 2020 <sup>(2)</sup>	\$ 862,500	\$ 1,725,000	\$ 2,932,500	
Mike Dippold	January 1, 2020 <sup>(1)</sup>	\$ 119,000	\$ 297,500	\$ 595,000	
Mike Dippold	January 1, 2020 <sup>(2)</sup>	\$ 690,000	\$ 1,380,000	\$ 2,346,000	
Mark Dorfman	January 1, 2020 <sup>(1)</sup>	\$ 108,680	\$ 271,700	\$ 543,400	
Mark Dorfman	January 1, 2020 <sup>(2)</sup>	\$ 540,500	\$ 1,081,000	\$ 1,837,700	
Sally Wallace	January 1, 2020 <sup>(1)</sup>	\$ 111,280	\$ 278,200	\$ 556,400	
Sally Wallace	January 1, 2020 <sup>(2)</sup>	\$ 540,500	\$ 1,081,000	\$ 1,837,700	

(1) These amounts represent cash awards that are possible under the Company's Incentive Compensation Plan. The value earned can be found in the Summary Compensation Table in the Non-Equity Incentive Compensation column. Refer to "Compensation Discussion and Analysis—Components of Compensation Program—Annual Incentive Compensation" for a description of these programs and the amounts earned by each NEO under each program for 2020.

(2) These amounts represent cash awards that are possible under the Company's Long Term Incentive Plan ("LTIP"). 2020 LTIP Awards are for the Performance Cycle consisting of partial vested 2018, 2019 and 2020 award grants. See "Compensation Discussion and Analysis—Components of Compensation Program—Long-Term Incentives" for a description of these programs and the amounts earned by each NEO under each program for 2020. Contingent upon vesting, the 2019 and 2020 remaining performance year award payments under the LTIP will be paid at target.



## PENSION BENEFITS AS OF DECEMBER 31, 2020

The following table lists the pension program participation and actuarial present value of the NEO with a defined benefit pension at December 31, 2020. No other NEOs have a defined benefit pension.

### PENSION BENEFITS

Name	Plan Name <sup>(1)</sup>	Number of Years Credited Service	Present Value of Accumulated Benefit (\$) <sup>(2)</sup>	Payments during the last fiscal year (\$)
Sally Wallace	Naval Power Systems Pension Plan	15.9	\$ 662,058	\$ —

(1) Benefits under the Pension Plan for Employees of DRS Naval Power Systems, Inc. were frozen effective as of December 31, 2011.

(2) The Present Value of Accumulated Benefit (PVAB) for Sally Wallace as of December 31, 2020 is \$662,058, which is based on a discount rate of 2.23% and the PRI-2012 mortality table projected using MP-2020 with white collar adjustment. The PVAB for her as of December 31, 2019 is \$633,067, which is based on a discount rate of 2.75% and the RP-2014 Adjusted Employees Healthy Annuitant Table projected using Scale MP-2016 with white collar adjustment. The above amounts are determined based on the same assumptions used for financial reporting purposes, except that the assumed retirement age is the normal retirement age of age 65, which is also the earliest age at which she may receive retirement benefits without any reduction in benefits.

#### The Pension Plan for Employees of DRS Naval Power Systems, Inc.

Certain employees participate in the Pension Plan for Employees of DRS Naval Power Systems, Inc., a Company-sponsored, tax-qualified, noncontributory defined-benefit plan (the "Pension Plan"). The Pension Plan was amended in October 2011 to freeze benefits for participants as of December 31, 2011. Benefits under the Pension Plan are accrued benefits calculated using the final average pay formula, with an early retirement option at age 55, and normal retirement at age 65. Final average monthly pay takes into account base salary and certain variable pay programs, but excludes non-recurring bonuses and executive incentive plans and any amount paid after December 31, 2011. Additional payment options may be available including a lump sum, period certain, and social security adjustment options if the participant retires early. Early retirement benefits, after age 55, are subject to a reduction schedule based on the participant's age at commencement and credited service. This projected benefit is not subject to cost-of-living adjustments.

#### POTENTIAL PAYMENTS UPON TERMINATION OR CHANGE IN CONTROL

As discussed under "Components of Compensation Program—Benefits and Perquisites—Severance and Change in Control Benefits," NEOs may be entitled to certain amounts under the ICP and LTIP on a termination of employment in certain limited circumstances. Additionally, pursuant to the Leonardo DRS, Inc. Amended and Restated Executive Change in Control Plan as in effect as of September 2016, NEOs are eligible for certain "double trigger" severance benefits in the event of a qualifying termination of employment in connection with a change in control. No payments or benefits would be payable to our NEOs solely as a result of a change in control of the Company.

This section estimates the payments that would be received by our NEOs upon a termination of employment effective as of December 31, 2020.

Name	Involuntary Termination without Cause or due to Death or Disability		Termination without Cause or for Good Reason in connection with a Change in Control	
Lynn, William CEO	\$	8,513,146	\$	13,006,160
Baylouny, John COO	\$	1,843,847	\$	4,179,472
Dippold, Michael CFO	\$	1,568,290	\$	3,512,040
Dorfman, Mark EVP, General Counsel	\$	1,401,990	\$	3,105,240
Wallace, Sally EVP, Bus Ops	\$	1,423,490	\$	3,152,990

### ***Change in Control***

As stated earlier in this section, the NEOs are eligible to receive severance benefits under the Change in Control Plan in the event their employment is terminated up to 24-months after a change in control occurs.

### ***Employment Agreement***

In 2020 under William Lynn's existing employment agreement, he was eligible for certain severance benefits in the event of other types of termination, including death, disability or involuntary termination without cause. In the event of a termination without cause on December 31, 2020, he would be eligible for 2.5 times the sum of his annual base salary and incentive compensation bonus and he would also receive payment for the 2020 incentive bonus and long-term incentive with all future awards forfeited, and 12 months of company-paid COBRA benefits.

The Company's other NEOs, John Baylouny, Michael Dippold, Mark Dorfman, and Sally Wallace have no formal employment agreements.

### ***Involuntary Termination without Cause***

In 2020, John Baylouny, Michael Dippold, Mark Dorfman, and Sally Wallace were not under employment agreements with the Company or any severance plan. If an involuntary termination without cause would have occurred, at the company's discretion in exchange for providing severance benefits, the employee must agree to and be in compliance with ongoing confidentiality and cooperation obligations, non-competition, and non-solicitation covenants for a period of 12-months following termination. Generally, our separation pay benefits are 12-months of base salary, 12-months of company-paid COBRA, and outplacement services. Under the terms of the annual incentive compensation plan, if the employee is terminated after September 1, 2020, the administrator of the plan may authorize an earned award, reflecting the employee's participation for a portion of the plan year ("pro-rated award"). The pro-rated award would be based on performance, and payable in March 2021. Under the terms of the LTIP, if the employee is terminated on or after December 31, 2020 but before payment, the administrator of the plan may authorize an earned award based on performance. All future awards under the long-term incentive plan would be forfeited.

### ***Death or Disability***

In the event of any NEOs' death or disability, he or she would be eligible for benefits under the company's group term life insurance and accidental death and dismemberment, and disability plan. Under the terms of our ICP and LTIP, the administrator may authorize a pro-rated award payment at target paid to the NEO or, in the case of death, to his or her estate.

### **Written Release**

In all cases, except for death, where separation benefits are being provided by the Company, the NEO is required to execute a written release agreement in order to be eligible for the severance benefits. In 2021, each NEO will be a participant in the Executive Severance Plan which will cover change in control with a double-trigger, and non-change in control terminations.

### **2020 DIRECTOR COMPENSATION**

We compensate each non-employee director for service on the board of directors. The CEO and compensation committee review director compensation periodically. In consideration of the duties performed each director receives a fixed annual cash retainer, payable quarterly in arrears.

Directors are reimbursed for reasonable expenses incurred in attending or returning from meetings of the board or any committee thereof, or otherwise in or about the business of the Company. These expenses are reimbursed in accordance in with the Company's policies regarding reimbursement of business expenses and are approved by the CEO.

<b>Name</b>	<b>Fees Earned or Paid in Cash (\$)</b>		<b>Total (\$)</b>
Frances Townsend	\$	200,000	\$ 200,907
Philip Odeen	\$	150,000	\$ 151,484
General George Casey, Jr.	\$	150,000	\$ 150,420
Kenneth Krieg	\$	200,000	\$ 202,062
David W. Carey	\$	200,000	\$ 200,000

Following the consummation of this offering, each of our non-employee directors will receive annual cash compensation of \$100,000 and will be granted restricted stock units of our common stock in an amount equal to \$100,000 at the date of grant that will vest on a one period from the grant date. The chairs of our audit committee, compensation committee, nominating and corporate governance committee and government security committee will receive an additional annual cash retainer of \$40,000, with the lead independent director receiving an additional annual cash retainer of \$50,000. Directors who are our employees will not receive any compensation from us for their service on our board of directors.

### **POST-OFFERING EXECUTIVE COMPENSATION**

#### **Omnibus Equity Compensation Plan**

Our board of directors has adopted, and our stockholder has approved, the Leonardo DRS 2021 Omnibus Equity Compensation Plan (the "Omnibus Plan") in connection with this offering. The Omnibus Plan will be effective as of February 24, 2021. Under the Omnibus Plan we will make grants of long-term equity incentive compensation to our key employees, prospective employees, consultants and non-employee directors. The purpose of the Omnibus Plan is to help us attract, retain and motivate key employees, align the interest of those individuals with the interests of our shareholders and promote ownership of the Company's equity. The following is a summary of the material terms of the Omnibus Plan, a copy of which is filed as an exhibit to the registration statement of which this prospectus forms a part.

#### **Administration**

The compensation committee of the board of directors (and its delegates) has the authority to interpret the terms and conditions of the Omnibus Plan, to determine eligibility for and terms of awards for participants and to make all other determinations necessary or advisable for the administration of the Omnibus Plan. The compensation committee may delegate any of its powers, responsibilities or duties to

any of its members, to any person who is not a member of the compensation committee or to any administrative group within the Company. The board of directors may also grant award or administer the Omnibus Plan. For purposes of this summary, we refer to the committee that administers the Omnibus Plan and to any person or group to whom this committee delegates authority, as the compensation committee.

#### ***Eligible Award Participants***

Our employees, consultants and non-employee directors are eligible to receive awards under the Omnibus Plan.

#### ***Awards***

Awards under the Omnibus Plan may be made in the form of stock options, stock appreciation rights ("SARs"), restricted shares, restricted stock units ("RSUs"), dividend equivalent rights and other equity-based or equity-related awards that the Administrator determines to be consistent with the purposes of the Omnibus Plan and the interests of the Company.

#### ***Shares Subject to the Omnibus Plan***

The aggregate number of shares of common stock available for issuance under the Omnibus Plan will be equal to 3,511,400 shares. Shares issued under the Omnibus Plan that are assumed, converted or substituted under the Omnibus Plan as a result of the Company's acquisition of another company, including by way of merger, combination or similar transaction will not count against the number of shares that may be issued under the Omnibus Plan. Available shares under a stockholder approved plan of an acquired company may be used for awards under the Omnibus Plan and do not reduce the maximum number of shares available for grant under the Omnibus Plan, subject to applicable stock exchange requirements. Shares subject to an award that is forfeited, expired or settled for cash, to the extent of such forfeiture, expiration or cash settlement will be available for future grants of awards under the Omnibus Plan and will be added back in the same number of shares as were deducted in respect of the grant of such award. The payment of dividend equivalent rights in cash in conjunction with any outstanding awards will not be counted against the shares available for issuance under the Omnibus Plan. In the case of SARs, the difference between the number of shares covered by the exercised portion of the SAR and the number of shares actually delivered upon exercise shall not be restored or available for future issuance under the Omnibus Plan. Shares tendered by a participant or withheld by us in payment of the exercise price of a stock option or to satisfy any tax withholding obligation with respect to an award will not again be available for awards.

#### ***Director Limits***

With respect to any period from one annual meeting of shareholders to the next following annual meeting of shareholders, the fair market value of shares subject to awards granted to any non-employee director, and the cash paid to any non-employee director, may not exceed \$500,000, with the value of any equity-based awards based on the accounting grant date value of such award.

#### ***Terms and Conditions of Options and Incentive Stock Options***

An incentive stock option means a stock option to purchase shares that is intended to be an "incentive stock option" within the meaning of Sections 421 and 422 of the Internal Revenue Code (the "Code"), as now constituted or subsequently amended, or pursuant to a successor provisions of the Code and which is designated as an incentive stock option in the applicable award agreement. Stock options may be granted to eligible recipients in such number and at such times during the term of the Omnibus Plan as the compensation committee may determine, provided that the maximum number of shares as to which stock option may be granted to any one individual in any fiscal year may not exceed the aggregate number of shares of common stock available for issuance under the Omnibus Plan.

Each stock option will vest and become exercisable according to the terms and conditions determined by the compensation committee. Unless otherwise determined by the compensation committee, no option or SAR may be exercisable more than ten years from the grant date, or in the case of an incentive stock option granted to a ten percent stockholder, five years. The exercise price per share under each non-qualified option and SAR granted under the Omnibus Plan may not be less than 100% of the fair market value of our common stock on the option grant date.

#### ***Terms and Conditions of SARs***

SARs may be granted to eligible recipients in such number and at such times during the term of the Omnibus Plan as the compensation committee may determine. Each SAR will vest and become exercisable according to the terms and conditions determined by the compensation committee. The exercise price per share with respect to each SAR will be determined by the compensation committee, but it may never be less than the fair market value of our common stock on the grant date. Unless otherwise determined by the compensation committee, no SAR may be exercisable more than ten years from the grant date.

#### ***Terms and Conditions of Restricted Stock and RSUs***

Restricted stock is an award of common stock on which certain restrictions are imposed over specified periods that subject the shares to a substantial risk of forfeiture. An RSU is a unit, equivalent in value to a share of common stock, credited by means of a bookkeeping entry in our books to a participant's account, which is settled after vesting in stock or cash, as determined by the compensation committee. Subject to the provisions of the Omnibus Plan, our compensation committee will determine the terms and conditions of each award of restricted stock or RSUs, including the restricted period for all or a portion of the award, and the restrictions applicable to the award. Restricted stock and RSUs will vest based on a period of service specified by our Administrator, the occurrence of events specified by our compensation committee or both. Unless otherwise determined by the compensation committee, RSUs that were granted under the Omnibus Plan not previously forfeited or terminated will receive one share of common stock, cash or other securities or property equal in value to a share of common stock or a combination thereof.

#### ***Terms and Conditions of Dividend Equivalents***

The compensation committee may include in the award agreement with respect to any award a dividend equivalent right entitling the recipient to receive amounts equal to all or any portion of the regular cash dividends that would be paid on the shares covered by such award. The compensation committee will determine whether the payment will be made in cash, in shares, or in another form.

#### ***Other Stock-Based or Cash-Based Awards***

The compensation committee may grant other types of equity-based, equity-related or cash-based awards in such amounts and subject to terms and conditions as the compensation committee may determine. The terms and conditions may relate to the achievement of performance goals as well as service-based goals, as determined by the compensation committee at the time of the grant. A performance-based award will be determined based on the attainment of written performance goals approved by the compensation committee for a performance period. The compensation committee may prescribe a formula to determine the amount of the performance-based award that may be payable based upon the level of attainment of the performance goals during the performance period. Following the completion of each performance period, the compensation committee will have the sole discretion to determine whether the applicable performance goals have been met with respect to each participant.

#### ***Other Forfeiture Provisions; Clawback***

Awards under the Omnibus Plan will be subject to any clawback or recapture policy that we may adopt from time to time.

### ***Effect of a Change in Control***

Except as otherwise determined by the compensation committee, if the participant's employment is terminated by us or any successor entity without "cause," or the participant resigns for "good reason," as each is defined in the Omnibus Plan, on or within two years after a change in control, each award granted to a participant prior to the change in control will become fully vested, including the lapsing of all restrictions and conditions, and as applicable, exercisable and any shares deliverable pursuant to RSUs will be delivered promptly following termination of employment.

### ***Expiration Date***

The Omnibus Plan has a ten-year term and will expire at the end of the term unless further approval of our shareholders of the Omnibus Plan or a successor plan is obtained. However, the expiration of the Omnibus Plan would have no effect on outstanding awards previously granted.

### **Executive Severance Plan**

Our board of directors has approved our Executive Severance Plan (the "Severance Plan") to help retain qualified employees, maintain a stable work environment and provide economic security by providing benefits to certain key employees in the event of certain qualifying terminations.

The Severance Plan will provide benefits to certain eligible employees, including the NEOs, whose jobs are eliminated by the Company without "cause" or by the executive with "good reason" (as each is defined in the Severance Plan) within two years of a "change in control" (as defined in the Severance Plan), excluding any termination due to death or disability, including:

- Severance pay in an amount equal to the sum of (i) his or her annual base salary and target award under the ICP for the fiscal year in which termination occurs, multiplied by the applicable severance multiplier, (ii) his or her unpaid prior year bonus, and (iii) the pro-rata bonus, paid in a lump sum;
- A monthly reimbursement equal to the monthly COBRA premiums for NEOs, the shorter of either 30 months or the period ending on the last day of the second calendar year following the year in which the severance occurs and for other participants, 24 months; and
- An additional monthly amount equal to the Company's cost as of immediately prior to the severance date under the Company's disability, accident and life insurance.

The Executive Severance Plan will provide benefits to certain eligible employees whose jobs are eliminated by the Company without cause unrelated to a change in control, excluding any termination due to death or disability, including:

- Severance pay in an amount equal to the sum of (i) his or her annual base salary for 18 months for the NEOs and for 12 months for other executives, (ii) his or her unpaid prior year bonus, and (iii) the pro-rata bonus, paid in equal installments;
- A monthly reimbursement equal to the monthly COBRA premiums for NEOs, the shorter of either 30 months or the period ending on the last day of the second calendar year following the year in which the severance occurs and for other participants, 24 months; and
- An additional monthly amount equal to the Company's cost as of immediately prior to the severance date under the Company's disability, accident and life insurance.

Any severed employee will not be eligible to receive the benefits listed above unless he or she first executes a written release, which becomes effective and is not revoked.

In the event a participant's employment is terminated by the Company without cause or by the executive with good reason in connection with a change in control, any awards granted to a severed employee under the LTIP will be deemed to be immediately vested and payable. If a participant's employment is terminated unrelated to a change in control, the terms of the LTIP will apply, which include that any awards granted under the LTIP and not yet paid will terminate and the participant will not be entitled to any further payments. However, if the termination is due to a reduction in force or due to a participant's death or disability, the compensation committee may authorize certain payments to be made for such participant's awards granted under the LTIP.

Under the Severance Plan, any outstanding awards under the Omnibus Plan will be treated in accordance with the terms of the Omnibus Plan and any award agreements, including the Founders Awards described below.

### **Founders Awards**

In connection with the offering, the board of directors has approved the grant of special one-time founders awards to certain key executives and directors, including William Lynn. The founders awards will be granted in the form of restricted stock units, which will cliff vest on the second anniversary of the grant date, provided that the time-based RSUs will vest in full upon the executive's termination of employment due to death or disability or the executive's termination of employment by us without cause. The aggregate value of RSUs to be granted in the form of founders grant RSU awards is expected to be within a range of \$7 million to \$14 million. The share amounts will be determined upon final IPO pricing.

### **New Employment Agreement for Chief Executive Officer, William J. Lynn III**

The board of directors approved a new employment agreement for Mr. Lynn, effective as of the completion of our initial public offering, to continue to serve as the chief executive officer of the Company and chairman of the board of directors of the Company. Mr. Lynn will be entitled to a base salary of \$1,157,249 and eligible to participate in our annual incentive program with a target award of 110% of his base salary and a maximum earned award of 200% of the target award. Further, Mr. Lynn will be eligible to participate in the LTIP with a target award of \$3,580,000. Additionally, Mr. Lynn will be eligible to receive a Founders Award in connection with our initial public offering, in accordance with the terms of the Founders Award but with a target award equal to an amount that is two times Mr. Lynn's 2020 target award under the LTIP.

#### ***Benefits***

Mr. Lynn is entitled to receive group health, dental, hospitalization, life and disability insurance benefits that are in effect as of the effective date of his employment agreement. Mr. Lynn is also eligible to participate in other welfare and retirement benefit plans or programs offered to senior executives at the Company. Term life insurance will provide Mr. Lynn's beneficiaries with a death benefit equal to \$4,000,000 and a death benefit of \$325,000 that is subject to age-related reductions after reaching the age of 65. Mr. Lynn will be entitled to four weeks of paid vacation, coverage under the directors' and officers' insurance policy, and an executive allowance program of \$40,000. Mr. Lynn will be reimbursed for reasonable legal expenses, up to \$10,000, in connection with the negotiation and documentation of his employment agreement.

#### ***Retirement***

Upon voluntarily termination of employment through retirement on one hundred eighty days' prior written notice to the Company, Mr. Lynn will be entitled to (i) his base salary and unused vacation days accrued through the effective date of termination of employment; (ii) any unpaid earned awards under the ICP for any completed prior fiscal year; (iii) his target award under the ICP for the full fiscal year, payable at the same time as ICP awards are paid to other participants; (iv) continued vesting of any restricted stock unit granted to Mr. Lynn under the Omnibus Plan (excluding the Founders Awards); (v) any unvested performance-based restricted stock unit awards will vest pro rata, based on the date his

employment terminates, in accordance with its vesting schedule, and subject to the satisfaction of the performance goals; (vi) any unvested award payments under the LTIP, paid out at the same time and manner as awards are made to other participants and subject to Committee approval; (vi) and COBRA coverage for eighteen months. Retirement generally means voluntary termination of employment by Mr. Lynn after he reaches the age of 65 and subject to his providing notice to the Company at least 180 days prior to his retirement.

### **Termination**

Upon a termination of employment for "cause" as defined in his employment agreement, Mr. Lynn will be paid his base salary and unused vacation days accrued through the effective date of termination of employment and any unpaid earned awards under the ICP for any completed prior fiscal year, and any benefits owed to him under the Company's benefit plans.

Upon a termination of employment for "death" or "disability" as defined in his employment agreement, Mr. Lynn or his beneficiaries will be entitled to receive, in addition to any regular life insurance benefits paid by the Company, his base salary and unused vacation days accrued through the effective date of termination of employment and any unpaid earned awards under the ICP and any benefits owed to him under the Company's benefit plans. Any unvested target awards under the LTIP will fully vest on the date of termination of employment, payable in accordance with the terms of the LTIP. Further, the compensation committee may authorize a pro-rated award payment under the ICP to Mr. Lynn or his beneficiaries, reflecting the participation for the portion of year in which the employment is terminated. Any awards granted under the Omnibus Plan, including the Founders Awards, will fully vest on the date of death or disability, unless provided in the applicable award agreements.

Upon a termination of Mr. Lynn's employment by the Company or by Mr. Lynn due to a material breach of the Company, other than terminations of employment due to cause, death, or disability, Mr. Lynn will be entitled to a lump sum payment equal to two and one-half times the sum of his base salary and target award under the ICP. Mr. Lynn will also be eligible for unvested award payment under the LTIP, subject to approval by the compensation committee, regardless to the date of termination of employment. Additionally, any unvested restricted stock unit awards granted to Mr. Lynn under the Omnibus Plan, including the Founders Awards, will continue to vest on their vesting schedule and any unvested performance-based restricted stock unit awards will vest pro rata, subject to the satisfaction of the performance goals. Mr. Lynn will also be entitled to payment or reimbursement for COBRA premiums for health, dental and hospitalization insurance and continued participation in, and payment of premiums by the Company for, life insurance and other welfare benefits had he remained employed at the Company for one year after the date his employment is terminated.

The employment agreement also contains a confidentiality provision that applies during the term of employment and following any termination of employment, a non-competition provision that applies during the term of employment and for one year following any termination of employment that results in severance benefits and an employee non-solicit provision that applies during the term of employment and for two years following any termination of employment.

### **Amendment to the LTIP Plan**

The board of directors has approved amendments to our LTIP, which provide that no awards will be granted under the LTIP on or after January 1, 2021. The Company performance component for any LTIP awards that were issued prior to January 1, 2021 will be deemed satisfied at 100% of the remaining target award. For awards issued in 2019, the remaining performance components will be paid in 2021 and 2022 and the retention component will be paid in 2022. For awards issued in 2020, the two remaining performance components will be paid in 2022 and 2023 and the retention component will be paid in 2023. The retention component is contingent upon the participant's continued employment on the date of each payment. The LTIP will be discontinued once the final payments are made under the plan.



## PRINCIPAL AND SELLING STOCKHOLDERS

Prior to the completion of this offering, all the shares of our common stock have been owned by US Holding, a wholly owned subsidiary of Leonardo S.p.A. Immediately following the offering, US Holding will own 78.0% of our outstanding common stock, assuming no exercise by the underwriters of their option to purchase additional shares, and 74.7% of our common stock if the underwriters exercise their option to purchase additional shares in full.

The following table sets forth information as of March 15, 2021 with respect to the ownership of our common stock by:

- each person known to own beneficially more than five percent of our common stock, including the selling stockholder;
- each of our directors and prospective directors;
- each of our named executive officers; and
- all of our current executive officers, directors and prospective directors as a group.

The amounts and percentages of shares beneficially owned are reported on the basis of regulations of the SEC governing the determination of beneficial ownership of securities. Under SEC rules, a person is deemed to be a “beneficial owner” of a security if that person has or shares voting power or investment power, which includes the power to dispose of or to direct the disposition of such security. A person is also deemed to be a beneficial owner of any securities of which that person has a right to acquire beneficial ownership within 60 days. Securities that can be so acquired are deemed to be outstanding for purposes of computing such person’s ownership percentage, but not for purposes of computing any other person’s percentage. Under these rules, more than one person may be deemed to be a beneficial owner of the same securities, and a person may be deemed to be a beneficial owner of securities as to which such person has no economic interest.

Percentage computations are based on approximately 145,000,000 shares of our common stock outstanding as of March 15, 2021 (after giving effect to a 1,450,000-for-1 forward stock split on our common stock effected on February 25, 2021).

Except as otherwise indicated in these footnotes, each of the beneficial owners listed has, to our knowledge, sole voting and investment power with respect to the indicated shares of common stock.

Unless otherwise set forth in the footnotes to the table, the address for each listed stockholder is c/o 2345 Crystal Drive, Suite 1000, Arlington, Virginia 22202.

Name of Beneficial Owner	Shares Beneficially Owned Before the Offering and After the Offering Assuming the Underwriters' Option Is Not Exercised <sup>(1)(3)</sup>					Shares Beneficially Owned After the Offering Assuming the Underwriters' Option Is Exercised in Full <sup>(1)(3)</sup>	
	Number of Shares Owned	Percent of Class Before the Offering (%)	Shares Offered Hereby	Number of Shares Owned	Percent of Class After the Offering (%)	Number of Shares	Percent of Class (%)
Leonardo S.p.A. <sup>(2)</sup>	145,000,000	100.0	31,900,000	113,100,000	78.0	108,315,000	74.7
Directors							
William J. Lynn III	—	—					*
Gail Baker	—	—	—	—	—	—	*
David W. Carey	—	—					
Mary E. Gallagher	—	—	—	—	—	—	*
General George W. Casey, Jr. (Ret.)	—	—	—	—	—	—	*
Kenneth J. Krieg	—	—	—	—	—	—	*
Peter A. Marino	—	—	—	—	—	—	*
Philip A. Odeen	—	—	—	—	—	—	*
Frances F. Townsend	—	—	—	—	—	—	*
Officers							
John A. Baylouny	—	—	—	—	—	—	*
Michael D. Dippold	—	—	—	—	—	—	*
Mark A. Dorfman	—	—	—	—	—	—	*
Sally A. Wallace	—	—	—	—	—	—	*
All directors and executive officers as a group (13 persons)	—	—	—	—	—	—	*

\* Less than one percent.

(1) The selling stockholder has granted the Underwriters an option to purchase up to an additional 4,785,000 shares.

(2) Leonardo S.p.A., as the parent of US Holding, beneficially owns all shares of our common stock owned of record by US Holding prior to the completion of this offering. Leonardo S.p.A. is a public company with shares listed on the Milan Stock Exchange. The address of Leonardo S.p.A. is Piazza Monte Grappa n. 4, 00195 Rome, Italy.

(3) Does not give effect to an anticipated grant of share-based awards upon the closing of this offering to certain individuals, including members of our senior management. See "Executive Compensation—Founders Awards."

## CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

### Policies and Procedures for Related Person Transactions

Following the completion of this offering, our audit committee will have the primary responsibility for reviewing and approving or disapproving “related-party transactions,” which are transactions between us and related persons in which the aggregate amount involved exceeds or may be expected to exceed \$120,000 and in which a related person has or may have a direct or indirect material interest. Upon completion of this offering, our policy regarding transactions between us and related persons will provide that a related person is defined as a director, executive officer, nominee for director or greater than 5% beneficial owner of our securities, in each case since the beginning of the most recently completed year, and any of their immediate family members. Our audit committee charter that will be in effect upon completion of this offering will provide that our audit committee will review and approve or disapprove any related-party transactions.

### Relationship with Leonardo S.p.A. Following this Offering

We are, and until completion of this offering will remain, an indirect wholly owned subsidiary of Leonardo S.p.A. Following this offering, Leonardo S.p.A., through US Holding, will continue to own a majority of our outstanding common stock, and, as a result, Leonardo S.p.A. will continue to have significant control over our business and affairs and matters being presented for approval by our stockholders, in each case subject to the terms of our proxy agreement described below. See “Risk Factors—Risks Relating to Our Status as a Controlled Company and under the Proxy Agreement.” In addition, we expect that Leonardo S.p.A. will continue to consolidate our financial results in Leonardo S.p.A.’s consolidated financial statements.

#### *Proxy Agreement*

We have entered into a proxy agreement, dated as of October 26, 2017, with the proxy holders, Leonardo S.p.A., US Holding and the DoD. Following this offering we expect to enter into an amended and restated proxy agreement (as amended and restated, the “proxy agreement”) and the parties to the proxy agreement have entered into a commitment letter, dated as of February 26, 2021, as to the form and content of the amended and restated proxy agreement which allows us to operate as if the amended and restated proxy agreement were already in effect. The following description of the proxy agreement therefore reflects the terms of the proxy agreement as it will be amended and restated, in accordance with the commitment letter, following this offering. The material terms of the amended and restated proxy agreement and the commitment letter are discussed below and the form of the amended and restated proxy agreement and the commitment letter have been filed as exhibits to the registration statement of which this prospectus forms a part.

Following this offering, Leonardo S.p.A. will continue to own the entire share capital of our immediate parent, US Holding, which, in turn, will beneficially own approximately 78.0% of the voting power of our outstanding common stock (or 74.7% if the underwriters exercise their option to purchase additional shares in full). As a result, we are deemed to be under FOCI under the NISPOM, which establishes procedures and requirements for government contractors, such as our company, with regard to classified information. Furthermore, the Italian state beneficially owns approximately 30.2% of Leonardo S.p.A.’s voting power (through its ownership of approximately 30.2% of the outstanding ordinary shares of Leonardo S.p.A.). A company is considered to be operating under FOCI whenever a foreign interest has the power, direct or indirect, whether or not exercised, and whether or not exercisable, to direct or decide matters affecting the management or operations of that company in a manner that may result in unauthorized access to classified information, may adversely affect the performance of classified contracts, or may undermine U.S. security or export controls. In order to be permitted to maintain our security clearances and our access to classified data and to perform or bid on classified programs, we are

required to mitigate FOCI, which we have done by entering into the proxy agreement. Among other things, the proxy agreement:

- provides that the shares of our common stock owned directly or indirectly by Leonardo S.p.A. are voted through proxy holders, who must be independent from current and prior affiliation with Leonardo S.p.A. and its subsidiaries (including US Holding and us) (subject to limited exceptions discussed below) and must maintain adequate security clearance;
- provides that the proxy holders are appointed by our immediate parent US Holding (in consultation with Leonardo S.p.A.), but the appointment is subject to approval of the DCSA, an agency of the DoD, and that the proxy holders must be members of our board of directors;
- restricts our ability to share facilities and personnel with and receive certain services from Leonardo S.p.A. or its other subsidiaries;
- requires us to maintain a government security committee of our board of directors; and
- regulates meetings, visits and communications that are not deemed to be routine business visits between us and Leonardo S.p.A. or its other subsidiaries.

The proxy agreement restricts the ability of Leonardo S.p.A. and US Holding to control our operations, as described further below. The proxy agreement will automatically terminate, among other reasons, if US Holding holds less than 50% of our outstanding shares of common stock and the DCSA determines that FOCI mitigation is no longer necessary. The proxy agreement has been filed as an exhibit to the registration statement of which this prospectus forms a part.

#### *Proxy Holders*

The proxy agreement requires the appointment of five proxy holders, who must be independent from current and prior affiliation with Leonardo S.p.A. and its subsidiaries (including US Holding and us), other than prior service as a proxy holder or as an outside director of us or a proxy agreement affiliate (as defined below), and maintain adequate security clearance, to vote the shares of our common stock owned directly or indirectly by Leonardo S.p.A. Proxy holders are appointed by US Holding after reasonable consultation with Leonardo S.p.A. and approval by the DCSA and serve for staggered three-year terms. During their terms, proxy holders may only be removed (i) for acts in violation of the proxy agreement, including the inability to protect the legitimate economic interest of US Holding, upon petition by US Holding to DCSA which may be granted or denied by DCSA in its sole discretion or (ii) for gross negligence or willful misconduct. Upon expiration of a proxy holder's term, or the death, resignation, removal or inability to act of any proxy holder, the proxy holder may be reappointed or replaced by US Holding after consultation with Leonardo S.p.A. and approval by DCSA. Until a successor proxy holder accepts appointment, the remaining proxy holders may exercise all of the rights, powers and privileges of the proxy holders and if no proxy holders remain, the chairman of our board shall be automatically vested with all rights, powers, authorities and immunities of the proxy holders for an interim period until a new proxy holder is appointed by US Holding and approved by DCSA. The current proxy holders and the commencement and expiration of their terms are as set forth in the table below.

Proxy Holder	Term Commencement	Term Expiration
David W. Carey	January 1, 2018	December 31, 2022
Kenneth J. Krieg	January 1, 2018	December 31, 2021
Peter A. Marino	January 1, 2018	December 31, 2022
Philip A. Odeen	January 1, 2018	June 30, 2021
Frances F. Townsend	January 1, 2018	December 31, 2021

The proxy agreement confers on the proxy holders the right to vote US Holding's shares of our common stock in the same manner and to the same extent as if they were the absolute owners of such

shares in their own right. All actions of the proxy holders with respect to US Holding's shares of our common stock require a majority vote of the proxy holders. Each proxy holder is entitled to one vote. In exercising their power as proxy holders and fulfilling their duties as members of our board, the proxy holders are directed to seek to protect the legitimate economic interests of our shareholders and to act in a manner consistent with their fiduciary duties.

The proxy holders are permitted to vote for or consent to the following matters in their sole and absolute discretion, without consultation with US Holding or Leonardo S.p.A.:

- the election of additional directors who are not proxy holders, and who are proposed by US Holding after reasonable consultation with the nominating and corporate governance committee of our board;
- any changes or amendments to our certificate of incorporation or bylaws involving matters other than those described below;
- the sale or disposal of our property, assets or business other than as described below;
- our incurrence of debt or any pledge, mortgage or encumbrance of any of our assets other than as described below;
- any action necessary to effect the offering other than as described below; and
- any action with respect to the foregoing, or any other matter affecting us and not specifically described below that US Holding might lawfully exercise.

The proxy holders may only vote for or consent to the following matters with the express written approval of US Holding:

- the sale or disposition of any of our subsidiaries, property, assets or business or those of our subsidiaries or the purchase by us or our subsidiaries of any business, properties, assets or entities, other than in the ordinary course of business, in any individual transaction where our investment (based on our share of the enterprise value) exceeds two percent (2%) of our revenues for the immediately preceding year or where our investment, in the aggregate, for all such sales or dispositions in a calendar year, exceeds an amount equal to five percent (5%) of our revenues for the immediately preceding year;
- the incurrence of debt or pledge, mortgage, lease or other encumbrance of our assets or those of our subsidiaries in connection with the incurrence of debt, if such incurrence would cause the aggregate outstanding principal amount of all debt of us and our subsidiaries to exceed a target leverage ratio set forth in our then-current operating plan, excluding current debt incurred for purposes of funding day-to-day working capital requirements in the ordinary course of business;
- any merger, consolidation, reorganization or dissolution of us or any of our subsidiaries except as permitted above and excluding transactions solely among our wholly owned subsidiaries; and
- the filing or making of any petition by us or our subsidiaries under the federal bankruptcy laws or any similar law or statute of any state or any foreign country.

In addition, the proxy holders may only vote to declare or suspend dividends after prior consultation with US Holding.

We and US Holding are required to jointly and severally indemnify and hold each proxy holder harmless from any and all claims arising from or in any way connected to his or her performance as a proxy holder except for his or her own individual gross negligence or willful misconduct.

### *Board of Directors*

The proxy agreement requires that all five proxy holders serve as members of our board. Additionally, our board must elect a chair and, if the chair is not one of the proxy holders, our board must elect a lead outside director from among the proxy holders. Under the terms of the proxy agreement, the proxy holders shall, in their sole discretion and in their capacity as members of the nominating and corporate governance committee of our board, nominate four additional individuals who are not proxy holders, selected from candidates proposed by US Holding, in consultation with the nominating and corporate governance committee, as candidates for election to our board (the "non-proxy holder director nominees"). The non-proxy holder director nominees shall include (i) our chief executive officer and (ii) three additional individuals. If any non-proxy holder director nominee has a prior or existing contractual, financial or employment relationship with Leonardo S.p.A., such that they would not be an "independent director", DCSA must approve their selection.

The nominating and corporate governance committee of our board, which will be comprised solely of proxy holders, will nominate the proxy holders for election as directors at any meeting of our stockholders at which directors are to be elected. At any such meeting, the proxy holders will vote on behalf of US Holding to elect the then-current proxy holders and the non-proxy holder director nominees to serve on our board for the succeeding year. The proxy holders may remove any non-proxy holder director nominee from our board by majority vote and after consultation with US Holding.

The proxy agreement requires our board to establish the GSC, consisting of all proxy holders, our chief executive officer, our general counsel, our CFO and our TCO, to the extent that such officers have adequate security clearances. The role of the GSC is to ensure that we maintain policies and procedures, including a technology control plan, to safeguard classified information in our possession and to ensure that we comply with the proxy agreement, the ITAR, the EAR, and the NISPOM. The proxy agreement also requires that the audit committee of our board appoint an independent auditor to conduct an annual audit of our books and records which may be the same independent auditor used by Leonardo S.p.A. or US Holding unless the GSC concludes that measures are not reasonably available to ensure that performance of the audit by such auditor complies with the proxy agreement.

### *Facilities, Personnel and Services*

The proxy agreement restricts our ability to share facilities and personnel with and receive certain services from (i) Leonardo S.p.A., (ii) each entity that, to our knowledge, Leonardo S.p.A. directly or indirectly controls, is directly or indirectly controlled by (other than DRS itself and our subsidiaries), or is directly under common control with, except for any entity operating under an effective DCSA FOCI mitigation agreement (each of (i) and (ii), a "proxy agreement affiliate") or (iii) any director, officer, employee, beneficial owner of greater than 5% of a class of equity securities (as determined by voting or investment control over the securities), agent or other representative of a proxy agreement affiliate (together with the proxy agreement affiliates, the "proxy agreement affiliated group").

Our officers may only serve as officers of any of the proxy agreement affiliated group and vice versa with the approval of the DCSA and the GSC. DRS may only collocate facilities and personnel with the proxy agreement affiliated group with the prior written approval of the DCSA pursuant to the submission by DRS of a facility location plan describing the location of the relevant facilities and which may include, at the DCSA's request, information such as maps and floor plans of such facilities. Furthermore, DRS and the proxy agreement affiliated group may only engage in specified "affiliated operations" (as described below) pursuant to an AOP, setting out policies and procedures regarding services provided to, provided by, or exchanged between DRS and the proxy agreement affiliated group, and approved by the DCSA.

Any AOP must, at a minimum, require the GSC to notify the DCSA of any proposed category of affiliated operations and obtain DCSA approval prior to accepting or providing any associated affiliated operations, contain procedures for ensuring that any such services do not circumvent the requirements of the proxy agreement and require the GSC to provide the DCSA with an annual written certification that it

is effectively monitoring any affiliated operations and that such affiliated operations do not allow the proxy agreement affiliated group to exercise prohibited control or influence with respect to the management or business of DRS.

Affiliated operations include (i) sharing of employees between DRS and the proxy agreement affiliated group, (ii) receipt by both DRS and the proxy agreement affiliated group of third party professional services such as accounting, legal, tax, information technology or business consulting from the same service provider and (iii) the provision of products or services between DRS and the proxy agreement affiliated group, where the provision of such products or services could result in the potential for operational leverage by the proxy agreement affiliated group over DRS. See “—Affiliated Operations Plan (AOP) Services Agreements” below. Sharing of third-party services between DRS and the proxy agreement affiliated group may be approved by the majority of the GSC but such approval is subject to DCSA review and the DCSA may require the GSC to rescind any such approval. Sharing of services and products between DRS and the proxy agreement affiliated group pursuant to contracts and subcontracts, joint research, development, marketing or other type of teaming arrangement entered in connection with a commercial pursuit or joint business venture may be approved by the majority of the proxy holders and must be disclosed to the DCSA.

If DRS expects to use technology products or services of the proxy agreement affiliated group in connection with classified contracts, DRS must notify each applicable government contracting activity and provide the GSC with an annual report regarding such the notifications.

#### *Meetings, Visits and Communications*

The proxy agreement regulates meetings, visits and other communications between us and the proxy agreement affiliated group. Representatives of Leonardo S.p.A. and US Holding are required to be invited to meetings of the proxy holders but the agenda and minutes for such meetings must be provided to the DCSA for its review. Classified and controlled unclassified information may only be disclosed to Leonardo S.p.A. and its subsidiaries (including US Holding) as specifically authorized by applicable law or regulation.

All proposed visits (which may include teleconferences and videoconferences), other than routine business visits, between us and the proxy agreement affiliated group must be approved in advance by a proxy holder. Routine business visits are those that (i) are made by persons other than key management personnel, (ii) do not involve the transfer or receipt of classified information, (iii) either do not involve export-controlled information, or involve the approved transfer of export-controlled information under a proper license or authorization, (iv) do not relate to activities bearing upon our performance of classified contracts, and (v) pertain only to the commercial aspects of our business. Routine business visits may include visits for the purpose of discussion of financial performance and securities law compliance, arm's-length business, U.S. government export control compliance and approved affiliated operations. As long as our DCSA security rating is “satisfactory” or above, routine business visits may be approved by the CFSSO, rather than a proxy holder, and all such visits may be approved in advance for a period of up to 180 days. Strictly social visits between our personnel and the proxy agreement affiliate group are not prohibited but written reports of such visits must be submitted to the CFSSO for review by the proxy holders. The GSC must maintain documentation related to all meetings, visitations and communications, together with appropriate approvals or disapprovals and reports, for review by the DCSA.

#### *Compliance and Termination*

The proxy holders are required to meet as necessary to satisfy their responsibilities under the proxy agreement and our board must meet at least four times per year in addition to any separate meetings of the proxy holders. Additionally, representatives of the DCSA, the proxy holders, other members of the GSC and certain other officers of DRS, Leonardo S.p.A. and US Holding are required to meet annually to review the purpose and effectiveness of the proxy agreement. The president of DRS and the chairman of the GSC are required to submit an annual report to the DCSA on the implementation of and compliance

with the proxy agreement, accompanied by a certificate from our corporate secretary certifying that each of the representations and warranties in the proxy agreement remain true and correct on the date of such report or providing updates as applicable. Under the proxy agreement, the DoD may impose any additional security safeguards that it believes necessary to adequately safeguard classified and controlled unclassified information.

In the event of a material breach of the proxy agreement, the DoD may (i) novate our classified contracts to a company not under FOCI at our expense, (ii) terminate our classified contracts and deny us new classified contracts, (iii) revoke our facility security clearance and/or (iv) suspend or debar us from participation in all U.S. government contracts.

The proxy agreement will expire by its terms five years from its effective date. Prior to that date, DCSA may terminate the proxy agreement if it deems the proxy agreement no longer necessary in order to maintain our facility security clearance or if our facility security clearance is no longer necessary, if there has been a breach of the proxy agreement that requires its termination or if the DCSA determines that terminating is necessary for national security or, in the DCSA's sole discretion, upon petition by us or US Holding. Additionally, the proxy agreement will be automatically terminated upon the sale of our business or all of US Holding's interest in us to a person or entity not controlled by Leonardo S.p.A. or if US Holding holds less than 50% of our outstanding shares of common stock and the DCSA determines that FOCI mitigation is no longer necessary.

### ***Cooperation Agreement***

We intend to enter into a cooperation agreement with Leonardo S.p.A. and US Holding upon the completion of this offering (the "cooperation agreement"). The cooperation agreement will address rights that Leonardo S.p.A. and US Holding will have with respect to our business and financial information and financial accounting matters. The form of the cooperation agreement has been filed as an exhibit to the registration statement of which this prospectus forms a part and the discussion of the cooperation agreement in this prospectus is subject to and qualified in its entirety by reference to the form of cooperation agreement.

### ***Information Rights, Disclosure and Financial Accounting***

The cooperation agreement will require us, as long as Leonardo S.p.A. is required under IFRS to consolidate our financial results in the consolidated financial statements of Leonardo S.p.A., to continue to provide Leonardo S.p.A. with (A) information and data relating to our and our subsidiaries' business and financial results and (B) reasonable access to our personnel, data and systems, in each case in the same manner as we do immediately prior to this offering, in each case subject to the terms of the proxy agreement. In addition, during this period, we will be required to maintain accounting principles, systems and reporting formats that are consistent with Leonardo S.p.A.'s financial accounting practices in effect at the time of completion of this offering and that support Leonardo S.p.A.'s environmental, social and governance (ESG) requirements consistent with the basis supported at the time of completion of the offering, and in good faith to consider any changes to such principles, systems or reporting formats requested by Leonardo S.p.A. to enable Leonardo S.p.A. to prepare its consolidated financial and ESG statements and related public disclosures. Furthermore, the cooperation agreement will require us during this time to maintain appropriate disclosure controls and internal controls.

Following the time at which the provisions of the immediately preceding paragraph cease to apply, and ending when Leonardo S.p.A. is no longer required under IFRS to account in its financial statements for its holdings in us under the equity method of accounting, unless Leonardo S.p.A. shall earlier provide written notice to us that it is opting out of these provisions, we will, subject to reasonable protections for our confidential or proprietary information, be obligated to provide Leonardo S.p.A. with (i) information and data relating to our and our subsidiaries' business and financial results and (ii) access to our personnel, data and systems, in each case to the extent that such information, data or access is reasonably



necessary for Leonardo S.p.A. to meet its legal, financial or regulatory obligations or requirements and subject to the terms of the proxy agreement.

The cooperation agreement will provide that, until such time as Leonardo S.p.A. is no longer required under IFRS to account in its financial statements for its holdings in us under the equity method of accounting (the “threshold date”), Leonardo S.p.A. will have certain consent, access and cooperation rights with respect to the independent public registered accounting firm responsible for the audit of our financial statements and access and cooperation rights with respect to our internal audit function.

The cooperation agreement will also provide that, until the threshold date, we shall consult and coordinate with Leonardo S.p.A. with respect to public disclosures and filings, including in connection with our quarterly and annual financial results. Among other requirements, we will, to the extent practicable and subject to appropriate confidentiality obligations, and unless, in our reasonable judgment immediate release is required, provide Leonardo S.p.A. with a copy of any public release at least one business day prior to publication and consider in good faith any comments provided by Leonardo S.p.A. We will have similar rights with respect to any public release by Leonardo S.p.A. that includes information with respect to us. In addition, we and Leonardo S.p.A. will have mutual rights with respect to any information and access each may require in connection with regulatory or supervisory reporting obligations or inquiries.

#### *US Holding Consent Rights*

Until the threshold date, US Holding’s consent will be required for us and our subsidiaries to take certain actions, including the following:

- creation or issuance of any class or series of our capital stock (including designation of any preferred stock) or acquisition of any capital stock (including stock buy-backs, redemptions or other reductions of capital), or securities convertible into or exchangeable or exercisable for capital stock or equity-linked securities by us or any of our subsidiaries, except (i) issuances of equity awards to directors or employees pursuant to an equity compensation plan approved by our board of directors; (ii) issuances or acquisitions of capital stock by any wholly-owned subsidiaries (which remains wholly-owned after the issuance or acquisition); and (iii) issuances or acquisitions of capital stock that our board of directors determines are necessary to maintain compliance with covenants contained in any debt instrument;
- amendment (or approval or recommendation of any amendment) to our certificate of incorporation or bylaws that adversely affects the rights of US Holding or Leonardo S.p.A.;
- listing or delisting of (i) any of our or any of our subsidiaries’ voting equity securities or convertible securities on a securities exchange and (ii) securities of our subsidiaries if, as a result, that subsidiary would become subject to public reporting obligations;
- any material change in our accounting policy, including any change our fiscal year, and any termination or change of our external auditor; and
- pledge, mortgage, lease or otherwise encumber our assets or assets of our subsidiaries in connection with any debt if, after such pledge, mortgage, lease or other encumbrance, the aggregate outstanding principal amount of secured debt would exceed the aggregate outstanding principal amount of secured debt as of the date of the cooperation agreement.

Certain of US Holding’s rights under the proxy agreement, as described under “—Proxy Agreement—Proxy Holders,” will also apply under the cooperation agreement so long as it is in effect. In addition, we are required to consult with US Holding prior to (i) making certain investments and restricted payments that we expect to be permitted under our new credit agreements, and (ii) creating, amending or rescinding, or establishing annual or other periodic compensation scales and incentive and similar targets under, equity-based and other material executive compensation plans or programs.

### *Term*

The cooperation agreement will terminate on the date that is two years following the threshold date, except for certain provisions including those relating to confidentiality and dispute resolution.

### **Registration Rights Agreement**

We will enter into a registration rights agreement (the "registration rights agreement") with Leonardo S.p.A. and US Holding upon the completion of this offering, pursuant to which Leonardo S.p.A. and its affiliated entities ("Leonardo holders") will be able to require us, beginning after this offering, to file one or more registration statements with the SEC covering the public resale of shares of our common stock beneficially owned by Leonardo holders. Leonardo holders may transfer all or any portion of their rights under the registration rights agreement to a transferee of shares of our common stock constituting not less than 5% of our outstanding common stock. The rights of the Leonardo holders, and their permitted transferees under the registration rights agreement ("rights holders") will remain in effect with respect to all shares of our common stock covered by such agreement until such securities (a) are sold in a private transaction in which the transferor's rights under the registration rights agreement are not assigned to the transferee, (b) are sold pursuant to an effective registration statement, (c) may be sold pursuant to Rule 144 without volume or manner of sale restrictions or (d) shall have ceased to be outstanding. The sale of shares pursuant to the registration rights agreement, or the perception that sales will be made, could adversely affect the price of our common stock after this offering because a great supply of shares would be, or would be perceived to be, available for sale in the public market. The form of the registration rights agreement has been filed as an exhibit to the registration statement of which this prospectus forms a part and the discussion of the registration rights agreement in this prospectus is subject to and qualified in its entirety by reference to the form of registration rights agreement.

### *Demand Registration*

Rights holders will be able to request registration under the Securities Act of all or any portion of our shares covered by the agreement, and we will be obligated, subject to limited exceptions, to register such shares as requested. Rights holders will be able to request that we complete one demand registrations in any given three-month period subject to limitations on, among other things, minimum offering size. Subject to certain exceptions, we may defer the filing of a registration statement after a demand request has been made if, at the time of such request, our board determines that any pending or imminent event would require disclosure of material, non-public information in the registration statement for such registration statement not to be materially misleading and would not otherwise be required to be publicly disclosed by us.

### *Shelf Registration*

At any time after the date that is one year following the date of the registration rights agreement or, if sooner, once we become eligible to use a registration statement on Form S-3, we will be obligated, upon request by a rights holder, to file a shelf registration statement to register all or any portion of our shares covered by the registration rights agreement, and we will be obligated, subject to limited exceptions, to register such shares as requested by rights holders. Rights holders may, at any time and from time to time, request that we complete an unlimited number of shelf take-downs; provided, that no request for an underwritten offering shall be made within 60 days of a previous underwritten offering.

### *Piggy-Back Registration*

If at any time we intend to file on our behalf or on behalf of any of our other security holders a registration statement in connection with a public offering of any of our securities on a form and in a manner that would permit the registration for offer and sale of our common stock held by rights holders, the rights holders will have the right to include their shares of our common stock in that offering. The rights holders' ability to participate in any such offering will be subject to market "cut-back" exceptions.

### *Registration Procedures; Expenses*

The selling rights holders will be responsible for all registration expenses, including expenses incurred by us, in connection with the registration, offer and sale of securities under the registration rights agreement by them, except that we will pay all registration expenses incident to the first registration statement filed during any one-year period and registration expenses for piggyback registrations will be shared proportionally by us and the selling rights holders. We and the selling rights holders will, in any event, pay our and their respective internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expenses of any annual audit or quarterly review and the expenses of any liability insurance.

The registration rights agreement will set forth customary registration procedures, including an agreement by us to make our management available for road show presentations in connection with any underwritten offerings. We will also agree to indemnify Leonardo S.p.A., US Holding and their permitted transferees with respect to liabilities resulting from any material untrue statements or omissions in any registration statement used in any registration or contribute to liabilities in respect thereof, other than untrue statements or omissions resulting from information furnished to us expressly for use in such registration statement by Leonardo S.p.A., US Holding or any permitted transferee. The registration rights agreement will not include any maximum cash penalties or any additional penalties resulting from delays in registering our common stock.

### **Tax Allocation Agreement**

We and US Holding have entered into a tax allocation agreement (the "tax allocation agreement"), dated as of November 16, 2020, with members of an affiliated group (the "affiliated group"), as defined in Section 1504(a) of the Tax Code, members of one or more consolidated, combined, unitary or similar state tax groups (the "state members") and additional parties who are part of an "expanded affiliated group" for certain tax purposes, prior to this offering. The agreement provides for the method of computing and allocating the consolidated U.S. federal tax liability of the affiliated group among its members and of allocating any state group tax liabilities among the state members for the taxable year ending December 31, 2020 and each subsequent year in which the parties are members of a group (whether federal or state). The tax allocation agreement also provides for reimbursement of US Holding and/or DRS for payment of such tax liabilities, for compensation of any member for use of its "net operating loss" or "tax credits" in arriving at such tax liabilities and the allocation and payment of any refund arising from a carryback of net operating losses or tax credits from subsequent taxable years. Under the tax allocation agreement, the parties have agreed to calculate and allocate their respective tax liabilities and other tax attributes for taxable years beginning with the first consolidated taxable year that included DRS (i.e., the taxable year ended March 31, 2009) as if the tax allocation agreement was then in effect.

The tax allocation agreement also allocates governance and decision-making rights, obligations and responsibilities in respect of the tax matters governed by the agreement including preparation and filing of covered returns, audits of covered returns and ensuring that payments and reimbursements in respect of covered returns are timely made. The tax allocation agreement provides for administration of the agreement and any related tax matters by us, in our reasonable discretion, with respect to any group to which we belong in any taxable year in which we are an affiliated group member or state member. For any taxable year in which we are not an affiliated group member or a state member, as applicable, US Holding will appoint an administrator. The tax allocation agreement will require the parties, including those who do not file consolidated, combined, unitary or similar tax returns with the other parties but whose operations may impact such returns filed by the other parties, to reasonably cooperate with US Holding and the administrator in carrying out the provisions of the agreement, including providing the administrator access to their books and records and other relevant information. The tax allocation agreement also requires the parties to cooperate in good faith, taking into account each relevant member's tax consequences, in respect of certain specified matters as well as any other tax-related decision or matter

the administrator determines, in its reasonable discretion, with the consent of US Holding where appropriate.

The tax allocation agreement is effective as of the first day of the consolidated return year beginning October 14, 2008 and will terminate upon the written agreement of the parties. The tax allocation agreement has been filed as an exhibit to the registration statement of which this prospectus forms a part and the discussion of the tax allocation agreement in this prospectus is subject to and qualified in its entirety by reference to the tax allocation agreement.

To the extent that the issuance of shares of our common stock in this offering results in DRS no longer being included as a consolidated member of the U.S. federal and state returns of US Holding, we will be required to file standalone tax returns as of the date of the deconsolidation. Pursuant to the tax allocation agreement, we will generally retain our historic tax assets and will be able to offset future taxable income against these attributes. Accordingly, we do not anticipate any significant tax consequences as a result of exiting the US Holding consolidated tax group.

#### ***Trademark License Agreement***

We will enter into a trademark license agreement (the “trademark license agreement”) with Leonardo S.p.A. prior to this offering pursuant to which Leonardo S.p.A. will grant us, subject to certain limitations, a non-exclusive license to use certain trademarks (the “licensed marks”), including the name “Leonardo.” The Trademark License Agreement will remain in effect until it is terminated by Leonardo S.p.A.’s and our mutual agreement, or upon the occurrence of certain conditions, including Leonardo S.p.A.’s right to terminate should it no longer consolidate our financial results under IFRS in its consolidated financial statements.

After the term of the trademark license agreement, unless the trademark license agreement is terminated for uncured breach, we will be able to continue to use the licensed marks for a transition period (the “transition period”) of six months (which period is subject to an extension, capped at a total of six months (we can request an extension of such period), for any licensed mark the removal of which we cannot obtain government approvals for), but we will be required to use reasonable best efforts to transition to other trademarks.

The form of the trademark license agreement has been filed as an exhibit to the registration statement of which this prospectus forms a part and the discussion of the trademark license agreement in this prospectus is subject to and qualified in its entirety by reference to the form of trademark license agreement.

#### ***Affiliated Operations Plan (AOP) Services Agreements***

Although we operate largely independently from Leonardo S.p.A., and the proxy agreement contains limitations on services that we may provide to and receive from Leonardo S.p.A. and its affiliates, we, Leonardo S.p.A. and Leonardo S.p.A.’s subsidiaries each provide certain services to the one another, share certain services and rely on certain third-party service providers to provide services pursuant to shared services contracts, subject to the terms of the proxy agreement and in accordance with our AOP, approved by the DCSA. Leonardo S.p.A. and its subsidiaries rely on certain contracts to which we are party for the provision of services that are important to Leonardo S.p.A.’s business. Likewise, we rely on certain contracts for the provision of certain services to which Leonardo S.p.A. or its subsidiaries are a party. For so long as we are required to comply with the AOP approval requirement for certain services within our proxy agreement affiliated group (see “—Proxy Agreement—Facilities, Personnel and Services” above), the proxy agreement will govern our continued provision or procurement of certain services among us, Leonardo S.p.A. and its subsidiaries and third-party service providers. The proxy agreement, including the AOP approval requirement, is expected to remain in place until such time as FOCI mitigation is no longer legally required.

Our AOP currently governs the following types of arrangements:

- services Leonardo S.p.A. or its subsidiaries (excluding us) receive pursuant to a contract with a third-party service provider, which Leonardo S.p.A. or its subsidiaries then provide to us on a pass-through basis;
- services we receive pursuant to a contract with a third-party service provider, which we then provide to Leonardo S.p.A. or its subsidiaries (excluding us) on a pass-through basis;
- certain services we receive directly from Leonardo S.p.A. or its subsidiaries (excluding us); and
- certain services we provide directly to Leonardo S.p.A. or its subsidiaries (excluding us).

Specifically, we are currently authorized to provide support services to Leonardo S.p.A. in the following functional areas:

- Compliance and Training
- Finance, Tax and Accounting
- Legal
- Marketing and Communications
- Procurement and Supply Chain
- Security
- Trade

The fees for each of the services to be provided under the AOP are mutually agreed upon as part of the negotiation of the services agreement and may vary on the basis of usage and other factors. Although we seek to implement commercially reasonable terms (including fees for the services provided) that could have been negotiated with an independent third party, the terms of such agreement may later prove to be more or less favorable than arrangements we could make to provide these services internally or to obtain them from unaffiliated service providers in the future.

#### **Transactions with Leonardo S.p.A. Affiliates**

As an indirect wholly owned subsidiary of Leonardo S.p.A., historically, we have entered into various transactions with Leonardo S.p.A. and its subsidiaries in the normal course of business. The transactions described below are between us and affiliates of Leonardo S.p.A. that are not also subsidiaries of DRS.

##### ***Sales***

We have related-party sales with Leonardo S.p.A. and its other affiliates that occur in the regular course of business. Related-party sales for these transactions are included in revenues and were \$26 million, \$16 million and \$20 million for the years ended December 31, 2020, 2019 and 2018, respectively. The receivables related to these transactions with Leonardo S.p.A. and its other affiliates of \$5 million and \$2 million, respectively, and payables of \$8 million and \$10 million, respectively, are included in accounts receivable and accounts payable in our consolidated balance sheet as of December 31, 2020 and 2019.

##### ***Financing Arrangements***

###### *Term Loans*

In January 2009, the Company entered into a credit agreement with Finmeccanica S.p.A. (now known as Leonardo S.p.A.) in the amount of \$2 billion (the "2009 Credit Agreement"). The 2009 Credit Agreement was subsequently assigned to US Holding and has a maturity of November 30, 2022.

The 2009 Credit Agreement provides for a term loan bearing interest at a rate of 7.5%, with interest payments due semi-annually on June 20 and December 20 in each year (the “7.5% Term loan”). The outstanding balance of the 7.5% Term loan at December 31, 2020 and 2019 was \$139 million and \$439 million, respectively. The reduction in the outstanding balance was due to the contribution by US Holding of \$300 million to us by converting an equal amount of borrowings outstanding under the 7.5% Term Loan into additional paid in capital in December 2020.

In June 2017, we entered into an unsecured term loan with US Holding in the principal amount of \$137.5 million, the proceeds of which were used to finance the acquisition of Daylight Solutions, Inc. (the “Daylight Term Loan”). The Daylight Term Loan had an outstanding balance of \$98 million and \$113 million at December 31, 2020 and 2019, respectively, which approximates its fair value. The Daylight Term Loan matures on October 15, 2024. The Daylight Term Loan has an interest rate of 5.0%, with interest payments due semi-annually on April 15 and October 15.

During April 2018, we were advanced an additional \$50 million by US Holding under a term loan. This term loan bears interest at 4.0% and had an initial maturity date of December 31, 2018, which was extended until December 31, 2021. This term loan was repaid in full, with no prepayment penalty, on December 19, 2020.

#### *Credit Facilities*

The 2009 Credit Agreement provides for a revolving credit facility available for our working capital needs (the “Revolving Credit Facility”). As of December 31, 2020 and 2019, the Revolving Credit Facility had a credit limit of \$450 million and \$350 million, respectively, and an interest rate of LIBOR plus 3.5%. There is a commitment fee of 0.25% applied to the unused balance of the Revolving Credit Facility and there are no compensating balance requirements. There was no balance on the Revolving Credit Facility as of December 31, 2020 and 2019.

We also maintain uncommitted working capital credit facilities with certain financial institutions in the aggregate of \$60 million and \$65 million at December 31, 2020 and 2019, respectively (the “Financial Institution Credit Facilities”), which are guaranteed by Leonardo S.p.A. The primary purpose of the Financial Institution Credit Facilities is to support standby letter of credit issuances on contracts with customers and also includes a revolving facility with a maximum borrowing limit of \$15 million, which bears interest at LIBOR plus 0.5%. At December 31, 2020 and December 31, 2019, there was no balance outstanding on the revolving facility. We had letters of credit outstanding of approximately \$31 million and \$30 million as of December 31, 2020 and 2019, respectively, which reduces the available capacity of the Financial Institution Credit Facilities by an equal amount.

#### *Surplus Treasury Agreement*

We entered into a Surplus Treasury Agreement with US Holding (the “Surplus Agreement”) in December 2019. The Surplus Agreement allows us to advance excess funds to US Holding when funds are available. The advances bear interest at LIBOR plus between 5 and 20 basis points depending on the tenor of the advance. As of December 31, 2020 and 2019, the Company had advanced \$115 million and \$100 million to US Holding, which is presented on the balance sheet as a related party note receivable.

For a discussion of certain recapitalization transactions that Leonardo S.p.A. and its affiliates and we have entered into or will enter into in connection with this offering, see “Recapitalization.”

#### **Employment Agreement**

We expect to enter into an employment agreement with our Chief Executive Officer, William J. Lynn III, effective as of the completion of this offering. For more information regarding the employment agreement with Mr. Lynn, see “Executive Compensation—New Employment Agreement for Chief Executive Officer, William J. Lynn III.”

## **Director Indemnification Agreements**

Prior to the completion of this offering, we will enter into indemnification agreements with our directors. The indemnification agreements will provide the directors with contractual rights to indemnification and expense rights. See “Description of Capital Stock—Limitations on Liability and Indemnification” and the form of Director Indemnification Agreement filed as an exhibit to the registration statement of which this prospectus forms a part.

## DESCRIPTION OF CAPITAL STOCK

The following description of our capital stock is a summary of the material terms of our amended and restated certificate of incorporation, amended and restated bylaws and the amended and restated proxy agreement. Reference is made to the more detailed provisions of, and the descriptions are qualified in their entirety by reference to, these documents, forms of which are filed with the SEC as exhibits to the registration statement of which this prospectus is a part, and applicable law. This description gives effect to our amended and restated certificate of incorporation and amended and restated bylaws, which took effect on March 9, 2021.

### General

Our authorized capital stock consists of 300,000,000 shares of common stock, par value \$0.01 per share, and 10,000,000 shares of undesignated preferred stock, par value \$0.01 per share. As of March 15, 2021, there are 145,000,000 shares of our common stock issued and outstanding.

### Common Stock

Holders of common stock will be entitled:

- to cast one vote for each share held of record on all matters submitted to a vote of the stockholders;
- to receive, on a pro rata basis, dividends and distributions, if any, that our board may declare out of legally available funds, subject to preferences that may be applicable to preferred stock, if any, then outstanding; and
- upon our liquidation, dissolution or winding up, to share equally and ratably in any assets remaining after the payment of all debt and other liabilities, subject to the prior rights, if any, of holders of any outstanding shares of preferred stock.

The holders of our common stock will not have any preemptive, cumulative voting, subscription, conversion, redemption or sinking fund rights. The common stock will not be subject to future calls or assessments by us. The rights and privileges of holders of our common stock are subject to any series of preferred stock that we may issue in the future, as described below.

Before the date of this prospectus, there has been no public market for our common stock.

As of March 15, 2021, we had 145,000,000 shares of common stock outstanding all of which were held of record by US Holding.

### Preferred Stock

Under our amended and restated certificate of incorporation, our board has the authority to issue up to 10,000,000 shares of preferred stock in one or more series and to fix the voting powers, designations, preferences and the relative participating, optional or other special rights and qualifications, limitations and restrictions of each series, including, without limitation, dividend rights, dividend rates, conversion rights, voting rights, terms of redemption, liquidation preferences and the number of shares constituting any series. Following this offering, no shares of our authorized preferred stock will be outstanding. Because the board has the power to establish the preferences and rights of the shares of any additional series of preferred stock, it may afford holders of any preferred stock preferences, powers and rights, including voting and dividend rights, senior to the rights of holders of our common stock, which could adversely affect the holders of the common stock and could delay, discourage or prevent a takeover of us even if a change of control of our company would be beneficial to the interests of our stockholders.



## **Authorized but Unissued Capital Stock**

The DGCL does not generally require stockholder approval for the issuance of authorized shares. These additional shares may be used for a variety of corporate purposes, including future public offerings, to raise additional capital or to facilitate acquisitions. However, the listing requirements of the NYSE, which would apply so long as the common stock remains listed on the NYSE, require stockholder approval of certain issuances equal to or exceeding 20% of the then-outstanding voting power or then-outstanding number of shares of common stock. In addition, under the cooperation agreement, the creation or issuance of any class or series of our capital stock (including designation of any preferred stock) or acquisition of any capital stock (including stock buy-backs, redemptions or other reductions of capital), or securities convertible into or exchangeable or exercisable for capital stock or equity-linked securities by us or any of our subsidiaries requires US Holding's consent, subject to certain exceptions. See "Certain Relationships and Related Party Transactions—Relationship with Leonardo S.p.A. Following this Offering—Cooperation Agreement."

## **Registration Rights**

Certain holders of our common stock will have certain rights to cause the registration of our common stock for resale pursuant to a registration rights agreement. See "Certain Relationships and Related Party Transactions—Relationship with Leonardo S.p.A. Following this Offering—Registration Rights Agreement."

## **Annual Stockholders Meeting**

Our amended and restated bylaws provide that annual stockholders meetings will be held at a date, time and place, if any, as exclusively selected by our board. To the extent permitted under applicable law, we may conduct meetings by remote communications, including by webcast.

## **Voting**

The affirmative vote of a plurality of the shares of our common stock present, in person or by proxy, at the meeting and entitled to vote on the election of directors will decide the election of any directors, and the affirmative vote of a majority of the shares of our common stock present, in person or by proxy, at the meeting and entitled to vote at any annual or special meeting of stockholders will decide all other matters voted on by stockholders, unless the question is one upon which, by express provision of law, under our amended and restated certificate of incorporation, or under our amended and restated bylaws, a different vote is required, in which case such provision will control. Stockholders do not have the right to cumulate their votes for the election of directors.

## **Proxy Agreement**

We have entered into a proxy agreement, dated as of October 26, 2017, with the proxy holders, Leonardo S.p.A., US Holding and the DoD. Following this offering we expect to enter into an amended and restated proxy agreement (as amended and restated, the "proxy agreement") and the parties to the proxy agreement have entered into a commitment letter, dated as of February 26, 2021, as to the form and content of the amended and restated proxy agreement which allows us to operate as if the amended and restated proxy agreement were already in effect. The proxy agreement requires the appointment of five proxy holders, who must be independent from prior affiliation with Leonardo S.p.A. and its subsidiaries (including US Holding and us) and maintain adequate security clearance, to vote the shares of our common stock owned directly or indirectly by Leonardo S.p.A. Proxy holders are appointed by US Holding after consultation with Leonardo S.p.A. and approval by the DCSA and serve for staggered three-year terms. The proxy holders may vote for or consent to certain specified matters only with the express written approval of US Holding, as set forth under "Certain Relationships and Related-Party Transactions—Relationship with Leonardo S.p.A. Following this Offering—Proxy Agreement" and may vote for or consent to all other matters in their sole and absolute discretion, without consultation with US Holding or Leonardo S.p.A. The proxy agreement contains a number of other provisions which are intended to

restrict the ability of Leonardo S.p.A. to control our operations. See “Certain Relationships and Related-Party Transactions—Relationship with Leonardo S.p.A Following this Offering—Proxy Agreement.”

**Board Designation Rights.** Pursuant to the proxy agreement, Leonardo S.p.A., US Holding, the DCSA and the proxy holders will have specified board designation and/or approval and other rights following this offering. The proxy agreement requires that our board include the five proxy holders appointed by US Holding after consultation with Leonardo S.p.A. and approval by the DCSA. The proxy agreement also requires our board to include four additional directors consisting of our chief executive officer and three additional candidates proposed by US Holding in reasonable consultation with the nominating and corporate governance committee, subject to approval of the DCSA in certain circumstances. See “Certain Relationships and Related-Party Transactions—Relationship with Leonardo S.p.A Following this Offering—Proxy Agreement.”

**Removal of Directors.** Our amended and restated bylaws will provide that, for so long as the proxy agreement is in effect, directors may be removed pursuant to the terms set forth in the proxy agreement. During their terms, proxy holders may only be removed (i) for acts in violation of the proxy agreement upon petition by US Holding to DCSA which may be granted or denied by DCSA in its sole discretion or (ii) for gross negligence or willful misconduct. The proxy holders may remove any non-proxy holder director from our board by majority vote and after consultation with US Holding. See “Certain Relationships and Related-Party Transactions—Relationship with Leonardo S.p.A Following this Offering—Proxy Agreement”.

### **Anti-Takeover Effects of Our Certificate of Incorporation and Bylaws**

The provisions of our amended and restated certificate of incorporation and amended and restated bylaws summarized below may have an anti-takeover effect and may delay, defer or prevent a tender offer or takeover attempt that you might consider in your best interest, including an attempt that might result in your receipt of a premium over the market price for your shares. These provisions are also designed, in part, to encourage persons seeking to acquire control of us to first negotiate with our board, which could result in an improvement of their terms.

**Authorized but Unissued Shares of Common Stock.** Following this offering, our shares of authorized and unissued common stock will be available for future issuance without additional stockholder approval. While our authorized and unissued shares are not designed to deter or prevent a change of control, under some circumstances we could use the additional shares to create voting impediments or to frustrate persons seeking to effect a takeover or otherwise gain control by, for example, issuing those shares in private placements to purchasers who might side with our board in opposing a hostile takeover bid.

**Authorized but Unissued Shares of Preferred Stock.** Under our amended and restated certificate of incorporation, our board has the authority to issue up to 10,000,000 shares of preferred stock in one or more series and to fix the voting powers, designations, preferences and the relative participating, optional or other special rights and qualifications, limitations and restrictions of each series, including, without limitation, dividend rights, dividend rates, conversion rights, voting rights, terms of redemption, liquidation preferences and the number of shares constituting any series. The existence of authorized but unissued preferred stock could reduce our attractiveness as a target for an unsolicited takeover bid since we could, for example, issue shares of preferred stock to parties who might oppose such a takeover bid or shares that contain terms the potential acquirer may find unattractive. This may have the effect of delaying or preventing a change of control, may discourage bids for the common stock at a premium over the market price of the common stock, and may adversely affect the market price of, and the voting and other rights of the holders of, our common stock.

**Special Meetings of Stockholders.** Our amended and restated certificate of incorporation provides that a special meeting of stockholders may be called only by the chairman of our board or chief executive officer or by a resolution adopted by a majority of our board. Special meetings may also be called by our

corporate secretary at the request of the holders of at least a majority of the outstanding shares of our common stock until the later of the termination of the proxy agreement and such date as Leonardo S.p.A. is no longer required under IFRS to consolidate the financial statements of the Company with its financial results. Thereafter, stockholders will not be permitted to call a special meeting of stockholders.

**Stockholders Advance Notice Procedure.** Our amended and restated bylaws establish an advance notice procedure for stockholders to make nominations of candidates for election as directors or to bring other business before an annual meeting of our stockholders. The amended and restated bylaws provide that any stockholders wishing to nominate persons for election as directors at, or bring other business before, an annual meeting must deliver to our corporate secretary a written notice of the stockholder's intention to do so. These provisions may have the effect of precluding the conduct of certain business at a meeting if the proper procedures are not followed. We expect that these provisions may also discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of our company. To be timely, the stockholder's notice must be delivered to our corporate secretary at our principal executive offices not less than 90 days nor more than 120 days before the first anniversary date of the annual meeting for the preceding year; provided, however, that in the event that the annual meeting is set for a date that is more than 30 days before or delayed by more than 60 days after the first anniversary date of the preceding year's annual meeting, a stockholder's notice must be delivered to our corporate secretary not later than the later of (x) the close of business on the 90th day prior to the meeting or (y) the close of business on the 10th day following the day on which a public announcement of the date of the meeting is first made by us.

**No Stockholders Action by Written Consent.** Our amended and restated certificate of incorporation provides that stockholders action may be taken only at an annual meeting or special meeting of stockholders, provided that, until the later of the termination of the proxy agreement and such date as Leonardo S.p.A. is no longer required under IFRS to consolidate the financial statements of the Company with its financial results, stockholders action may be taken by written consent in lieu of a meeting.

**Amendments to Certificate of Incorporation and Bylaws.** Our amended and restated certificate of incorporation provides that our amended and restated certificate of incorporation may be amended by both the affirmative vote of a majority of our board and the affirmative vote of the holders of a majority of the outstanding shares of our common stock then entitled to vote at any annual or special meeting of stockholders; provided that, following the termination of the proxy agreement and such date as Leonardo S.p.A. is no longer required under IFRS to consolidate the financial statements of the Company with its financial results, specified provisions of our amended and restated certificate of incorporation may not be amended, altered or repealed unless the amendment is approved by the affirmative vote of the holders of at least 66 2/3% of the outstanding shares of our common stock then entitled to vote at any annual or special meeting of stockholders, including, but not limited to, the provisions governing:

- liability and indemnification of directors;
- corporate opportunities;
- elimination of stockholders action by written consent;
- prohibition on the rights of stockholders to call a special meeting; and
- required approval of the holders of at least 66 2/3% of the outstanding shares of our common stock to amend our amended and restated bylaws and certain provisions of our amended and restated certificate of incorporation.

In addition, our amended and restated bylaws may be amended, altered or repealed, or new bylaws may be adopted, by the affirmative vote of a majority of the board, or by the affirmative vote of the holders of (x) until the earlier of the termination of the proxy agreement and such date as Leonardo S.p.A. is no longer required under IFRS to consolidate the financial statements of the Company with its financial

results, at least a majority and (y) thereafter, at least 66 2/3%, of the outstanding shares of our common stock then entitled to vote at any annual or special meeting of stockholders.

These provisions make it more difficult for any person to remove or amend any provisions in our amended and restated certificate of incorporation and amended and restated bylaws that may have an anti-takeover effect.

**Delaware Anti-Takeover Law.** In general, Section 203 of the DGCL prohibits a publicly held Delaware corporation from engaging in a business combination, such as mergers, sales and leases of assets, issuances of securities and similar transactions by the corporation or a subsidiary with an interested stockholder including a person or group who beneficially owns 15% or more of the corporation's voting stock for a period of three years following the date the person became an interested stockholder, unless (with certain exceptions) the business combination or the transaction in which the person became an interested stockholder is approved in a prescribed manner. Section 203 permits corporations, in their certificate of incorporation, to opt out of the protections of Section 203. Our certificate of incorporation generally excepts Leonardo S.p.A. and its affiliates, including US Holding, and their direct and indirect transferees of our stock and any affiliate of any such transferee, from the definition of interested stockholder for purposes of Section 203 of the DGCL until the occurrence of a transaction in which Leonardo S.p.A. or its affiliates, including US Holding, cease to collectively, as applicable, beneficially own at least 15% of the voting power of our outstanding voting stock.

### **Limitations on Liability and Indemnification**

Our amended and restated certificate of incorporation contains provisions relating to the liability of directors. These provisions eliminate a director's personal liability for monetary damages resulting from a breach of fiduciary duty, except in circumstances involving:

- any breach of the director's duty of loyalty;
- acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law;
- unlawful payments of dividends or unlawful stock repurchases, redemptions or other distributions; or
- any transaction from which the director derives an improper personal benefit.

The principal effect of the limitation on liability provision is that a stockholder will be unable to prosecute an action for monetary damages against a director unless the stockholder can demonstrate a basis for liability for which indemnification is not available under the DGCL. These provisions, however, should not limit or eliminate our rights or any stockholder's rights to seek non-monetary relief, such as an injunction or rescission, in the event of a breach of director's fiduciary duty. These provisions will not alter a director's liability under federal securities laws. The inclusion of this provision in our amended and restated certificate of incorporation may discourage or deter stockholders or management from bringing a lawsuit against directors for a breach of their fiduciary duties, even though such an action, if successful, might otherwise have benefited us and our stockholders. In addition, your investment may be adversely affected to the extent we pay costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions.

Our amended and restated certificate of incorporation and our amended and restated bylaws require us to indemnify and advance expenses to our directors and officers to the fullest extent not prohibited by the DGCL and other applicable law, except in the case of a proceeding instituted by the director without the approval of the company. Our amended and restated certificate of incorporation and our amended and restated bylaws provide that we are required to indemnify our directors and executive officers, to the fullest extent permitted by law, for all judgments, fines, settlements, legal fees and other expenses incurred in connection with pending or threatened legal proceedings because of the director's or officer's

positions with us or another entity that the director or officer serves at our request, subject to various conditions, and to advance funds to our directors and officers to enable them to defend against such proceedings. To receive indemnification, the director or officer must have been successful in the legal proceeding or have acted in good faith and in what was reasonably believed to be a lawful manner in our best interest and, with respect to any criminal proceeding, have had no reasonable cause to believe his or her conduct was unlawful.

Prior to this offering, we will enter into an indemnification agreement with each of our directors. The indemnification agreement will provide our directors with contractual rights to the indemnification and expense advancement rights provided under our amended and restated bylaws, as well as contractual rights to additional indemnification as provided in the indemnification agreement. See the Form of Director Indemnification Agreement filed as an exhibit to the registration statement of which this prospectus forms a part.

### **Corporate Opportunities**

Our amended and restated certificate of incorporation provides that we, on our behalf and on behalf of our subsidiaries, renounce any interest or expectancy in, or in being offered an opportunity to participate in, potential transactions, matters or business opportunities (each, a "corporate opportunity") that are from time to time presented to Leonardo S.p.A. or any of its officers, directors, employees, agents, stockholders, members, partners, affiliates or subsidiaries (other than us and our subsidiaries), with the exception of the proxy holders, even if the opportunity is one that we or our subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so. Neither Leonardo S.p.A. nor any of its officers, directors, employees, agents, stockholders, members, partners, affiliates or subsidiaries, with the exception of the proxy holders, will be liable to us or any of our subsidiaries for breach of any fiduciary or other duty by reason of the fact that such person pursues or acquires such corporate opportunity, directs such corporate opportunity to another person or fails to present such corporate opportunity, or information regarding such corporate opportunity, to us or our subsidiaries. To the fullest extent permitted by law, by becoming a stockholder in our company, stockholders will be deemed to have notice of and consented to this provision of our amended and restated certificate of incorporation.

### **Choice of Forum**

Our amended and restated certificate of incorporation provides that, unless we consent in writing to the selection of an alternate forum, the Court of Chancery of the State of Delaware will, to the fullest extent provided by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed to us or our stockholders by any of our directors, officers, other employees, agents or stockholders, (iii) any action asserting a claim against us arising under the DGCL or as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware (including, without limitation, any action asserting a claim arising out of or pursuant to our amended and restated bylaws) or (iv) any action asserting a claim against us that is governed by the internal affairs doctrine. The foregoing provision does not apply to claims arising under the Securities Act, the Securities Exchange Act, or other federal securities laws for which there is exclusive federal or concurrent federal and state jurisdiction. Our stockholders cannot waive compliance with the federal securities laws and the rules and regulations thereunder. Furthermore, unless we select or consent to the selection of an alternative forum, our amended and restated certificate of incorporation provides that the federal district courts of the United States of America will be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. To the fullest extent permitted by law, by becoming a stockholder in our company, you will be deemed to have notice of and have consented to the provisions of our amended and restated certificate of incorporation related to choice of forum.

**Market Listing**

We have applied to list our common stock on the NYSE under the symbol "DRS".

**Transfer Agent and Registrar**

The transfer agent and registrar for our common stock will be Computershare Trust Company, N.A.

## SHARES ELIGIBLE FOR FUTURE SALE

Immediately prior to this offering, there was no public market for our common stock. Sales of substantial amounts of our common stock in the public market could adversely affect prevailing market prices of our common stock. Some shares of our common stock will not be available for sale for a certain period of time after this offering because they are subject to contractual and legal restrictions on resale some of which are described below. Sales of substantial amounts of common stock in the public market after these restrictions lapse, or the perception that these sales could occur, could adversely affect the prevailing market price and our ability to raise equity capital in the future.

### Sales of Restricted Securities

Currently, 145,000,000 shares of our common stock are outstanding. Of these shares, 31,900,000 shares sold in this offering (or 36,685,000 shares if the underwriters exercise their option to purchase additional shares of common stock from the selling stockholder in full) will be freely tradable without restriction under the Securities Act, unless purchased by our "affiliates," as that term is defined in Rule 144 under the Securities Act. The remaining 113,100,000 shares of our common stock (or 108,315,000 shares if the underwriters exercise their option to purchase additional shares of common stock from the selling stockholder in full) that will be outstanding after this offering are "restricted securities" within the meaning of Rule 144 under the Securities Act. Restricted securities may be sold in the public market only if they are registered under the Securities Act or are sold pursuant to an exemption from registration under Rule 144 under the Securities Act, which is summarized below. Subject to the lock-up agreements described below, shares held by our affiliates that are not restricted securities or that have been owned for more than one year may be sold subject to compliance with Rule 144 of the Securities Act without regard to the prescribed one-year holding period under Rule 144.

### Registration Statement on Form S-8

We intend to file with the SEC, as soon as practicable following this offering, a registration statement on Form S-8 registering an aggregate of shares of common stock underlying equity awards we will make to our employees and certain other qualifying individuals. The Form S-8 will become effective upon filing and shares of common stock so registered will become freely tradable upon such effectiveness, subject to any restrictions imposed on such resale pursuant to the lock-up agreements entered into with the underwriters for the offering.

### Lock-up Agreements

In connection with this offering, the selling stockholder and our directors and executive officers will enter into lock-up agreements, under which they will agree not to dispose of or hedge any of our common stock or securities convertible into or exchangeable for shares of our common stock without the prior written consent of Goldman Sachs & Co. LLC, BofA Securities, Inc. and J.P. Morgan Securities LLC for a period of 180 days after the date of this prospectus. See also the section "Underwriting."

### Rule 144

In general, under Rule 144, as currently in effect, a person (or persons whose shares are aggregated) who is not deemed to be or have been at any time during the 90 days preceding a sale one of our affiliates for purposes of the Securities Act and who has beneficially owned the shares proposed to be sold for at least six months, including the holding period of any prior owner other than an affiliate, is entitled to sell such shares without registration, subject to compliance with the public information requirements of Rule 144. If such a person has beneficially owned the shares proposed to be sold for at least one year, including the holding period of a prior owner other than an affiliate, then such person is entitled to sell such shares without complying with any of the requirements of Rule 144.

In general, under Rule 144, as currently in effect, our affiliates or persons selling shares on behalf of our affiliates, who have met the six-month holding period for beneficial ownership of "restricted shares" of

our common stock, are entitled to sell within any three-month period, a number of shares that does not exceed the greater of:

- 1% of the number of shares of our common stock then outstanding, which will equal approximately 145,000,000 shares immediately after this offering; and
- the average reported weekly trading volume of our common stock on NYSE during the four calendar weeks preceding the date of filing a Notice of Proposed Sale of Securities Pursuant to Rule 144 with respect to the sale.

Sales under Rule 144 by our affiliates or persons selling shares on behalf of our affiliates are also subject to certain manner of sale provisions and notice requirements and to the availability of current public information about us. The sale of these shares, or the perception that sales will be made, could adversely affect the price of our common stock after this offering because a great supply of shares would be, or would be perceived to be, available for sale in the public market.



## MATERIAL U.S. FEDERAL TAX CONSIDERATIONS FOR NON-U.S. HOLDERS

The following is a discussion of material U.S. federal income tax considerations relating to the purchase, ownership and disposition of our common stock by Non-U.S. Holders (as defined below) that purchase such common stock pursuant to this offering and hold such common stock as a capital asset. This discussion is based on the U.S. Internal Revenue Code of 1986, as amended (the "Code"), U.S. Treasury regulations promulgated or proposed thereunder, and administrative and judicial interpretations thereof, all as in effect on the date hereof and all of which are subject to change, possibly with retroactive effect, or to different interpretation. This discussion does not address all of the U.S. federal income tax considerations that may be relevant to specific Non-U.S. Holders in light of their particular circumstances or to Non-U.S. Holders subject to special treatment under U.S. federal income tax law (such as banks, insurance companies, dealers in securities or other Non-U.S. Holders that generally mark their securities to market for U.S. federal income tax purposes, Non-U.S. Holders that are "controlled foreign corporations" or "passive foreign investment companies" for U.S. federal income tax purposes, foreign governments, international organizations, tax-exempt entities, certain former citizens or residents of the United States, Non-U.S. Holders that hold our common stock as part of a straddle, hedge, conversion or other integrated transaction, or Non-U.S. Holders that purchase or sell our common stock as part of a wash sale for tax purposes). This discussion does not address any U.S. state or local or non-U.S. tax considerations or any U.S. federal estate and gift, Medicare contribution or alternative minimum tax considerations.

As used in this discussion, the term "Non-U.S. Holder" means a beneficial owner of our common stock that, for U.S. federal income tax purposes, is:

- an individual who is neither a citizen nor a resident of the United States;
- a corporation that is not created or organized in or under the laws of the United States, any state thereof, or the District of Columbia or otherwise treated as a domestic corporation;
- an estate that is not subject to U.S. federal income tax on income from non-U.S. sources which is not effectively connected with the conduct of a trade or business in the United States; or
- a trust unless (i) a court within the United States is able to exercise primary supervision over its administration and one or more U.S. persons have the authority to control all of its substantial decisions or (ii) it has in effect a valid election under applicable U.S. Treasury regulations to be treated as a U.S. person.

If an entity or arrangement that is treated as a partnership for U.S. federal income tax purposes invests in our common stock, the U.S. federal income tax considerations relating to such investment will depend in part upon the status and activities of such entity and the particular partner. Any such entity should consult its own tax advisor regarding the U.S. federal income tax considerations applicable to it and its partners relating to the purchase, ownership and disposition of our common stock.

PERSONS CONSIDERING AN INVESTMENT IN OUR COMMON STOCK SHOULD CONSULT THEIR OWN TAX ADVISORS REGARDING THE U.S. FEDERAL, STATE AND LOCAL AND NON-U.S. INCOME, ESTATE AND OTHER TAX CONSIDERATIONS RELATING TO THE PURCHASE, OWNERSHIP AND DISPOSITION OF OUR COMMON STOCK IN LIGHT OF THEIR PARTICULAR CIRCUMSTANCES.

### Distributions on Common Stock

If we make a distribution of cash or other property (other than certain pro rata distributions of our common stock or rights to acquire our common stock) with respect to a share of our common stock, the distribution generally will be treated as a dividend to the extent it is paid from our current or accumulated earnings and profits (as determined under U.S. federal income tax principles). If the amount of such distribution exceeds our current and accumulated earnings and profits, such excess generally will be

treated first as a tax-free return of capital to the extent of the Non-U.S. Holder's adjusted tax basis in such share of our common stock, and then as capital gain (which will be treated in the manner described below under "—Sale, Exchange or Other Disposition of Common Stock"). Subject to the following paragraph, distributions treated as dividends on our common stock that are paid to or for the account of a Non-U.S. Holder generally will be subject to U.S. federal withholding tax at a rate of 30%, or at a lower rate if provided by an applicable tax treaty and the Non-U.S. Holder provides the documentation (generally, Internal Revenue Service ("IRS") Form W-8BEN or W-8BEN-E) required to claim benefits under such tax treaty to the applicable withholding agent. Even if our current or accumulated earnings and profits are less than the amount of the distribution, the applicable withholding agent may elect to treat the entire distribution as a dividend for U.S. federal withholding tax purposes. Each Non-U.S. Holder should consult its own tax advisor regarding U.S. federal withholding tax on distributions, including such Non-U.S. Holder's eligibility for a lower rate and the availability of a refund of any excess U.S. federal tax withheld.

If, however, a dividend is effectively connected with the conduct of a trade or business in the United States by a Non-U.S. Holder, such dividend generally will not be subject to the 30% U.S. federal withholding tax if such Non-U.S. Holder provides the appropriate documentation (generally, IRS Form W-8ECI) to the applicable withholding agent. Instead, such Non-U.S. Holder generally will be subject to U.S. federal income tax on such dividend in substantially the same manner as a U.S. person (except as provided by an applicable tax treaty). In addition, a Non-U.S. Holder that is treated as a corporation for U.S. federal income tax purposes may be subject to a branch profits tax at a rate of 30% (or a lower rate if provided by an applicable tax treaty) on its effectively connected income for the taxable year, subject to certain adjustments.

The foregoing discussion is subject to the discussion below under "—FATCA Withholding" and "—Information Reporting and Backup Withholding."

### **Sale, Exchange or Other Disposition of Common Stock**

A Non-U.S. Holder generally will not be subject to U.S. federal income tax on any gain recognized on the sale, exchange or other disposition of our common stock unless:

- (i) such gain is effectively connected with the conduct of a trade or business in the United States by such Non-U.S. Holder, in which event such Non-U.S. Holder generally will be subject to U.S. federal income tax on such gain in substantially the same manner as a U.S. person (except as provided by an applicable tax treaty) and, if it is treated as a corporation for U.S. federal income tax purposes, may also be subject to a branch profits tax at a rate of 30% (or a lower rate if provided by an applicable tax treaty);
- (ii) such Non-U.S. Holder is an individual who is present in the United States for 183 days or more during the taxable year of such sale, exchange or other disposition and certain other conditions are met, in which event such gain (net of certain U.S. source losses) generally will be subject to U.S. federal income tax at a rate of 30% (except as provided by an applicable tax treaty); or
- (iii) we are or have been a "United States real property holding corporation" for U.S. federal income tax purposes at any time during the shorter of (x) the five-year period ending on the date of such sale, exchange or other disposition and (y) such Non-U.S. Holder's holding period with respect to such common stock, and certain other conditions are met.

Generally, a corporation is a "United States real property holding corporation" if the fair market value of its United States real property interests equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests and its other assets used or held for use in a trade or business (all as determined for U.S. federal income tax purposes). We believe that we presently are not, and we do not presently anticipate that we will become, a United States real property holding corporation.

The foregoing discussion is subject to the discussion below under "Information Reporting and Backup Withholding."

## **FATCA Withholding**

Pursuant to sections 1471 through 1474 of the Code, commonly known as the Foreign Account Tax Compliance Act ("FATCA"), a 30% withholding tax ("FATCA withholding") will generally be imposed on certain payments to you or to certain foreign financial institutions, investment funds and other non-US persons receiving payments on your behalf if you or such persons fail to comply with certain information reporting requirements. Payments of dividends that you receive in respect of common stock could be affected by this withholding if you are subject to the FATCA information reporting requirements and fail to comply with them or if you hold common stock through a non-US person (e.g., a foreign bank or broker) that fails to comply with these requirements (even if payments to you would not otherwise have been subject to FATCA withholding). In order to be treated as FATCA compliant, a Non-U.S. Holder must provide certain documentation (usually an IRS Form W-8BEN or W-8BEN-E) containing information about its identity, its FATCA status and, if required, its direct and indirect U.S. owners. These requirements may be modified by the adoption or implementation of a particular intergovernmental agreement between the United States and another country or by future U.S. Treasury Regulations. Documentation that Non-U.S. Holders provide in order to be treated as FATCA compliant may be reported to the IRS and other tax authorities, including information about a Non-U.S. Holder's identity, its FATCA status, and if applicable, its direct and indirect U.S. owners. You should consult your own tax advisors regarding the relevant U.S. law and other official guidance on FATCA withholding.

## **Information Reporting and Backup Withholding**

Amounts treated as payments of dividends on our common stock paid to a Non-U.S. Holder and the amount of any U.S. federal tax withheld from such payments generally will be reported annually to the IRS and to such Non-U.S. Holder by the applicable withholding agent.

The information reporting and backup withholding rules that apply to payments of dividends to certain U.S. persons generally will not apply to payments of dividends on our common stock to a Non-U.S. Holder if such Non-U.S. Holder certifies under penalties of perjury that it is not a U.S. person (generally by providing an IRS Form W-8BEN or W-8BEN-E to the applicable withholding agent) or otherwise establishes an exemption.

Proceeds from the sale, exchange or other disposition of our common stock by a Non-U.S. Holder effected outside the United States through a non-U.S. office of a non-U.S. broker generally will not be subject to the information reporting and backup withholding rules that apply to payments to certain U.S. persons, provided that the proceeds are paid to the Non-U.S. Holder outside the United States. However, proceeds from the sale, exchange or other disposition of our common stock by a Non-U.S. Holder effected through a non-U.S. office of a non-U.S. broker with certain specified U.S. connections or of a U.S. broker generally will be subject to these information reporting rules (but generally not to these backup withholding rules), even if the proceeds are paid to such Non-U.S. Holder outside the United States, unless such Non-U.S. Holder certifies under penalties of perjury that it is not a U.S. person (generally by providing an IRS Form W-8BEN or W-8BEN-E to the applicable withholding agent) or otherwise establishes an exemption. Proceeds from the sale, exchange or other disposition of our common stock by a Non-U.S. Holder effected through a U.S. office of a broker generally will be subject to these information reporting and backup withholding rules unless such Non-U.S. Holder certifies under penalties of perjury that it is not a U.S. person (generally by providing an IRS Form W-8BEN or W-8BEN-E to the applicable withholding agent) or otherwise establishes an exemption.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules generally will be allowed as a refund or a credit against a Non-U.S. Holder's U.S. federal income tax liability if the required information is furnished by such Non-U.S. Holder on a timely basis to the IRS.

## UNDERWRITING

The Company, US Holding (the selling stockholder) and the underwriters named below have entered into an underwriting agreement dated the date of this prospectus with respect to the shares being offered. Subject to certain conditions, each underwriter has severally agreed to purchase the number of shares indicated in the following table. Goldman Sachs & Co. LLC, BofA Securities, Inc. and J.P. Morgan Securities LLC are the representatives of the underwriters.

<u>Underwriters</u>	<u>Number of Shares</u>
Goldman Sachs & Co. LLC	
BofA Securities, Inc.	
J.P Morgan Securities LLC	
Barclays Capital Inc.	
Citigroup Global Markets Inc.	
Credit Suisse Securities (USA) LLC	
Morgan Stanley & Co. LLC	
Credit Agricole Securities (USA) Inc.	
Intesa Sanpaolo S.p.A.	
MUFG Securities Americas Inc.	
UniCredit Capital Markets LLC	
Total	31,900,000

The underwriters are committed to take and pay for all of the shares being offered, if any are taken, other than the shares covered by the option described below unless and until this option is exercised.

The underwriters will have an option to buy up to an additional 4,785,000 shares from US Holding to cover sales by the underwriters of a greater number of shares than the total number set forth in the table above at the public offering price listed on the cover page of this prospectus, less underwriting discounts and commissions. They may exercise that option for 30 days from the date of this prospectus. If any shares are purchased pursuant to this option, the underwriters will severally purchase shares in approximately the same proportion as set forth in the table above.

The Company will not receive any proceeds from this offering.

The following table shows the per share and total underwriting discounts and commissions to be paid to the underwriters by US Holding. Such amounts are shown assuming both no exercise and full exercise of the underwriters' option to purchase 4,785,000 additional shares.

<u>Paid by US Holding</u>	<u>No Exercise</u>	<u>Full Exercise</u>
Per Share	\$	\$
Total	\$	\$

Shares sold by the underwriters to the public will initially be offered at the initial public offering price set forth on the cover page of this prospectus. Any shares sold by the underwriters to securities dealers may be sold at a discount of up to \$ per share from the initial public offering price. After the initial offering of the shares, the representatives may change the offering price and the other selling terms. The offering of the shares by the underwriters is subject to receipt and acceptance and subject to the underwriters' right to reject any order in whole or in part.

We, US Holding and our executive officers and directors have agreed with the underwriters, subject to certain exceptions, not to dispose of or hedge any common stock or securities convertible into or

exchangeable for shares of common stock during the period from the date of this prospectus continuing through the date 180 days after the date of this prospectus, except with the prior written consent of the representatives. See "Shares Eligible for Future Sale" for a discussion of certain transfer restrictions.

Prior to the offering, there has been no public market for the shares. The initial public offering price has been negotiated among us, US Holding, Leonardo S.p.A. and the representatives. Among the factors considered in determining the initial public offering price of the shares, in addition to prevailing market conditions, were our historical performance, estimates of our business potential and earnings prospects, an assessment of our management and the consideration of the above factors in relation to market valuation of companies in related businesses.

An application has been made to list the common stock on the NYSE under the symbol "DRS."

Intesa Sanpaolo S.p.A. is not a broker-dealer registered with the SEC and, therefore, may not make sales of any shares in the United States or to U.S. persons except in compliance with the applicable U.S. securities laws and regulations. To the extent that Intesa Sanpaolo S.p.A. intends to effect sales of the shares in the United States, it will do so only through one or more U.S. registered broker-dealers or otherwise, as permitted by applicable U.S. law.

In connection with the offering, the underwriters may purchase and sell shares of common stock in the open market. These transactions may include short sales, stabilizing transactions and purchases to cover positions created by short sales. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering, and a short position represents the amount of such sales that have not been covered by subsequent purchases. A "covered short position" is a short position that is not greater than the amount of additional shares for which the underwriters' option described above may be exercised. The underwriters may cover any covered short position by either exercising their option to purchase additional shares or purchasing shares in the open market. In determining the source of shares to cover the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase additional shares pursuant to the option described above. "Naked" short sales are any short sales that create a short position greater than the amount of additional shares for which the option described above may be exercised. The underwriters must cover any such naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of common stock made by the underwriters in the open market prior to the completion of the offering.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

Purchases to cover a short position and stabilizing transactions, as well as other purchases by the underwriters for their own accounts, may have the effect of preventing or retarding a decline in the market price of our common stock, and together with the imposition of the penalty bid, may stabilize, maintain or otherwise affect the market price of the common stock. As a result, the price of the common stock may be higher than the price that otherwise might exist in the open market. The underwriters are not required to engage in these activities and may end any of these activities at any time. These transactions may be effected on the relevant exchange, in the over-the-counter market or otherwise.

We estimate that the total expenses of the offering, excluding underwriting discounts and commissions, will be approximately \$9.3 million. We have also agreed to reimburse the underwriters for certain expenses.

We and US Holding and the underwriters have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act, or to contribute to payments that each party may be required to make in respect of those liabilities.

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. Certain of the underwriters and their respective affiliates have provided, and may in the future provide, a variety of these services to the Company, US Holding and Leonardo S.p.A. and to persons and entities with relationships with the Company, US Holding and Leonardo S.p.A., for which they received or will receive customary fees and expenses. Certain of the underwriters or their affiliates are anticipated to be lenders under the proposed senior facilities and bridge facilities with the Company as described under "Recapitalization".

In the ordinary course of their various business activities, the underwriters and their respective affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of the Company (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with the Company. The underwriters and their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

## **Selling Restrictions**

### ***Canada***

The shares may be sold in Canada only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of the Securities Act (Ontario), and are permitted clients, as defined in National Instrument 31-103 Registration Requirements, Exemptions, and Ongoing Registrant Obligations. Any resale of the shares must be made in accordance with an exemption form, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory of these rights or consult with a legal advisor.

Pursuant to section 3A.3 of National Instrument 33-105 Underwriting Conflicts ("NI 33-105"), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

### ***European Economic Area***

This prospectus is not a prospectus for the purposes of the Prospectus Regulation (as defined below). This prospectus has been prepared on the basis that any offer of shares in any Member States of the European Economic Area (the "EEA") (each, a "Relevant State") will be made pursuant to an exemption under the Prospectus Regulation from the requirement to publish a prospectus for offers of shares. Accordingly any person making or intending to make an offer in that Relevant State of shares which are the subject of the offering contemplated in this prospectus may only do so in circumstances in

which no obligation arises for the Company or any of the underwriters to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation in relation to such offer. Neither the Company nor the underwriters have authorized, nor do they authorize, the making of any offer of shares in circumstances in which an obligation arises for the Company or the underwriters to publish a prospectus for such offer.

In relation to each Relevant State, no offer of shares which are the subject of the offering contemplated by this prospectus ("Securities") have been offered or will be offered pursuant to the offering to the public in that Relevant State, other than:

- (a) to any legal entity which is a qualified investor as defined under Article 2 of the Prospectus Regulation
- (b) to fewer than 150 natural or legal persons (other than qualified investors as defined under Article 2 of the Prospectus Regulation), subject to obtaining the prior consent of the representatives for any such offer; or
- (c) in any other circumstances falling within Article 1(4) of the Prospectus Regulation,

provided that no such offer of Securities shall require the Company or any underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation.

For the purposes of this provision, the expression an "offer to the public" in relation to any Securities in any Relevant State means the communication in any form and by any means of sufficient information on the terms of the offer and any Securities to be offered so as to enable an investor to decide to purchase or subscribe for any Securities, and the expression "Prospectus Regulation" means Regulation (EU) 2017/1129.

This EEA selling restriction is in addition to any other selling restrictions set out in this prospectus.

### **Italy**

The offering of the shares has not been registered with the *Commissione Nazionale per le Società e la Borsa* ("CONSOB") pursuant to Italian securities legislation and, accordingly, no shares may be offered, sold or delivered, directly or indirectly, nor may copies of this prospectus or of any other document or offering material relating to the shares be distributed in the Republic of Italy, except, in accordance with all Italian securities, tax and exchange control and other applicable laws and regulations:

- (i) to "qualified investors" (*investitori qualificati*) as defined in Article 2, letter (e), of Regulation (EU) 2017/1129 (the "Prospectus Regulation"), pursuant to Article 1, fourth paragraph, letter (a) of the Prospectus Regulation; or
- (ii) in other circumstances which are exempted from the rules on public offerings pursuant to Article 1 of the Prospectus Regulation, Article 34-ter of CONSOB Regulation No. 11971 of May 14, 1999, as amended from time to time, and the applicable Italian laws.

Any offer, sale or delivery of the shares or distribution of copies of this prospectus or any other document relating to the shares in the Republic of Italy must be in compliance with the selling restrictions under paragraphs (i) or (ii) above and must be:

- (a) made by an investment firm, bank or financial intermediary permitted to conduct such activities in the Republic of Italy in accordance with Legislative Decree No. 58 of February 24, 1998, Regulation No. 20307 of February 15, 2018 and Legislative Decree No. 385 of September 1, 1993 (in each case, as amended from time to time); and

(b) in compliance with any other applicable laws and regulations, including any limitation or requirement which may be imposed from time to time by CONSOB and/or the Bank of Italy and/or any other Italian competent authority.

Any investor purchasing the shares is solely responsible for ensuring that any offer or resale of the shares by such investor occurs in compliance with applicable laws and regulations.

### **United Kingdom**

This prospectus is not a prospectus for the purposes of the UK Prospectus Regulation (as defined below). This prospectus has been prepared on the basis that any offer of shares in the United Kingdom will be made pursuant to an exemption under the UK Prospectus Regulation from the requirement to publish a prospectus for offers of shares. Accordingly any person making or intending to make an offer in the United Kingdom of shares which are the subject of the offering contemplated in this prospectus may only do so in circumstances in which no obligation arises for the Company or any of the underwriters to publish a prospectus pursuant to Article 3 of the UK Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the UK Prospectus Regulation in relation to such offer. Neither the Company nor the underwriters have authorized, nor do they authorize, the making of any offer of shares in circumstances in which an obligation arises for the Company or the underwriters to publish a prospectus for such offer.

No Securities have been offered or will be offered pursuant to the offering to the public in the United Kingdom other than:

- (a) to any legal entity which is a qualified investor as defined under Article 2 of the UK Prospectus Regulation;
- (b) to fewer than 150 natural or legal persons (other than qualified investors as defined under Article 2 of the UK Prospectus Regulation), subject to obtaining the prior consent of the representative for any such offer; or
- (c) in any other circumstances falling within Section 86 of the Financial Services and Markets Act 2000 (as amended, the "FSMA"),

provided that no such offer of the Securities shall require the Company or any underwriter to publish a prospectus pursuant to Section 85 of the FSMA or supplement a prospectus pursuant to Article 23 of the UK Prospectus Regulation.

For the purposes of this provision, the expression an "offer to the public" in relation to the Securities in the United Kingdom means the communication in any form and by any means of sufficient information on the terms of the offer and any Securities to be offered so as to enable an investor to decide to purchase or subscribe for any Securities and the expression "UK Prospectus Regulation" means Regulation (EU) 2017/1129 as it forms part of domestic law in the United Kingdom by virtue of the European Union (Withdrawal) Act 2018.

This prospectus may not be distributed or circulated to any person in the United Kingdom other than to (i) persons who have professional experience in matters relating to investments falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended (the "Order"); (ii) high net worth entities falling within Article 49(2)(a) to (d) of the Order; and (iii) other persons to whom it may lawfully be communicated (all such persons together being referred to as "relevant persons"). This prospectus is directed only at relevant persons. Other persons should not act or rely on this prospectus or any of its contents. This prospectus is confidential and is being supplied to you solely for your information and may not be reproduced, redistributed or passed on to any other person or published, in whole or in part, for any other purpose.



Each underwriter represents and agrees that:

- (a) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) in connection with the issue or sale of the Securities in circumstances in which Section 21(1) of the FSMA does not apply to the Company; and
- (b) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the Securities in, from or otherwise involving the United Kingdom.

### ***Hong Kong***

The shares have not been and will not be offered or sold in Hong Kong by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32 of the Laws of Hong Kong) ("Companies (Winding Up and Miscellaneous Provisions) Ordinance") or which do not constitute an invitation to the public within the meaning of the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong) ("Securities and Futures Ordinance"), (ii) to "professional investors" as defined in the Securities and Futures Ordinance and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a "prospectus" as defined in the Companies (Winding Up and Miscellaneous Provisions) Ordinance, and no advertisement, invitation or document relating to the shares have been or will be issued or have been or will be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" in Hong Kong as defined in the Securities and Futures Ordinance and any rules made thereunder.

### ***Japan***

The shares have not been and will not be registered under the Financial Instruments and Exchange Act of Japan (Act No. 25 of 1948, as amended), or the FIEA. The shares may not be offered or sold, directly or indirectly, in Japan or to or for the benefit of any resident of Japan (including any person resident in Japan or any corporation or other entity organized under the laws of Japan) or to others for reoffering or resale, directly or indirectly, in Japan or to or for the benefit of any resident of Japan, except pursuant to an exemption from the registration requirements of the FIEA and otherwise in compliance with any relevant laws and regulations of Japan.

### ***Singapore***

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares may not be circulated or distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor (as defined under Section 4A of the Securities and Futures Act, Chapter 289 of Singapore (the "SFA")) under Section 274 of the SFA, (ii) to a relevant person (as defined in Section 275(2) of the SFA) pursuant to Section 275(1) of the SFA, or any person pursuant to Section 275(1A) of the SFA, and in accordance with the conditions specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA, in each case subject to conditions set forth in the SFA.

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor, the securities (as defined in Section 239(1) of the

SFA) of that corporation shall not be transferable for six months after that corporation has acquired the shares under Section 275 of the SFA except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person (as defined in Section 275(2) of the SFA), (2) where such transfer arises from an offer in that corporation's securities pursuant to Section 275(1A) of the SFA, (3) where no consideration is or will be given for the transfer, (4) where the transfer is by operation of law, (5) as specified in Section 276(7) of the SFA, or (6) as specified in Regulation 32 of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005 of Singapore ("Regulation 32").

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is a trust (where the trustee is not an accredited investor (as defined in Section 4A of the SFA)) whose sole purpose is to hold investments and each beneficiary of the trust is an accredited investor, the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferable for six months after that trust has acquired the shares under Section 275 of the SFA except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person (as defined in Section 275(2) of the SFA), (2) where such transfer arises from an offer that is made on terms that such rights or interest are acquired at a consideration of not less than \$200,000 (or its equivalent in a foreign currency) for each transaction (whether such amount is to be paid for in cash or by exchange of securities or other assets), (3) where no consideration is or will be given for the transfer, (4) where the transfer is by operation of law, (5) as specified in Section 276(7) of the SFA, or (6) as specified in Regulation 32.

*Singapore Securities and Futures Act Product Classification*—Solely for the purposes of its obligations pursuant to Sections 309B(1)(a) and 309B(1)(c) of the SFA, the Company has determined, and hereby notifies all relevant persons (as defined in Section 309A of the SFA) that the shares are "prescribed capital markets products" (as defined in the Securities and Futures (Capital Markets Products) Regulations 2018) and Excluded Investment Products (as defined in MAS Notice SFA 04-N12: Notice on the Sale of Investment Products and MAS Notice FAA-N16: Notice on Recommendations on Investment Products).

## **VALIDITY OF COMMON STOCK**

The validity of the shares of our common stock offered hereby will be passed upon for us by Sullivan & Cromwell LLP, New York, New York.

Certain legal matters will be passed upon for the underwriters by Cleary Gottlieb Steen & Hamilton LLP, New York, New York. Cleary Gottlieb Steen & Hamilton LLP provides legal services from time to time to Leonardo S.p.A. and its affiliates.

## **EXPERTS**

The consolidated financial statements of Leonardo DRS, Inc. as of December 31, 2020 and 2019, and for each of the years in the three-year period December 31, 2020 have been included herein in reliance upon the report of KPMG LLP, independent registered public accounting firm, appearing elsewhere herein, and upon the authority of said firm as experts in accounting and auditing. The audit report covering these consolidated financial statements refers to a change to the method of accounting for leases.

## **WHERE YOU CAN FIND MORE INFORMATION**

We have filed with the SEC a registration statement on Form S-1, of which this prospectus forms a part, with respect to the shares of our common stock being sold in this offering. This prospectus does not contain all of the information set forth in the registration statement and the exhibits thereto because some parts have been omitted in accordance with the rules and regulations of the SEC. For further information with respect to us and the common stock being sold in this offering, reference is made to the registration statement and the exhibits filed therewith. Statements contained in this prospectus as to the contents of any contract or other document referred to are not necessarily complete and in each instance, if such contract or document is filed as an exhibit, reference is made to the copy of such contract or other document filed as an exhibit to the registration statement, each statement being qualified in all respects by such reference. The SEC maintains an internet website that contains reports and other information about issuers, like us, that file electronically with the SEC. The address of that website is [www.sec.gov](http://www.sec.gov).

Upon completion of this offering, we will be subject to the informational requirements of the Exchange Act and, accordingly, will file annual reports containing financial statements audited by an independent registered public accounting firm, quarterly reports containing unaudited financial statements, current reports, proxy statements and other information with the SEC. These reports, proxy statements and other information will be available on the website of the SEC referred to above. You will also be able to access, free of charge, our reports filed with the SEC (for example, our Annual Reports on Form 10-K, our Quarterly Reports on Form 10-Q and our Current Reports on Form 8-K and any amendments to those forms) through our website (<https://www.leonardodrs.com/>). Reports filed with or furnished to the SEC will be available as soon as reasonably practicable after they are filed with or furnished to the SEC. None of the information contained on, or that may be accessed through our website or any other website identified herein is part of, or incorporated into, this prospectus. All website addresses in this prospectus are intended to be inactive textual references only.

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## Report of Independent Registered Public Accounting Firm

To the Shareholder and Board of Directors  
Leonardo DRS, Inc.:

### *Opinion on the Consolidated Financial Statements*

We have audited the accompanying consolidated balance sheets of Leonardo DRS, Inc. and subsidiaries (the Company) as of December 31, 2020 and 2019, the related consolidated statements of earnings (loss), comprehensive income (loss), shareholder's equity, and cash flows for each of the years in the three-year period ended December 31, 2020, and the related notes (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020 and 2019, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2020, in conformity with U.S. generally accepted accounting principles.

### *Change in Accounting Principle*

As discussed in Note 1 to the Consolidated Financial Statements, the Company has changed its method of accounting for leases as of January 1, 2019, in accordance with the adoption of Accounting Standards Codification (ASC) Topic 842, Leases.

### *Basis for Opinion*

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

### *Critical Audit Matter*

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of a critical audit matter does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

#### *Estimation of costs to complete for select long-term contracts*

As discussed in Note 2 to the consolidated financial statements, the Company recognizes revenues for the majority of contracts determined using the ratio of cumulative costs incurred to date to estimated total contract costs at completion. The accounting for long-term contracts

involves estimation of the costs to complete a contract in order to accurately recognize the associated revenue. Developing the estimated total cost at completion often requires judgment related to the nature and complexity of the work to be performed, subcontractor performance and the risk and impact of delayed performance.

We identified the assessment of the estimation of costs to complete for a select group of long-term contracts in the Integrated Mission Systems segment as a critical audit matter. The evaluation of the costs to complete for this select group of contracts required a high level of subjective auditor judgment, due to the nature and complexity of the individual contracts. Changes to the estimated costs to complete each contract may have a significant impact on the estimated revenue recorded during the period.

The following are the primary procedures we performed to address this critical audit matter. We evaluated the design of certain internal controls related to the estimation of costs to complete the selected long-term contracts. This included contract level controls over certain elements of estimated costs. For certain contracts, we compared the Company's historical estimates of costs to actual costs incurred to assess the Company's ability to estimate accurately. Based on the nature of the individual contract, we evaluated the Company's estimation of costs to complete by:

- reading the underlying contract and related amendments to obtain an understanding of the contractual requirements and related performance obligations
- assessing costs incurred to-date compared to estimated total contract costs at completion and the relative progress toward satisfying the performance obligation(s) of the contract
- comparing, if relevant, the estimated costs to complete to similar or predecessor contracts and programs
- inquiring of financial and operational personnel of the Company to identify factors that should be considered within the cost to complete estimates or indications of potential management bias
- inspecting correspondence, if any, between the Company and the customer regarding actual to-date and expected performance
- analyzing the sufficiency of the Company's assessment of contract performance risks included within the estimated costs to complete.

/s/ KPMG LLP

We have served as the Company's auditor since 2012.

McLean, Virginia  
February 26, 2021

LEONARDO DRS, INC.

Consolidated Statements of Earnings (Loss)

(Dollars in millions, except per share amounts)	Year Ended December 31,		
	2020	2019	2018
<b>Revenues:</b>			
Products	\$ 2,412	\$ 2,220	\$ 1,819
Services	366	494	514
Total revenues	2,778	2,714	2,333
<b>Cost of revenues:</b>			
Products	(2,000)	(1,904)	(1,548)
Services	(284)	(351)	(371)
Total cost of revenues	(2,284)	(2,255)	(1,919)
<b>Gross profit</b>	494	459	414
General and administrative expenses	(283)	(277)	(268)
Amortization of intangibles	(9)	(9)	(93)
Other operating expenses, net	(21)	(10)	(8)
<b>Operating earnings</b>	181	163	45
Interest expense	(64)	(65)	(58)
Other, net	(5)	(3)	(4)
<b>Earnings (loss) before taxes</b>	112	95	(17)
Income tax provision (benefit)	27	20	(7)
<b>Net earnings (loss)</b>	\$ 85	\$ 75	\$ (10)
<b>Net earnings (loss) per share from common stock:</b>			
Basic and diluted earnings (loss) per share:	\$ 0.59	\$ 0.52	\$ (0.07)

See accompanying Notes to Consolidated Financial Statements.

LEONARDO DRS, INC.

Consolidated Statements of Comprehensive Income (Loss)

(Dollars in millions)	Year Ended December 31,		
	2020	2019	2018
<b>Net earnings (loss)</b>	\$ 85	\$ 75	\$ (10)
<b>Other comprehensive income (loss):</b>			
Foreign currency translation gain (loss), net of income taxes	1	3	(5)
Net unrealized gain on hedging derivatives, net of income taxes	—	—	3
Net unrecognized gain (loss) on postretirement obligations, net of income taxes	22	(15)	(3)
<b>Other comprehensive loss, net of income tax</b>	23	(12)	(5)
<b>Total comprehensive income (loss)</b>	\$ 108	\$ 63	\$ (15)

See accompanying Notes to Consolidated Financial Statements.



**LEONARDO DRS, INC.**  
**Consolidated Balance Sheets**

	December 31,	
	2020	2019
<i>(Dollars in millions, except per share amounts)</i>		
<b>ASSETS</b>		
<i>Current assets:</i>		
Cash and cash equivalents	\$ 61	\$ 85
Accounts receivable, net	102	66
Contract assets	672	736
Inventories	247	209
Related party note receivable	115	100
Prepaid expenses	33	19
Other current assets	33	36
<b>Total current assets</b>	<b>1,263</b>	<b>1,251</b>
<i>Noncurrent assets:</i>		
Property plant and equipment, net	355	253
Intangible assets, net	60	69
Goodwill	1,057	1,057
Deferred tax assets	87	117
Other noncurrent assets	134	141
<b>Total noncurrent assets</b>	<b>1,693</b>	<b>1,637</b>
<b>Total assets</b>	<b>\$ 2,956</b>	<b>\$ 2,888</b>
<b>LIABILITIES AND SHAREHOLDER'S EQUITY</b>		
<i>Current liabilities:</i>		
Short-term borrowings and current portion of long-term debt	\$ 53	\$ 56
Accounts payable	478	536
Contract liabilities	177	175
Other current liabilities	267	234
<b>Total current liabilities</b>	<b>975</b>	<b>1,001</b>
<i>Noncurrent liabilities:</i>		
Long-term debt	374	656
Pension and other postretirement benefit plan liabilities	88	119
Other noncurrent liabilities	92	93
<b>Total noncurrent liabilities</b>	<b>\$ 554</b>	<b>868</b>
<i>Shareholder's equity:</i>		
Preferred Stock, \$0.01 par value: 10,000,000 shares authorized; none issued	\$ —	\$ —
Common stock, \$0.01 par value: 300,000,000 shares authorized; 145,000,000 shares issued and outstanding	1	1
Additional paid-in capital	4,633	4,333
Accumulated deficit	(3,137)	(3,222)
Accumulated other comprehensive loss	(70)	(93)
<b>Total shareholder's equity</b>	<b>1,427</b>	<b>1,019</b>
<b>Total liabilities and shareholder's equity</b>	<b>\$ 2,956</b>	<b>\$ 2,888</b>

See accompanying Notes to Consolidated Financial Statements.

LEONARDO DRS, INC.

Consolidated Statements of Cash Flows

(Dollars in millions)	Year Ended December 31,		
	2020	2019	2018
<b>Operating activities</b>			
Net earnings (loss)	\$ 85	\$ 75	\$ (10)
Adjustments to reconcile net earnings (loss) to net cash from operating activities:			
Depreciation and amortization	53	51	128
Deferred income taxes	30	12	(3)
Other	3	3	8
Changes in assets and liabilities:			
Accounts receivable	(35)	9	44
Contract assets	65	(166)	(122)
Inventories	(38)	(36)	42
Prepaid expenses	(14)	(2)	(4)
Other current assets	3	3	(3)
Other noncurrent assets	22	19	(13)
Defined benefit obligations	(9)	(1)	(10)
Other current liabilities	30	(11)	32
Other noncurrent liabilities	(14)	(16)	—
Accounts payable	(58)	156	83
Contract liabilities	2	61	(67)
Net cash provided by operating activities	125	157	105
<b>Investing activities</b>			
Capital expenditures	(56)	(55)	(40)
Business acquisitions, net of cash acquired	—	(4)	(6)
Proceeds from sales of assets	5	8	—
Advances (net of repayments received) on related party note receivable	(15)	(100)	—
Cost method investment	(4)	—	—
Net cash used in investing activities	(70)	(151)	(46)
<b>Financing activities</b>			
Net (decrease) increase in third party borrowings (maturities of 90 days or less)	(11)	16	11
Repayment of related party debt	(1,170)	(895)	(560)
Borrowings from related parties	1,105	880	532
Earn-out payment	—	—	(13)
Other	(4)	(2)	—
Net cash used in financing activities	(80)	(1)	(30)
Effect of exchange rate changes on cash and cash equivalents	1	1	(2)
Net (decrease) increase in cash and cash equivalents	(24)	6	27
Cash and cash equivalents at beginning of year	85	79	52
Cash and cash equivalents at end of year	\$ 61	\$ 85	\$ 79
<b>Supplemental disclosure of non-cash investing and financing activities</b>			
Forgiveness of related party debt	\$ 300	\$ —	\$ —
Additions of property plant and equipment and long-term debt for a build-to-suit lease	49	\$ —	\$ —

See accompanying Notes to Consolidated Financial Statements.

LEONARDO DRS, INC.

Consolidated Statements of Shareholder's Equity

(Dollars in millions, except per share amounts)

	Common stock	Additional paid-in capital	Accumulated other comprehensive loss	Accumulated deficit	Total
<b>Balance as of December 31, 2017</b>	\$ 1	\$ 4,333	\$ (76)	\$ (3,286)	\$ 972
Cumulative effect of adopting ASC 606	—	—	—	(1)	(1)
Total other comprehensive loss	—	—	(5)	(10)	(15)
<b>Balance as of December 31, 2018</b>	1	4,333	(81)	(3,297)	956
Total other comprehensive loss	—	—	(12)	75	63
<b>Balance as of December 31, 2019</b>	1	4,333	(93)	(3,222)	1,019
Forgiveness of related party debt	—	300	—	—	300
Total other comprehensive income	—	—	23	85	108
<b>Balance as of December 31, 2020</b>	\$ 1	\$ 4,633	\$ (70)	\$ (3,137)	\$ 1,427

See accompanying Notes to Consolidated Financial Statements.

## LEONARDO DRS, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

#### Note 1. Summary of Significant Accounting Policies

##### A. Organization

Leonardo DRS, Inc., together with its wholly owned subsidiaries (hereinafter, "DRS," "the Company," "us," "our," or "we") is a supplier of defense electronics products, systems and military support services. The Company is controlled by Leonardo S.p.A (hereinafter, "Leonardo S.p.A.," "the Parent"), an Italian multi-national aerospace, defense and security company headquartered in Rome, Italy, through its direct sole ownership of Leonardo US Holding, Inc. ("US Holding"). US Holding is the direct and sole shareholder of the Company.

DRS is a provider of defense products and technologies that are used across land, air, sea, space and cyber domains. Our diverse array of defense systems and solutions are offered to all branches of the U.S. military, major aerospace and defense prime contractors, government intelligence agencies, international military customers and industrial markets for deployment on a wide range of military platforms. We focus our capabilities in areas of critical importance to the U.S. military, such as soldier sensing, electronic warfare ("EW"), cyber security, network computing, communications, force protection and electrical power conversion and propulsion.

These capabilities directly align with our three reportable segments: Advanced Sensor Technologies, Network Computing & Communications and Integrated Mission Systems. The U.S. Department of Defense ("DoD") is our largest customer and accounts for approximately 84% and 89% of our total revenues as an end-user for the years ended December 31, 2020 and 2019, respectively. Specific international and commercial market opportunities exist within these segments and make up approximately 16% and 11% of our total revenues for the years ended December 31, 2020 and 2019. Our three reportable segments reflect the way performance is assessed and resources are allocated by our Chief Executive Officer, who is our chief operating decision maker ("CODM").

##### *Advanced Sensor Technologies ("AST")*

The AST segment provides electro-optical sensor technologies, laser systems, EW systems and intelligence and surveillance solutions to U.S. military and intelligence community customers. Major solutions include ground vehicle targeting and surveillance sensors, including electro-optical and advanced detection systems. Our soldier sensing applications include infrared imaging solutions and precision targeting systems. Our infrared focal plane array foundry produces small sized cryogenically cooled and uncooled infrared sensors. Beyond the capabilities noted above, AST also provides aircraft training instrumentation equipment and high-performance radio frequency receivers and transceivers for U.S. and international customers. Our quantum cascade laser technology has military and commercial medical applications.

##### *Network Computing & Communication ("NC&C")*

The NC&C segment provides defense electronics solutions across all domains of warfare. Our technologies and products can be integrated into legacy and new military platforms, end-to-end network communication systems, satellite services and cyber solutions. We are a provider of ruggedized computing platforms. For the U.S. Navy and its allies, we provide naval computing infrastructure, network and data distribution, radar and rugged naval control systems, which are present on all naval surface and subsurface combatant vessels. Our global communications network is a worldwide network of terrestrial and satellite bandwidth that ensures our customers' data is secure and reliable.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

*Integrated Mission Systems (“IMS”)*

The IMS segment provides critical force protection, vehicle integration, transportation and logistics and electrical conversion and ship propulsion systems to the U.S. military. Our force protection systems protect service members and military assets from evolving threats and include solutions for counter-unmanned aerial systems, short-range air defense systems and active protection systems on ground vehicles. We have military transportation and logistics offerings and ground vehicle integration capabilities to support U.S. forces in a wide range of operational environments. For the U.S. Navy, we continue to provide and support multi-generational power conversion and propulsion systems for our nation's shipbuilding programs.

*Other*

The Company separately presents the unallocable costs associated with corporate functions and certain non-operating subsidiaries of the Company as Corporate & Eliminations.

See *Note 17: Segment Information* for further information regarding our business segments.

**B. Basis of presentation**

The accompanying Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”) and include the accounts of DRS, its wholly owned subsidiaries and its controlling interests. Interests in joint ventures that are controlled by the Company, or for which the Company is otherwise deemed to be the primary beneficiary, are consolidated. For joint ventures in which the Company does not have a controlling interest, but exerts significant influence, the Company applies the equity method of accounting. All intercompany transactions and balances have been eliminated in consolidation. Certain prior year amounts have been reclassified to conform to current year presentation.

**C. Use of estimates**

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The most significant of these estimates and assumptions relate to the recognition of contract revenues and estimated costs to complete contracts in process, recoverability of reported amounts of goodwill, long-lived assets and intangible assets, valuation of pensions and other postretirement benefits, the valuation of deferred tax assets and liabilities and the valuation of unrecognized tax benefits. Actual results could differ from these estimates.

**D. Revenue Recognition**

On January 1, 2018, we adopted Accounting Standards Update (“ASU”) 2014-09, Revenue from Contracts with Customers, and the related amendments of Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) Topic 606, which supersedes most previous U.S. GAAP revenue recognition guidance. As of the date of adoption, we elected the practical expedient for contract modifications, which allows us to assume that the terms of the contract that existed at the beginning of the earliest period presented have been in place since the inception of the contract on the basis that it is not practical to separately evaluate the effects of all prior contract modifications). Our revenues consist of sales of products (tangible goods) and sales of services to customers. We recognize the majority of our revenue from contracts with customers using an over time, cost-to-cost method of accounting. On certain other contracts, primarily time and material (“T&M”) and cost-plus contracts, revenue is recognized using the right-to-invoice practical expedient as we are contractually able to bill our customer based on control transferred to the customer. See *Note 2: Revenue from Contracts with Customers* for additional information regarding revenue recognition.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

**E. Cost of Revenues**

Cost of revenues includes materials, labor and overhead costs incurred in the manufacturing, design, and provision of products and services sold in the period as well as warranty costs. Material costs include raw materials, purchased components and sub-assemblies, outside processing and inbound freight costs. Labor and overhead costs consist of direct and indirect manufacturing costs, including wages and fringe benefits, operating supplies, depreciation and amortization, occupancy costs, and purchasing, receiving and inspection costs.

**F. Research and Development Expenses**

We conduct research and development ("R&D") activities using our own funds (referred to as company-funded R&D or independent research and development ("IR&D")) and under contractual arrangements with our customers (referred to as customer-funded R&D) to enhance existing products and services and to develop future technologies. R&D costs include basic research, applied research, concept formulation studies, design, development, and related test activities. IR&D costs are allocated to customer contracts as part of the general and administrative overhead costs and generally recoverable on our customer contracts with the U.S. Government. Customer-funded R&D costs are charged directly to the related customer contract. Substantially all R&D costs are charged to cost of revenues as incurred. Company-funded R&D costs charged to cost of revenues totaled \$41 million, \$31 million and \$29 million in 2020, 2019 and 2018, respectively.

**G. Foreign Currency**

Significant transactions in foreign currencies are translated into U.S. dollars at the approximate prevailing rate at the time of the transaction. Foreign exchange transaction gains and losses in 2020, 2019 and 2018 were immaterial to the Company's results of operations. The operations of the Company's foreign subsidiaries are translated from the local (functional) currencies into U.S. dollars using weighted average rates of exchange during each monthly period. The rates of exchange at each balance sheet date are used for translating certain balance sheet accounts and gains or losses resulting from these translation adjustments are included in the accompanying Consolidated Balance Sheet as a component of other comprehensive earnings.

**H. Cash and Cash Equivalents**

Cash and cash equivalents include cash on hand, deposits with banks or other short-term, highly liquid investments with original maturities of three months or less.

**I. Accounts Receivable**

Accounts receivable consist of amounts billed and currently due from customers. When events or conditions indicate that amounts outstanding from customers may become uncollectible, an allowance is estimated and recorded. See *Note 3: Accounts Receivable* for additional information regarding accounts receivable.

**J. Inventories**

Inventories are recorded at the lower of cost (determined by either actual, weighted average or first-in, first-out methods) or net realizable value, and include direct production costs as well as indirect costs, such as factory overhead. The net realizable value is calculated as the expected sales price in the course of normal operations net of estimated costs to finish and sell the goods. See *Note 4: Inventories* for additional information regarding inventories.

**K. Property, Plant and Equipment**

Property, plant and equipment is carried at cost less accumulated depreciation. Depreciation is calculated on the straight-line method. The estimated useful lives of plant, machinery and equipment and

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

building and building improvements generally range from 3 to 10 years and 15 to 40 years, respectively. Leasehold improvements are amortized over the shorter of the estimated useful life of the improvements or the remaining life of the lease.

When assets are retired or otherwise disposed of, the cost and related accumulated depreciation or amortization are removed from the Consolidated Balance Sheet, and the net gain or loss is included in the determination of net earnings. Maintenance and repairs are charged to operations as incurred and renewals and improvements are capitalized. See *Note 5: Property, Plant and Equipment* for additional information regarding property, plant and equipment.

**L. Goodwill**

On January 1, 2018, we early adopted ASU 2017-04, *Intangibles - Goodwill and Other (Topic 350), Simplifying the Test for Goodwill Impairment*. The standard simplifies the measurement of goodwill impairment by eliminating the requirement that an entity compute the implied fair value of goodwill based on the fair values of its assets and liabilities to measure impairment. Instead, goodwill impairment will be measured as the difference between the fair value and the carrying value of the reporting unit. Goodwill represents the excess purchase price paid to acquire a business over the fair value of net assets acquired. Goodwill is assigned to reporting units and is reviewed for impairment at the reporting unit level on an annual basis, or whenever changes in circumstances indicate that the carrying amount may not be recoverable. A reporting unit is an operating segment, or one level below that operating segment (the component level) if discrete financial information is prepared and regularly reviewed by the segment manager. Two or more components of an operating segment may be aggregated and deemed a single reporting unit if the components have similar economic characteristics. Based upon the aggregation criteria the Company concluded it had seven reporting units at both December 31, 2020 and 2019.

The annual impairment test is typically performed after completion of the Company's annual financial operating plan, which occurs as of December 31. The Company uses quantitative assessments and qualitative factors to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying value. If the optional qualitative assessment is performed (Step 0) and the Company concludes that it is more likely than not that the fair value of a reporting unit is less than its carrying amount, an additional quantitative fair value test (Step 1) is performed. When performing the Step 1 goodwill impairment test, we compare the fair values of each of our reporting units to their respective carrying values. In order to compute the fair value of our reporting units, we primarily use the income approach based on the discounted cash flows that each reporting unit expects to generate in the future, consistent with our operating plans. Determining the fair value of our reporting units requires significant judgments, including the timing and amount of future cash flows, long-term growth rates, determination of the weighted-average cost of capital and terminal value assumptions. If, based on the quantitative fair value test, the Company concludes that the carrying value of the reporting unit exceeds its fair value, the Company will recognize a goodwill impairment loss in an amount equal to that excess. The Company completed impairment tests as of December 31, 2020 and 2019 and no adjustment to the carrying value of goodwill was deemed to be necessary. See *Note 7: Goodwill* for additional information regarding goodwill.

**M. Long-Lived Assets and Acquired Identifiable Intangible Assets**

Identifiable intangible assets represent assets acquired as part of the Company's business acquisitions and include customer and program/contract-related assets. The values assigned to acquired identifiable intangible assets are determined as of the date of acquisition based on estimates and judgments regarding expectations for the estimated future after-tax cash flows from those assets over their lives, including the probability of expected future contract renewals and revenues, all of which are discounted to present value.

The Company assesses the recoverability of the carrying value of its long-lived assets and intangible assets with finite useful lives whenever events or changes in circumstances indicate that the carrying

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

amount of the assets or asset group may not be recoverable. If there are any indicators of impairment present, the Company then evaluates the recoverability of the potentially impaired long-lived assets and acquired identifiable intangible assets based upon expectations of undiscounted net cash flows from such assets. If the sum of the expected future undiscounted net cash flows is less than the carrying amount of the asset or asset group, a loss is recognized for the difference between the estimated fair value and the carrying amount of the assets. Assets to be disposed of, including those of discontinued operations, are reported at the lower of the carrying amount or fair value, less the costs to sell. See *Note 5: Property, Plant and Equipment* and *Note 8: Intangible Assets* for additional information regarding long-lived assets and intangible assets.

**N. Derivative Financial Instruments**

The Company does not use derivative financial instruments for trading purposes. All derivative instruments are carried on the Consolidated Balance Sheet as either assets or liabilities at fair value. The classification of gains and losses resulting from changes in the fair values of derivatives depends on the intended use of the derivative and its resultant designation. The Company had no significant derivative or hedging instruments during the years ended December 31, 2020, 2019 or 2018.

**O. Pension and Other Postretirement Benefits**

The obligations for the Company's pension plans and postretirement benefit plans and the related annual costs of employee benefits are calculated based on several long-term assumptions, including discount rates for employee benefit liabilities, rates of return on plan assets, expected annual rates of salary increases for employee participants in the case of pension plans and expected annual increases in the costs of medical and other health care benefits in the case of postretirement benefit plans. These long-term assumptions are subject to revision based on changes in interest rates, financial market conditions, expected versus actual returns on plan assets, participant mortality rates and other actuarial assumptions, including future rates of salary increases, benefit formulas and levels, and rates of increase in the costs of benefits. Changes in these assumptions, if significant, can materially affect the amount of annual net periodic benefit costs recognized in the Company's results of operations from one year to the next, the liabilities for the pension plans and postretirement benefit plans and the Company's annual cash requirements to fund these plans. See *Note 12: Pension and Other Postretirement Benefits* for further information regarding our pension and postretirement plans.

**P. Income Taxes**

We and US Holding have entered into a Tax Allocation Agreement ("Tax Allocation Agreement"), dated as of November 16, 2020, with members of an affiliated group, as defined in Section 1504(a) of the U.S. Internal Revenue Code of 1986, as amended (the "Tax Code"), members of one or more consolidated, combined, unitary or similar state tax groups and additional parties who are part of an "expanded affiliated group" for certain tax purposes, prior to this offering. The agreement provides for the method of computing and allocating the consolidated U.S. federal tax liability of the affiliated group among its members and of allocating any state group tax liabilities among the state members for the taxable year ending December 31, 2020 and each subsequent year in which the parties are members of a group (whether federal or state). The agreement also provides for reimbursement of US Holding and/or DRS for payment of such tax liabilities, for compensation of any member for use of its "net operating loss" or "tax credits" in arriving at such tax liabilities and the allocation and payment of any refund arising from a carryback of net operating losses or tax credits from subsequent taxable years. Under the agreement, the parties have agreed to calculate and allocate their respective tax liabilities and other tax attributes for taxable years beginning with the first consolidated taxable year that included DRS (i.e., the taxable year ended December 31, 2008) as if the agreement was then in effect.

The provision for income taxes is determined using the asset and liability approach of accounting for income taxes. Under this approach, deferred taxes represent the future tax consequences expected to occur when the reported amounts of assets and liabilities are recovered or paid. Income taxes as



## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

presented attribute deferred income taxes of US Holding to DRS in a manner that is systematic, rational and consistent with the asset and liability method and the governing Tax Allocation Agreement which allocates the tax liability amongst the entities, including DRS.

The provision for income taxes represents income taxes paid or payable for the current year plus the change in deferred taxes during the year. Deferred taxes result from differences between the financial and tax basis of DRS' assets and liabilities and are adjusted for changes in tax rates and tax laws when such changes are enacted.

In general, the taxable income of DRS is included in the consolidated U.S. federal and state tax returns of US Holding. Where applicable, US Holding's current portion of U.S. federal income taxes payable were offset against DRS' net operating loss carryforwards in the period the related tax expense was recorded. Consequently, our net operating loss carryforwards are deemed to have been settled with US Holding in each year in an amount commensurate with the carrying value of the tax effected net operating loss utilized.

If management determines that some portion or all of a deferred tax asset is not "more likely than not" to be realized, a valuation allowance is recorded as a component of the income tax provision to reduce the deferred tax asset to the amounts expected to be realized. In determining whether the Company's deferred tax assets are realizable, management considers all evidence, both positive and negative, including the history of financial reporting earnings, existing taxable temporary differences and their projected reversals, as well as projected future income and tax planning strategies. We believe it is more likely than not that we will generate sufficient taxable income in future periods to realize our deferred tax assets, subject to the valuation allowances recognized.

The Company assesses its tax positions for all periods open to examination by tax authorities based on the latest available information. Those positions are evaluated to determine whether they will more likely than not be sustained upon examination by the relevant taxing authorities. Liabilities for unrecognized tax benefits are measured based on the largest amount of benefit that is greater than 50% likely of being realized upon ultimate settlement. These unrecognized tax benefits are recorded as a component of income tax expense. Interest and penalties related to unrecognized tax benefits are not material.

See *Note 10: Income Taxes* for additional information regarding income taxes.

**Q. Earnings Per Share**

Basic earnings per share ("EPS") is computed by dividing net earnings by the weighted average number of shares of common stock outstanding during each period. The computation of diluted EPS includes the dilutive effect of outstanding stock-based compensation awards, only in periods in which such effect would have been dilutive for the period. In February 2021, the Company completed a forward stock split of 1-for-1,450,000 shares of common stock. The consolidated financials statements have been retroactively adjusted to reflect the forward stock split for all periods presented. There were 100 shares and 145.00 million basic and diluted common shares outstanding before and after the forward stock split, respectively, for all periods presented.

**R. Fair Value Measurements**

Fair value is the price the Company would receive to sell an asset or pay to transfer a liability in an orderly transaction with a market participant on the measurement date. We are required to maximize the use of observable inputs and minimize the use of unobservable inputs in measuring fair value, and to utilize a three-level fair value hierarchy that prioritizes the inputs used to measure fair value. The three hierarchical levels used to measure fair value are as follows:

Level 1 — Quoted prices in active markets for identical assets or liabilities.

## LEONARDO DRS, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Level 2 — Quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar assets or liabilities in markets that are not active; and inputs other than quoted prices that are directly or indirectly observable.

Level 3 — Significant inputs to the valuation model are unobservable.

In certain instances, fair value is determined through information obtained from third parties using the latest available market data. In obtaining such data from third parties, we have evaluated the methodologies used to develop the estimate of fair value in order to assess whether such valuations are representative of fair value. The Company categorizes plan assets for disclosure purposes in accordance with this fair value hierarchy. Certain plan investments are measured at fair value using the net asset value ("NAV") per share (or its equivalent) practical expedient and are therefore not categorized as Level 1, 2, or 3. NAV is defined as the total value of the fund divided by the number of the fund's shares outstanding. See *Note 12: Pension and Other Postretirement Benefits* for further information regarding our pension and postretirement plans.

#### **S. Financial Instruments**

Our financial instruments consist primarily of cash and cash equivalents, accounts receivable, accounts payable and accrued expenses and other current liabilities. Financial instruments are reported in the Consolidated Balance Sheet at carrying value, which other than the 7.5% Term loan due November 30, 2022, approximate fair value. See *Note 11: Debt* for further information regarding our debt.

#### **T. Acquisitions, Investments and Variable Interest Entities**

##### *Acquisitions*

Our consolidated financial statements include the operations of acquired businesses from the date of acquisition. We account for acquired businesses using the acquisition method of accounting, which requires that any assets acquired and liabilities assumed be measured at their respective fair values on the acquisition date. The accounting for business combinations requires the Company to make significant judgments and estimates. Any excess of the fair value of consideration transferred over the assigned values of the net assets acquired is recognized as goodwill.

There were no significant acquisitions that were completed for the years ended December 31, 2020 and 2019.

##### *Investments*

Investments where we have the ability to exercise significant influence, but do not control, are accounted for under the equity method of accounting and are included in other noncurrent assets on our Consolidated Balance Sheet. Significant influence typically exists if we have a 20% to 50% ownership interest in the investee. Under this method of accounting, our share of the net earnings or losses of the investee is included in operating profit in other income, net on our Consolidated Statements of Earnings (Loss) since the activities of the investee are closely aligned with the operations of the business segment holding the investment. We evaluate our equity method investments for impairment whenever events or changes in circumstances indicate that the carrying amounts of such investments may be impaired. If a decline in the value of an equity method investment is determined to be other than temporary, a loss is therefore recorded during the current period. See *Note 13: Equity Method Investments* for further information regarding our equity method investments.

The Company's cost method investment consists of an investment in a private company in which we do not have the ability to exercise significant influence over its operating and financial activities. Management evaluates this investment for possible impairment quarterly.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

*Variable Interest Entities*

The Company occasionally forms joint ventures and/or enters into arrangements with special purpose limited liability companies for the purpose of bidding and executing on specific projects. The Company analyzes each such arrangement to determine whether it represents a variable interest entity ("VIE"). If the arrangement is determined to be a VIE, the Company assesses whether it is the primary beneficiary of the VIE and if it is, consequently required to consolidate the VIE. The Company did not have any investment in VIEs as of December 31, 2020 or 2019.

**U. New Accounting Pronouncements*****Recently Adopted Accounting Pronouncements****Leases*

Effective January 1, 2019, the Company adopted ASU 2016-02, *Leases (Topic 842)*, as amended ("ASC 842"), which requires lessees to recognize most leases on their balance sheets as right-of-use ("ROU") assets along with corresponding lease liabilities. The new standard requires lessees to apply a dual approach, classifying leases as either finance or operating leases. This classification determines whether lease expense is recognized based on an effective interest method or on a straight-line basis over the term of the lease. The new standard also requires increased disclosures to help financial statement users better understand the amount, timing and uncertainty of cash flows arising from leases. ASC 842 provides companies with the option to elect an optional transition method whereby companies apply the standard to new and existing leases within the scope of the guidance as of the beginning of the period of adoption. We elected this transition method and have recognized ROU assets, lease liabilities and any cumulative-effect adjustments to the opening balance of accumulated deficit as of January 1, 2019. Prior period amounts were not adjusted and will continue to be reported under the accounting standards in effect for those periods. As part of our adoption, we elected to utilize the practical expedients provided which permitted us to not reassess our previous conclusions on lease identification, lease classification and the accounting for initial direct costs for any existing leases. We did not elect the hindsight practical expedient.

The adoption of the new standard resulted in the recognition of lease assets and lease liabilities of \$158 million and \$172 million, respectively, on the Consolidated Balance Sheet with no adjustment to our January 1, 2019 beginning accumulated deficit balance. The difference between the right of use asset and lease liability primarily relates to deferred rent recorded prior to adoption. The adoption of the new standard did not have a material impact on our results of operations or cash flows.

*Financial Instruments - Credit Losses*

Effective January 1, 2020, the Company adopted ASU 2016-13, *Financial Instruments - Credit Losses (Topic 326), Measurement of Credit Losses on Financial Instruments*, as amended. The standard requires a change in the measurement approach for credit losses on financial assets measured on an amortized cost basis from an incurred loss method to an expected loss method, thereby eliminating the requirement that a credit loss be considered probable to impact the valuation of a financial asset measured on an amortized cost basis. The standard requires the measurement of expected credit losses to be based on relevant information about past events, including historical experience, current conditions and a reasonable and supportable forecast that affects the collectability of the related financial asset. The adoption of the standard did not have a material impact on our operating results, financial position or cash flows.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

**Accounting Guidance Issued but Not Yet Adopted as of December 31, 2020:***Changes to Disclosure Requirements for Defined Benefit Plans*

In August 2018, the FASB issued ASU 2018-14, *Compensation - Retirement Benefits - Defined Benefit Plans - General (Subtopic 715-20): Disclosure Framework - Changes to the Disclosure Requirements for Defined Benefit Plans*. Specifically, the amendment removes disclosure requirements for amounts classified in accumulated other comprehensive income expected to be recognized over the next year and the effects of a one-percentage-point change in the assumed health care cost trend rate on service cost, interest cost and the benefit obligation for postretirement benefits. The amendment also requires additional disclosure around weighted-average interest crediting rates for cash balance plans, a narrative description of the reasons for significant gains and losses, and an explanation of any other significant changes in the benefit obligation or plan assets. The standard is effective for fiscal years beginning after December 15, 2020, with early adoption permitted. The Company does not expect the adoption to have a material impact on our disclosures.

*Simplifying the Accounting for Income Taxes*

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes* which removes certain exceptions to the general principles in Topic 740 for: recognizing deferred taxes for investments, performing intra-period allocations and calculating taxes in interim periods. The amendments also improve consistent application of and simplify U.S. GAAP for other areas of Topic 740 by clarifying and amending existing guidance. The standard is effective for fiscal years beginning after December 15, 2020. The Company does not expect the adoption to have a material impact on our consolidated financial statements.

**Note 2. Revenue from Contracts with Customers**

The Company recognizes revenue for each separately identifiable performance obligation in a contract representing an obligation to transfer a distinct good or service to a customer. In most cases, goods and services provided under the Company's contracts are accounted for as single performance obligations due to the complex and integrated nature of our products and services. These contracts generally require significant integration of a group of goods and/or services to deliver a combined output. In some contracts, the Company provides multiple distinct goods or services to a customer. In those cases, the Company accounts for the distinct contract deliverables as separate performance obligations and allocates the transaction price to each performance obligation based on its relative standalone selling price, which is generally estimated using cost plus a reasonable margin. We classify revenues as products or services on our Consolidated Statements of Earnings (Loss) based on the predominant attributes of the performance obligations. While the Company provides warranties on certain contracts, we typically do not provide for services beyond standard assurances and therefore do not consider warranties to be separate performance obligations. Typically we enter into three types of contracts: fixed-price contracts, cost-plus contracts and T&M contracts (cost-plus contracts and T&M contracts are aggregated below as flexibly priced contracts). The majority of our total revenues are derived from fixed-price contracts; refer to the revenue disaggregation disclosures that follow.

For fixed-price contracts, customers agree to pay a fixed amount, negotiated in advanced for a specified scope of work.

For cost-plus contracts typically we are reimbursed for allowable or otherwise defined total costs (defined as cost of revenues plus allowable general and administrative expenses) incurred, plus a fee. The contracts may also include incentives for various performance criteria, including quality, timeliness and cost-effectiveness. In addition, costs are generally subject to review by clients and regulatory audit agencies, and such reviews could result in costs being disputed as non-reimbursable under the terms of the contract.

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

T&M contracts provide for reimbursement of labor hours expended at a contractual fixed labor rate per hour, plus the actual costs of material and other direct non-labor costs. The fixed labor rates on T&M contracts include amounts for the cost of direct labor, indirect contract costs and profit.

Estimating the transaction price for an arrangement requires judgment and is based on expected results which are determined using the Company's historical data. We estimate that the revenue that we expect to be entitled to receive from a customer to the extent it is probable that a significant reversal of cumulative revenue recognized will not occur.

Revenue from contracts with customers is recognized when the performance obligations are satisfied through the transfer of control over the good or service to the customer, which may occur either over time or at a point in time.

Revenues for the majority of our contracts are measured as determined by the ratio of cumulative costs incurred to date to estimated total contract costs at completion (the "cost-to-cost method"). We believe this is an appropriate measure of progress toward satisfaction of performance obligations as this measure most accurately depicts the progress of our work and transfer of control to our customers. Due to the long-term nature of many of our contracts, developing the estimated total cost at completion and total transaction price often requires judgment. Factors that must be considered in estimating the cost of the work to be completed include the nature and complexity of the work to be performed, subcontractor performance and the risk and impact of delayed performance.

After establishing the estimated total cost at completion, we follow a standard Estimate at Completion ("EAC") process in which we review the progress and performance on our ongoing contracts at least quarterly. Adjustments to original estimates for a contract's revenue, estimated costs at completion and estimated profit or loss often are required as work progresses under a contract, as experience is gained and as more information is obtained, even though the scope of work required under the contract may not change and are also required if contract modifications occur. When adjustments in estimated total costs at completion or in estimated total transaction price are determined, the related impact on revenue and operating income are recognized using the cumulative catch-up method, which recognizes in the current period the cumulative effect of such adjustments for all prior periods. Any anticipated losses on these contracts are fully recognized in the period in which the losses become evident.

EAC adjustments had the following impacts to revenue for the periods presented:

<i>(Dollars in millions)</i>	Year Ended December 31,		
	2020	2019	2018
Revenue	\$ (77)	\$ (55)	\$ (26)
Total % of Revenue	3 %	2 %	1 %

The impacts noted above are attributed primarily to changes in our firm-fixed-price development type programs. As changes happen in the design required to achieve contractual specifications, those changes often result in the programs' estimate and related profitability. The reductions to revenue for the years ended December 31, 2020, 2019 and 2018 were related to certain masted surveillance and submarine electronic propulsion programs within our IMS segment, solidier sensing programs within our AST segment and adjustments to the measurement of variable consideration related to certain requests for equitable adjustment with the U.S. Navy.

Conversely, if the requirements for the recognition of contracts over time are not met, revenue is recognized at a point in time when control transfers to the customer, which is generally upon transfer of title. In such cases, the production that is in progress and costs that will be recognized at a future point in time are reported within "inventories".

Costs to obtain a contract are incremental direct costs incurred to obtain a contract with a customer, including sales commissions and dealer fees, and are capitalized if material. Costs to fulfill a contract

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

include costs directly related to a contract or specific anticipated contract (e.g., certain design costs) that generate or enhance our ability to satisfy our performance obligations under these contracts. These costs are capitalized to the extent they are expected to be recovered from the associated contract.

*Contract Assets and Liabilities*

The timing of revenue recognition, billings and cash collections results in billed accounts receivable, unbilled receivables (contract assets), and customer advances and deposits (contract liabilities) on the Consolidated Balance Sheet. Amounts are billed as work progresses in accordance with agreed-upon contractual terms, either at periodic intervals (e.g., biweekly or monthly) or upon achievement of contractual milestones. Generally, billing occurs subsequent to revenue recognition, resulting in contract assets. However, we sometimes receive advances or deposits from our customers before revenue is recognized, resulting in contract liabilities.

<i>(Dollars in millions)</i>	Year Ended December 31,	
	2020	2019
Contract assets	\$ 672	\$ 736
Contract liabilities	177	175
<b>Net contract assets</b>	<b>\$ 495</b>	<b>\$ 561</b>

Revenue recognized in 2020 and 2019 that was included in the contract liability balance at the beginning of each year was \$104 million and \$62 million, respectively.

The change in the balances of the Company's contract assets and liabilities primarily results from timing differences between revenue recognition and customer billings and/or payments.

Contract assets related to amounts withheld by customers until contract completion are not considered a significant financing component of our contracts because the intent is to protect the customers from our failure to satisfactorily complete our performance obligations. Payments received from customers in advance of revenue recognition (contract liabilities) are not considered a significant financing component of our contracts because they are utilized to pay for contract costs within a one-year period or are requested by us to ensure the customers meet their payment obligations.

*Value of Remaining Performance Obligations*

The value of remaining performance obligations, which we also refer to as total backlog, includes the following components:

- **Funded** - Funded backlog represents the revenue value of orders for services under existing contracts for which funding is appropriated or otherwise authorized less revenue previously recognized on these contracts.
- **Unfunded** - Unfunded backlog represents the revenue value of firm orders for products and services under existing contracts for which funding has not yet been appropriated less funding previously recognized on these contracts.

The following table summarizes the value of our backlog at December 31, 2020 and 2019:

<b>Backlog:</b> <i>(Dollars in millions)</i>	Year Ended December 31,	
	2020	2019
Funded	\$ 2,847	\$ 2,547
Unfunded	444	297
<b>Total Backlog</b>	<b>\$ 3,291</b>	<b>\$ 2,844</b>

We expect to recognize approximately 69% of our December 31, 2020 backlog as revenue over the next 12 months, with the remainder to be recognized thereafter.

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

*Disaggregation of Revenue*

AST: AST revenue is primarily derived from U.S. government development and production contracts and is generally recognized over time using the cost-to-cost method. We disaggregate AST revenue by geographical region, customer relationship and contract type. We believe these categories best depict how the nature, amount, timing and uncertainty of AST revenue and cash flows are affected by economic factors:

<i>(Dollars in millions)</i>	Year Ended December 31,		
	2020	2019	2018
<b>Revenue by Geographical Region</b>			
United States	\$ 821	\$ 711	\$ 566
International	107	58	79
Intersegment Sales	12	12	14
<b>Total</b>	<b>\$ 940</b>	<b>\$ 781</b>	<b>\$ 659</b>
<b>Revenue by Customer Relationship</b>			
Prime contractor	\$ 443	\$ 372	\$ 337
Subcontractor	485	397	308
Intersegment Sales	12	12	14
<b>Total</b>	<b>\$ 940</b>	<b>\$ 781</b>	<b>\$ 659</b>
<b>Revenue by Contract Type</b>			
Firm Fixed Price	\$ 813	\$ 614	\$ 450
Flexibly Priced <sup>(1)</sup>	115	155	195
Intersegment Sales	12	12	14
<b>Total</b>	<b>\$ 940</b>	<b>\$ 781</b>	<b>\$ 659</b>

(1) Includes revenue derived from time-and-materials contracts.

NC&C: NC&C revenue is primarily derived from U.S. government development and production contracts and is generally recognized over time using the cost-to-cost method. We disaggregate NC&C revenue by geographical region, customer relationship and contract type. We believe these categories

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

best depict how the nature, amount, timing and uncertainty of NC&C revenue and cash flows are affected by economic factors:

(Dollars in millions)	Year Ended December 31,		
	2020	2019	2018
<b>Revenue by Geographical Region</b>			
United States	\$ 942	\$ 988	\$ 1,057
International	75	41	22
Intersegment Sales	9	24	32
<b>Total</b>	<b>\$ 1,026</b>	<b>\$ 1,053</b>	<b>\$ 1,111</b>
<b>Revenue by Customer Relationship</b>			
Prime contractor	\$ 620	\$ 655	\$ 694
Subcontractor	397	374	385
Intersegment Sales	9	24	32
<b>Total</b>	<b>\$ 1,026</b>	<b>\$ 1,053</b>	<b>\$ 1,111</b>
<b>Revenue by Contract Type</b>			
Firm Fixed Price	\$ 903	\$ 956	\$ 981
Flexibly Priced <sup>(1)</sup>	114	73	98
Intersegment Sales	9	24	32
<b>Total</b>	<b>\$ 1,026</b>	<b>\$ 1,053</b>	<b>\$ 1,111</b>

(1) Includes revenue derived from time-and-materials contracts.

IMS: IMS revenue is primarily derived from U.S. government development and production contracts and is generally recognized over time using the cost-to-cost method. We disaggregate IMS revenue by geographical region, customer relationship and contract type. We believe these categories best depict how the nature, amount, timing and uncertainty of IMS revenue and cash flows are affected by economic factors:

(Dollars in millions)	Year Ended December 31,		
	2020	2019	2018
<b>Revenue by Geographical Region</b>			
United States	\$ 792	\$ 895	\$ 570
International	41	21	39
Intersegment Sales	1	1	1
<b>Total</b>	<b>\$ 834</b>	<b>\$ 917</b>	<b>\$ 610</b>
<b>Revenue by Customer Relationship</b>			
Prime contractor	\$ 283	\$ 442	\$ 182
Subcontractor	550	474	427
Intersegment Sales	1	1	1
<b>Total</b>	<b>\$ 834</b>	<b>\$ 917</b>	<b>\$ 610</b>
<b>Revenue by Contract Type</b>			
Firm Fixed Price	\$ 692	\$ 763	\$ 479
Flexibly Priced <sup>(1)</sup>	141	153	130
Intersegment Sales	1	1	1
<b>Total</b>	<b>\$ 834</b>	<b>\$ 917</b>	<b>\$ 610</b>

(1) Includes revenue derived from time-and-materials contracts.



LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

**Note 3. Accounts Receivable**

Accounts receivable represent amounts billed and currently due from customers. Payment is typically received from our customers either at periodic intervals (e.g., biweekly, or monthly) or upon achievement of contractual milestones.

Accounts receivable consist of the following:

<i>(Dollars in millions)</i>	December 31,	
	2020	2019
Accounts receivable	\$ 104	\$ 68
Less allowance for doubtful accounts	(2)	(2)
<b>Accounts receivable, net</b>	<b>\$ 102</b>	<b>\$ 66</b>

The Company maintains certain agreements with financial institutions to sell certain trade receivables. Receivables are derecognized in their entirety when sold, and the Company's continuing involvement in the sold receivables is limited to their servicing, for which the Company receives a fee commensurate with the service provided. Pursuant to the servicing agreements, the Company collected approximately \$27 million and \$38 million at December 31, 2020 and 2019, respectively, of these sold receivables that had not yet been remitted to the financial institutions. These unremitted amounts collected on behalf of the financial institutions are included within short-term borrowings and current portion of long-term debt in the Consolidated Balance Sheet.

**Note 4. Inventories**

Inventories consists of the following:

<i>(Dollars in millions)</i>	December 31,	
	2020	2019
Raw materials	\$ 52	\$ 50
Work in progress	193	157
Finished goods	2	2
<b>Total</b>	<b>\$ 247</b>	<b>\$ 209</b>

**Note 5. Property, Plant and Equipment**

Property, plant and equipment by major asset class consists of the following:

<i>(Dollars in millions)</i>	December 31,	
	2020	2019
Land, buildings and improvements	\$ 294	\$ 210
Plant and machinery	186	190
Equipment and other	276	234
Total property, plant and equipment, at cost	756	634
Less accumulated depreciation	(401)	(381)
<b>Total property, plant and equipment, net</b>	<b>\$ 355</b>	<b>\$ 253</b>

Depreciation expense related to property, plant and equipment was \$44 million, \$42 million and \$35 million for the years ended December 31, 2020, 2019 and 2018, respectively.

Land, buildings and improvements include assets under finance leases in the amount of \$108 million and \$67 million as of December 31, 2020 and 2019, respectively. See *Note 9: Leases* for additional information.

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

As of December 31, 2020, the Company accounted for our manufacturing facility in Menomonee Falls as a build-to-suit lease with a failed sale-leaseback and is included in the Land, building, and improvements in the above table. See Note 11: Debt for additional information.

**Note 6. Other Liabilities**

A summary of significant other liabilities by balance sheet caption follows:

(Dollars in millions)	December 31,	
	2020	2019
Salaries, wages and accrued bonuses	\$ 61	\$ 77
Fringe benefits	71	48
Litigation	10	23
Restructuring costs	1	4
Provision for contract losses	44	24
Operating lease liabilities	22	21
Other <sup>(1)</sup>	58	37
<b>Total other current liabilities</b>	<b>\$ 267</b>	<b>\$ 234</b>
Retirement benefits	\$ —	\$ —
Operating lease liabilities	\$ 81	\$ 88
Other <sup>(2)</sup>	11	5
<b>Total other noncurrent liabilities</b>	<b>\$ 92</b>	<b>\$ 93</b>

(1) Consists primarily of taxes payable, environmental remediation reserves and warranty reserves. See Note 15: Commitments and Contingencies for more information regarding the warranty provision.

(2) Consists primarily of workers' compensation liabilities and certain payroll taxes deferred under the CARES Act.

**Note 7. Goodwill**

Changes in the carrying amount of goodwill by reportable segment are as follows:

(Dollars in millions)	AST	NC&C	IMS	Total
<b>Balance at January 1, 2019<sup>(1)</sup></b>	\$ 361	\$ 275	\$ 419	\$ 1,055
Acquisitions	2	—	—	2
<b>Balance at December 31, 2019</b>	<b>363</b>	<b>275</b>	<b>419</b>	<b>1,057</b>
Acquisitions	—	—	—	—
<b>Balance at December 31, 2020</b>	<b>\$ 363</b>	<b>\$ 275</b>	<b>\$ 419</b>	<b>\$ 1,057</b>

(1) Goodwill is reported net of \$1,313 million, \$1,049 million and \$606 million of accumulated impairments as of January 2019 for the AST, NC&C and IMS segments respectively.

**Note 8. Intangible Assets**

Other intangible assets mainly refer to the fair value of existing customer contractual relationships attributable to the acquired business and patents which are being amortized over their respective lives. The fair value of intangible assets typically is determined, as of the date of acquisition, based on estimates and judgments regarding expectations for the estimated future after-tax earnings and cash flows (including cash flows for working capital) arising from backlog and follow-on sales to the customer over their estimated lives, including the probability of expected future contract renewals and sales, less a contributory assets charge, all of which is discounted to present value.

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

The following disclosure presents certain information regarding the Company's intangible assets as of December 31, 2020 and 2019. All intangible assets are being amortized over their estimated useful lives, as indicated below, with no estimated residual values.

<i>(Dollars in millions)</i>	December 31, 2020			December 31, 2019		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Customer relationships	\$ 957	\$ (899)	\$ 58	\$ 957	\$ (890)	\$ 67
Patents and licenses	7	(5)	2	7	(5)	2
<b>Total intangible assets</b>	<b>\$ 964</b>	<b>\$ (904)</b>	<b>\$ 60</b>	<b>\$ 964</b>	<b>\$ (895)</b>	<b>\$ 69</b>

Amortization expense related to intangible assets was \$9 million, \$9 million and 93 million, respectively, for the years ended December 31, 2020, 2019 and 2018.

Customer relationships are amortized on a straight-line basis over their estimated useful lives of 10 to 15 years. Patents and licenses are amortized on a straight-line basis over their estimated useful lives of 5 to 10 years. The estimated annual amortization expense related to intangible assets for the subsequent five years is as follows:

<i>(in millions)</i> Year Ending December 31,	Estimated Annual Amortization
2021	\$ 9
2022	9
2023	9
2024	9
2025	9

**Note 9. Leases**

The Company leases various real estate for manufacturing facilities, administrative offices and warehouses under both finance leases and operating leases. In addition, the Company leases vehicles, machinery and office equipment under operating leases. We determine whether our contracts are or contain a lease at the inception of such arrangements. A contract is or contains a lease if it conveys the right to control the use of an identified asset for a period of time in exchange for consideration.

ROU assets and lease liabilities are recorded on the Consolidated Balance Sheet as of the lease commencement based on the present value of the future lease payments over the lease term. As our leases do not generally explicitly state the discount rate implicit in the lease, we use our incremental borrowing rate, which is determined based on the rate of interest that the Company would have to pay to borrow an amount equal to the lease payments on a collateralized basis over a similar term as of the lease commencement date. In addition to the present value of the future lease payments, the calculation of the ROU asset also includes lease payments made at or before the commencement date of the lease, less any lease incentives received. The remaining lease cost is amortized over the remaining life of the lease on a straight-line basis. We evaluate ROU assets for impairment consistent with the treatment of other long-lived assets.

Some of our leases include options to extend the lease terms or to terminate the lease early. We include the impact of the option in the determination of the ROU assets and liabilities when it is reasonably certain that we will exercise the option. Our lease payments are largely fixed, but may include variable payments that do not depend on an index or rate, such as usage-based amounts, and are

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

recorded as a lease expense in the period incurred. The Company's lease agreements do not contain any material residual value guarantees or restrictive covenants.

In 2019, we have entered into a sale-leaseback transaction related to a facility in Milwaukee, WI. We have analyzed the transaction and determined the criteria to recognize a sale has been met and we have derecognized the related assets. The arrangement does not contain a repurchase option or other substantive obligations related to the property. Further, we have determined that the underlying lease meets the criteria to be classified as an operating lease. As a result, we have recognized an immaterial loss related to the transaction.

As of December 31, 2020, the Company has not entered into any significant leases that have not yet commenced. We elected not to recognize a ROU asset and lease liability for leases with an initial term of 12 months or less. These leases are expensed on a straight-line basis over the lease term. The Company elected the practical expedient to not separate lease and non-lease components and to instead account for them as a single component. We have elected this practical expedient for all classes of assets.

**Lease Cost**

The Company's total lease cost consists of the following:

<i>(Dollars in millions)</i>	Year Ended December 31,	
	2020	2019
Operating lease cost <sup>(1)</sup>	\$ 24	\$ 25
Finance lease cost <sup>(2)</sup> :		
Amortization of right-of-use assets	7	5
Interest on lease liabilities	5	4
<b>Total lease cost</b>	<b>\$ 36</b>	<b>\$ 34</b>

(1) Operating lease expense is included within cost of products, cost of services or general and administrative expenses, dependent upon the nature and use of the ROU asset, in the Company's Consolidated Statements of Earnings (Loss). Operating lease cost includes short-term leases of approximately \$5 million and an insignificant amount of variable lease cost for both 2020 and 2019.

(2) Finance lease expense is recorded as depreciation and amortization expense within cost of products, cost of services or general and administrative expenses, dependent upon the nature and use of the ROU asset and interest expense, net in the Company's Consolidated Statements of Earnings (Loss).

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

**Supplemental Balance Sheet Information**

Supplemental balance sheet information related to leases is as follows:

<i>(Dollars in millions)</i>	December 31,	
	2020	2019
<b>ROU assets</b>		
Operating leases <sup>(1)</sup>	\$ 88	\$ 95
Finance leases <sup>(2)</sup>	108	67
<b>Total leased assets</b>	\$ 196	\$ 162
<b>Liabilities</b>		
Current lease liabilities:		
Operating <sup>(1)</sup>	\$ 22	\$ 21
Finance <sup>(2)</sup>	5	4
Noncurrent lease liabilities:		
Operating <sup>(1)</sup>	81	88
Finance <sup>(2)</sup>	109	68
<b>Total lease liabilities</b>	\$ 217	\$ 181

- (1) Operating lease assets are included within other noncurrent assets and operating lease liabilities are included within other current liabilities (current portion) and other noncurrent liabilities (noncurrent portion) in the Company's Consolidated Balance Sheet.
- (2) Finance lease assets are included within property, plant and equipment, net and finance lease liabilities are included within short-term borrowings and current portion of long-term debt (current portion) and long-term debt (noncurrent portion) in the Company's Consolidated Balance Sheet.

**Supplemental Cash Flow Information**

Supplemental cash flow information related to leases is as follows:

<i>(Dollars in millions)</i>	Year Ended December 31,	
	2020	2019
<b>Cash paid for amounts included in the measurement of lease liabilities:</b>		
Operating cash flows from operating leases	\$ 27	\$ 26
Operating cash flows from finance leases	5	4
Financing cash flows from finance leases	4	2
<b>Right-of-use assets obtained in exchange for new lease liabilities:</b>		
Operating leases	16	118
Finance leases	46	71

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

**Weighted Average Lease Term and Discount Rate**

Lease terms and discount rates related to leases are as follows:

	December 31,	
	2020	2019
Weighted-average remaining lease term:		
Operating leases	5 years	6 years
Finance leases	16 years	16 years
Weighted-average discount rate:		
Operating leases	4.4%	4.6%
Finance leases	4.5%	5.3%

**Maturity of Lease Liabilities:**

As of December 31, 2020, future minimum rental payments on leases with initial non-cancellable lease terms in excess of one year were due as follows:

(Dollars in millions)

	Operating Leases	Finance Leases
<b>Year Ending December 31,</b>		
2021	\$ 26	\$ 10
2022	25	10
2023	23	10
2024	16	10
2025	9	10
Thereafter	14	113
<b>Total lease payments</b>	<b>113</b>	<b>163</b>
Less: imputed interest	10	49
<b>Present value of lease liabilities</b>	<b>103</b>	<b>114</b>
Less: current maturities	22	5
<b>Long-term lease obligations</b>	<b>\$ 81</b>	<b>\$ 109</b>

**Note 10. Income Taxes**

Earnings (loss) before taxes consists of the following:

(Dollars in millions)

	Year Ended December 31,		
	2020	2019	2018
Earnings (loss) before taxes			
Domestic	\$ 112	\$ 89	\$ (22)
Foreign	—	6	5
<b>Total</b>	<b>\$ 112</b>	<b>\$ 95</b>	<b>\$ (17)</b>

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Income tax provision (benefit) consists of the following:

(Dollars in millions)	Year Ended December 31,		
	2020	2019	2018
<b>Current:</b>			
Federal	\$ —	\$ —	\$ (1)
State	3	2	1
Foreign	2	1	1
	<u>5</u>	<u>3</u>	<u>1</u>
<b>Deferred:</b>			
Federal	24	17	(7)
State	—	—	(1)
Foreign	(2)	—	—
	<u>22</u>	<u>17</u>	<u>(8)</u>
<b>Total</b>	<u>\$ 27</u>	<u>\$ 20</u>	<u>\$ (7)</u>

The reconciliation from the statutory federal income tax rate to our effective income tax rate follows:

	Year Ended December 31,		
	2020	2019	2018
Statutory federal rate	21.0 %	21.0 %	21.0 %
State rate, net of federal benefit	2.3 %	0.5 %	7.9 %
Foreign rate differential	0.5 %	0.5 %	(2.3)%
Research & development credit, net of reserves	(0.7)%	(2.3)%	26.0 %
Nondeductible expenses	0.4 %	0.7 %	(5.3)%
Global intangible low taxed income	0.2 %	1.0 %	(4.0)%
Change in valuation allowance	(2.5)%	0.2 %	(4.2)%
Change in tax reserves	2.2 %	0.2 %	7.0 %
Other	0.7 %	(0.7)%	(4.9)%
Effective tax rate	<u>24.1 %</u>	<u>21.1 %</u>	<u>41.2 %</u>

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and deferred tax liabilities at December 31, 2020 and 2019 is as follows:

(Dollars in millions)	December 31,	
	2020	2019
<b>Deferred tax assets:</b>		
Federal net operating losses	\$ 18	\$ 45
State net operating losses	21	24
Tax credit carryforwards	23	21
Accrued compensation and benefits	26	18
Contract liabilities	20	16
Accrued expenses	5	6
Pension and post-retirement plans	24	31
Inventory capitalization	8	6
Other	8	7
Disallowed interest	1	4
<b>Total gross deferred tax assets</b>	<b>154</b>	<b>178</b>
Less valuation allowance	11	14
Deferred tax assets	143	164
<b>Deferred tax liabilities:</b>		
Intangible assets	(44)	(44)
Fixed assets	(11)	(2)
Other	(1)	(1)
<b>Deferred tax liabilities</b>	<b>(56)</b>	<b>(47)</b>
<b>Net deferred tax asset</b>	<b>\$ 87</b>	<b>\$ 117</b>

Our deferred tax balance associated with our retirement benefit plans includes a deferred tax asset of \$14 million and \$21 million as of December 31, 2020 and 2019, respectively, that are recorded in accumulated other comprehensive earnings to recognize the funded status of our retirement plans. See *Note 12: Pension and Other Postretirement Benefits* for additional details. As of December 31, 2020 and 2019 the Company had U.S. federal net operating loss carryforwards of \$131 million and \$246 million, respectively, which we anticipate we will be able to apply prior to their expiration which commences in 2025. The annual utilization of approximately \$34 million of certain our Federal net operating losses is subject to limitations under section 382 of the Internal Revenue Code. As of December 30, 2020 and 2019 we had apportioned state net operating loss carryforwards of \$327 million and \$325 million, respectively, substantially all of which are associated with jurisdictions in which we currently file and the Company expect to utilize prior to expiration. We have federal tax credit carryforwards that commence expiring in 2032, which we anticipate being able to utilize prior to their expiration.

**Tax Uncertainties**

The Company maintains reserves for uncertain tax positions related to unrecognized income tax benefits. These reserves involve considerable judgment and estimation and are evaluated by management at least quarterly based on the best information available. The Company's total liability for unrecognized tax benefits as of December 31, 2020, 2019 and 2018 was approximately \$25 million, \$18 million and \$14 million, respectively; all of which will impact the effective tax rate when recognized. Approximately \$22 million, \$16 million and \$12 million as of December 31, 2020, 2019 and 2018, respectively, have been recorded within (and as an offset to) deferred tax assets. In addition, the Company does not believe there are any tax positions for which it is reasonably possible that the



LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

unrecognized tax benefits will vary significantly over the next 12 months. The table below summarizes the activity associated with our unrecognized tax benefits:

(Dollars in millions)

	2020	2019	2018
<b>Balance at January 1,</b>	\$ 18	\$ 14	\$ 15
Increase related to prior year tax positions	3	3	—
Increase related to current year tax positions	4	1	1
Decreases related to prior year tax positions	—	—	—
Lapse of statute of limitations	—	—	(2)
Settlements with taxing authorities	—	—	—
<b>Balance at December 31,</b>	<b>\$ 25</b>	<b>\$ 18</b>	<b>\$ 14</b>

The Company is subject to U.S. federal income tax as well as income tax of multiple state and foreign jurisdictions. The Company has substantially concluded all U.S. federal income tax matters for years through the tax year ended December 31, 2016 except as it relates to the net operating loss carryforward and tax credit carryforwards. Substantially all material state and local matters have been concluded for years through the tax year ended December 31, 2015. The Company has substantially concluded all material tax matters in foreign jurisdictions for years through the tax years ending during 2016.

As of December 31, 2020, the Company has accumulated undistributed earnings generated by our foreign subsidiaries and most have been taxed in the U.S. as a result of the Tax Cuts and Jobs Act of 2017 (the "TCJA"). The 2017 TCJA allows for a dividend received deduction for repatriation of foreign earnings. We intend to indefinitely reinvest these earnings. Should the Company's undistributed earnings from its investment in non-U.S. subsidiaries be distributed in the future in the form of dividends or otherwise, the Company may be subject to foreign and domestic income taxes and withholding taxes.

**Note 11. Debt**

The Company's debt consists of the following:

(Dollars in millions)

	December 31,	
	2020	2019
4.0% Term loan due December 31, 2021 <sup>(1)</sup>	\$ —	\$ 50
7.5% Term loan due November 30, 2022 <sup>(1)</sup>	139	439
5.0% Daylight term loan due October 15, 2024 <sup>(1)</sup>	98	113
Finance lease and other	163	72
Short-term borrowings	27	38
<b>Total debt principal</b>	<b>427</b>	<b>712</b>
Less unamortized debt issuance costs and discounts	—	—
<b>Total debt, net</b>	<b>427</b>	<b>712</b>
Less short-term borrowings and current portion of long-term debt	(53)	(56)
<b>Total long-term debt</b>	<b>\$ 374</b>	<b>\$ 656</b>

(1) The Company's debt with related parties consists of two term loans and a working capital credit facility with US Holding, as described below.

**Term Loans**

In January 2009, the Company entered into a credit agreement with its ultimate parent company, Finmeccanica S.p.A. (presently Leonardo S.p.A.) in the amount of \$2 billion (the "2009 Credit Agreement"). The 2009 Credit Agreement was subsequently assigned to US Holding and has a maturity of November 30, 2022. The 2009 Credit Agreement provides for a term loan bearing interest at a rate of

## LEONARDO DRS, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

7.5%, with interest payments due semi-annually on June 20 and December 20 in each year (the "7.5% Term loan"). The outstanding balance of the 7.5% Term loan at December 31, 2020 and 2019 was \$139 million and \$439 million, respectively. The fair value of this term loan at December 31, 2020 and 2019 was \$182 million and \$537 million, respectively; however the Company has the ability to prepay the outstanding principal balance at the carrying amount without penalty. During 2020, US Holding forgave \$300 million of related party debt. This was treated as a capital transaction and the amount was recorded in additional paid-in capital, as US Holding is a related party.

In June 2017, the Company entered into an unsecured term loan with US Holding in the principal amount of \$137.5 million, the proceeds of which were used to finance the acquisition of Daylight Solutions, Inc. (the "Daylight Term Loan"). The Daylight Term Loan had an outstanding balance of \$98 million and \$113 million at December 31, 2020 and 2019, respectively, which approximates its fair value. The Daylight Term Loan matures on October 15, 2024. The Daylight Term Loan has an interest rate of 5.0%, with interest payments due semi-annually on April 15 and October 15.

During April 2018, the Company was advanced an additional \$50 million by US Holding under a term loan. This term loan bears interest at 4.0% and had an initial maturity date of December 31, 2018, which was extended until December 31, 2021. This term loan was repaid in full, with no prepayment penalty, on December 19, 2020.

#### ***Credit Facilities***

The 2009 Credit Agreement provides for a revolving credit facility available for working capital needs of the Company (the "Revolving Credit Facility"). As of December 31, 2020 and 2019, the Revolving Credit Facility had a credit limit of \$450 million and \$350 million, respectively, and an interest rate of LIBOR plus 3.5%. There is a commitment fee of 0.25% applied to the unused balance of the Revolving Credit Facility and there are no compensating balance requirements. There was no balance on the Revolving Credit Facility as of December 31, 2020 and 2019.

The Company also maintains uncommitted working capital credit facilities with certain financial institutions in the aggregate of \$60 million and \$65 million at December 31, 2020 and 2019, respectively (the "Financial Institution Credit Facilities"). The Financial Institution Credit Facilities are guaranteed by Leonardo S.p.A. The primary purpose of the Financial Institution Credit Facilities is to support standby letter of credit issuances on contracts with customers and also includes a revolving facility with a maximum borrowing limit of \$15 million, which bears interest at LIBOR plus 0.5%. At December 31, 2020 and December 31, 2019, there was no balance outstanding on the revolving facility. The Company had letters of credit outstanding of approximately \$31 million and \$30 million as of December 31, 2020 and 2019, respectively, which reduces the available capacity of the Financial Institution Credit Facilities by an equal amount.

#### ***Finance Lease and Other***

As of December 31, 2020, finance lease and other includes approximately \$114 million related to finance lease liabilities and \$49 million related to our Menomonee Falls manufacturing facility, which has been accounted for as a build-to-suit lease with a failed sale leaseback. Approximately \$5 million has been recognized as the current portion of long-term debt for the finance lease liabilities and financing liability related to the build-to-suit arrangement.

#### ***Short-term Borrowings***

As of December 31, 2020 and 2019, the Company recognized \$27 million and \$38 million, respectively, collected on behalf of the buyers of our trade receivables pursuant to our factoring

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

arrangements as short-term borrowings and current portion of long-term debt in the Consolidated Balance Sheet, which approximates its fair value. Refer to *Note 3: Accounts Receivable* for more information.

**Interest Paid**

Total interest paid associated with our debt was \$64 million, \$65 million and \$58 million in 2020, 2019 and 2018, respectively.

**Maturities of long-term debt as of December 31, 2020 are as follows:**

(Dollars in millions)

Year Ending December 31,

2021	\$	53
2022		165
2023		31
2024		39
2025		6
Thereafter		133
<b>Total principal payments</b>	<b>\$</b>	<b>427</b>

**Note 12. Pension and Other Postretirement Benefits**

**Retirement Plan Summary Information**

The Company maintains multiple pension plans, both contributory and non-contributory, covering employees at certain locations. Eligibility requirements for participation in the plans vary, and benefits generally are based on the participant's compensation and years of service, as defined in the respective plan. The Company's funding policy generally is to contribute in accordance with cost accounting standards that affect government contractors, subject to the Tax Code and regulations thereunder. Plan assets are invested primarily in equities, bonds (both corporate and U.S. government), U.S. government-sponsored entity instruments, cash and cash equivalents and real estate.

The Company also provides postretirement medical benefits for certain retired employees and dependents at certain locations. Participants are eligible for these benefits when they retire from active service and meet the eligibility requirements for the Company's postretirement benefit plans. The Company's contractual arrangements with the U.S. government provide for the recovery of contributions to a Voluntary Employees' Beneficiary Association ("VEBA") trust and, for non-funded plans, recovery of claims on a pay-as-you-go basis, subject to the Tax Code and regulations thereunder, with the retiree generally paying a portion of the costs through contributions, deductibles and coinsurance provisions.

The Company also maintains certain non-contributory and unfunded supplemental retirement plans. Eligibility for participation in the supplemental retirement plans is limited, and benefits generally are based on the participant's compensation and/or years of service.

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

The following tables provide certain information regarding the Company's pension, postretirement and supplemental retirement plans as of December 31, 2020 and 2019:

<i>(Dollars in millions)</i>	Defined Benefit Pension Plans		Postretirement Benefit Plans		Supplemental Retirement Plans	
	2020	2019	2020	2019	2020	2019
<b>Change in benefit obligation:</b>						
Benefit obligation at beginning of year	\$ 261	\$ 226	\$ 3	\$ 3	\$ 24	\$ 20
Service cost	—	—	—	—	—	—
Interest cost	7	8	—	—	1	1
Plan participants' contributions	—	—	—	—	—	—
Actuarial (gain) loss	(10)	36	(1)	—	(1)	4
Benefits paid	(10)	(10)	—	—	(1)	(1)
(Gain) loss due to settlement	(21)	—	—	—	—	—
Plan amendments	—	—	—	—	—	—
Exchange rate differences and other	(1)	1	—	—	—	—
Benefit obligation at end of year	\$ 226	\$ 261	\$ 2	\$ 3	\$ 23	\$ 24
<b>Change in plan assets:</b>						
Fair value of plan assets at beginning of year	\$ 158	\$ 133	\$ 1	\$ 8	\$ 10	\$ 9
Actual return on plan assets	19	24	—	1	1	1
Plan participants' contributions	—	—	—	—	—	—
Employer contributions	6	10	—	—	1	1
Benefits paid	(10)	(10)	—	(8)	(1)	(1)
(Loss) gain due to settlement	(21)	—	—	—	—	—
Exchange rate differences and other	(1)	1	—	—	—	—
Fair value of plan assets at end of year	151	158	1	1	11	10
Contributions between measurement date and year end	—	—	—	—	—	—
Funded status of the plans at year end	\$ (75)	\$ (103)	\$ (1)	\$ (2)	\$ (12)	\$ (14)

The amounts recognized in the Consolidated Balance Sheet, as of December 31, 2020 and 2019 consist of:

<i>(Dollars in millions)</i>	Defined Benefit Pension Plans		Postretirement Benefit Plans		Supplemental Retirement Plans	
	2020	2019	2020	2019	2020	2019
Noncurrent assets	\$ —	\$ —	\$ 1	\$ 1	\$ —	\$ —
Current liabilities	—	—	—	—	—	—
Noncurrent liabilities	(75)	(103)	(2)	(2)	(11)	(14)
<b>Net liability recognized</b>	<b>\$ (75)</b>	<b>\$ (103)</b>	<b>\$ (1)</b>	<b>\$ (1)</b>	<b>\$ (11)</b>	<b>\$ (14)</b>

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Amounts recognized in accumulated other comprehensive earnings (before taxes) at December 31, 2020 and 2019 consist of:

<i>(Dollars in millions)</i>	Defined Benefit Pension Plans		Postretirement Benefit Plans		Supplemental Retirement Plans	
	2020	2019	2020	2019	2020	2019
Prior service cost	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —
Net actuarial loss (gain)	52	79	(2)	(2)	7	9
<b>Total amount recognized in accumulated other comprehensive losses (earnings)</b>	<b>\$ 52</b>	<b>\$ 79</b>	<b>\$ (2)</b>	<b>\$ (2)</b>	<b>\$ 7</b>	<b>\$ 9</b>

The aggregate accumulated benefit obligation (“ABO”) for the Company's defined benefit pension plans combined was \$249 million and \$285 million at December 31, 2020 and 2019, respectively. The ABO represents benefits accrued without assuming future compensation increases to plan participants and is approximately equal to our projected benefit obligation (“PBO”). The table below presents information for the pension plans with an ABO and PBO in excess of the fair value of plan assets at December 31, 2020 and 2019.

<i>(Dollars in millions)</i>	December 31, 2020	December 31, 2019
Projected benefit obligation	\$ 249	\$ 285
Accumulated benefit obligation	249	285
Fair value of plan assets	162	168

The following table summarizes the weighted average actuarial assumptions used to determine our benefit obligations at December 31, 2020 and 2019:

	Defined Benefit Pension Plans		Postretirement Benefit Plans		Supplemental Retirement Plans	
	2020	2019	2020	2019	2020	2019
<b>Rate assumptions</b>						
Discount rate	2.4 %	2.7 %	4.3 %	2.9 %	2.5 %	2.6 %
Increase in future compensation levels	N/A	N/A	N/A	N/A	N/A	N/A
Expected long-term return on plan assets	6.4 %	6.3 %	6.4 %	5.8 %	N/A	N/A
Health care trend rate assumed for next year	N/A	N/A	5.4 %	5.8 %	N/A	N/A
Ultimate health care trend rate	N/A	N/A	4.3 %	4.5 %	N/A	N/A
Year rate reaches ultimate trend rate	N/A	N/A	2031	2029	N/A	N/A

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

The following table summarizes the components of net periodic benefit cost for the Company's pension, postretirement and supplemental retirement plans for the years ended December 31, 2020, 2019 and 2018:

<i>(Dollars in millions)</i>	Defined Benefit Pension Plans			Postretirement Benefit Plans			Supplemental Retirement Plans		
	2020	2019	2018	2020	2019	2018	2020	2019	2018
Service cost	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —
Interest cost	7	7	6	—	—	—	1	1	1
Expected return on plan assets	(8)	(7)	(8)	—	—	—	—	—	—
Amortization of net actuarial loss (gain)	3	2	2	(1)	—	—	—	—	—
Amortization of prior service cost	—	—	—	—	—	—	—	—	—
Settlement expense (income)	3	—	—	—	—	—	—	—	—
<b>Net periodic benefit cost</b>	<b>\$ 5</b>	<b>\$ 2</b>	<b>\$ —</b>	<b>\$ (1)</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 1</b>	<b>\$ 1</b>	<b>\$ 1</b>

The following table summarizes the other changes in plan assets and benefit obligations recognized in other comprehensive earnings for the Company's pension, postretirement and supplemental retirement benefit plans for the years ended December 31, 2020, 2019 and 2018:

<i>(Dollars in millions)</i>	Defined Benefit Pension Plans			Postretirement Benefit Plans			Supplemental Retirement Plans		
	2020	2019	2018	2020	2019	2018	2020	2019	2018
Net actuarial (gain) loss	\$ (21)	\$ 19	\$ 7	\$ (1)	\$ (1)	\$ —	\$ (1)	\$ 4	\$ (1)
Prior service cost	—	—	—	—	—	—	—	—	—
Amortization of net actuarial (loss) gain from prior years	(6)	(2)	(2)	1	—	—	—	—	—
Amortization of prior service cost	—	—	—	—	—	—	—	—	—
Other <sup>(1)</sup>	—	—	(1)	—	—	—	—	—	—
<b>Total recognized in other comprehensive income</b>	<b>\$ (27)</b>	<b>\$ 17</b>	<b>\$ 4</b>	<b>\$ —</b>	<b>\$ (1)</b>	<b>\$ —</b>	<b>\$ (1)</b>	<b>\$ 4</b>	<b>\$ (1)</b>

(1) Includes foreign exchange translation.

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

The following table summarizes the amounts expected to be amortized from accumulated other comprehensive loss and recognized as components of net periodic benefit costs during the year ended December 31, 2021:

<i>(Dollars in millions)</i>	Defined Benefit Pension Plans	Postretirement Benefit Plans	Supplemental Retirement Plans
Prior service cost	\$ —	\$ —	\$ —
Net actuarial loss (gain)	1	(1)	—
	<u>\$ 1</u>	<u>\$ (1)</u>	<u>\$ —</u>

The following table summarizes the weighted average actuarial assumptions used to determine our net periodic cost of the plans for the years ended December 31, 2020, 2019 and 2018:

	Defined Benefit Pension Plans			Postretirement Benefit Plans			Supplemental Retirement Plans		
	2020	2019	2018	2020	2019	2018	2020	2019	2018
<b>Rate assumptions</b>									
Discount rate	2.7 %	3.6 %	3.1 %	2.8 %	3.3 %	3.0 %	2.6 %	3.5 %	3.0 %
Expected long - term return on plan assets	6.3 %	6.9 %	7.0 %	5.8 %	5.7 %	5.4 %	N/A	N/A	N/A
Increase in future compensation levels	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Health care trend rate assumed for next year	N/A	N/A	N/A	6.0 %	6.5 %	6.5 %	N/A	N/A	N/A
Ultimate health care trend rate	N/A	N/A	N/A	4.5 %	4.5 %	4.5 %	N/A	N/A	N/A
Year rate reaches ultimate trend rate	N/A	N/A	N/A	2029	2027	2027	N/A	N/A	N/A

The expected long-term return on plan assets assumption represents the average rate that the Company expects to earn over the long-term on the assets of the Company's benefit plans, including those from dividends, interest income and capital appreciation. The assumption has been determined based on expectations regarding future rates of return for the plans' investment portfolio, with consideration given to the allocation of investments by asset class and historical rates of return for each individual asset class.

A one percentage increase or decrease in healthcare trend rates in the table above would have an insignificant impact to our service and interest cost and the postretirement medical obligations.

**Plan Assets**

The Company is responsible for formulating the investment policies and strategies for each plan's assets. Presently all of the plans are governed by a single investment policy and are uniformly invested. As part of the policy statement the Company has implemented a glide path which adjusts the percentage of assets invested in return seeking assets based upon the attainment of specific funding percentages. The non-return seeking assets are invested primarily in bonds with maturities closely matching the anticipated payment of benefits.

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

The table below represents all of the Company's funded pension plans' and postretirement benefit plans' weighted-average asset allocation at December 31, 2020 and 2019 by asset category:

Asset Category	Asset Allocation	
	2020	2019
Equity securities	55 %	49 %
Debt securities	33 %	40 %
Real estate	6 %	6 %
Other, primarily cash and cash equivalents, and hedge funds	6 %	5 %

The table below presents the target allocation ranges for each major asset category for the Company's benefit plans for the years ended December 31, 2020 and 2019.

Asset Category	Target Asset Allocation Range	
	2020	2019
Equity securities	40% - 60%	40% - 60%
Debt securities	30% - 50%	40% - 50%
Real estate	5% - 10%	5% - 10%
Other, primarily cash and cash equivalents and hedge funds	5% - 10%	5% - 10%

The following tables provides the fair value of plan assets held by our defined benefit plan by asset category and by fair value hierarchy level. Certain investments are measured at their NAV per share and



LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

do not have readily determined fair values. As such, these investments are not subject to leveling in the fair value hierarchy.

(Dollars in millions)	December 31, 2020			
	Level 1	Level 2	Level 3	Total
<b>Asset category</b>				
<i>Investments measured at fair value:</i>				
Cash and cash equivalents	\$ 9	\$ —	\$ —	\$ 9
Equity securities	6	—	—	6
Debt securities	—	—	—	—
<b>Total</b>	<b>\$ 15</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 15</b>
<i>Investments measured at NAV:</i>				
Collective trust funds	—	—	—	148
Equity and fixed income funds	—	—	—	—
<b>Total</b>	<b>\$ 15</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 163</b>

(Dollars in millions)	December 31, 2019			
	Level 1	Level 2	Level 3	Total
<b>Asset category</b>				
<i>Investments measured at fair value:</i>				
Cash and cash equivalents	\$ 7	\$ —	\$ —	\$ 7
Equity securities	6	—	—	6
Debt securities	—	—	—	—
<b>Total</b>	<b>\$ 13</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 13</b>
<i>Investments measured at NAV:</i>				
Collective trust funds	—	—	—	136
Equity and fixed income funds	—	—	—	20
<b>Total</b>	<b>\$ 13</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 169</b>

For the year ended December 31, 2021, the Company expects to contribute \$18 million to its pension plans and an inconsequential amount to its postretirement plans. The Company deferred approximately \$7 million in pension contributions until 2021 under the CARES Act and IRS Notice 2020-82, which is included in the expected contributions for 2021.

The following table presents expected pension and postretirement benefit payments over the next 10 years:

(Dollars in millions)	Defined Benefit Pension Plans	Postretirement Benefit Plans	Supplemental Retirement Plans
Year Ending December 31,			
2021	\$ 11	\$ —	\$ 1
2022	12	—	1
2023	11	—	1
2024	13	—	1
2025	12	—	1
2026-2030	62	1	6

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

**Defined Contribution Plans**

The Company maintains defined contribution plans covering substantially all domestic full-time eligible employees. The Company's contributions to these plans for the years ended December 31, 2020, 2019 and 2018 amounted to \$21 million, \$19 million and \$15 million, respectively.

**Note 13. Equity Method Investments**

Our share of net earnings related to our equity method investments was \$3 million, \$2 million and \$1 million for the years ended December 31, 2020, 2019 and 2018, respectively, which was included in our Network Computing & Communications business segment operating profit.

Below is a list of the entities accounted for under the equity method and recorded in other noncurrent assets on our Consolidated Balance Sheet:

(Dollars in millions)	% of Ownership		Carrying Value	
	2020	2019	2020	2019
Advanced Acoustics Concepts, LLC	51 %	51 %	\$ 25	\$ 22

**Note 14. Share-based compensation plans**

The Company does not have any share-based compensation plans. See *Note 6: Other Liabilities*, for information regarding cash compensation.

**Note 15. Commitments and Contingencies**

**Commitments**

The Company's commitments are primarily related to our lease and credit agreements. See *Note 9: Leases* and *Note 11: Debt* for additional information on our leases and credit agreements.

**Contingencies**

From time to time we are subject to certain legal proceedings and claims in the ordinary course of business. These matters are subject to many uncertainties and it is possible that some of these matters ultimately could be decided, resolved or settled in a manner adverse to us. Although the precise amount of liability that may result from these matters is not ascertainable, the Company believes that any amounts exceeding the Company's recorded accruals should not materially adversely affect the Company's financial condition or liquidity. It is possible, however, that the ultimate resolution of those matters could result in a material adverse effect on the Company's results of operations and/or cash flows from operating activities for a particular reporting period. We establish reserves for specific legal matters when we determine that the likelihood of an unfavorable outcome is probable and the loss is reasonably estimable.

Some environmental laws, such as the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (also known as "CERCLA" or the "Superfund law") and similar state statutes, can impose liability upon former owners or operators for the entire cost of investigating and remediating contaminated sites regardless of the lawfulness of the original activities that led to the contamination. In July 2000, an entity which later became a subsidiary of the Company received a Section 104(e) Request for Information ("RFI") from the National Park Service ("NPS"), pursuant to CERCLA, regarding the presence of radioactive material at a site within a national park, which site was operated by an alleged predecessor to our subsidiary over 50 years ago. Following the subsidiary's response to the RFI, the NPS directed it and another alleged former operator to perform an Engineering Evaluation and Cost Analysis ("EE/CA") of a portion of the site. The Company's subsidiary made a good faith offer to conduct an alternative EE/CA work plan, but the NPS rejected this offer and opted to perform the EE/CA itself. The NPS previously posted its intention to open a formal public comment period regarding the EE/CA at the

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

end of 2019. To the Company's knowledge, the EE/CA has not been released and a public comment period has yet to be opened.

Following completion of the EE/CA, the NPS may seek reimbursement for its investigative and remedial efforts to date, or direct one or more of the potentially responsible parties to perform any remediation that may be required by CERCLA or may enter an alternative dispute resolution proceeding to attempt to resolve each party's share. In addition, the NPS may seek to recover damages for loss of use of certain natural resources. The Company believes that it has legitimate defenses to its subsidiary's potential liability and that there are other potentially responsible parties for the environmental conditions at the site, including the U.S. government as owner, operator and arranger at the site. The potential liability associated with this matter could change substantially due to such factors as additional information on the nature or extent of contamination, methods of remediation that might be recommended or required, changes in the apportionment of costs among the responsible parties, whether the NPS seeks to recover additional damages, whether the NPS's plans to investigate additional areas to identify a need for further remedial action for which the Company may be identified as a potentially responsible party and other actions by governmental agencies or private parties.

The Company has recorded its best estimate of damages and its share of remediation costs related to the site to reflect what we and our advisors reasonably believe we would be liable for based on the current information and circumstances of the claim, exclusive of other potential liabilities that may be asserted in the future.

In the performance of our contracts we routinely request contract modifications that require additional funding from the customer. Most often, these requests are due to customer-directed changes in the scope of work. While we are entitled to recovery of these costs under our contracts, the administrative process with our customer may be protracted. Based on the circumstances, we periodically file requests for equitable adjustment ("REAs") that are sometimes converted into claims. In some cases, these requests are disputed by our customer. We believe our outstanding modifications, REAs and other claims will be resolved without material impact to our results of operations, financial condition or cash flows.

As a government contractor, with customers including the U.S. government as well as various state and local government entities, the Company may be subject to audits, investigations and claims with respect to its contract performance, pricing, costs, cost allocations and procurement practices. Additionally, amounts billed under such contracts, including direct and indirect costs, are subject to potential adjustments before final settlement.

Management believes that adequate provisions for such potential audits, investigations, claims and contract adjustments, if any, have been made in the Consolidated Financial Statements.

***Restructuring costs***

In 2020, 2019 and 2018 we engaged in restructuring initiatives in order to rationalize headcount and align our operations in a more strategic and cost-efficient structure. In connection with these restructuring initiatives we recorded charges totaling \$12 million, \$20 million and \$14 million for the years ended December 31, 2020, 2019 and 2018, respectively. Costs incurred were related to employee termination and severance costs, as well as costs related to discontinuing product lines or closing down of locations. Charges were recorded within other operating expenses, net, with the exception of costs incurred related

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

to the write-down of inventory, which were recorded in cost of products. See the table below for a breakout of restructuring costs incurred by segment and by nature of cost incurred:

<i>(Dollars in millions)</i>	Year Ended December 31,		
	2020	2019	2018
<b>AST</b>			
Severance	\$ —	\$ —	\$ —
Facility abandonment	—	3	3
Inventory	—	—	2
<b>Total AST</b>	<b>—</b>	<b>3</b>	<b>5</b>
<b>NC&amp;C</b>			
Severance	6	1	1
Facility abandonment	—	—	3
Inventory	—	2	3
<b>Total NC&amp;C</b>	<b>6</b>	<b>3</b>	<b>7</b>
<b>IMS</b>			
Severance	—	2	2
Facility abandonment	6	6	—
Inventory	—	5	—
<b>Total IMS</b>	<b>6</b>	<b>13</b>	<b>2</b>
<b>Corporate</b>			
Severance	—	—	—
Facility abandonment	—	1	—
Inventory	—	—	—
<b>Total Corporate</b>	<b>—</b>	<b>1</b>	<b>—</b>
<b>Total</b>	<b>\$ 12</b>	<b>\$ 20</b>	<b>\$ 14</b>

The following is a summary of changes in the restructuring provision balance during the years ended December 31, 2019 and 2020:

<i>(Dollars in millions)</i>	
<b>Balance at January 1, 2019</b>	\$ 1
Additional provision	20
Reversal and utilization	(17)
<b>Balance at December 31, 2019</b>	<b>4</b>
Additional provision	12
Reversal and utilization	(15)
<b>Balance at December 31, 2020</b>	<b>\$ 1</b>

**Product Warranties**

Product warranty costs generally are accrued in proportion to product revenue realized in conjunction with our over-time revenue recognition policy. Product warranty expense is recognized based on the term of the product warranty, generally one year to three years, and the related estimated costs, considering historical claims expense. Accrued warranty costs are reduced as these costs are incurred and as the warranty period expires, and otherwise may be modified as specific product performance issues are

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

identified and resolved. The following is a summary of changes in the product warranty balances during the years ended December 31, 2019 and 2020:

(Dollars in millions)

<b>Balance at January 1, 2019</b>	<b>\$ 16</b>
Additional provision	10
Reversal and utilization	(13)
<b>Balance at December 31, 2019</b>	<b>13</b>
Additional provision	16
Reversal and utilization	(12)
<b>Balance at December 31, 2020</b>	<b>\$ 17</b>

**Note 16. Related Party Transactions**

Under our current proxy agreement, DRS remains largely independent from the Parent. Additionally, the Company provides services related to the US interface for the Parent and its other affiliates. These services include financial, tax, trade compliance, marketing and communications and legal.

The Company also has related-party sales with the Parent and its other affiliates that occur in the regular course of business. Related-party sales for these transactions are included in revenues and were \$26 million, \$16 million and \$20 million for the years ended December 31, 2020, 2019 and 2018, respectively. The receivables related to these transactions with the Parent and its other affiliates of \$5 million and \$2 million, respectively, and payables of \$8 million and \$10 million, respectively, are included in accounts receivable and accounts payable in our Consolidated Balance Sheet as of December 31, 2020 and 2019.

The Company entered into a Surplus Treasury Agreement with US Holding (the "Surplus Agreement") in December 2019. The Surplus Agreement allows the Company to advance excess funds to US Holding when funds are available. The advances bear interest at LIBOR plus between 5 and 20 basis points depending on the tenor of the advance. As of December 31, 2020 and 2019, the Company had advanced \$115 million and \$100 million to US Holding, which is presented on the balance sheet as a related party note receivable.

During 2020, US Holding forgave \$300 million of related party debt. This was treated as a capital transaction and the amount was recorded in additional paid-in capital, as US Holding is a related party.

The Company entered into Tax Allocation Agreement with US Holding, dated as of November 16, 2020. Refer to *Note 1: Summary of Significant Accounting Policies* for more information.

**Note 17. Segment Information**

Operating segments represent components of an enterprise for which separate financial information is available that is regularly reviewed by the CODM in determining how to allocate resources and assess performance. Our Chief Executive Officer is our CODM and he uses a variety of measures to assess the performance of the Company as a whole, depending on the nature of the activity. The Company's operating and reportable segments consist of AST, NC&C and IMS. All other operations, which consists primarily of DRS Corporate Headquarters and certain non-operating subsidiaries of the Company, are grouped in Corporate & Eliminations.

We primarily use Adjusted EBITDA to manage the Company and allocate resources. Adjusted EBITDA of our business segments includes our net earnings before income taxes, amortization of acquired intangible assets, depreciation, restructuring costs, interest, transaction costs related to this offering, acquisition and divestiture related expenses, foreign exchange, COVID-19 response costs, non-service pension expenditures and other one-time non-operational events. Adjusted EBITDA is used to facilitate a comparison of the ordinary, ongoing and customary course of our operations on a consistent

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

basis from period to period and provide an additional understanding of factors and trends affecting our business segments. This measure assists the CODM in assessing segment operating performance consistently over time without the impact of our capital structure, asset base and items outside the control of the management team and expenses that do not relate to our core operations.

Certain information related to our segments for the years ended December 31, 2020, 2019 and 2018, is presented in the following tables. Consistent accounting policies have been applied by all segments within the Company, within all reporting periods. A description of our reportable segments as of December 31, 2020 and 2019 has been included in *Note 1: Summary of Significant Accounting Policies*. Transactions between segments generally are negotiated and accounted for under terms and conditions that are similar to other government and commercial contracts; however, these intercompany transactions are eliminated in consolidation.

Total revenues and intersegment revenues by segment for the years ended December 31, 2020, 2019 and 2018 consists of the following:

<i>(Dollars in millions)</i>	2020	2019	2018
AST	\$ 940	\$ 781	\$ 659
NC&C	1,026	1,053	1,111
IMS	834	917	610
Corporate & Eliminations	(22)	(37)	(47)
<b>Total revenue</b>	<b>\$ 2,778</b>	<b>\$ 2,714</b>	<b>\$ 2,333</b>

<i>(Dollars in millions)</i>	2020	2019	2018
AST	\$ 12	\$ 12	\$ 14
NC&C	9	24	33
IMS	1	1	—
<b>Total intersegment revenue</b>	<b>\$ 22</b>	<b>\$ 37</b>	<b>\$ 47</b>

Depreciation by segment as of December 31, 2020, 2019 and 2018 consists of the following:

<i>(Dollars in millions)</i>	2020	2019	2018
AST	\$ 19	\$ 19	\$ 16
NC&C	11	10	10
IMS	14	13	9
<b>Total depreciation</b>	<b>\$ 44</b>	<b>\$ 42</b>	<b>\$ 35</b>

Total assets by segment as of December 31, 2020 and 2019 consist of the following:

<i>(Dollars in millions)</i>	2020	2019
AST	\$ 978	\$ 853
NC&C	577	683
IMS	970	934
Corporate & Eliminations	431	418
<b>Total assets</b>	<b>\$ 2,956</b>	<b>\$ 2,888</b>

LEONARDO DRS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Reconciliation of reportable segment Adjusted EBITDA to Net Earnings (loss) consists of the following:

(Dollars in millions)

	2020	2019	2018
<b>Adjusted EBITDA</b>			
AST	\$ 123	\$ 94	\$ 73
NC&C	90	75	72
IMS	55	63	41
Corporate & Eliminations	—	2	1
<b>Total Adjusted EBITDA</b>	<u>\$ 268</u>	<u>\$ 234</u>	<u>\$ 187</u>
Amortization of intangibles	(9)	(9)	(93)
Depreciation	(44)	(42)	(35)
Restructuring costs	(12)	(20)	(14)
Interest expense	(64)	(65)	(58)
Transaction costs related to this offering	(9)	—	—
Acquisition and divestiture related expenses	—	—	—
Foreign exchange	(1)	—	(3)
COVID-19 response costs	(12)	—	—
Non-service pension expense	(5)	(3)	(1)
Other one-time non-operational events	—	—	—
Income tax (provision) benefit	(27)	(20)	7
<b>Net earnings (loss)</b>	<u>\$ 85</u>	<u>\$ 75</u>	<u>\$ (10)</u>

**Note 18. Subsequent Events**

The Company has evaluated subsequent events through March 15, 2021, which represents the date on which the Consolidated Financial Statements were issued.

The coronavirus ("COVID-19") pandemic has caused significant disruptions to national and global economies and government activities. We are designated as an essential business in each of the jurisdictions in which we operate and, as such, we have worked to ensure continuity of our operations to meet our contractual obligations. Certain of our businesses have experienced disruptions, such as customer site closures, travel restrictions and social distancing requirements. We have adopted various initiatives at our businesses as part of our business continuity programs, and we continue to work to mitigate risk when disruptions occur.

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31,900,000 Shares

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**Leonardo DRS, Inc.**

Common Stock

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**Goldman Sachs & Co. LLC      BofA Securities      J.P. Morgan**

**Barclays      Citigroup      Credit Suisse      Morgan Stanley**

**Credit Agricole CIB      IMI - Intesa Sanpaolo      MUFG      UniCredit Capital Markets**

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, 2021

Through and including , 2021 (25 days after the date of this prospectus), all dealers that buy, sell or trade our common stock, whether or not participating in this offering, may be required to deliver a prospectus. This delivery requirement is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

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**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 13. Other Expenses of Issuance and Distribution.**

The following table sets forth the estimated expenses payable by us in connection with the sale and distribution of the securities registered hereby, other than underwriting discounts or commissions. All amounts are estimates except for the SEC registration fee and the FINRA filing fee.

SEC Registration Fee	\$	88,051
FINRA Filing Fee	\$	121,561
Listing Fee	\$	197,000
Printing Fees and Expenses	\$	250,000
Accounting Fees and Expenses	\$	6,100,000
Legal Fees and Expenses	\$	2,100,000
Blue Sky Fees and Expenses	\$	35,000
Transfer Agent Fees and Expenses	\$	10,000
Miscellaneous	\$	400,000
Total:	\$	9,301,612

**Item 14. Indemnification of Directors and Officers.**

***Leonardo DRS, Inc. Is Incorporated Under the Laws of the State of Delaware.***

Section 145(a) of the DGCL provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful.

Section 145(b) of the DGCL provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Delaware Court of Chancery or such other court shall deem proper.

Section 145(c) of the DGCL provides that to the extent that a present or former director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding

referred to in subsections (a) and (b) of Section 145 of the DGCL, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

Section 145(e) of the DGCL provides that expenses (including attorneys' fees) incurred by an officer or director of the corporation in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in Section 145 of the DGCL. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents of the corporation or by persons serving at the request of the corporation as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the corporation deems appropriate.

Section 145(g) of the DGCL specifically allows a Delaware corporation to purchase liability insurance on behalf of its directors and officers and to insure against potential liability of such directors and officers regardless of whether the corporation would have the power to indemnify such directors and officers under Section 145 of the DGCL.

Section 102(b)(7) of the DGCL permits a Delaware corporation to include a provision in its certificate of incorporation eliminating or limiting the personal liability of directors to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. This provision, however, may not eliminate or limit a director's liability (1) for breach of the director's duty of loyalty to the corporation or its stockholders, (2) for acts or omissions not in good faith or involving intentional misconduct or a knowing violation of law, (3) under Section 174 of the DGCL, which provides for liability of directors for unlawful payments of dividends or unlawful stock purchases, redemptions or other distributions, or (4) for any transaction from which the director derived an improper personal benefit.

Section 174 of the DGCL provides, among other things, that a director who willfully and negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption may be held liable for such actions. A director who was either absent when the unlawful actions were approved or dissented at the time may avoid liability by causing his or her dissent to such actions to be entered in the books containing the minutes of the meetings of the board of directors at the time the action occurred or immediately after the absent director receives notice of the unlawful acts.

Our amended and restated certificate of incorporation contains provisions permitted under the DGCL relating to the liability of directors. These provisions will eliminate a director's personal liability for monetary damages resulting from a breach of fiduciary duty, except in circumstances involving:

- any breach of the director's duty of loyalty;
- acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law;
- unlawful payments of dividends or unlawful stock purchases, redemptions or other distributions; or
- any transaction from which the director derives an improper personal benefit.

Our amended and restated certificate of incorporation and our amended and restated bylaws require us to indemnify and advance expenses to our directors and officers to the fullest extent not prohibited by the DGCL and other applicable law, except in the case of a proceeding instituted by the director without the approval of our board. Our amended and restated certificate of incorporation and our amended and restated bylaws provide that we are required to indemnify our directors and officers, to the fullest extent permitted by law, for all judgments, fines, settlements, legal fees and other expenses incurred in

connection with pending or threatened legal proceedings because of the director's or officer's positions with us or another entity that the director or officer serves at our request, subject to various conditions, and to advance funds to our directors and officers to enable them to defend against such proceedings. To receive indemnification, the director or officer must have been successful in the legal proceeding or have acted in good faith and in what was reasonably believed to be a lawful manner in our best interest and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.

#### ***Indemnification Agreements***

Prior to the completion of this offering, we will enter into indemnification agreements with our directors. The indemnification agreements will provide the directors with contractual rights to the indemnification and expense advancement rights provided under our amended and restated bylaws, as well as contractual rights to additional indemnification as provided in the indemnification agreements.

The indemnification agreements will provide for the advancement or payment of all expenses to the indemnitee and for reimbursement to us if it is found that such indemnitee is not entitled to such indemnification under applicable law and our amended and restated certificate of incorporation and amended and restated bylaws.

#### ***Directors' and Officers' Liability Insurance***

Prior to the completion of this offering, we will have obtained directors' and officers' liability insurance that insures against certain liabilities that our directors and officers and the directors and officers of our subsidiaries may, in such capacities, incur.

#### ***Underwriting Agreement***

In the underwriting agreement we entered into in connection with the sale of the common stock being registered hereby, the underwriters have agreed to indemnify, under certain conditions, us, our directors, our officers and persons who control us within the meaning of the Securities Act, against certain liabilities, or to contribute to payments such parties may be required to make in respect of these liabilities.

#### **Item 15. Recent Sales of Unregistered Securities.**

None.

**Item 16. Exhibits and Financial Statement Schedules.**

## (a) Exhibits.

<b>Exhibit Number</b>	<b>Exhibit Description</b>
1.1**	<a href="#">Form of Underwriting Agreement</a>
3.1**	<a href="#">Amended and Restated Certificate of Incorporation of Leonardo DRS, Inc. (f/k/a DRS Technologies, Inc.) (as amended)</a>
3.2**	<a href="#">Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Leonardo DRS, Inc. (f/k/a DRS Technologies, Inc.)</a>
3.3**	<a href="#">Amended and Restated Certificate of Incorporation of Leonardo DRS, Inc., as in effect</a>
3.3(a)*	<a href="#">Form of Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Leonardo DRS, Inc., to be effective at the completion of this offering.</a>
3.4**	<a href="#">Amended and Restated Bylaws of Leonardo DRS, Inc., as in effect</a>
4.1**	<a href="#">Form of Common Stock Certificate</a>
5.1*	<a href="#">Opinion of Sullivan &amp; Cromwell LLP</a>
10.1**	<a href="#">Form of Cooperation Agreement between Leonardo DRS, Inc., Leonardo US Holding, Inc. and Leonardo – Società per azioni</a>
10.2**	<a href="#">Form of Amended and Restated Proxy Agreement by and among Leonardo DRS, Inc., the individual Proxy Holders signatories thereto, Leonardo US Holding, Inc., Leonardo – Società per azioni and the U.S. Department of Defense</a>
10.3**	<a href="#">Commitment Letter re Leonardo DRS, Inc. Commitment to Mitigate Foreign Ownership, Control or Influence, dated as of February 26, 2021, by and among Leonardo DRS, Inc., Leonardo US Holding, Inc., Leonardo – Società per azioni and the U.S. Department of Defense</a>
10.4**	<a href="#">Form of Registration Rights Agreement</a>
10.5**	<a href="#">Tax Allocation Agreement, dated as of November 16, 2020, by and among Leonardo US Holding, Inc., Leonardo DRS, Inc. and the other signatories thereto</a>
10.6**	<a href="#">Form of Trademark License Agreement</a>
10.7†*	<a href="#">Form of Employment Agreement between Leonardo DRS, Inc. and William J. Lynn III</a>
10.8†**	<a href="#">Leonardo DRS Incentive Compensation Plan</a>
10.9†**	<a href="#">Leonardo DRS Long-Term Incentive Plan</a>
10.10†**	<a href="#">Leonardo DRS, Inc. Executive Severance Plan</a>
10.11†**	<a href="#">Leonardo DRS, Inc. Omnibus Equity Compensation Plan</a>
10.12†**	<a href="#">Form of Founders Restricted Stock Unit Award Agreement</a>
10.13†**	<a href="#">Form of Director Indemnification Agreement</a>
10.14†**	<a href="#">Form of Restricted Stock Unit Agreement</a>
10.15†**	<a href="#">Form of Performance Restricted Stock Unit Agreement</a>
10.16†*	<a href="#">Form of Credit Agreement by and among Leonardo DRS, Inc., the subsidiary guarantors named therein, and the lenders party thereto</a>
10.17†*	<a href="#">Form of Bridge Loan Credit Agreement by and among Leonardo DRS, Inc., the subsidiary guarantors named therein, and the lenders party thereto</a>
21.1**	<a href="#">Subsidiaries</a>
23.1*	<a href="#">Consent of KPMG LLP</a>
23.2*	<a href="#">Consent of Sullivan &amp; Cromwell LLP (included in Exhibit 5.1 hereto)</a>
24.1**	<a href="#">Powers of Attorney (contained on signature pages to the Registration Statement on Form S-1)</a>
99.1*	<a href="#">Consent of Gail Baker</a>
99.2*	<a href="#">Consent of Mary Gallagher</a>

\* Filed herewith.

† Identifies each management contract or compensatory plan or arrangement.

\*\* Previously filed.

(b) Financial Statement Schedules: Not applicable.

**Item 17. Undertakings.**

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the U.S. Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

- (1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.
- (2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, Leonardo DRS, Inc. has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Arlington, State of Virginia on the 15th day of March, 2021.

**LEONARDO DRS, INC.**

By: /s/ William J. Lynn III  
Name: William J. Lynn III  
Title: Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed on March 15, 2021 by the following persons in the capacities indicated.

<u>Signature</u>	<u>Title</u>
<u>/s/ William J. Lynn III</u> William J. Lynn III	Director, Chief Executive Officer (Principal Executive Officer)
<u>/s/ Michael D. Dippold</u> Michael D. Dippold	Executive Vice President and Chief Financial Officer (Principal Financial Officer)
<u>/s/ Pamela J. Morrow</u> Pamela J. Morrow	Senior Vice President and Controller (Principal Accounting Officer)
<u>*</u> David W. Carey	Director
<u>*</u> General George W. Casey, Jr. (Ret.)	Director
<u>*</u> Kenneth J. Krieg	Director
<u>*</u> Peter A. Marino	Director
<u>*</u> Philip A. Odeen	Director
<u>*</u> Frances F. Townsend	Director

\*By: /s/ Michael D. Dippold  
Michael D. Dippold  
Attorney-in-Fact

**CERTIFICATE OF AMENDMENT  
TO THE  
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
LEONARDO DRS, INC.**

March , 2021

LEONARDO DRS, INC., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the “DGCL”), hereby certifies as follows:

FIRST: The name of the Corporation is Leonardo DRS, Inc. (the “Corporation”). The original certificate of incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on November 8, 1968 under the name Diagnostic/Retrieval Systems, Inc. The Amended and Restated Certificate of Incorporation of the Corporation (the “Certificate”) was filed with the Secretary of State of the State of Delaware on March 9, 2021.

SECOND: This Amendment (the “Amendment”) to the Certificate was duly adopted in accordance with Section 228 and Section 242 of the DGCL by the holders of a majority of the issued and outstanding shares of stock of the Corporation entitled to vote thereon.

THIRD: Article TWELVETH of the Certificate is hereby amended by deleting Article TWELVETH in its entirety and inserting in its place a new Article TWELVETH to read as follows:

“TWELVETH: Subject to the Proxy Agreement, the Corporation reserves the right to amend, alter, or repeal any provision contained in this Amended and Restated Certificate of Incorporation in the manner now or hereafter prescribed by the DGCL; and all rights herein conferred upon stockholders, directors or any other persons are granted subject to this reservation. Notwithstanding anything to the contrary contained in this Amended and Restated Certificate of Incorporation, and notwithstanding that a lesser percentage may be permitted from time to time by applicable law, an affirmative vote of the majority of the Board of Directors and the affirmative vote of the holders of a majority of the outstanding shares of Common Stock then entitled to vote at any annual meeting or special meeting of stockholders shall be required to amend, alter, repeal or adopt any provision of this Amended and Restated Certificate of Incorporation; provided, however, that from and after the earlier of the Reporting Date and termination of the Effective Proxy Period, no provision of Articles FIFTH, SIXTH, SEVENTH, EIGHTH, NINETH, ELEVENTH and TWELVETH of this Certificate of Incorporation may be altered, amended or repealed in any respect, nor may any provision inconsistent therewith be adopted or added, unless such alteration, amendment, repeal, adoption or addition is approved by the affirmative vote of the holders of at least 66 2/3% of the voting power of the outstanding Common Stock then entitled to vote at any annual meeting or special meeting of stockholders.”

*[Signature page follows]*

IN WITNESS WHEREOF, the undersigned has duly executed this certificate of amendment on behalf of the Corporation  
this day of March, 2021.

/s/

---

William J. Lynn III  
Chief Executive Officer

*[Signature Page to Certificate of Amendment]*



March 15, 2021

Leonardo DRS, Inc.,  
2345 Crystal Drive, Suite 1000,  
Arlington, Virginia 22202.

Ladies and Gentlemen:

In connection with the registration under the Securities Act of 1933 (the “Act”) of up to 36,685,000 shares (the “Shares”) of Common Stock, par value \$0.01 per share, of Leonardo DRS, Inc., a Delaware corporation (the “Company”), which will be sold by the selling stockholder named in the registration statement relating to the Shares (the “Registration Statement”), we, as your counsel, have examined such corporate records, certificates and other documents, and such questions of law, as we have considered necessary or appropriate for the purposes of this opinion. Upon the basis of such examination, it is our opinion that the Shares have been validly issued and are fully paid and nonassessable.

In rendering the foregoing opinion, we are not passing upon, and assume no responsibility for, any disclosure in any registration statement or any related prospectus or other offering material relating to the offer and sale of the Shares.

The foregoing opinion is limited to the Federal laws of the United States and the General Corporation Law of the State of Delaware, and we are expressing no opinion as to the effect of the laws of any other jurisdiction.

We have relied as to certain factual matters on information obtained from public officials, officers of the Company and other sources believed by us to be responsible.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the reference to us under the heading “Validity of Common Stock” in the

Prospectus. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act.

Very truly yours,

/s/ Sullivan & Cromwell LLP



March , 2021

William J. Lynn III

4505 Hoban Road

Washington, D.C. 20007

Re: New Employment Agreement

Dear Bill:

This letter sets forth the terms of your continued employment as Chairman and Chief Executive Officer of Leonardo DRS, Inc. (the “**Company**”). Should you accept this offer, this signed letter shall constitute your employment agreement with the Company (the “**Agreement**”) and will be effective as and contingent upon the completion of Company’s initial public offering (the “**Effective Date**”).

1. Duties.

1.1 The Company shall employ you, and you shall serve, as Chairman and Chief Executive Officer of the Company and in such capacity, have such authority, functions, duties, powers, and responsibilities typically associated with such position.

1.2 You shall report to the Company’s Board of Directors. You shall devote substantially all of your working time and efforts relating to the performance of your duties hereunder. While employed, you shall not engage in any other occupation for gain, profit or pecuniary advantage without the consent of the Board; provided, however, that: (a) this limitation shall not be construed as preventing you from managing your passive investments or being involved in charitable, religious, and civic interests so long as they do not materially interfere with the performance of your duties hereunder; (b) you may serve on the Proxy Board of Accenture, Inc. so long as such service does not create an actual conflict of interest or materially interfere with the performance of your duties hereunder; and (c) you may request to serve on another for-profit board of advisors or board of directors, provided that such for-profit organization is not a competing business and subject to the approval of the Board of Directors. In performing your duties hereunder, you shall comply with all written policies and procedures of the Company.

1.3 You will provide services to the Company from the Company’s offices in Arlington, Virginia (Crystal City); subject to any business travel as is necessary to perform your duties as Chairman and Chief Executive Officer.

1.4 Subject to the terms set forth in Section 4 below, please understand that this letter does not constitute a contract of employment for any specific period of time, but will create an employment at-will relationship that may be terminated at any time by you or the

Company, with or without cause, and with or without advance notice. The at-will nature of the employment relationship may not be modified or amended except by written agreement signed by the Chair of the Company's Compensation Committee (the "**Committee**") and you.

2. Compensation and Other Remuneration.

2.1 Base Salary. Your annual base salary ("**Base Salary**") for 2021 will be \$1,157,249. The amount of your Base Salary shall be reviewed annually by the Board in consultation with the Parent; provided the Company may increase, but not decrease, the Base Salary. Base Salary shall be paid in accordance with the customary payroll practices of the Company and shall be subject to payroll deductions and required withholdings.

2.2 Annual and Long Term Incentives.

(a) You shall be eligible to participate in the Company's annual Incentive Compensation Plan or any successor annual incentive program in effect from time to time (the "**ICP**") in accordance with, and subject to, the terms of such plan. Your target award under the ICP shall be 110% of your Base Salary (as determined in accordance with the ICP) ("**Target Award**") and your maximum Earned Award (as defined in the ICP) shall be 200% of your Target Award (notwithstanding anything to the contrary in the ICP). The actual amount, if any, of your ICP award will be determined in accordance with the ICP and related terms and conditions approved by the Committee or the Board, as applicable.

(b) You shall be eligible to participate in the Company's Long-Term Incentive Plan (the "**LTIP**"), the Company's 2021 Omnibus Equity Compensation Plan (the "**Omnibus Plan**"), or any other long-term incentive plans in effect from time to time (collectively, the "**LTI Plans**") in accordance with the terms of the LTI Plans. Your target award for 2021 under the Company's Omnibus Plan shall be \$3,580,000. The amount of your target award shall be reviewed annually by the Board; provided the Company may increase, but not decrease, the target award. Unless otherwise provided herein, all LTI Plan awards will be subject to the terms and conditions set forth in the applicable LTI Plan and award agreement.

(c) Any awards granted to you under the LTIP in 2019 and 2020 and otherwise payable in 2022 and 2023 shall be subject to Section 6.2 of the LTIP.

(d) You shall be eligible to receive a Founders Award ("**Founders Award**") in connection with the Company's initial public offering in the form of restricted stock units, subject to approval by the Committee and in accordance with the terms of the Founders Award. Your target Founders Award shall be equal to an amount that is two times your 2020 LTIP target award, subject to the terms and conditions of the Founders Award.

3. Benefits. While employed by the Company, you shall be entitled to the compensation, benefits, and reimbursements set forth in this Section 3, subject to the terms hereof.

3.1 Health, Welfare and Retirement Benefits. The Company shall provide group health, dental, hospitalization, life and disability insurance benefits to you and your eligible dependents that are in effect as of the Effective Date in accordance with the terms of such plans as may be modified from time to time. You shall also be eligible to participate in such other welfare and retirement benefit plans or programs that are offered to senior executives of the Company generally to the extent you are eligible under the general provisions thereof as in effect from time to time.

3.2 Life Insurance. The Company shall provide you with term life insurance benefits under a company-sponsored individual policy that provides your beneficiary with (i) a death benefit in the amount of \$4,000,000 and (ii) a death benefit of \$325,000 that is subject to certain age-related reductions after you reach the age of 65. Such benefits are to be provided by group life insurance applicable to you and are subject to your eligibility for commercially available coverage and cooperation in obtaining same.

3.3 Vacation. You shall be entitled to four (4) weeks of paid vacation per year, with such vacation being accrued in accordance with the Company's vacation policies.

3.4 Directors' and Officers' Insurance. The Company shall provide you with coverage under the directors' and officers' insurance policy currently maintained by the Company, or provide you with coverage under any successor or replacement policy that provides at least the same level and duration of coverage as the policy currently maintained by the Company. The Company shall maintain such coverage in full force and effect for a period of time after the termination of your employment which is reasonable and customary in the industry.

3.5 Executive Allowances. You shall participate in the Company's executive allowances program, and for each calendar year of your employment you shall be entitled to an executive allowance of \$40,000.

3.6 Business Travel. The Company shall reimburse you for all reasonable expenses incurred for all business travel you engage in for the benefit of the Company. You shall be entitled to not less than business class travel, when available, when travelling for Company business.

3.7 Business Expenses. The Company shall pay or reimburse you for the ordinary and customary business expenses incurred in the performance of your duties hereunder.

3.8 Legal Expenses. The Company shall reimburse you for your reasonable legal expenses, in an amount not to exceed \$10,000, incurred in the negotiation and documentation of this Agreement.

3.9 Annual Exam. Each calendar year during which you are employed hereunder, the Company shall pay for a comprehensive annual physical examination by a physician of your choice, to the extent not otherwise covered under the Company's medical plan.

#### 4. Termination of Employment.

##### 4.1 Termination for Cause.

(a) The Company may terminate your employment and all of the Company's obligations hereunder, other than its obligations set forth below in this Section 4.1, at any time for "Cause." "Cause" shall mean (i) willful failure or refusal without proper cause to perform your duties with the Company, including your obligations under this Agreement (other than any such failure resulting from your incapacity due to physical or mental impairment) and, after having been given written notice thereof by the Company, failure to correct such willful failure or refusal to perform within 30 days after receipt of such notice; (ii) your engagement in dishonesty, illegal conduct or misconduct; (iii) your embezzlement, misappropriation or fraud, whether or not related to the your employment with the Company; (iv) your conviction of, or plea of guilty or nolo contendere to, a crime that constitutes a felony (or state law equivalent) or crime that constitutes a misdemeanor involving moral turpitude; or (v) your violations of the Company's code of ethics and business conduct, as amended from time to time, as determined in the Company's sole discretion.

(b) In the event your employment is terminated by the Company for Cause, the Company shall have no further obligations to you under this agreement other than to: (i) pay Base Salary and unused vacation accrued through the effective date of termination, (ii) pay any unpaid Earned Award under the ICP for any completed prior fiscal year and (iii) comply with obligations owed under the Company's benefit plans in accordance with their terms as in effect as of the effective date of termination ((i) through (iii) collectively, the "**Termination Entitlement**").

(c) In the event your employment is terminated by the Company for Cause, you shall cease to be eligible for any Award Payments (as defined in the ICP) not paid as of the date on which your employment terminates.

(d) In the event your employment is terminated by the Company for Cause, you shall cease to be eligible for any Award Payments (as defined in the LTIP) not paid as of the date on which employment terminates.

(e) In the event your employment (as defined in the Omnibus Plan) is terminated by the Company for Cause prior to the vesting of all of the awards granted to you under the Omnibus Plan, any unvested awards shall terminate automatically without any further action by the Company and be forfeited without further notice and at no cost to the Company, unless otherwise provided in the applicable award agreements. For the avoidance of doubt, this Section 4.1(e) shall also apply to your Founders Awards.

#### 4.2 Termination Due to Death or Disability.

(a) This Agreement shall terminate (i) upon your death or (ii) upon written notice to you by the Company if you become physically or mentally disabled, whether totally or partially, so that you are unable to perform the regular duties of your employment with the Company on a full time continuous basis for six (6) months, or which can be expected to prevent you from performing such duties in the opinion of a qualified physician, with such notice given at any time thereafter during which you are still disabled. In the event your employment is terminated under this Section 4.2(a), the Company shall not have any further obligations hereunder, except that you or your estate shall be entitled to receive, in addition to any regular life insurance benefits paid by the Company or any disability benefits paid by insurance plans, the Termination Entitlement.

(b) In the event this Agreement is terminated due to your death or Disability (as defined in the LTIP), notwithstanding anything to the contrary herein or in the LTIP, any unvested Target Awards (as defined in the LTIP), shall fully vest on the date this Agreement terminates due to your death or Disability and shall be payable in accordance with the terms of the LTIP to you or your beneficiary.

(c) In the event your employment is terminated by reason of your death or Disability (as defined in the ICP), the Administrator (as defined in the ICP), in its sole discretion, may authorize a Pro-rated Award Payment (as defined in the ICP) to you or your beneficiary reflecting your participation for a portion of the Plan Year (as defined in the ICP) in which your employment terminated payable in accordance with the terms of the ICP.

(d) In the event your employment (as defined in the Omnibus Plan) is terminated by reason of your death or Disability (as defined in the Omnibus Plan), any awards granted under the Omnibus Plan shall fully vest on the date of your death or Disability, as applicable, unless otherwise provided in the applicable award agreements. For the avoidance of doubt, this Section 4.2(d) shall also apply to your Founders Awards.

4.3 Termination in Connection with a Change in Control. In the event of a Change in Control (as defined in the Company's Executive Severance Plan), the provisions of the Company's Executive Severance Plan shall apply.

#### 4.4 Other Termination by the Company.

(a) The Company may terminate your employment, other than a termination under Section 4.1, 4.2 or 4.3, upon 30 days' written notice to you. In the event this Agreement is so terminated, you shall be entitled to a lump sum payment equal to (i) two and one-half times (2.5x) the sum of: (A) your Base Salary, and (B) your Target Award under the ICP for the fiscal year in which your termination of employment occurs, and (ii) any unpaid cash incentive compensation bonus earned by you for the last full fiscal year prior to the termination of your employment.

(b) If the Company terminates your employment pursuant to this Section 4.4, notwithstanding anything to the contrary in the LTIP, then you shall be eligible for unvested Award Payments (as defined in the LTIP) under the LTIP, payable in accordance with the terms of the LTIP at the same time and in the same manner as Award Payments paid to other participants and subject to approval by the Committee, provided however: (i) you shall automatically be eligible for such Award Payment without regard to the date of your termination of employment during the calendar year, and (ii) payment of such Award Payment shall not be subject to any requirement that you be employed by the Company on the date of payment.

(c) If the Company terminates your employment (as defined in the Omnibus Plan) pursuant to this Section 4.4 prior to the vesting of all of any awards granted to you under the Omnibus Plan, excluding any Founders Awards, then subject to Committee approval and notwithstanding anything to the contrary in the Omnibus Plan or applicable award agreement, (i) any unvested restricted stock unit granted to you under the Omnibus Plan shall continue to vest in accordance with its vesting schedule set forth in the applicable award agreement and (ii) any performance-based restricted stock unit granted to you under the Omnibus Plan shall vest pro rata, in accordance with its vesting schedule, based on the effective date your employment terminates, subject to satisfaction of the performance goals set forth in the applicable award agreement, as determined by the Committee.

(d) If the Company terminates your employment (as defined in the Omnibus Plan) pursuant to this Section 4.4 prior to the vesting of all of your Founders Awards, any unvested awards shall continue to vest in accordance with vesting schedule set forth in the applicable award agreement.

4.5 Termination Due to Material Breach by Company. Notwithstanding anything in this Agreement to the contrary, you shall have the right, exercisable by notice to the Company, to terminate your employment, effective thirty (30) days after the giving of notice, if at the time of such notice: (a) the Company shall be in material breach of its obligations hereunder, (b) the Company seeks to relocate your place of employment from the Washington, D.C. area, or (c) the Company has materially diminished your duties, authority or reporting lines (each, a “material breach”); provided, however, this Agreement and your employment will not so terminate if within such 30-day period the Company has cured all such material breaches; and provided further, that such notice is provided to the Company within 120 days after the occurrence of such material breach. If such material breach has not been so cured, you may elect to terminate your employment and to treat such termination as a termination of your employment by the Company pursuant to Section 4.4 above, and you shall be entitled to the rights and benefits provided for therein.

4.6 Resignation. Notwithstanding anything in this Agreement to the contrary, you may voluntarily terminate your employment ninety (90) days prior written notice to the Company. In such event, the Company’s only obligations to you shall be for the Termination Entitlement.

4.7 Retirement. Notwithstanding anything in this Agreement to the contrary, you may Retire by voluntarily terminating your employment on one hundred eighty (180) days’



prior written notice to the Company. In such event, you shall be eligible to receive, subject to approval of the Committee:

(a) the Termination Entitlement;

(b) your Target Award under the ICP for the full fiscal year in which you retire payable at the same time as ICP awards are paid to other participants;

(c) any restricted stock unit granted to you under the Omnibus Plan (excluding any Founders Awards) shall continue to vest according to the vesting schedule in the applicable award agreement, provided that your employment continued for a minimum of six (6) months after the date of grant of such awards;

(d) any performance-based restricted stock unit granted to you under the Omnibus Plan shall vest pro rata, in accordance with its vesting schedule, based on the date your employment terminates, subject to satisfaction of the performance goals set forth in the applicable award agreement, as determined by the Committee;

(e) Notwithstanding anything to the contrary in the LTIP, unvested Award Payments (as defined in the LTIP) under the LTIP, payable in accordance with the terms of the LTIP at the same time and in the same manner as Award Payments are made to other participants and subject to approval by the Committee; and

(f) Coverage pursuant to Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") for eighteen (18) months, subject to the terms set forth in Section 2.2 of the Company's Executive Severance Plan.

For the purposes of this agreement, "**Retire**" means, once you have reached the age of 65 years, the voluntary termination of employment by you; provided, that you provide notice to the Company at least one hundred eighty (180) days prior to your last day of employment. Any Founders Awards that are unvested at the time you retire shall terminate automatically without any further action by the Company and be forfeited without further notice and at no cost to the Company.

#### 4.8 Delivery of Release; Timing of Payments.

(a) Notwithstanding anything herein to the contrary, you shall be entitled to the payments and benefits provided for in Sections 4.4, 4.5, and 4.8(b) (subject to the terms of such sections) only if you first execute and deliver to the Company, and do not revoke, a Separation and General Release Agreement (the "**Release Agreement**") in favor of the Company, its affiliates and their respective officers and directors, in a form to be provided by the Company on or about the date on which your termination of employment occurs.

(b) Subject to Section 4.8(a), the payment provided for in Section 4.4(a) (subject to the specific terms therein) shall be made no later than 60 days following the date on which your termination of employment occurs, provided, that if the release

consideration and revocation period spans two calendar years, then such payment shall be made in the second calendar year. The Termination Entitlement will be paid on the payroll date next following the date on which your termination of employment occurs.

#### 4.9 Benefits and Other Payments upon Termination.

(a) Except as otherwise provided herein, upon termination employment, your rights to benefits and payments under the Company's incentive compensation and other benefit plans (including the ICP, the LTIP, the Omnibus Plan, your Founders Awards) shall be determined in accordance with the then current terms and provisions of such plans and any agreements under which such benefits or payments were granted, except as specifically set forth herein.

(b) If your employment is terminated under Section 4.4 or Section 4.5, you shall be entitled to the payments and benefits described in the following clauses (i) and (ii):

(i) Payment or reimbursement by the Company for COBRA premiums payable by you for health, dental and hospitalization insurance for you and any dependents who are enrolled in such plans on the date of termination for the one-year period following such date (or until the date you cease to have a valid COBRA election in effect, if sooner). Such coverage shall in all events qualify as an "accident or health plan" under Sections 105 or 106 of the Code and shall be secondary to: (y) benefits of the same type received by or made available to you by a subsequent employer (if any), and (z) Medicare coverage upon you becoming eligible for Medicare. Notwithstanding the foregoing, in the event the Company determines, in its reasonable judgment, that payment or reimbursement of your COBRA premiums may result in a violation of applicable law, the imposition of any penalties under applicable law, or other adverse consequences to the Company, the Company may instead pay to you a lump sum amount, in cash, that on an after-tax basis is equal to the premiums (or remaining premiums) that would otherwise have been paid or reimbursed by the Company.

(ii) Continued participation in, and payment of premiums by the Company for, life insurance and other welfare benefits (other than health, dental, and hospitalization benefits) that you would otherwise be entitled to receive had you remained employed by the Company during the one-year period following the date of termination; provided, however, that if such participation by you after termination of employment is not permitted under any such plan, the Company may provide you with substantially equivalent alternative coverage through one or more individual insurance policies or otherwise. You shall cooperate with the Company with respect to the Company's obtaining and providing such substantially equivalent alternative coverage.

#### 5. Restrictions.

##### 5.1 Confidential Information

(a) You shall not disclose or use at any time, either during or subsequent to your service with the Company, any trade secrets or other proprietary or

confidential information, whether patentable or not, of the Company or any of its Affiliates (defined below), including, but not limited to, technical or non-technical data, software programs and enhancement equipment, hardware and enhancements, business strategies, marketing data and plans, current and potential customer data and contract arrangements, plans for growth and acquisition, financial information, facilities, personnel information and operating methods and procedures or suppliers, of which you are or become informed or aware during your service with the Company, whether or not developed by you. “**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.

(b) This covenant shall survive the termination of your service with the Company and shall remain in effect and be enforceable against you for so long as any such Company and/or Affiliate secret, proprietary or confidential information retains economic value, whether actual or potential (to be determined at the discretion of the Company and/or the Affiliate, as applicable), from not being generally known to other persons who can obtain economic value from its disclosure or use. You shall execute such reasonable further agreements and confirmations of your obligations to the Company and its Affiliates concerning non-disclosure of trade secrets and proprietary and confidential information of the Company and its Affiliates as the Company and its Affiliates may require from time to time.

(c) Upon termination of your service with the Company, you shall promptly deliver to the Company all of the Company’s property, wherever it is located, including, but not limited to, keys, equipment, all customer lists, specifications, drawings, listings, documentation, manuals, letters, notes, note books, reports, computer discs, and all copies thereof, and all other materials of a secret, proprietary, or confidential nature relating to the Company’s business, which are in your possession or under your control.

(d) Notwithstanding anything to the contrary in this Agreement or otherwise, nothing shall limit your rights under applicable law to provide truthful information to any governmental entity or to file a charge with or participate in an investigation conducted by any governmental entity.

(e) Notwithstanding the foregoing, you agree to waive your right to recover monetary damages in connection with any charge, complaint or lawsuit filed by you or anyone else on your behalf (whether involving a governmental entity or not); provided, that you are not agreeing to waive, and this Agreement shall not be read as requiring you to waive, any right you may have to receive an award for information provided to any governmental entity. You are hereby notified that the immunity provisions in Section 1833 of title 18 of the United States Code provide that an individual cannot be held criminally or civilly liable under any federal or state trade secret law for any disclosure of a trade secret that is made (1) in confidence to federal, state or local government officials, either directly or indirectly, or to an attorney, and is solely for the purpose of reporting or investigating a suspected violation of the law, (2) under seal in a complaint or other document filed in a lawsuit or other proceeding, or (3) to your attorney in connection with a lawsuit for retaliation for reporting a suspected violation of law (and the trade secret may be used in the court proceedings for such lawsuit) as long as any

document containing the trade secret is filed under seal and the trade secret is not disclosed except pursuant to court order.

5.2 Intellectual Property. You hereby irrevocably assign and agree to assign to the Company all rights, title, and interest worldwide you may have or acquire in and to any and all Company Intellectual Property, together with the right to prosecute or sue for infringements or violations of the same. The term “**Intellectual Property**” means inventions, discoveries; developments; trade secrets; processes; formulas; data; lists; plans, software programs; graphics; artwork; logos, and all other works of authorship, ideas, concepts, know-how, designs, and techniques, whether or not any of the foregoing is or are patentable, copyrightable, or registerable under any intellectual property laws or industrial property laws in the United States or any foreign country. The term “**Company Intellectual Property**” means all Intellectual Property that: (a) relate to the actual or proposed business, work, research or investigation of the Company, any of its Affiliates or any predecessors thereto or that are discovered, developed, created, conceived, reduced to practice, made, completed, learned or written by you, either alone or jointly with others, in the course of your employment; (b) utilize, incorporate or otherwise relate to Company or Affiliate secret, proprietary or confidential information; or (c) are discovered, developed, created, conceived, reduced to practice, made, completed, learned or written by you using property or equipment of the Company or any of its predecessors. You agree to promptly and fully communicate in writing to the Company (to such department or officer of the Company and in accordance with such procedures as the Company may direct from time to time) any and all Company Intellectual Property. You acknowledge and agree that any work of authorship by you or others comprising Company Intellectual Property shall be deemed to be a “work made for hire,” as that term is defined in the United States Copyright Act (17 U.S.C. § 101 (2000)). To the extent that any such work of authorship may not be deemed to be a work made for hire, you hereby irrevocably assigns and agrees to assign any ownership rights you may have or acquire in and to such work to the Company. You agree to perform, whether during or after your employment with the Company, all acts deemed necessary or desirable by the Company to permit and assist the Company in protecting, registering, recording, obtaining, maintaining, defending, enforcing and perfecting the Company’s rights in and to the Company Intellectual Property, including executing applications for registration therefore. This Agreement does not apply to any Intellectual Property you made before your employment by the Company.

5.3 Non-Disparagement. You agree, other than with regard to employees in the good faith performance of your duties with the Company while employed by the Company, both during and after your employment with the Company terminates, not to knowingly disparage the Company or its officers, directors, employees or agents in any manner likely to be materially harmful to it or them or its or their business, business reputation or personal reputation. This paragraph shall not be violated by statements from you which are truthful, complete and made in good faith in required response to legal process or governmental inquiry. You also agree that any breach of this non-disparagement provision by you shall be deemed a material breach of this Agreement. Likewise, the Company agrees not to disparage you or your business or personal reputation, provided, however, that this paragraph shall not be violated by statements from the company which are truthful, complete, and made in good faith in required governmental disclosures in response to legal or governmental inquiry. The Company agrees that

its breach of this non-disparagement provision shall be deemed a material breach of this Agreement.

5.4 Non-Competition. You agree that so long as you are employed by the Company and for a period of one (1) year after such employment is terminated, whether voluntarily or involuntarily, you will not be employed by, manage, operate, control or participate in the ownership, management, operation or control of any company, business, or organization doing business in the United States that provides products or services competitive with those of the Company if that company is providing services under a program for which the Company provided services during the last two (2) years of your employment and if your job duties or function for that company, business or organization is substantially similar to the job duties or function that you performed in connection with that program while employed by the Company during that period.

5.5 Program Non-Solicitation. You agree that you will not, while employed with the Company and for an additional two (2) years after your employment with the Company is terminated for any reason, whether voluntarily or involuntarily, participate in or assist with the submission of any proposal or bid for a program or prospective program that is competitive with a proposal of the Company by: (i) disclosing, providing or using information about the Company's work on a program or prospective program, (ii) disclosing, providing or using information about a proposal or bid for a program and prospective program prepared or made by the Company, (iii) reviewing, advising or assisting with the preparation of a proposal or bid for a program or prospective program, or (iv) reviewing, advising, assisting with or making a presentation to a program customer or prospective program customer.

5.6 Employee Non-Solicitation. You agree that you will not, while employed with the Company and for an additional two (2) years after your employment with the Company is terminated for any reason, whether voluntarily or involuntarily, directly or indirectly, (i) solicit, hire, or recruit, (ii) attempt to solicit, hire or recruit, or (iii) induce or cause the termination of employment or engagement of, any employee, consultant, independent contractor or agent of the Company.

5.7 Remedies for Breach. The parties hereby declare that the rights of the Company contained in Sections 5.1 through 5.6 are of a unique nature, the loss of which may cause irreparable harm, and that it may be impossible to measure in money the damages which will accrue to the Company by reason of the loss of such rights or a failure by you to perform or adhere to any of the obligations under Sections 5.1 through 5.6 herein. You expressly acknowledge that remedies at law alone will be inadequate to compensate the Company and its Affiliates for any breach or violation of any of the provisions of Sections 5.1 through 5.6 herein, and that the Company, in addition to all other remedies hereunder or thereunder, shall be entitled, as a matter of right, to seek injunctive relief, including specific performance, with respect to any such breach or violation, in any court of competent jurisdiction and you waive the requirement of the posting of any bond in connection with such injunctive relief. You further acknowledge and agree that the promises and covenants contained in Sections 5.1 through 5.6 are ancillary to the otherwise enforceable promises contained herein and are reasonable and valid.

6. Indemnification. The Company hereby agrees to indemnify and hold you harmless for any damages, costs, charges, fees or other expenses, including without limitation, reasonable attorneys' fees, that you incur or may incur as a result of any claims, disputes, suits or other proceedings or investigations arising out of or relating to the performance of your duties under this Agreement, to the maximum extent permitted by law. You shall be entitled to advancement of expenses in the event an indemnifiable event occurs or is threatened upon written notice to the Company of such event. You may be represented in any such matter by counsel of your choice if you shall reasonably determine that there exists a conflict of interest between the Company and you. The Company's obligations under this Section 6 shall be subject to you executing and delivering to the Company an undertaking agreement containing customary provisions for the repayment of any amounts paid, advanced, or reimbursed by the Company to the extent that it is ultimately determined that you are not entitled to indemnification pursuant to this Section 6.

7. General.

7.1 Notices. All notices, requests, consents and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given, if delivered personally or mailed first-class, postage prepaid, by registered or certified mail, as follows (or to such other or additional address as either party shall designate by notice in writing to the other in accordance herewith): If to the Company, to the Company's principal HR official in the United States and, if to you, to the address set forth on the records of the Company.

7.2 Governing Law. Except for the indemnification provision contained in Section 6, which shall be governed by the laws of the State of Delaware, this Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Virginia applicable to agreements made and performed within Virginia, without regard to the principles of conflicts laws.

7.3 Resolution of Conflict. Except as provided in Section 5.3, any and all disputes, claims and controversies between the parties hereto concerning the validity, interpretation, performance, termination or breach of this Agreement, which cannot be resolved by the parties within ninety (90) days after such dispute, claim or controversy arises shall, at the option of either party, be referred to and finally settled by arbitration. Such arbitration shall be initiated by the initiating party giving notice (the "**Arbitration Notice**") to the other party (the "**Respondent**") that it intends to submit such dispute, claim or controversy to arbitration. Each party shall, within thirty (30) days of the date the Arbitration Notice is received by the Respondent, designate a person to act as an arbitrator; if either party fails to designate a person to Act as an arbitrator within the time specified herein the arbitration shall be conducted by the sole designated arbitrator. The two arbitrators appointed by the parties shall, within thirty (30) days after their designation appoint a third arbitrator who shall act as presiding arbitrator (the "**Presiding Arbitrator**"). If the two arbitrators designated by the parties are unable to appoint a Presiding Arbitrator, the Presiding Arbitrator shall be appointed according to the rules of the American Arbitration Association as in effect on the date the notice of submission to arbitration

is given (the “**Rules**”). Such arbitration shall be held in Virginia in accordance with the Rules except as otherwise expressly provided herein. The arbitrators shall, by majority vote, render a written decision stating reasons therefore in reasonable detail within three (3) months after the appointment of all the arbitrators. The award of the arbitrators shall be made in United States currency and shall be final and binding, and judgment thereon may be rendered by any court having jurisdiction thereof, or application may be made to such court for the judicial acceptance of the award and an order of enforcement as the case may be.

7.4 Assignability. This Agreement may not be assigned by either party without the other party’s express written consent.

7.5 Amendments; Waivers. This Agreement may be amended, modified, superseded, canceled, renewed or extended and the terms or covenants hereof may be waived only by written instrument executed by both of the parties hereto, or in the case of a waiver, by the party waiving compliance. The failure of either party at any time or times to require performance of any provisions hereof shall in no manner affect such party’s right at a later time to enforce the same. No waiver by either party of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such breach, or a waiver of the breach of any other term or covenant contained in this Agreement.

7.6 Severability. If any provision of this Agreement is held to be unenforceable by a court, the remaining provisions shall be enforced to the maximum extent possible. If a court should determine that any provision of this Agreement is overbroad or unreasonable, such provision shall be given effect to the maximum extent possible by narrowing or enforcing in part that aspect of the provision found overbroad or unreasonable.

7.7 Withholding Taxes. Payments made to pursuant to this Agreement shall be subject to withholding and social security taxes and other ordinary and customary payroll deductions.

7.8 Compliance with IRC Section 409A. This Agreement is intended to comply with Section 409A of the Internal Revenue Code of 1986, as amended (the “**Code**”) to the extent applicable, and will be interpreted in a manner intended to comply with Section 409A of the Code. Notwithstanding anything herein to the contrary, if at the time of your termination of employment with the Company you are a “specified employee” as defined in Section 409A of the Code (and any related regulations or other pronouncements thereunder) and the deferral of the commencement of any payments or benefits otherwise payable hereunder or under the LTI Plans as a result of such termination of employment is necessary in order to prevent any accelerated or additional tax under Section 409A of the Code, then the Company will defer the commencement of the payment of any such payments or benefits hereunder (without any reduction in such payments or benefits ultimately paid or provided to you) until the expiration of the six-month period measured from the date of your separation from service with the Company (or the earliest date as is permitted under Section 409A of the Code). On the first day of the seventh month following the date of your separation from service, or if earlier, the date of your death, all payments delayed pursuant to this paragraph (whether they would have otherwise been

paid or reimbursed to you in a single sum or in installments) shall be paid or reimbursed to you in a single sum and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal dates specified for them in this Agreement. In addition, if any other payments of money or other benefits due to you hereunder could cause the application of an accelerated or additional tax under Section 409A of the Code, such payments or other benefits shall be deferred if deferral will make such payment or other benefits compliant under Section 409A of the Code, or otherwise such payment or other benefits shall be restructured, to the extent possible, in a manner, determined by the Company, that does not cause such an accelerated or additional tax. To the extent any reimbursements or in-kind benefits due to you under this Agreement constitute “deferred compensation” under Section 409A of the Code, any such reimbursements or in-kind benefits shall be paid to you in a manner consistent with Treas. Reg. Section 1.409A-3(i)(1)(iv) or (v), as applicable. Each payment made under this Agreement shall be designated as a “separate payment” within the meaning of Section 409A of the Code. The Company shall consult with you in good faith regarding the implementation of the provisions of this Section 7.8.

#### 7.9 Section 280G.

(a) If any of the payments or benefits received or to be received by you (including, without limitation, any payment or benefits received in connection with your Separation of Service, whether pursuant to the terms of this Agreement or any other plan, arrangement, or agreement, or otherwise) (all such payments collectively referred to herein as the “**280G Payments**”) constitute “parachute payments” within the meaning of Section 280G of the Code and will be subject to the excise tax imposed under Section 4999 of the Code (the “**Excise Tax**”, then such 280G Payments will be reduced in a manner determined by the Company (by the minimum possible amounts) that is consistent with the requirements of Section 409A until no amount payable to you will be subject to the Excise Tax. If two economically equivalent amounts are subject to reduction but are payable at different times, the amounts will be reduced (but not below zero) on a pro rata basis.

(b) All calculations and determinations under this Section will be made by an independent accounting firm, independent consultant or independent tax counsel appointed by the Company (the “**Tax Counsel**”) whose determinations will be conclusive and binding on the Company and you for all purposes. For purposes of making the calculations and determinations required by this Section, the Tax Counsel may rely on reasonable, good faith assumptions and approximations concerning the application of Section 280G and Section 4999 of the Code. The Company and you will furnish the Tax Counsel with such information and documents as the Tax Counsel may reasonably request in order to make its determinations under this Section. The Company will bear all costs the Tax Counsel may reasonably incur in connection with its services.

7.10 No Offset. Neither you nor the Company shall have any right to offset any amounts owed by one party hereunder against amounts owed or claimed to be owed to such party, whether pursuant to this Agreement or otherwise, and you and the Company shall make all the payments provided for in this Agreement in a timely manner.



7.11 Beneficiaries. Whenever this Agreement provides for any payment to your estate, such payment may be made instead to such beneficiary or beneficiaries as you may designate by written notice to the Company. You shall have the right to revoke any such designation and to re-designate a beneficiary or beneficiaries by written notice to the Company (and to any applicable insurance company) to such effect.

7.12 Compliance with SSA and Proxy Agreement. The parties agree that the terms of this Agreement and the performance of the parties' obligations contemplated herein are intended to be subject to any Special Security Agreement ("SSA") or Proxy Agreement entered into between the Company and the Department of Defense. To the extent that any provision of this Agreement is prohibited or invalid under the terms of any SSA or Proxy Agreement, (a) such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, and (b) the Company and you agree to negotiate in good faith such changes as may be necessary to comply with the terms of any SSA or Proxy Agreement and to preserve to the maximum extent possible, the rights and obligations of the parties hereto.

7.13 Successor. The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company to assume and agree to perform this Agreement in the same manner and to the same extent as the Company would be required to perform if no such succession had occurred. As used in this Agreement, "**Company**" shall mean the Company as defined above and any successor to all or substantially all of its business or assets which becomes bound by all of the terms and conditions of this Agreement.

7.14 Counterparts. This Agreement may be executed in any number of counterparts and by facsimile or .pdf, all of which shall constitute one original instrument.

7.15 Headings. The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

7.16 Entire Agreement. This letter and the documents and agreements referenced herein constitute the entire agreement between you and the Company with respect to the subject matter hereof and as of the Effective Date will supersede any and all prior or contemporaneous oral or written representations, understandings, agreements or communications between you and the Company concerning those subject matters, including but not limited to the employment agreement between you and the Company dated as of May 1, 2014 and the employment agreement between you and the Company dated as of May 3, 2017. The terms set forth in this letter shall not be changed, altered, modified or amended, except by a written agreement that (i) explicitly states the intent of both parties hereto to supplement this offer letter and (ii) is signed by both parties hereto. No provision of this Agreement is intended to confer on any person not a party hereto any rights or remedies.

7.17 No Mitigation. The Company agrees that, if your employment with the Company terminates, you shall not be required to seek other employment or to attempt in any way to reduce any amounts payable to you by the Company pursuant to Section 4. Further, no

payment or benefit provided for in this Agreement shall be reduced by any compensation earned by you as the result of retirement benefits or as a result of you providing services to another Person.

7.18 Survival. Provisions of this Agreement which by their terms must survive the termination of this Agreement in order to effectuate the intent of the parties will survive any such termination, whether by termination of your employment or otherwise, for such period as may be appropriate under the circumstances. Such provisions include, without limitation, Sections 4, 5, 6 and 7.

To accept this offer, please sign this letter in the space provided below and return to Tami Gesiskie, Senior Vice President, Human Resources. We are pleased to reach agreement regarding your continued service to the Company and look forward to receiving your acceptance of this offer by 11:59 pm (ET) on March 12, 2021.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement with legal and binding effect as of the day and year first above written.

LEONARDO DRS, INC.

By:

\_\_\_\_\_  
Name: Frances F. Townsend  
Title: Compensation Committee Chair

WILLIAM J. LYNN III

By:

\_\_\_\_\_  
Name:

Published Deal CUSIP: 52660HAA2  
Revolver Facility CUSIP: 52660HAB0  
Term Loan A Facility CUSIP: 52660HAC8

CREDIT AGREEMENT

Dated as of , 2021

among

**LEONARDO DRS, INC.,**  
as the Borrower,

**CERTAIN SUBSIDIARIES OF LEONARDO DRS, INC.**  
**as Guarantors**

BANK OF AMERICA, N.A.,  
as Administrative Agent, Swing Line Lender [and [an] L/C Issuer,]

[The Other L/C Issuers Party Hereto,]

**GOLDMAN SACHS BANK USA,**  
BOFA SECURITIES, INC. ,  
JPMORGAN CHASE BANK, N.A.  
BARCLAYS BANK PLC,  
CITIBANK, N.A., LONDON BRANCH,  
CREDIT SUISSE LOAN FUNDING LLC,  
MORGAN STANLEY SENIOR FUNDING INC.,  
**as Lead Arrangers and Bookrunners,**

**GOLDMAN SACHS BANK USA,**  
JPMORGAN CHASE BANK, N.A.,  
**as Syndication Agents,**

BARCLAYS BANK PLC,  
CITIBANK, N.A., LONDON BRANCH,  
CREDIT SUISSE LOAN FUNDING LLC,  
MORGAN STANLEY SENIOR FUNDING INC.  
**as Documentation Agents,**

and

The Lenders Party Hereto

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\$ 100,000,000 Term A Facility and \$ 200,000,000 Revolving Credit Facility

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## CREDIT AGREEMENT

This CREDIT AGREEMENT (“Agreement”) dated as of \_\_\_\_\_, is entered into by and among **LEONARDO DRS, INC.**, a Delaware corporation (“Borrower”), certain subsidiaries of Borrower, as Guarantors, the Lenders party hereto from time to time, **BANK OF AMERICA, N.A.** (“Bank of America”) as Administrative Agent and Swing Line Lender, Bank of America [and [\_\_\_]], as L/C Issuer[s], **GOLDMAN SACHS BANK USA** (“Goldman Sachs”) and JPMorgan Chase Bank, N.A., as syndication agents (in such capacity, each a “Syndication Agent”), Goldman Sachs, BofA Securities, Inc., JPMorgan Chase Bank, N.A., Barclays Bank PLC, Citibank, N.A., London Branch, Credit Suisse Loan Funding LLC and Morgan Stanley Senior Funding Inc., as lead arrangers (in such capacity, each an “Arranger”) and bookrunners, and Barclays Bank PLC, Citibank, N.A., London Branch, Credit Suisse Loan Funding LLC and Morgan Stanley Senior Funding Inc., as documentation agents (in such capacity, each a “Documentation Agent”).

### PRELIMINARY STATEMENTS:

**WHEREAS**, Lenders have agreed to extend certain credit facilities to Borrower, in an aggregate principal amount not to exceed \$300,000,000, consisting of (A) \$100,000,000 aggregate principal amount of a term A loan facility, the proceeds of which will be used (i) to refinance certain existing debt of the Borrower and certain of its subsidiaries (including existing debt to the Borrower’s direct or indirect parent entities), and (ii) to pay fees, commissions and expenses in connection with the Loans and the Bridge Loans (in each case, as defined below), and (B) up to \$200,000,000 aggregate principal amount of a revolving credit facility, the proceeds of which will be used for working capital and other general corporate purposes;

**WHEREAS**, the L/C Issuer[s] [have] agreed to issue certain letters of credit for the account of Borrower, in an aggregate amount plus any unreimbursed drawings thereunder not to exceed \$75,000,000 at any time outstanding; and

**WHEREAS**, the Guarantors have agreed to guarantee the obligations of Borrower hereunder.

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

### **ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS**

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

“Administrative Agent” means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 11.02, or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in substantially the form of Exhibit E-2 or any other form approved by the Administrative Agent.

“Adverse Proceeding” means any action, suit, proceeding, hearing (in each case, whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of the Borrower or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of the Borrower or any of its Subsidiaries, threatened against or affecting the Borrower or any of its Subsidiaries or any property of the Borrower or any of its Subsidiaries.

“Affiliate” means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

“Agent” means each of the following (i) Administrative Agent, (ii) Syndication Agents, (iii) Documentation Agents, (iv) Bookrunners and (v) any other Person appointed under the Loan Documents to serve in an agent or similar capacity.

“Aggregate Commitments” means the Commitments of all the Lenders.

“Agreement” means this Credit Agreement.

“Applicable Fee Rate” means with respect to Revolving Credit Loans, (i) from the Closing Date until the first date on which the Borrower will have notified the Administrative Agent that both Moody’s and S&P have publicly issued an updated corporate rating in respect of the Borrower (the “Rating Update Date”), a percentage, *per annum*, determined by reference to the following table as if the Borrower’s corporate rating then in effect were the rating set out

below for Pricing Level 2; and (ii) thereafter, a percentage, *per annum*, determined by reference to the Borrower's corporate rating in effect from time to time as set forth below:

<b>Pricing Level</b>	<b>Corporate rating of the Borrower by Moody's and S&amp;P</b>	<b>Applicable Fee Rate</b>
1	Equal to or higher than Ba1 (stable) / BB+ (stable)	0.375%
2	Lower than Ba1 (stable) / BB+ (stable)	0.50%

provided that if a different corporate rating is issued by either Moody's or S&P, then the lower of such ratings shall apply (with the rating for Pricing Level 1 being the higher and the rating for Pricing Level 2 being the lower) and provided further that, in the event that either Moody's or S&P will cease to provide a corporate rating in respect of the Borrower, the Applicable Fee Rate shall be a percentage per annum determined by reference to the table above as if the Borrower's corporate rating then in effect were the rating set out above for Pricing Level 2.

and "Applicable Rate" means with respect to the Term A Facility and the Revolving Credit Facility, (i) from the Closing Date until the Rating Update Date, a percentage, *per annum*, determined by reference to the following table as if the Borrower's corporate rating then in effect were the rating set out below for Pricing Level 3; and (ii) thereafter, a percentage, *per annum*,

determined by reference to the Borrower’s corporate rating in effect from time to time as set forth below:

<b>Pricing Level</b>	<b>Corporate rating of the Borrower by Moody’s and S&amp;P</b>	<b>Applicable Rate for Eurodollar Rate Loans</b>	<b>Applicable Rate for Base Rate Loans</b>
1	Equal to or higher than Baa2 / BBB	1.75%	0.75%
2	Equal to or higher than Baa3 / BBB-	2.00%	1.00%
3	Equal to or higher than Ba1 (stable) / BB+ (stable)	2.25%	1.25%
4	Equal to or higher than Ba2 (stable) / BB (stable)	2.50%	1.50%
5	Lower than Ba2 (stable) / BB (stable)	2.75%	1.75%

provided that if a different corporate rating is issued by either Moody’s or S&P, then the lower of such ratings shall apply (with the rating for Pricing Level 1 being the highest and the rating for Pricing Level 5 being the lowest), unless there is a split in ratings of more than one level, in which case the Pricing Level that is one Pricing Level higher than the Pricing Level for the lower rating shall apply, and provided further that, in the event that either Moody’s or S&P will cease to provide a corporate rating in respect of the Borrower, the Applicable Rate shall be a percentage *per annum* determined by reference to the table above as if the Borrower’s corporate rating then in effect were the rating set out above for Pricing Level 3.

The Borrower shall promptly notify the Administrative Agent of the public issuance by each of Moody’s and S&P of the first updated corporate rating in respect of the Borrower after the Closing Date, of any subsequent change in such corporate rating, as well as in the event that either Moody’s or S&P will cease to provide a corporate rating in respect of the Borrower, provided that any consequent change in the Applicable Rate or the Applicable Fee Rate resulting from a change in the Borrower’s corporate rating shall not be effective until the date falling on the third Business Day after the date on which such change in the Borrower’s corporate rating is first announced by Moody’s and/or S&P. Nothing in this paragraph shall limit the right of Administrative Agent or any Lender under Section 2.08(b) or Article VIII.

“Applicable Law” means, as to any Person, all applicable Laws binding upon such Person or to which such a Person is subject.

“Applicable Percentage” means (a) in respect of the Term A Facility, with respect to any Term A Lender at any time, the percentage (carried out to the ninth decimal place) of the Term A Facility represented by (i) on or prior to the Closing Date, such Term A Lender’s Term A Commitment at such time, subject to adjustment as provided in Section 2.17, and (ii) thereafter, the principal amount of such Term A Lender’s Term A Loans at such time, (b) in respect of the Revolving Credit Facility, with respect to any Revolving Credit Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Credit Facility represented by such Revolving Credit Lender’s Revolving Credit Commitment at such time, subject to adjustment as provided in Section 2.17. If the commitment of each Revolving Credit Lender to make Revolving Credit Loans and the obligation of the L/C Issuers to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Revolving Credit Commitments have expired, then the Applicable Percentage of each Revolving Credit Lender in respect of the Revolving Credit Facility shall be determined based on the Applicable Percentage of such Revolving Credit Lender in respect of the Revolving Credit Facility most recently in effect, giving effect to any subsequent assignments and to any Lender’s status as a Defaulting Lender at the time of determination. The initial Applicable Percentage of each Lender in respect of each Facility is set forth opposite the name of such Lender on Schedule 2.01A or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Applicable Revolving Credit Percentage” means with respect to any Revolving Credit Lender at any time, such Revolving Credit Lender’s Applicable Percentage in respect of the Revolving Credit Facility at such time.

“Appropriate Lender” means, at any time, (a) with respect to any of the Term A Facility or the Revolving Credit Facility, a Lender that has a Commitment with respect to such Facility or holds a Term A Loan or a Revolving Credit Loan, respectively, at such time, (b) with respect to the Letter of Credit Sublimit, (i) the L/C Issuers and (ii) if any Letters of Credit have been issued pursuant to Section 2.03(a), the Revolving Credit Lenders and (c) with respect to the Swing Line Sublimit, (i) the Swing Line Lender and (ii) if any Swing Line Loans are outstanding pursuant to Section 2.04(a), the Revolving Credit Lenders.

“Approved Fund” means any Fund 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” has the meaning specified in the introductory paragraph hereto.

“Asset Sale” means a sale, lease or sub-lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, exclusive license (as licensor or sublicensee), transfer or other disposition to, or any exchange of property with, any Person (other than the Borrower or any Guarantor), in one transaction or a series of transactions, of all or any part of the Borrower’s or any of its Subsidiaries’ businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased or licensed, including the Equity Interests of any of the Borrower’s Subsidiaries, other than (i) inventory (or other assets) sold, leased or licensed out in the ordinary course of business



(excluding any such sales, leases or licenses out by operations or divisions discontinued or to be discontinued), (ii) sales, leases or licenses out of other assets for aggregate consideration of less than \$5,000,000 with respect to any transaction or series of related transactions and less than \$20,000,000 in the aggregate during any Fiscal Year and (iii) the issuance or sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit E-1 or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent and the Borrower.

“Auto-Extension Letter of Credit” has the meaning specified in Section 2.03(b).

“Availability Period” means in respect of the Revolving Credit Facility, the period from and including the Closing Date to the earliest of (i) the Maturity Date for the Revolving Credit Facility, (ii) the date of termination of the Revolving Credit Commitments pursuant to Section 2.06, (iii) the date of termination of the commitment of each Revolving Credit Lender to make Revolving Credit Loans and of the obligation of the L/C Issuers to make L/C Credit Extensions pursuant to Section 8.02, and (iv) [ , 2021], if the Term Loans are not made on or before that date].

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bank of America” means Bank of America, N.A. and its successors.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1% (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate”, and (c) the Eurodollar Rate plus 1.00%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.03 hereof, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above.

“Base Rate Loan” means a Revolving Credit Loan or a Term A Loan that bears interest based on the Base Rate.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Beneficiary” means each Agent, L/C Issuer, Lender, Hedge Bank and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Bookrunners” means the Arrangers, in their capacity as lead arrangers and bookrunners.

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

“Borrowing” means a Revolving Credit Borrowing, a Swing Line Borrowing or a Term A Borrowing, as the context may require.

“Bridge Credit Agreement” means the bridge credit agreement, dated [as of the date hereof] among the Borrower, the Guarantors, the lenders from time to time party thereto, the Arrangers, Goldman Sachs, as administrative agent, and the other parties thereto, as it may be amended, restated, supplemented or otherwise modified from time to time.

“Bridge Loans” means a “Loan” as defined under the Bridge Credit Agreement.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.

“Cash” means money, currency or a credit balance in any demand or Deposit Account.

“Cash Collateral Account” means a blocked deposit account of one or more of the Loan Parties at Bank of America (or any successor Administrative Agent or another commercial bank reasonably acceptable to the Administrative Agent and the Borrower) in the name of the Administrative Agent and under the sole dominion and control of the Administrative Agent, and otherwise established in a manner reasonably satisfactory to the Administrative Agent.

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the L/C Issuers or Swing Line Lender (as applicable) and the Lenders, as collateral for L/C Obligations, Obligations in respect of Swing Line Loans, or obligations of Lenders to fund participations in respect of L/C Obligations or Swing Line Loans (as the context may require), cash or deposit account balances or, if the Administrative Agent, the L/C Issuers or Swing Line Lender shall agree in their sole discretion, other credit support, in

each case pursuant to documentation in form and substance reasonably satisfactory to (a) the Administrative Agent and (b) the L/C Issuers or the Swing Line Lender (as applicable). “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such Cash Collateral and other credit support.

“Cash Equivalents” means, as at any date of determination, any of the following: (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government or (b) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in the case of each of subclauses (a) and (b), maturing within one year after such date; (ii) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-2 from S&P or at least P-2 from Moody’s; (iii) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-2 from S&P or at least P-2 from Moody’s; (iv) certificates of deposit or bankers’ acceptances (or, in the case of Foreign Subsidiaries, the foreign equivalent) maturing within one year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (a) is at least “adequately capitalized” (as defined in the regulations of its primary Federal banking regulator) and (b) has Tier 1 capital (as defined in such regulations) of not less than \$250,000,000 (or, in the case of Foreign Subsidiaries, any local office of any commercial bank organized under the law of the relevant jurisdiction or any political subdivision thereof which has combined capital and surplus and undivided profits in excess of \$250,000,000 or the foreign currency equivalent); (v) repurchase obligations for underlying securities of the types described in clauses (i) through (iv) above; and (vi) shares of any money market mutual fund that (a) has substantially all of its assets invested continuously in the types of investments referred to in clauses (i) and (ii) above, (b) has net assets of not less than \$500,000,000, and (c) has one of the two highest ratings obtainable from either S&P or Moody’s. In the case of any Investment by any Foreign Subsidiary of the Borrower, “Cash Equivalents” shall also include: (x) 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), in each case, maturing within a year after such date and having, at the time of the acquisition thereof, a rating equivalent to at least A-2 from S&P and at least P-2 from Moody’s, (y) investments of the type and maturity described in clauses (i) through (vi) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (z) shares of any money market mutual or similar fund that has substantially all its assets invested continuously in the types of investments otherwise satisfying the requirements of this definition.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation 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 or in the implementation thereof 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, issued or implemented.

“Change of Control” means, (i) any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) other than Parent shall have acquired beneficial ownership of Equity Interests representing more than 35% of the aggregate ordinary voting power for the election of directors represented by the issued and outstanding Equity Interests of the Borrower and the percentage of aggregate ordinary voting power for the election of directors so acquired is in excess of the percentage of the aggregate ordinary voting power for the election of directors represented by the Equity Interests beneficially owned by the Parent at such time; or (ii) any “change of control” or similar event under the Bridge Credit Agreement or the documentation relating to the Permanent Debt shall occur.

“Change of Control Acceptance Notice” has the meaning specified in Section 2.05(b)(i).

“Change of Control Payment Date” has the meaning specified in Section 2.05(b)(i).

“Change of Control Prepayment Offer” has the meaning specified in Section 2.05(b)(i).

“Class” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Credit Loans or Term A Loans and, when used in reference to any Commitment, refers to whether such Commitment is a Revolving Credit Commitment or Term A Commitment.

“Closing Date” means the date on which the Term Loans are made.

“Closing Date Certificate” means a closing date certificate substantially in the form of Exhibit F-1.

“Code” means the Internal Revenue Code of 1986.

“Commitment” means a Term A Commitment or a Revolving Credit Commitment, as the context may require.

“Committed Loan Notice” means a notice of (a) a Term Borrowing, (b) a Revolving Credit Borrowing, (c) a conversion of Loans from one Type to the other, or (d) a continuation of Eurodollar Rate Loans, pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit A or such other form as may be approved by the Administrative Agent, including any form on an electronic platform or electronic transmission system as shall be approved by the

Administrative Agent, appropriately completed and signed by a Responsible Officer of the Borrower.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*), as amended from time to time, and any successor statute.

“Confidential Information” has the meaning specified in Section 11.07(b).

“Compliance Certificate” means a certificate substantially in the form of Exhibit D.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated Adjusted EBITDA” means, for any period, an amount determined for the Borrower and its Subsidiaries on a consolidated basis equal to:

(i) Consolidated Net Income, plus, to the extent reducing Consolidated Net Income, the sum, without duplication, of amounts for:

- (a) consolidated interest expense;
- (b) provisions for taxes based on income;
- (c) total depreciation expense;
- (d) total amortization expense;
- (e) other non-Cash charges, expenses or losses reducing Consolidated Net Income (including any impairment) (excluding any such non-Cash charge to the extent that it represents an accrual or reserve for potential Cash charge in any future period or amortization of a prepaid Cash charge that was paid in a prior period);
- (f) the actual amount of any restructuring charges; provided that amounts added back pursuant to this subclause (f), when aggregated with amounts added back pursuant to subclause (g) below, shall not exceed 25% of Consolidated Adjusted EBITDA (calculated before giving effect to such adjustments) during such period;
- (g) the amount of net cost savings and synergies projected by the Borrower in good faith as a result of actions taken or expected to be taken in connection with acquisitions, and dispositions of assets, net of the amount of actual benefits realized during such period from such actions; provided that (A) such cost savings and synergies are reasonably identifiable and factually supportable, (B) such actions are taken or expected to be taken within twelve (12) months after the consummation of

the relevant acquisition or disposition, (C) no cost savings shall be added pursuant to this subclause (g) to the extent duplicative of any such expenses or charges added back pursuant to subclauses (e) above, or (h) below, and (D) the benefits resulting therefrom are anticipated by the Borrower to be realized within twelve (12) months of such actions having been taken, and (E) amounts added back pursuant to this subclause (g), when aggregated with amounts added back pursuant to subclause (f) above, shall not exceed 25% of Consolidated Adjusted EBITDA (calculated before giving effect to such adjustments) during such period;

- (h) all extraordinary, unusual or nonrecurring expenses, losses and charges for such period;
- (i) expenses, losses and charges relating to the Transactions, the Initial Public Offering or any Asset Sale, regardless of when paid;
- (j) proceeds of business interruption insurance (whether or not received, so long as the Borrower or any Subsidiary is expected to receive the same within the next four fiscal quarters (it being understood that to the extent not actually received within such four fiscal quarter period, such proceeds shall be deducted in calculating Consolidated Adjusted EBITDA for the next four fiscal quarter period)); and
- (k) the amount of any minority interest expense deducted from subsidiary income attributable to minority equity interests of third parties in any non-wholly owned subsidiary;

minus (ii) the sum of (a) non-Cash gains increasing Consolidated Net Income for such period (excluding any such non-Cash gain to the extent it represents the reversal of an accrual or reserve for potential Cash gain in any prior period) and (b) all extraordinary, unusual or nonrecurring income or gains for such period.

“Consolidated Net Interest Expense” means, for any period, total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) of the Borrower and its Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness of the Borrower and its Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and net costs under Interest Rate Agreements, but excluding, however, any amount not payable in Cash and any amounts referred to in Section 2.09(b) payable on or before the Closing Date minus total cash interest income of the Borrower and its Subsidiaries on a consolidated basis for such period. Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated Net Interest Expense for any period that would otherwise start before the Closing Date, such period shall instead start on the Closing Date and Consolidated Net Interest Expense shall be an amount equal to Consolidated Net Interest Expense from the Closing Date through the last day of such period multiplied by a fraction the numerator of which is 365 and the

denominator of which is the number of days from the Closing Date through the last day of such period.

“Consolidated Net Income” means, for any period, (i) the net income (or loss) of the Borrower and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, minus (ii) (a) the income (or loss) of any Person (other than a Subsidiary of the Borrower) in which any other Person (other than the Borrower or any of its Subsidiaries) has a joint interest or any Person that is an Unrestricted Subsidiary, except to the extent of the amount of dividends or other distributions actually paid to the Borrower or any of its Subsidiaries by such Person during such period, (b) the income (or loss) of any Person or any Unrestricted Subsidiary accrued prior to the date it becomes a Subsidiary of the Borrower or is redesignated a Restricted Subsidiary, as applicable, or is merged into or consolidated with the Borrower or any of its Subsidiaries or that Person’s assets are acquired by the Borrower or any of its Subsidiaries, (c) the income of any Subsidiary of the Borrower to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, (d) any after-tax gains or losses attributable to Asset Sales or returned surplus assets of any Pension Plan, (e) the income (or loss) attributable to the early extinguishment of Indebtedness, and (f) (to the extent not included in clauses (a) through (e) above) any net extraordinary gains or net extraordinary losses.

“Consolidated Total Net Debt” means, as of any date of determination, (a) the aggregate par value or stated face amount of all Indebtedness under clauses (i) through (iii) and (to the extent drawn and unreimbursed) (vi) of the definition thereof of the Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP, minus (b) the aggregate amount of Unrestricted Cash included in the consolidated balance sheet of the Borrower and its Subsidiaries as of such date. For clarity, Consolidated Total Net Debt does not include Indebtedness outstanding under credit card or receivables factoring programs.

“Contractual Obligation” means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

“Counterpart Agreement” means a Counterpart Agreement substantially in the form of Exhibit G delivered by a Loan Party pursuant to Section 6.10.

“Covered Entity” has the meaning specified in Section 11.22(b).

“Credit Date” means the date of a Credit Extension.

“Credit Extension” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“Cumulative Amount” means at any time (the “Cumulative Amount Reference Time”), an amount (which shall not be less than zero) equal to:

(i) 50% of the Consolidated Net Income of the Borrower and its Subsidiaries for the period (taken as one accounting period) beginning on the first day of the Fiscal Quarter in which the Closing Date occurs to the end of the most recently ended Fiscal Quarter at the Cumulative Amount Reference Time; plus

(ii) the amount of Net Equity Proceeds received by the Borrower from any cash capital contributions or the sale or issuance of any Equity Interests Not Otherwise Applied during the period from and including the Business Day immediately following the Closing Date through and including the Cumulative Amount Reference Time; provided that this clause (ii) excludes sales of Disqualified Equity Interests and Specified Equity Contributions; plus

(iii) the cumulative amount of net cash proceeds from the sale of any Investments made pursuant to Section 7.06(i); plus

(iv) the cumulative amount of returns (including dividends, interest, distributions, returns of principal, repayments, income and similar amounts) received by the Borrower or any Restricted Subsidiary in cash or Cash Equivalents in respect of any Investments made pursuant to Section 7.06(i); plus

(v) in the event any Unrestricted Subsidiary has been redesignated as a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, the Borrower or any of its Restricted Subsidiaries, the lesser of (x) the fair market value of the Investments of the Borrower or the applicable Restricted Subsidiary made with the Cumulative Amount in such Unrestricted Subsidiary at the time of such redesignation, merger or consolidation (or of the assets transferred or conveyed, as applicable) and (y) the fair market value of the original Investments by the Borrower or the applicable Restricted Subsidiary made with the Cumulative Amount in such Unrestricted Subsidiary, in each case, as determined by the Borrower in good faith; minus

(vi) the aggregate amount of any Investments made pursuant to Section 7.6(i) and any Restricted Junior Payment made pursuant to Section 7.4(c), in each case, during the period commencing on the Closing Date and ending on or prior to the Cumulative Amount Reference Time (and, for purposes of this clause (vi), without taking account of the intended usage of the Cumulative Amount at such Cumulative Amount Reference Time).

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

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



“Defaulting Lender” means, subject to Section 2.17(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any L/C Issuer, the Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Line Loans) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, any L/C Issuer or the Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower, each L/C Issuer, the Swing Line Lender and each other Lender promptly following such determination.

“Deposit Account” means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

“Designated Non-Cash Consideration” means the fair market value of non-cash consideration received in connection with an Asset Sale pursuant to Section 7.8(c) that is

designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Borrower, setting forth the basis of such valuation.

“Disqualified Equity Interests” means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), in whole or in part, or (iii) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 91 days after the Latest Maturity Date except, in the case of clauses (i) and (ii), if as a result of a change of control or asset sale, so long as any rights of the holders thereof upon the occurrence of such a change of control or asset sale event are subject to the prior payment in full of all Obligations, the cancellation or expiration of (without any pending drawing on) all Letters of Credit and the termination of the Commitments.

“Disqualified Institution” means, on any date, any Person set forth on Schedule 11.06.

“Division” means the division of the assets, liabilities and/or obligations of a Person (the “Dividing Person”) among two or more Persons (whether pursuant to a “plan of division” or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

“Documentation Agent” has the meaning specified in the introductory paragraph hereto.

“Dollar” and “\$” mean lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of any political subdivision of the United States.

“DQ List” has the meaning specified in Section 11.06(l)(iv).

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a Subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 11.06(b)(iii) and (v) (subject to such consents, if any, as may be required under Section 11.06(b)(iii)). For the avoidance of doubt, any Disqualified Institution is subject to Section 11.06(l).

“Environmental Laws” means any and all current or future foreign or domestic, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, or any other requirements of Governmental Authorities relating to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, in any manner applicable to the Borrower or any of its Subsidiaries or any Facility.

“Environmental Claim” means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

“Equity Interests” means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of

the Code or Sections 303, 304 and 305 of ERISA; (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate; or (i) a failure by the Borrower or any ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or the failure by the Borrower or any ERISA Affiliate to make any required contribution to a Multiemployer Plan.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Eurodollar Rate” means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to the London Interbank Offered Rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars for a period equal in length to such Interest Period) (“LIBOR”) as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period;

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to LIBOR, at or about 11:00 a.m., London time determined two London Banking Days prior to such date for U.S. Dollar deposits with a term of one month commencing that day; and

(c) if the Eurodollar Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

“Eurodollar Rate Loan” means a Revolving Credit Loan or a Term A Loan that bears interest at a rate based on clause (a) of the definition of the Eurodollar Rate.

“Event of Default” means each of the conditions or events set forth in Section 8.01.

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guaranty 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 (determined after giving effect to Section 10.12 and any other “keepwell, support or other agreement” for the benefit of such Guarantor and any and all guarantees of such Guarantor’s Swap Obligations by other Loan Parties) at the time the Guaranty of such Guarantor, or a grant by such Guarantor of a 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 Guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 11.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii), (a)(iii) or (c), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(g) (*Status of Lenders; Tax Documentation*) and (d) any withholding Taxes imposed pursuant to FATCA.

“Existing Indebtedness” means Indebtedness and other obligations under that certain agreement dated as of [\_\_\_\_] between Borrower and [\_\_\_\_], as amended prior to the Closing Date.

“Facility” means the Term A Facility or the Revolving Credit Facility, as the context may require.

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable 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, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such sections of the Code.

“Federal Funds Rate” means, for any day, the rate per annum calculated by the Federal Reserve Bank of New York based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the federal funds effective rate; provided that if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Fee Letter” means any Fee Letter entered into between any Arrangers or the Administrative Agent, as the case may be, on the one side, and the Borrower, on the other side, setting out certain fees payable by the Borrower in connection with the transactions contemplated by this Agreement and/or the Bridge Credit Agreement, as amended, restated, supplemented or otherwise modified from time to time.

“Financial Officer” means, with respect to any Person, the Chief Financial Officer, principal accounting officer, Treasurer, Assistant Treasurer or Controller of such Person (and, in the case of the Borrower, shall also mean each person performing similar duties as the foregoing).

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

“Financial Plan” has the meaning specified in Section 6.1(i).

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

“Fiscal Year” means the fiscal year of the Borrower and its Subsidiaries ending on December 31 of each calendar year.

“Foreign Lender” means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under laws of a jurisdiction other than that in which the Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

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

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to any L/C Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swing Line Lender, such Defaulting Lender’s Applicable Percentage of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders in accordance with the terms hereof.

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

“GAAP” means, subject to Section 1.03, generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantor” means each Domestic Subsidiary of the Borrower.

“Guaranty” means the Guaranty by each Guarantor set forth in Article X.

“Hazardous Materials” means any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or which may or could pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

“Hazardous Materials Activity” means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

“Hedge Agreement” means any interest rate or currency Swap Contract permitted hereunder and which is entered into by and between any Loan Party and any Hedge Bank for the purpose of hedging the interest rate or currency exposure associated with the Borrower’ and its Subsidiaries’ operations (and not for speculative purposes).

“Hedge Bank” means any Person that, at the time it enters into a Hedge Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Hedge Agreement.

“Historical Financial Statements” means as of the Closing Date, (i) audited consolidated financial statements of the Borrower and its Subsidiaries, for each of the three (3) most recent Fiscal Years ended at least sixty days prior to the Closing Date, consisting of balance sheets and the related statements of income, stockholders’ equity and cash flows for such Fiscal Years, and (ii) the unaudited consolidated financial statements of the Borrower and its subsidiaries for any

Fiscal Quarter (other than the fourth Fiscal Quarter) ended after the date of the most recent audited financial statements delivered pursuant to clause (i) above (and corresponding periods of any prior year) and at least forty-five days prior to the Closing Date, consisting of a balance sheet and the related consolidated statements of income, stockholders' equity and cash flows for the three, six or nine month period, as applicable, ending on such date and, in each case (a) prepared in accordance with GAAP and (b) certified by the chief financial officer of Borrower that they fairly present, in all material respects, the financial condition of Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

“Impacted Loans” has the meaning assigned to such term in Section 3.03(a).

“Indebtedness” means, as applied to any Person, without duplication, (i) all indebtedness for borrowed money; (ii) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (iv) any obligation owed for all or any part of the deferred purchase price of property or services, including any earn-out obligations (excluding any such obligations incurred under ERISA), which purchase price is (a) due more than six months from the date of incurrence of the obligation in respect thereof or (b) evidenced by a note or similar written instrument; (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; (vi) the face amount of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (vii) Disqualified Equity Interests; (viii) the discounting with recourse or sale with recourse by such Person of the obligation of another; (ix) any liability of such Person for Indebtedness described in the other clauses of this definition of another Person through any agreement (contingent or otherwise) (a) to purchase, repurchase or otherwise acquire such Indebtedness or any security therefor, or to provide funds for the payment or discharge of such Indebtedness (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (b) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (a) or (b) of this clause (x), the primary purpose or intent thereof is as described in clause (ix) above; and (x) all obligations of such Person in respect of any exchange traded or over the counter derivative transaction, including under any Interest Rate Agreement or Currency Agreement, in each case, whether entered into for hedging or speculative purposes or otherwise; provided, in no event shall obligations under any Hedge Agreement be deemed “Indebtedness” for any purpose under Section 7.7 unless such obligations relate to a derivatives transaction which has been terminated.

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

“Indemnitees” has the meaning specified in Section 11.04(b).



“Initial Public Offering” means the initial underwritten secondary public offering of the common stock of the Borrower by the selling stockholder, Leonardo US Holding Inc., a wholly owned subsidiary of the Parent, pursuant to an effective registration statement filed with the U.S. Securities and Exchange Commission in accordance with the Securities Act.

“Information” has the meaning specified in Section 5.25.

“Intercompany Subordination Agreement” means the Intercompany Subordination Agreement among the Loan Parties, the other Subsidiaries party thereto and the Administrative Agent, substantially in the form of Exhibit K.

“Interest Payment Date” means, (a) as to any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; provided, however, that if any Interest Period for a Eurodollar Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan or Swing Line Loan, the last Business Day of each March, June, September and December and the Maturity Date of the Facility under which such Loan was made (with Swing Line Loans being deemed made under the Revolving Credit Facility for purposes of this definition).

“Interest Period” means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one, two, three or six months thereafter (in each case, subject to availability), as selected by the Borrower in its Committed Loan Notice; provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Rate Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period pertaining to a Eurodollar Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period shall extend beyond the Maturity Date.

“Investment” means (i) any direct or indirect purchase or other acquisition by the Borrower or any of its Subsidiaries of, or of a beneficial interest in, any of the Securities of any other Person (other than a Guarantor); (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary of the Borrower from any Person (other than the Borrower or any Guarantor), of any Equity Interests of such Person; (iii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contributions by the Borrower or any of its Subsidiaries to any other Person (other than the Borrower or any Guarantor), including all indebtedness and accounts receivable from that other

Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business and (iv) all investments consisting of any exchange traded or over the counter derivative transaction, including any Swap Contract, whether entered into for hedging or speculative purposes or otherwise. The amount of any Investment of the type described in clauses (i), (ii) and (iii) shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment, minus the amount of any repayments of principal in the case of Investments in the form of loans and any return of capital or return on Investment in the case of equity Investments (whether as a distribution, dividend, redemption or sale but not in excess of the amount of the initial Investment).

“IRS” means the United States Internal Revenue Service.

“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“ISP” means the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by any L/C Issuer and the Borrower (or any Subsidiary) or in favor of such L/C Issuer and relating to such Letter of Credit.

“Joint Venture” means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided, in no event shall any corporate Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

“Latest Maturity Date” means, at any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“L/C Advance” means, with respect to each Revolving Credit Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Revolving Credit Percentage.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Credit Borrowing.

“L/C Commitment” means, with respect to each L/C Issuer, the commitment of such L/C Issuer to issue Letters of Credit hereunder. The initial amount of each L/C Issuer’s L/C Commitment is set forth on Schedule 2.01C, or if an L/C Issuer has entered into an Assignment and Assumption or has otherwise assumed an L/C Commitment after the Closing Date, the amount set forth for such L/C Issuer as its L/C Commitment in the Register maintained by the Administrative Agent. The L/C Commitment of an L/C Issuer may be modified from time to time by agreement between such L/C Issuer and the Borrower, and notified to the Administrative Agent.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“L/C Issuer” means [each of] Bank of America, [and [\_\_\_\_\_]], in its capacity as issuer of Letters of Credit hereunder, each other Lender (if any) as the Borrower may from time to time select as an L/C Issuer hereunder pursuant to Section 2.03(n) or Section 2.03(p), and any Lender appointed by the Borrower (with the consent of the Administrative Agent) as L/C Issuer as a replacement for any L/C Issuer who is at the time of such appointment a Defaulting Lender; provided that such Lender has agreed to be an L/C Issuer. Any L/C Issuer may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such L/C Issuer, in which case the term “L/C Issuer” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate. Each reference herein to the “L/C Issuer” in connection with a Letter of Credit or other matter shall be deemed to be a reference to the relevant L/C Issuer with respect thereto.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lender” has the meaning specified in the introductory paragraph hereto and, as the context requires, includes the Swing Line Lender.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

“Letter of Credit” means any letter of credit issued hereunder, providing for the payment of cash upon the honoring of a presentation thereunder. A Letter of Credit may be a commercial letter of credit or a standby letter of credit.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the applicable L/C Issuer.

“Letter of Credit Fee” has the meaning specified in Section 2.03(j).

“Letter of Credit Sublimit” means an amount equal to \$75,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“LIBOR” has the meaning specified in the definition of Eurodollar Rate.

“LIBOR Replacement Date” has the meaning specified in Section 3.03(c).

“LIBOR Screen Rate” means the LIBOR quote on the applicable screen page the Administrative Agent designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

“LIBOR Successor Rate” has the meaning specified in Section 3.03(c).

“LIBOR Successor Rate Conforming Changes” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of Business Day, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and implementation of such LIBOR Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

“Lien” means (i) any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, and any lease or license in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing and (ii) in the case of Securities (other than Securities representing an interest in a Joint Venture that is not a Subsidiary), any purchase option, call or similar right of a third party with respect to such Securities; provided that in no event shall an operating lease or an agreement to sell be deemed to constitute a Lien.

“Loan” means an extension of credit by a Lender to the Borrower under Article II in the form of a Term Loan, a Revolving Credit Loan or a Swing Line Loan.

“Loan Documents” means this Agreement, including schedules and exhibits hereto, each Note, each Issuer Document, any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.16 of this Agreement and any amendments, modifications or supplements hereto or to any other Loan Document or waivers hereof or to any other Loan Document.

“Loan Parties” means, collectively, the Borrower and each Guarantor.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Margin Stock” as defined in Regulation U.

“Material Adverse Effect” means a material adverse effect on (i) the business, operations, properties, assets or financial condition of the Borrower and its Subsidiaries taken as a whole; (ii) the ability of the Loan Parties to perform the Obligations; or (iii) the legality, validity, binding effect or enforceability of the Loan Documents; or (iv) the rights, remedies and benefits available to, or conferred upon, any Agent, any Lender, Issuing Bank or any other Beneficiary under the Loan Documents.

“Maturity Date” means, with respect to the Term A Facility and the Revolving Credit Facility, the earlier of (a) the 5-year anniversary of the Closing Date, and (b) the date on which the Term A Facility or the Revolving Credit Facility shall become due and payable in full hereunder, whether by acceleration or otherwise; provided, however, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Minimum Collateral Amount” means, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 103% of the Fronting Exposure of all L/C Issuers with respect to Letters of Credit issued and outstanding at such time and (ii) otherwise, an amount determined by the Administrative Agent and the L/C Issuers in their sole discretion.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Narrative Report” means, with respect to the financial statements for which such narrative report is required, a narrative report describing the operations of the Borrower and its Subsidiaries for the applicable month, Fiscal Quarter or Fiscal Year and for the period from the beginning of the then current Fiscal Year to the end of such period to which such financial statements relate.

“Net Equity Proceeds” means an amount equal to any Cash proceeds from a capital contribution to, or the issuance of any Equity Interests of, the Borrower or any of its Subsidiaries, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses.

“Net Interest Coverage Ratio” means the ratio as of the last day of any Fiscal Quarter of (i) Consolidated Adjusted EBITDA for the four-Fiscal Quarter period ending on the same date to (ii) Consolidated Net Interest Expense for such four-Fiscal Quarter period.

“Net Mark-to-Market Exposure” of a Person means, as of any date of determination, the excess (if any) of all unrealized losses over all unrealized profits of such Person arising from Hedge Agreements or other Indebtedness of the type described in clause (xi) of the definition thereof. As used in this definition, “unrealized losses” means the fair market value of the cost to such Person of replacing such Hedge Agreement or such other Indebtedness as of the date of determination (assuming the Hedge Agreement or such other Indebtedness were to be terminated as of that date), and “unrealized profits” means the fair market value of the gain to such Person of replacing such Hedge Agreement or such other Indebtedness as of the date of determination (assuming such Hedge Agreement or such other Indebtedness were to be terminated as of that date).

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 11.01 and (b) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Non-Extension Notice Date” has the meaning specified in Section 2.03(b).

“Non-Guarantor Basket” has the meaning specified in Section 7.06(d).

“Not Otherwise Applied” means, with reference to any Net Equity Proceeds of any cash capital contributions or Net Equity Proceeds from the sale or issuance of any common Equity Interests or any other transaction or event, or the Cumulative Amount that is proposed to be applied to a particular use or transaction, that such amount was not previously applied in determining the permissibility of a transaction under the Loan Documents where such permissibility was (or may have been) contingent on the receipt or availability of such amount (including any application of Specified Equity Contributions pursuant to Section 8.04).

“Note” means a Term A Note or a Revolving Credit Note, as the context may require.

“Notice of Loan Prepayment” means a notice of prepayment with respect to a Loan, which shall be substantially in the form of Exhibit Q or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, Letter of Credit, or Hedge Agreement, 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 and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided that, without limiting the foregoing, the Obligations include the obligation to pay principal, interest, Letter of Credit commissions, charges, expenses, fees, indemnities and other amounts payable by any Loan Party under any Loan Document; provided further that the Obligations shall exclude any Excluded Swap Obligations.

“Organizational Documents” means (i) with respect to any corporation or company, its certificate, memorandum or articles of incorporation, organization or association, as amended, and its by-laws, as amended, (ii) with respect to any limited partnership, its certificate or declaration of limited partnership, as amended, and its partnership agreement, as amended, (iii) with respect to any general partnership, its partnership agreement, as amended, and (iv) with respect to any limited liability company, its certificate or articles of formation or organization, as amended, and its limited liability company or operating agreement, as amended. In the event any term or condition of this Agreement or any other Loan Document requires any Organizational Document to be certified by a secretary of state or similar Governmental Authority, the reference to any such Organizational Document shall only be to a document of a type customarily certified by such Governmental Authority.

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

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06).

“Outstanding Amount” means (a) with respect to Term Loans, Revolving Credit Loans and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans, Revolving Credit Loans and Swing Line Loans, as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

“Parent” means Leonardo S.p.A., a joint stock company (*società per azioni*) organized under the laws of the Republic of Italy.

“Participant” has the meaning specified in Section 11.06(d).

“Participant Register” has the meaning specified in Section 11.06(d).

“PATRIOT Act” has the meaning specified in Section 4.01(g).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum funding standards with respect to Pension Plans and set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Borrower and any ERISA Affiliate or with respect to which the Borrower or any ERISA Affiliate has any liability and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Permanent Debt” as defined in Section 4.01(g).

“Permitted Acquisition” means any acquisition, directly or indirectly, by Borrower or any of its wholly-owned Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Equity Interests of, or a business line or unit or a division of, any Person; provided,

- (i) immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;
- (ii) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all Applicable Laws and in conformity with all applicable Governmental Authorizations;
- (iii) the Borrower and its Subsidiaries shall be in compliance with the financial covenants set forth in Section 7.7 on a pro forma basis after giving effect



to such acquisition as of the last day of the Fiscal Quarter most recently ended; and

- (iv) any Person or assets or division as acquired in accordance herewith shall be in same business or lines of business in which Borrower and/or its Subsidiaries are engaged as of the Closing Date or similar or related businesses.

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

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Borrower or any ERISA Affiliate or any such Plan to which the Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Platform” has the meaning specified in Section 6.01(l).

“Pre-Adjustment Successor Rate” has the meaning specified in Section 3.03(c).

“Private Lenders” means Lenders that have advised the Administrative Agent in writing that they wish to receive Private-Side Information.

“Private-Side Information” means any information with respect to the Borrower and its Subsidiaries that is not Public-Side Information.

“Projections” has the meaning specified in Section 5.08.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Public Lender” means Lenders that have advised the Administrative Agent in writing that they do not wish to receive Private-Side Information.

“Public-Side Information” means information that is not material non-public information (for purposes of United States federal, state or other applicable securities laws).

“Qualified ECP Guarantor” shall mean, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act and can cause another person to qualify as an “eligible contract participant” at such time under §1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Qualified Equity Interests” means Equity Interests other than Disqualified Equity Interests.

“Real Estate Asset” means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by any Loan Party in any real property.

“Real Property” means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by the Borrower or any of its Subsidiaries or any of their respective predecessors or Affiliates.

“Recipient” means the Administrative Agent, any Lender, any L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“Reduction Amount” has the meaning set forth in Section 2.05(b)(ix).

“Refinance” as defined in the definition of “Refinancing Indebtedness”.

“Refinancing Indebtedness” means any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, to “Refinance”) the Indebtedness being Refinanced (or previous refinancings thereof constituting Refinancing Indebtedness); provided that (a) the principal amount (or accreted value, if applicable) of such Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus the amount of unpaid accrued or capitalized interest and premiums thereon (including tender premiums), underwriting discounts, original issue discount, defeasance costs, fees (including upfront fees, underwriting fees, legal fees, accounting and audit fees and other similar or customary fees), commissions and expenses), (b) the weighted-average life to maturity of such Refinancing Indebtedness is greater than or equal to the weighted-average life to maturity of the Indebtedness being Refinanced, (c) if the Indebtedness being Refinanced is subordinated in right of payment to the Obligations, such Refinancing Indebtedness shall be subordinated in right of payment to such Obligations on terms at least as favorable taken as a whole to the Lenders as those contained in the documentation governing the Indebtedness being Refinanced (as determined in good faith and certified in writing to the Administrative Agent by a Responsible Officer of the Borrower); and (d) no Refinancing Indebtedness shall have different obligors, greater guarantees or substantially different collateral than, the Indebtedness being Refinanced (except to the extent that less collateral is granted to the holders of the Refinancing Indebtedness).

“Register” has the meaning specified in Section 11.06(c).

“Regulation U” means Regulation U of the FRB, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Related Adjustment” means, in determining any LIBOR Successor Rate, the first relevant available alternative set forth in the order below that can be determined by the Administrative Agent applicable to such LIBOR Successor Rate:

(A) the spread adjustment, or method for calculating or determining such spread adjustment, that has been selected or recommended by the Relevant Governmental Body for the relevant Pre-Adjustment Successor Rate (taking into account the Interest Period, interest payment date or payment period for interest calculated and/or tenor thereto) and which adjustment or method (x) is published on an information service as

selected by the Administrative Agent from time to time in its reasonable discretion or (y) solely with respect to Term SOFR, if not currently published, which was previously so recommended for Term SOFR and published on an information service acceptable to the Administrative Agent; or

(B) the spread adjustment that would apply (or has previously been applied) to the fallback rate for a derivative transaction referencing the ISDA Definitions (taking into account the Interest Period, interest payment date or payment period for interest calculated and/or tenor thereto).

“Related Documents” means the Bridge Credit Agreement.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors, consultants, service providers and representatives of such Person and of such Person’s Affiliates.

“Release” means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

“Relevant Governmental Body” means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Required Class Lenders” means, at any time with respect to any Class of Loans or Commitments, Lenders having Total Credit Exposures with respect to such Class representing more than 50% of the Total Credit Exposures of all Lenders of such Class. The Total Credit Exposure of any Defaulting Lender with respect to such Class shall be disregarded in determining Required Class Lenders at any time.

“Required Lenders” means, at any time, Lenders holding more than 50% of the sum of the (a) Total Outstandings (with the aggregate amount of each Revolving Credit Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Revolving Credit Lender for purposes of this definition) and (b) aggregate unused Commitments; provided that the amount of any participation in any Swing Line Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the Swing Line Lender or the applicable L/C Issuer, as the case may be, in making such determination.

“Required Revolving Lenders” means, as of any date of determination, Revolving Credit Lenders holding more than 50% of the sum of the (a) Total Revolving Credit Outstandings (with the aggregate amount of each Revolving Credit Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Revolving Credit Lender for purposes of this definition) and (b) aggregate unused Revolving Credit Commitments; provided that the unused Revolving Credit Commitment of, and the portion of the Total Revolving Credit Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Lenders.

“Required Term A Lenders” means, as of any date of determination, Term A Lenders holding more than 50% of the Term A Facility on such date; provided that the portion of the Term A Facility held by any Defaulting Lender shall be excluded for purposes of making a determination of Required Term A Lenders.

“Rescindable Amount” has the meaning specified in Section 2.12(b)(ii).

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer, controller or any vice president of a Loan Party, and solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Junior Payment” means (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of stock of Borrower or any of its Subsidiaries (or any direct or indirect parent of Borrower) now or hereafter outstanding, except a dividend payable solely in shares of that class of stock to the holders of that class; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock of Borrower or any of its respective Subsidiaries (or any direct or indirect parent of Borrower) now or hereafter outstanding; (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of stock of Borrower or any of its Subsidiaries (or any direct or indirect parent of Borrower) now or hereafter outstanding; and (iv) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Indebtedness.

“Restricted Subsidiary” means any subsidiary of the Borrower other than an Unrestricted Subsidiary; provided that upon the occurrence of any Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such subsidiary shall be included in the definition of “Restricted Subsidiary”.

“Revolving Credit Borrowing” means a borrowing consisting of simultaneous Revolving Credit Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Revolving Credit Lenders pursuant to Section 2.01(c).

“Revolving Credit Commitment” means, as to each Revolving Credit Lender, its obligation to (a) make Revolving Credit Loans to the Borrower pursuant to Section 2.01(c), (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01A under the caption “Revolving Credit Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Revolving Credit Exposure” means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Credit Loans and such Lender’s participation in L/C Obligations and Swing Line Loans at such time.

“Revolving Credit Facility” means, at any time, the aggregate amount of the Revolving Credit Lenders’ Revolving Credit Commitments at such time.

“Revolving Credit Lender” means, at any time, any Lender that has a Revolving Credit Commitment at such time.

“Revolving Credit Loan” has the meaning specified in Section 2.01(c).

“Revolving Credit Note” means a promissory note made by the Borrower in favor of a Revolving Credit Lender evidencing Revolving Credit Loans or Swing Line Loans, as the case may be, made by such Revolving Credit Lender, substantially in the form of Exhibit C-1.

“Sanction(s)” has the meaning specified in Section 5.26.

“S&P” means S&P’s Global Ratings, a division of S&P Global, Inc., and any successor thereto.

“Securities” means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

“Securities Act” means the Securities Act of 1933, as amended from time to time, and any successor statute.

“SOFR” with respect to any Business Day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the

benchmark (or a successor administrator) on the Federal Reserve Bank of New York's website (or any successor source) at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day and, in each case, that has been selected or recommended by the Relevant Governmental Body.

“Solvency Certificate” means a certificate of a Financial Officer of the Borrower substantially in the form of Exhibit F-2.

“Specified Loan Party” means any Loan Party that is not an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 11.11).

“Subordinated Indebtedness” means any Indebtedness (other than any intercompany Indebtedness owing to direct and indirect parent companies of the Borrower or the Borrower or any Subsidiary not prohibited under this Agreement) expressly subordinated in right of payment to the Obligations.

“subsidiary” means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding.

“Subsidiary” means, unless the context otherwise requires, a Restricted Subsidiary of Borrower. For purposes of Sections 5.02, 5.11, 5.12, 5.20, 5.24, 5.25, 6.01(b)-(e), 6.03, 6.08 and 7.08(ii) only, references to Subsidiaries shall be deemed also to be references to Unrestricted Subsidiaries.

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

a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Obligations” means with respect to any 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.

“Swing Line Borrowing” means a borrowing of a Swing Line Loan pursuant to Section 2.04.

“Swing Line Commitment” means as to any Lender (a) the amount set forth opposite such Lender’s name on Schedule 2.01B hereof or (b) if such Lender has entered into an Assignment and Assumption or has otherwise assumed a Swing Line Commitment after the Closing Date, the amount set forth for such Lender as its Swing Line Commitment in the Register maintained by the Administrative Agent pursuant to Section 11.06(c).

“Swing Line Lender” means Bank of America in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

“Swing Line Loan” has the meaning specified in Section 2.04(a).

“Swing Line Loan Notice” means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which shall be substantially in the form of Exhibit B or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

“Swing Line Sublimit” means an amount equal to the lesser of (a) \$15,000,000 and (b) the Revolving Credit Facility. The Swing Line Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“Syndication Agent” has the meaning specified in the introductory paragraph hereto.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges in the nature of tax imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term A Borrowing” means a borrowing consisting of simultaneous Term A Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Term A Lenders pursuant to Section 2.01(a).

“Term A Commitment” means, as to each Term A Lender, its obligation to make Term A Loans to the Borrower pursuant to Section 2.01(a) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Term A Lender’s name on Schedule 2.01A under the caption “Term A Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Term A Lender becomes a party hereto, as

applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Term A Facility” means, at any time, the aggregate principal amount of the Term A Loans of all Term A Lenders outstanding at such time.

“Term A Lender” means (a) at any time on or prior to the Closing Date, any Lender that has a Term A Commitment at such time and (b) at any time after the Closing Date, any Lender that holds Term A Loans at such time.

“Term A Loan” means an advance made by any Term A Lender under the Term A Facility.

“Term A Loan Exposure” means, as to any Lender at any time, the aggregate Outstanding Amount at such time of its Term A Loans; provided that at any time prior to the making of the Term A Loans, the Term A Loan Exposure of any Lender shall be equal to such Lender’s Term A Commitment.

“Term A Note” means a promissory note made by the Borrower in favor of a Term A Lender evidencing Term A Loans made by such Term A Lender, substantially in the form of Exhibit C-2.

“Term Borrowing” means a Term A Borrowing.

“Term Facility” means, at any time, the Term A Facility.

“Term Loan” means a Term A Loan.

“Term SOFR” means the forward-looking term rate for any period that is approximately (as determined by the Administrative Agent) as long as any of the Interest Period options set forth in the definition of “Interest Period” and that is based on SOFR and that has been selected or recommended by the Relevant Governmental Body, in each case as published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion.

“Total Credit Exposure” means, as to any Lender at any time, (a) in respect of the Revolving Credit Facility, the unused Revolving Credit Commitments and Revolving Credit Exposure of such Lender at such time and (b) in respect of the Term A Facility, the Term A Loan Exposure of such Lender at such time.

“Total Net Leverage Ratio” means the ratio as of the last day of any Fiscal Quarter of (i) Consolidated Total Net Debt as of such day to (ii) Consolidated Adjusted EBITDA for the four-Fiscal Quarter period ending on such date.

“Total Revolving Credit Outstandings” means the aggregate Outstanding Amount of all Revolving Credit Loans, Swing Line Loans and L/C Obligations.



“Total Outstandings” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“Transaction” means, collectively, (i) the repayment of the Existing Indebtedness, (b) the borrowing of the Term Facility, the Bridge Loans and any Revolving Credit Facility to be made on the Closing Date and (c) the other transactions contemplated by the Loan Documents and the Related Documents.

“Type” means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

“UCC” means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect from time to time in any applicable jurisdiction.

“UCP” means the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time).

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

“Unreimbursed Amount” has the meaning specified in Section 2.03(f).

“Unrestricted Cash” means the aggregate amount of cash and Cash Equivalents held in accounts on the consolidated balance sheet of Borrower and its Subsidiaries to the extent that the use of such Cash and Cash Equivalents for application to payment of the Obligations or other Indebtedness is not prohibited by law or any contract or other agreement and such Cash and Cash Equivalents are free and clear of all Liens (other than Liens described in Section 7.2(p)).

“Unrestricted Subsidiary” means any subsidiary of Borrower designated by the Borrower as an Unrestricted Subsidiary pursuant to Section 6.13 subsequent to the date hereof. Borrower may designate any subsidiary of Borrower (including any existing subsidiary and any newly acquired or newly formed subsidiary) to be an Unrestricted Subsidiary unless such subsidiary or any of its subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on any property of, Borrower or any subsidiary of Borrower (other than any subsidiary of the subsidiary to be so designated); provided that each of (A) the subsidiary to be so designated and (B) its subsidiaries has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of Borrower or any Restricted Subsidiary.

“Unrestricted Subsidiary Reporting Period” means any Fiscal Quarter or Fiscal Year if, as of the end of such period, either (i) the combined revenues of the Unrestricted Subsidiaries exceed 15% of the combined revenues of the Borrower and its consolidated Subsidiaries for the four Fiscal Quarter period then ended, or (ii) the aggregate amount of the assets of the Unrestricted Subsidiaries as recorded on the balance sheet of the Borrower and its consolidated

Subsidiaries exceeds 15% of the aggregate amount of the assets of the Borrower and its consolidated Subsidiaries on such balance sheet.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

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

“Withholding Agent” means the Borrower and the Administrative Agent.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

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

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) 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 herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law, rule or regulation shall, unless otherwise specified, refer to such law, rule or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

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

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

(d) Any reference herein to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

1.03 Accounting Terms. (a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and the Borrower shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (A) such ratio or requirement shall continue to be computed in accordance with GAAP as in effect prior to such change therein and (B) the Borrower shall provide to the Administrative Agent and the Lenders together with any financial statements delivered pursuant to Section 6.01(b) or (C) an internally-prepared reconciliation between such financial statements and any financial information required for the computation of such ratio or requirement in accordance with GAAP as in effect prior to such change therein.

(c) Notwithstanding anything to the contrary in this Section 1.03 or in the definition of “Capital Lease,” any change in accounting for leases pursuant to GAAP resulting from the adoption of Financial Accounting Standards Board Accounting Standards Update No. 2016-02, Leases (Topic 842), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2015, such lease shall not be considered a capital lease, any lease that would have been treated as an operating lease under GAAP as in effect on December 31, 2015 shall continue

to be considered an operating lease, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith.

(d) Unless otherwise specifically indicated, the term “consolidated” with respect to any Person refers to such Person consolidated with its Restricted Subsidiaries, and excludes from such consolidation any Unrestricted Subsidiary as if such Unrestricted Subsidiary were not an Affiliate of such Person.

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

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

1.06 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

1.07 Currency Equivalents Generally. Any amount specified in this Agreement (other than in Articles II, IX and X) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount thereof in the applicable currency to be determined by the Administrative Agent at such time on the basis of the Spot Rate (as defined below) for the purchase of such currency with Dollars. For purposes of this Section 1.07, the “Spot Rate” for a currency means the rate determined by the Administrative Agent to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date of such determination; provided that the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

1.08 Interest Rates. The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “Eurodollar Rate” or with respect to any rate that is an alternative or replacement for or successor to any of such rate (including, without limitation, any LIBOR Successor Rate) or the effect of any of the foregoing, or of any LIBOR Successor Rate Conforming Changes.

## ARTICLE II. THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 The Loans. (a) The Term A Borrowing. Subject to the terms and conditions set forth herein, each Term A Lender severally agrees to make a single loan to the Borrower on the Closing Date in an amount not to exceed such Term A Lender's Term A Commitment of the Term A Facility. The Term A Borrowing shall consist of Term A Loans made simultaneously by the Term A Lenders in accordance with their respective Applicable Percentage of the Term A Facility. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Term A Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

(b) [Reserved.]

(c) The Revolving Credit Borrowings. Subject to the terms and conditions set forth herein, each Revolving Credit Lender severally agrees to make loans (each such loan, a "Revolving Credit Loan") to the Borrower from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's Revolving Credit Commitment; provided, however, that after giving effect to any Revolving Credit Borrowing, (i) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility, and (ii) the Revolving Credit Exposure shall not exceed such Revolving Credit Lender's Revolving Credit Commitment. Within the limits of each Revolving Credit Lender's Revolving Credit Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01(c), prepay under Section 2.05, and reborrow under this Section 2.01(c). Revolving Credit Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

2.02 Borrowings, Conversions and Continuations of Loans. (a) Each Term A Borrowing, each Revolving Credit Borrowing, each conversion of Term Loans or Revolving Credit Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by (A) telephone, or (B) a Committed Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Committed Loan Notice. Each such Committed Loan Notice must be received by the Administrative Agent not later than (i) 12:00 p.m. three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) 11:00 a.m. on the requested date of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of \$2,000,000 or a whole multiple of \$500,000 in excess thereof. Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice shall specify (i) whether the Borrower is requesting a Term A Borrowing, a Revolving Credit Borrowing, a conversion of Term Loans or Revolving Credit Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type

of Loans to be borrowed or to which existing Term Loans or Revolving Credit Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Term Loans or Revolving Credit Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Notwithstanding anything to the contrary herein, a Swing Line Loan may not be converted to a Eurodollar Rate Loan.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage under the applicable Facility of the applicable Term A Loans or Revolving Credit Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(a). Each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 2:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is to be made on the Closing Date, Section 4.01), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided, however, that if, on the date a Committed Loan Notice with respect to a Revolving Credit Borrowing is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Revolving Credit Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to the Borrower as provided above.

(c) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate.

(e) After giving effect to all Term A Borrowings, all conversions of Term A Loans from one Type to the other, and all continuations of Term A Loans as the same Type, there shall not be more than two Interest Periods in effect in respect of the Term A Facility. After giving effect to all Revolving Credit Borrowings, all conversions of Revolving Credit Loans from one

Type to the other, and all continuations of Revolving Credit Loans as the same Type, there shall not be more than eight Interest Periods in effect in respect of the Revolving Credit Facility.

(f) Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all of the portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent, and such Lender.

2.03 Letters of Credit. (a) General. The Letter of Credit Commitment. (i) Subject to the terms and conditions set forth herein, in addition to the Loans provided for in Section 2.01, the Borrower may request that any L/C Issuer, in reliance on the agreements of the Revolving Credit Lenders set forth in this Section 2.03, issue, at any time and from time to time during the Availability Period, Letters of Credit denominated in Dollars for its own account in such form as is acceptable to such L/C Issuer in its reasonable determination. Letters of Credit issued hereunder shall constitute utilization of the Revolving Credit Commitments.

(b) Notice of Issuance, Amendment, Extension. To request the issuance of a Letter of Credit (or the amendment of the terms and conditions, extension of the terms and conditions, extension of the expiration date, or reinstatement of amounts paid, or renewal of an outstanding Letter of Credit), the Borrower shall deliver (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable L/C Issuer) to an L/C Issuer selected by it and to the Administrative Agent not later than 11:00 a.m. at least two Business Days (or such later date and time as the Administrative Agent and such L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be, a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, extended, reinstated or renewed, and specifying the date of issuance, amendment, extension, reinstatement or renewal (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with clause (d) of this Section 2.03), the amount of such Letter of Credit, the name and address of the beneficiary thereof, the purpose and nature of the requested Letter of Credit and such other information as shall be necessary to prepare, amend, extend, reinstate or renew such Letter of Credit. If requested by the applicable L/C Issuer, the Borrower also shall submit a letter of credit application and reimbursement agreement on such L/C Issuer's standard form in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application and reimbursement agreement or other agreement submitted by the Borrower to, or entered into by the Borrower with, an L/C Issuer relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

If the Borrower so requests in any applicable Letter of Credit Application (or the amendment of an outstanding Letter of Credit), the applicable L/C Issuer may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit shall permit such L/C Issuer to prevent any such extension at least once in each twelve-month period

(commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the “Non-Extension Notice Date”) in each such twelve-month period to be agreed upon by the Borrower and the applicable L/C Issuer at the time such Letter of Credit is issued. Unless otherwise directed by the applicable L/C Issuer, the Borrower shall not be required to make a specific request to such L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Credit Lenders shall be deemed to have authorized (but may not require) the applicable L/C Issuer to permit the extension of such Letter of Credit at any time to an expiration date not later than the date permitted pursuant to Section 2.03(d); provided, that such L/C Issuer shall not (i) permit any such extension if (A) such L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its extended form under the terms hereof (except that the expiration date may be extended to a date that is no more than one year from the then-current expiration date) or (B) it has received notice (which may be in writing or by telephone (if promptly confirmed in writing)) on or before the day that is seven Business Days before the Non-Extension Notice Date from the Administrative Agent that the Required Revolving Lenders have elected not to permit such extension or (ii) be obligated to permit such extension if it has received notice (which may be in writing or by telephone (if promptly confirmed in writing)) on or before the day that is seven Business Days before the Non-Extension Notice Date from the Administrative Agent, any Revolving Credit Lender or the Borrower that one or more of the applicable conditions set forth in Section 4.02 is not then satisfied, and in each such case directing such L/C Issuer not to permit such extension.

(c) Limitations on Amounts, Issuance and Amendment. A Letter of Credit shall be issued, amended, extended, reinstated or renewed only if (and upon issuance, amendment, extension, reinstatement or renewal of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, extension, reinstatement or renewal (i) the aggregate amount of the outstanding Letters of Credit issued by any L/C Issuer shall not exceed its L/C Commitment, (ii) the aggregate L/C Obligations shall not exceed the L/C Sublimit, (iii) the Revolving Credit Exposure of any Lender shall not exceed its Revolving Credit Commitment and (iv) the sum of the total Revolving Credit Exposures shall not exceed the total Revolving Credit Commitments.

(i) No L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing the Letter of Credit, or any Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss,



cost or expense which was not applicable on the Closing Date and which such L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of such L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and such L/C Issuer, the Letter of Credit is in an initial stated amount less than \$250,000; or

(D) any Revolving Credit Lender is at that time a Defaulting Lender, unless [the][such] L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such L/C Issuer (in its sole discretion) with the Borrower or such Lender to eliminate such L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.17(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which such L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(ii) No L/C Issuer shall be under any obligation to amend any Letter of Credit if (A) such L/C Issuer would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(iii) Upon the issuance of any Letter of Credit or amendment to a Letter of Credit pursuant to this Section 2.03, the applicable L/C Issuer shall promptly notify the Administrative Agent of such issuance or amendment, which notice shall be accompanied by a copy of such Letter of Credit or amendment.

(iv) Each L/C Issuer shall promptly furnish to the Administrative Agent any information which may be reasonably requested by it with respect to any Letters of Credit issued by such L/C Issuer under this Section 2.03 (including any L/C Disbursement thereunder).

(d) Expiration Date. Each Letter of Credit shall have a stated expiration date no later than the earlier of (i) the date twelve months after the date of the issuance of such Letter of Credit (or, in the case of any extension of the expiration date thereof, whether automatic or by amendment, twelve months after the then-current expiration date of such Letter of Credit) and (ii) the date that is five Business Days prior to the Maturity Date.

(e) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount or extending the expiration date thereof), and without any further action on the part of the applicable L/C Issuer or the Lenders, such L/C Issuer hereby grants to each Revolving Credit Lender, and each Revolving Credit Lender hereby acquires from such L/C Issuer, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. Each Revolving Credit

Lender acknowledges and agrees that its obligation to acquire participations pursuant to this clause (e) in respect of Letters of Credit is absolute, unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including any amendment, extension, reinstatement or renewal of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Revolving Credit Commitments.

In consideration and in furtherance of the foregoing, each Revolving Credit Lender hereby absolutely, unconditionally and irrevocably agrees to pay to the Administrative Agent, for account of the applicable L/C Issuer, such Lender's Applicable Percentage of each L/C Disbursement made by an L/C Issuer not later than 1:00 p.m. on the Business Day specified in the notice provided by the Administrative Agent to the Revolving Credit Lenders pursuant to Section 2.03(f) until such L/C Disbursement is reimbursed by the Borrower or at any time after any reimbursement payment is required to be refunded to the Borrower for any reason, including after the Maturity Date. Such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each such payment shall be made in the same manner as provided in Section 2.02 with respect to Loans made by such Lender (and Section 2.02 shall apply, *mutatis mutandis*, to the payment obligations of the Revolving Credit Lenders pursuant to this Section 2.03), and the Administrative Agent shall promptly pay to the applicable L/C Issuer the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to Section 2.03(f), the Administrative Agent shall distribute such payment to the applicable L/C Issuer or, to the extent that the Revolving Credit Lenders have made payments pursuant to this clause (e) to reimburse such L/C Issuer, then to such Lenders and such L/C Issuer as their interests may appear. Any payment made by a Lender pursuant to this clause (e) to reimburse an L/C Issuer for any L/C Disbursement shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such L/C Disbursement.

Each Revolving Credit Lender further acknowledges and agrees that its participation in each Letter of Credit will be automatically adjusted to reflect such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit at each time such Lender's Commitment is amended as a result of an assignment in accordance with Section 11.06 or otherwise pursuant to this Agreement.

[If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the applicable L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(e), then, without limiting the other provisions of this Agreement, the applicable L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the applicable L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by such L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Credit Loan included in the relevant Revolving Credit Borrowing or L/C

Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of any L/C Issuer submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this clause (e) shall be conclusive absent manifest error.]

(f) Reimbursement. If an L/C Issuer shall make any L/C Disbursement in respect of a Letter of Credit, it shall promptly notify the Administrative Agent and the Borrower pursuant to the provisions of clause (l) of this Section 2.03, and the Borrower shall reimburse such L/C Issuer in respect of such L/C Disbursement by paying to such L/C Issuer an amount equal to such L/C Disbursement not later than 12:00 noon on (i) the Business Day that the Borrower receives notice of such L/C Disbursement, if such notice is received prior to 10:00 a.m. or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time, provided that, if such L/C Disbursement is not less than \$[1,000,000], the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.02 or Section 2.04 that such payment be financed with a Borrowing of Base Rate Loans or Swing Line Loan in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting Borrowing of Base Rate Loans or Swing Line Loan. If the Borrower fails to make such payment when due, the applicable L/C Issuer shall notify the Administrative Agent, which, in turn, shall notify each Revolving Credit Lender of the applicable L/C Disbursement, the payment then due from the Borrower in respect thereof (the "Unreimbursed Amount") and such Lender's Applicable Percentage thereof. In such event, the Borrower shall be deemed to have requested a Revolving Credit Borrowing of Base Rate Loans to be disbursed on the date of payment by the applicable L/C Issuer under a Letter of Credit in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the aggregate Revolving Credit Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by any L/C Issuer or the Administrative Agent pursuant to this Section 2.03(f) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(g) Obligations Absolute. The Borrower's obligation to reimburse L/C Disbursements as provided in clause (f) of this Section 2.03 shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of:

(i) any lack of validity or enforceability of this Agreement, any other Loan Document or any Letter of Credit, or any term or provision herein or therein;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), any L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement in such draft or other document being untrue or inaccurate in any respect;

(iv) waiver by any L/C Issuer of any requirement that exists for such L/C Issuer's protection and not the protection of the Borrower or any waiver by such L/C Issuer which does not in fact materially prejudice the Borrower;

(v) [Reserved.]

(vi) [Reserved.]

(vii) payment by the applicable L/C Issuer under a Letter of Credit against presentation of a draft or other document that does not comply strictly with the terms of such Letter of Credit; or

(viii) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.03, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder.

None of the Administrative Agent, the Lenders, any L/C Issuer, or any of their Related Parties shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit by the applicable L/C Issuer or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of the applicable L/C Issuer; provided that the foregoing shall not be construed to excuse an L/C Issuer from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by Applicable Law) suffered by the Borrower that are caused by such L/C Issuer's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of an L/C Issuer (as finally determined by a court of competent jurisdiction), an L/C Issuer shall be deemed to have exercised care in each such determination, and that:

(i) an L/C Issuer may replace a purportedly lost, stolen, or destroyed original Letter of Credit or missing amendment thereto with a certified true copy marked as such or waive a requirement for its presentation;

(ii) an L/C Issuer may accept documents that appear on their face to be in substantial compliance with the terms of a Letter of Credit without responsibility for further investigation, regardless of any notice or information to the contrary, and may

make payment upon presentation of documents that appear on their face to be in substantial compliance with the terms of such Letter of Credit and without regard to any non-documentary condition in such Letter of Credit;

(iii) an L/C Issuer shall have the right, in its sole discretion, to decline to accept such documents and to make such payment if such documents are not in strict compliance with the terms of such Letter of Credit; and

(iv) this sentence shall establish the standard of care to be exercised by an L/C Issuer when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof (and the parties hereto hereby waive, to the extent permitted by Applicable Law, any standard of care inconsistent with the foregoing).

Without limiting the foregoing, none of the Administrative Agent, the Lenders, any L/C Issuer, or any of their Related Parties shall have any liability or responsibility by reason of (i) any presentation that includes forged or fraudulent documents or that is otherwise affected by the fraudulent, bad faith, or illegal conduct of the beneficiary or other Person, (ii) an L/C Issuer declining to take-up documents and make payment (A) against documents that are fraudulent, forged, or for other reasons by which that it is entitled not to honor or (B) following a Borrower's waiver of discrepancies with respect to such documents or request for honor of such documents or (iii) an L/C Issuer retaining proceeds of a Letter of Credit based on an apparently applicable attachment order, blocking regulation, or third-party claim notified to such L/C Issuer.

(h) Applicability of ISP and UCP. Unless otherwise expressly agreed by the applicable L/C Issuer and the Borrower when a Letter of Credit is issued by it, (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, no L/C Issuer shall be responsible to the Borrower for, and no L/C Issuer's rights and remedies against the Borrower shall be impaired by, any action or inaction of any L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where any L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(i) Each L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included such L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to such L/C Issuer.

(j) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage a Letter of Credit fee (the “Letter of Credit Fee”) equal to the Applicable Rate for Revolving Loans that are Eurodollar Rate Loans, times the average daily aggregate amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (i) due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Maturity Date and thereafter on demand and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each standby Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(k) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuers. The Borrower shall pay directly to the applicable L/C Issuer for its own account a fronting fee (i) with respect to each commercial Letter of Credit, at a rate per annum equal to the percentage separately agreed upon between the Borrower and such L/C Issuer, computed on the amount of such Letter of Credit, and payable upon the issuance thereof, (ii) with respect to any amendment of a commercial Letter of Credit increasing the amount of such Letter of Credit, at a rate separately agreed between the Borrower and such L/C Issuer, computed on the amount of such increase, and payable upon the effectiveness of such amendment, and (iii) with respect to each standby Letter of Credit, at the rate per annum equal to the percentage separately agreed upon between the Borrower and such L/C Issuer, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the tenth Business Day after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Maturity Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. In addition, the Borrower shall pay directly to the applicable L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(l) Disbursement Procedures. The L/C Issuer for any Letter of Credit shall, within the time allowed by Applicable Laws or the specific terms of the Letter of Credit following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. Such L/C Issuer shall promptly after such examination notify the Administrative Agent and the Borrower in writing of such demand for payment if such L/C Issuer has made or will make an L/C Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such L/C Issuer and the Lenders with respect to any such L/C Disbursement.

(m) Interim Interest. If the L/C Issuer for any Letter of Credit shall make any L/C Disbursement, then, unless the Borrower shall reimburse such L/C Disbursement in full on the date such L/C Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such L/C Disbursement is made to but excluding the date that the Borrower reimburses such L/C Disbursement, at the rate per annum then applicable to Base Rate Loans; provided that if the Borrower fails to reimburse such L/C Disbursement when due pursuant to clause (f) of this Section 2.03, then Section 2.08(b) shall apply. Interest accrued pursuant to this clause (m) shall be for account of such L/C Issuer, except that interest accrued on and after the date of payment by any Lender pursuant to clause (f) of this Section 2.03 to reimburse such L/C Issuer shall be for account of such Lender to the extent of such payment.

(n) Replacement of any L/C Issuer. Any L/C Issuer may be replaced at any time by written agreement between the Borrower, the Administrative Agent, the replaced L/C Issuer and the successor L/C Issuer. The Administrative Agent shall notify the Lenders of any such replacement of an L/C Issuer. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced L/C Issuer pursuant to Section 2.03(j). From and after the effective date of any such replacement, (i) the successor L/C Issuer shall have all the rights and obligations of an L/C Issuer under this Agreement with respect to Letters of Credit to be issued by it thereafter and (ii) references herein to the term "L/C Issuer" shall be deemed to include such successor or any previous L/C Issuer, or such successor and all previous L/C Issuer, as the context shall require. After the replacement of an L/C Issuer hereunder, the replaced L/C Issuer shall remain a party hereto and shall continue to have all the rights and obligations of an L/C Issuer under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(o) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Revolving Lenders demanding the deposit of Cash Collateral pursuant to this clause (o), the Borrower shall immediately deposit into an account established and maintained on the books and records of the Administrative Agent (the "Collateral Account") an amount in cash equal to 103% of the total L/C Obligations as of such date plus any accrued and unpaid interest thereon, provided that the obligation to deposit such Cash Collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clauses (f) and (g) of Section 8.01. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Borrower under this Agreement. In addition, and without limiting the foregoing or clause (d) of this Section 2.03, if any L/C Obligations remain outstanding after the expiration date specified in said clause (d), the Borrower shall immediately deposit into the Collateral Account an amount in cash equal to 103% of such L/C Obligations as of such date plus any accrued and unpaid interest thereon.

The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over the Collateral Account. Other than any interest earned on the

investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in the Collateral Account. Moneys in the Collateral Account shall be applied by the Administrative Agent to reimburse each L/C Issuer for L/C Disbursements for which it has not been reimbursed, together with related fees, costs, and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the L/C Obligations at such time. If the Borrower is required to provide an amount of Cash Collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.

(p) Designation of Additional L/C Issuers. Subject to the consent of the Administrative Agent, the Borrower may, at any time and from time to time, designate as additional L/C Issuers one or more Revolving Credit Lenders that agree in writing to serve in such capacity as provided below, provided that, at any time, there shall be no more than four L/C Issuers under this Agreement. The acceptance by a Revolving Credit Lender of an appointment as an L/C Issuer hereunder shall be evidenced by an agreement, which shall set forth, among other things, the L/C Commitment assumed by, and the contact information of, such designated Revolving Credit Lender and shall be in form and substance reasonably satisfactory to the Administrative Agent, executed by the Borrower, such designated Revolving Credit Lender and the Administrative Agent. From and after the effective date of such agreement, (i) such Revolving Credit Lender shall have all the rights and obligations of an L/C Issuer under this Agreement with respect to Letters of Credit to be issued by it thereafter and (ii) references herein to the term "L/C Issuer" shall be deemed to include such Revolving Credit Lender in its capacity as an issuer of Letters of Credit hereunder, unless the context so requires. The Administrative Agent shall notify the Lenders of any designation of an additional L/C Issuer.

(q) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

2.04 Swing Line Loans. (a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender, in reliance upon the agreements of the other Lenders set forth in this Section 2.04, may in its sole discretion make loans (each such loan, a "Swing Line Loan") to the Borrower from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit; provided, however, that after giving effect to any Swing Line Loan, (i) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility at such time, and (ii) the Revolving Credit Exposure of any Revolving Credit Lender shall not exceed such Lender's Revolving Credit Commitment, (y) the Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan, and (z) the Swing Line Lender shall not be under any obligation to make any Swing Line Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Credit Extension may have, Fronting Exposure. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.04, prepay under



Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall bear interest only at a rate based on the Base Rate. Immediately upon the making of a Swing Line Loan, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Revolving Credit Lender's Applicable Revolving Credit Percentage times the amount of such Swing Line Loan.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Borrower's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by (A) telephone or (B) by a Swing Line Loan Notice; provided that any telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a Swing Line Loan Notice. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$500,000 and an integral multiple of \$100,000, and (ii) the requested borrowing date, which shall be a Business Day. Promptly after receipt by the Swing Line Lender of any Swing Line Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Credit Lender) prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 3:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrower.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Revolving Credit Lender make a Base Rate Loan in an amount equal to such Lender's Applicable Revolving Credit Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Revolving Credit Facility and the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the Borrower with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Credit Lender shall make an amount equal to its Applicable Revolving Credit Percentage of the amount specified in such Committed Loan Notice available to the Administrative Agent in immediately available funds (and the

Administrative Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) for the account of the Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such Committed Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Credit Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Revolving Credit Lenders fund its risk participation in the relevant Swing Line Loan and each Revolving Credit Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Credit Loan included in the relevant Revolving Credit Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Revolving Credit Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Revolving Credit Lender its Applicable Revolving Credit Percentage thereof in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Revolving Credit Lender shall pay to the Swing Line Lender its Applicable Revolving Credit Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrower for interest on the Swing Line Loans. Until each Revolving Credit Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Credit Lender's Applicable Revolving Credit Percentage of any Swing Line Loan, interest in respect of such Applicable Revolving Credit Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

2.05 Prepayments.

(a) Optional.

(i) The Borrower may, upon notice to the Administrative Agent pursuant to delivery to the Administrative Agent of a Notice of Loan Prepayment, at any time or from time to time voluntarily prepay Term Loans and Revolving Credit Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Administrative Agent not later than 11:00 a.m. (1) three Business Days prior to any date of prepayment of Eurodollar Rate Loans and (2) on the date of prepayment of Base Rate Loans; (B) any prepayment of Eurodollar Rate Loans shall be in a principal amount of \$2,000,000 or a whole multiple of \$500,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each

Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein, provided that such prepayment may be conditioned on the occurrence of any subsequent event (including a Change of Control, refinancing transaction or Permitted Acquisition or other Investment). Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued and unpaid interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of the outstanding Term Loans pursuant to this Section 2.05(a) shall be applied to the principal repayment installments thereof as directed by the Borrower in the Notice of Loan Prepayment, provided that, should the borrower fail to direct the application of such prepayment, the same shall be applied to reduce the scheduled remaining installments of principal of the Term Loans on a pro rata basis. Subject to Section 2.17, each prepayment under this Section 2.05(a) shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Facilities.

(ii) The Borrower may, upon notice to the Swing Line Lender pursuant to delivery to the Swing Line Lender of a Notice of Loan Prepayment (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the date of the prepayment, and (B) any such prepayment shall be in a minimum principal amount of \$100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(b) Mandatory.

(i) Prior to or within 10 days following a Change of Control, the Borrower shall make an offer to prepay the entire principal amount of all Loans and L/C Borrowings, and to Cash Collateralize any remaining L/C Obligations (the "Change of Control Prepayment Offer") by notifying the Administrative Agent in writing of the Change of Control Prepayment Offer. Each such notice shall specify the date of such prepayment, which shall be no earlier than 15 days from the date such notice is delivered to the Administrative Agent and no later than 30 days from the date of such Change of Control (the date of such proposed payment, the "Change of Control Payment Date") and, if delivered prior to the occurrence of the relevant Change of Control, may state that the Change of Control Prepayment Offer be conditional on the occurrence of such Change of Control. The Administrative Agent will promptly notify each Lender of the contents of any such prepayment notice and of such Lender's pro rata share of the prepayment. Any Lender may elect, by delivering not less than five (5) Business Days prior to the Change of Control Payment Date, a written notice to the Administrative Agent (such notice, a

“Change of Control Acceptance Notice”) that any change of control prepayment be made with respect to all or any portion of the Loans, L/C Borrowings and L/C Obligations held by such Lender pursuant to this Section 2.05(b), in which case the Borrower shall prepay such Loans and L/C Borrowings, and shall Cash Collateralize such L/C Obligations, on the Change of Control Payment Date. If a Lender fails to deliver a Change of Control Acceptance Notice within the time frame specified above, any such failure will be deemed a rejection of the Change of Control Prepayment Offer as to all outstanding Loans, L/C Borrowings and L/C Obligations of such Lender.

(ii) [Reserved.]

(iii) [Reserved.]

(iv) Upon the incurrence or issuance by the Borrower or any of its Subsidiaries of any Indebtedness (other than Indebtedness permitted to be incurred or issued pursuant to Section 7.01), the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of all Cash proceeds received therefrom on the date of receipt thereof, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, including reasonable fees and expenses (such prepayments to be applied as set forth in clauses (vi) and (ix) below).

(v) [Reserved.]

(vi) Each prepayment of Loans pursuant to Section 2.05(b)(iv) shall be applied, first, to the Term Facility and to the principal repayment installments thereof on a pro-rata basis and, second, to the Revolving Credit Facility in the manner set forth in clause (ix) of this Section 2.05(b).

(vii) [Reserved.]

(viii) If for any reason the Total Revolving Credit Outstandings at any time exceed the Revolving Credit Facility at such time, the Borrower shall immediately prepay Revolving Credit Loans, Swing Line Loans and L/C Borrowings and/or Cash Collateralize the L/C Obligations (other than the L/C Borrowings) in an aggregate amount equal to such excess.

(ix) Subject to Section 2.05(b)(i), prepayments of the Revolving Credit Facility made pursuant to this Section 2.05(b), first, shall be applied ratably to the L/C Borrowings and the Swing Line Loans, second, shall be applied ratably to the outstanding Revolving Credit Loans, and, third, shall be used to Cash Collateralize the remaining L/C Obligations; and, in the case of prepayments of the Revolving Credit Facility required pursuant to clause (iii) of this Section 2.05(b), the amount remaining, if any, after the prepayment in full of all L/C Borrowings, Swing Line Loans and Revolving Credit Loans outstanding at such time and the Cash Collateralization of the remaining L/C Obligations in full (the sum of such prepayment amounts, Cash Collateralization amounts and remaining amount being, collectively, the “Reduction Amount”) may be retained by the

Borrower for use in the ordinary course of its business, and the Revolving Credit Facility shall be automatically and permanently reduced by the Reduction Amount as set forth in Section 2.06(b)(ii). Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrower or any other Loan Party) to reimburse the L/C Issuer or the Revolving Credit Lenders, as applicable.

2.06 Termination or Reduction of Commitments. (a) Optional. The Borrower may, upon notice to the Administrative Agent, terminate the Revolving Credit Facility, the Letter of Credit Sublimit or the Swing Line Sublimit, or from time to time permanently reduce the Revolving Credit Facility, the Letter of Credit Sublimit or the Swing Line Sublimit; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$2,000,000 or any whole multiple of \$500,000 in excess thereof and (iii) the Borrower shall not terminate or reduce (A) the Revolving Credit Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Credit Outstandings would exceed the Revolving Credit Facility, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, or (C) the Swing Line Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swing Line Loans would exceed the Letter of Credit Sublimit, and provided further that any such termination or reduction may be conditioned on the occurrence of any subsequent event (including a Change of Control, refinancing transaction or Permitted Acquisition or other Investment).

(b) Mandatory. (i) The aggregate Term A Commitments shall be automatically and permanently reduced to zero on the date of the Term A Borrowing.

(ii) The Revolving Credit Facility shall be automatically and permanently reduced on each date on which the prepayment of Revolving Credit Loans outstanding thereunder is required to be made pursuant to Section 2.05(b) by an amount equal to the applicable Reduction Amount.

(iii) If after giving effect to any reduction or termination of Revolving Credit Commitments under this Section 2.06, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the Revolving Credit Facility at such time, the Letter of Credit Sublimit or the Swing Line Sublimit, as the case may be, shall be automatically reduced by the amount of such excess.

(c) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, Swing Line Sublimit or the Revolving Credit Commitment under this Section 2.06. Upon any reduction of the Revolving Credit Commitments, the Revolving Credit Commitment of each Revolving Credit Lender shall be reduced by such Lender's Applicable Revolving Credit Percentage of such Reduction Amount. All fees in respect of the Revolving Credit Facility

accrued until the effective date of any termination of the Revolving Credit Facility shall be paid on the effective date of such termination.

2.07 Repayment of Loans.

(a) Term A Loans. The Borrower shall repay to the Term A Lenders the aggregate principal amount of all Term A Loans outstanding on the following dates in the respective amounts set forth opposite such dates (which amounts shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05):

<b>Date</b>	<b>Amount in USD</b>
September 30, 2021	1,250,000
December 31, 2021	1,250,000
March 31, 2022	1,250,000
June 30, 2022	1,250,000
September 30, 2022	2,500,000
December 31, 2022	2,500,000
March 31, 2023	2,500,000
June 30, 2023	2,500,000
September 30, 2023	2,500,000
December 30, 2023	2,500,000
March 31, 2024	2,500,000
June 30, 2024	2,500,000
September 30, 2024	2,500,000
December 31, 2024	2,500,000
March 31, 2025	2,500,000
June 30, 2025	2,500,000
September 30, 2025	16,250,000
December 31, 2025	16,250,000
March 31, 2026	\$16,250,000.00
Maturity	16,250,000 + Remainder

provided, however, that the final principal repayment installment of the Term A Loans shall be repaid on the Maturity Date for the Term A Facility and in any event shall be in an amount equal to the aggregate principal amount of all Term A Loans outstanding on such date.

(b) [Reserved].

(c) Revolving Credit Loans. The Borrower shall repay to the Revolving Credit Lenders on the Maturity Date for the Revolving Credit Facility the aggregate principal amount of all Revolving Credit Loans outstanding on such date.

(d) Swing Line Loans. The Borrower shall repay each Swing Line Loan on the earlier to occur of (i) the date falling ten Business Days after such Loan is made and (ii) the Maturity Date. At any time that there shall exist a Defaulting Lender, immediately upon the request of the Swing Line Lender, the Borrower shall repay the outstanding Swing Line Loans made by the Swing Line Lender in an amount sufficient to eliminate any Fronting Exposure in respect of such Swing Line Loans.

2.08 Interest. (a) Subject to the provisions of Section 2.08(b), (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) Upon the occurrence and during the continuance of an Event of Default under Section 8.01(a),(c) (with respect to a breach of Section 7.07 only), (f) or (g), the principal amount of all Loans outstanding and, to the extent permitted by Applicable Law, any interest payments on the Loans or any fees or other amounts owed hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under Debtor Relief Laws) payable on demand at a rate that is 2% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 2% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans that are Revolving Loans); provided, in the case of Eurodollar Rate Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such Eurodollar Rate Loans shall thereupon become Base Rate Loans and shall thereafter bear interest payable upon demand at a rate which is 2% per annum in excess of the interest rate otherwise payable hereunder for Base Rate Loans. Payment or acceptance of the increased rates of interest provided for in this Section 2.08(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent, any L/C Issuer, the Swing Line Lender or any Lender.

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

2.09 Fees. In addition to certain fees described in Sections 2.03(j) and (k):

(a) Commitment Fee. The Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage, a commitment fee equal to the Applicable Fee Rate times the actual daily amount by which the Revolving Credit Facility exceeds the sum of (i) the Outstanding Amount of



Revolving Credit Loans and (ii) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.17. For the avoidance of doubt, the Outstanding Amount of Swing Line Loans shall not be counted towards or considered usage of the Aggregate Commitments for purposes of determining the commitment fee. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period for the Revolving Credit Facility. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Fee Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Fee Rate separately for each period during such quarter that such Applicable Fee Rate was in effect.

(b) Other Fees. The Borrower shall pay to each of the Arrangers, Agents and Lenders such other fees in the amounts and at the times separately agreed upon (including all fees provided for under any Fee Letter).

2.10 Computation of Interest and Fees. All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurodollar Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 Evidence of Debt. (a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender in the ordinary course of business. The Administrative Agent shall maintain the Register in accordance with Section 11.06(c). The accounts or records maintained by each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the Register, the Register shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in Section 2.11(a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.12 Payments Generally; Administrative Agent's Clawback. (a) General. All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected on computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to

the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrower; Presumptions by Administrative Agent.

Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or any L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the applicable L/C Issuers, as the case may be, the amount due.

With Respect to any payment that the Administrative Agent makes for the account of the Lenders or any L/C Issuer hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "Rescindable Amount") : (1) the Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrower (whether or not then owed); or (3) the Administrative agent has for any reason otherwise erroneously made such payment; then each of the Lenders or the applicable L/C Issuers, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender or such L/C Issuer, in immediately available funds 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 Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this clause (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and Revolving Credit Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible

for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

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

(f) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, L/C Borrowings, interest and fees then due hereunder, such funds shall be applied (i) first, toward 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, toward payment of principal and L/C Borrowings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and L/C Borrowings then due to such parties.

2.13 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payment on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section 2.13 shall not be construed to apply to (x) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the

existence of a Defaulting Lender or Disqualified Institution), (y) the application of Cash Collateral provided for in Section 2.17(d)(iii), or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such 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.

2.14 [Reserved.]

2.15 [Reserved.]

2.16 [Reserved.]

2.17 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 11.01 and in the definition of "Required Lenders".

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any L/C Issuer or the Swing Line Lender hereunder; *third*, to Cash Collateralize the L/C Issuers' Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.16; *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuers' future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.16; *sixth*, to the payment of any amounts owing to the Lenders,

the L/C Issuers or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any L/C Issuer or the Swing Line Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swing Line Loans are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.17(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.17(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee payable under Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.16.

(C) With respect to any fee payable under Section 2.09(a) or any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations or Swing Line Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to each L/C Issuer and the Swing Line Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's or such Swing Line Lender's Fronting Exposure to

such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swing Line Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Credit Commitment. Subject to Section 11.21, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swing Line Loans. If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under Applicable Law, (x) first, prepay Swing Line Loans in an amount equal to the Swing Line Lender's Fronting Exposure and (y) second, Cash Collateralize the L/C Issuers' Fronting Exposure in accordance with the procedures set forth in Section 2.16.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Swing Line Lender and each L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Credit Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held pro rata by the Lenders in accordance with their Revolving Credit Commitments (without giving effect to Section 2.17(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Swing Line Loans/Letters of Credit. So long as any Revolving Credit Lender is a Defaulting Lender, (i) the Swing Line Lender shall not be required to fund any Swing Line Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swing Line Loan and (ii) no L/C Issuer shall be required to issue, extend, increase, reinstate or renew any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

(d) Cash Collateral.

(i) Obligation to Cash Collateralize. At any time that there shall exist a Defaulting Lender, within one Business Day following the written request of the Administrative Agent or any L/C Issuer (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize the L/C Issuers' Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 2.17(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(ii) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuers and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.16(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or the [applicable] L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (determined in the case of Cash Collateral provided pursuant to Section 2.17(a)(v), after giving effect to Section 2.17(a)(v) and any Cash Collateral provided by the Defaulting Lender). All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in a Cash Collateral Account at Bank of America. The Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(iii) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.16 or Sections 2.04, 2.05, 2.06, 2.17 or 8.02 in respect of Letters of Credit or Swing Line Loans shall be held and applied to the satisfaction of the specific L/C Obligations, Swing Line Loans, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(iv) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section



11.06(b)(vi)) or (ii) the determination by the Administrative Agent and the applicable L/C Issuer that there exists excess Cash Collateral; provided, however, the Person providing Cash Collateral and the applicable L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

2.18 Use of Proceeds. The proceeds of the Term A Loan made on the Closing Date shall be applied by Borrower to repay the Existing Indebtedness and to pay fees and expenses in connection with this Agreement and the Related Documents. The proceeds of the Revolving Credit Loans and Swing Line Loans made on and/or after the Closing Date shall be applied by Borrower for working capital and general corporate purposes of Borrower and its Subsidiaries. Letters of Credit shall be used by Borrower for working capital and general corporate purposes of Borrower and its Subsidiaries.

### **ARTICLE III. TAXES, YIELD PROTECTION AND ILLEGALITY**

3.01 Taxes. (a) Defined Terms: For purposes of this Section 3.01, the term “Applicable Law” includes FATCA and the term “Lender” includes any L/C Issuer.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

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

(d) Indemnification by Borrower. Each of the Loan Parties shall indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified 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 the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 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 11.06(d) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this clause (e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by laws to report such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders; Tax Documentation.

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

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

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

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

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

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

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit M-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN-E (or W-8BEN, as applicable); or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E (or W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit M-2 or Exhibit M-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a

partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit M-4 on behalf of each such direct and indirect partner;

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

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds. Unless required by Applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or an L/C Issuer, or have any obligation to pay to any Lender or any L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or such L/C Issuer, as the case may be. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to the Loan Party an amount equal to such refund (but only to the extent

of indemnity payments made, or additional amounts paid, by a Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to the Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this clause (h), in no event will the applicable Recipient be required to pay any amount to the Loan Party pursuant to this clause (h) the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to available its tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party or any other Person.

(i) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender or an L/C Issuer, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, upon notice thereof by such Lender to the Borrower (through the Administrative Agent), (a) any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (ii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, the Administrative Agent shall during the period of such

suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.05.

### 3.03 Inability to Determine Rates.

(a) If in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof, (i) the Administrative Agent determines that (A) Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, or (B) (x) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan and (y) the circumstances described in Section 3.03(c)(i) do not apply (in each case with respect to this clause (i), "Impacted Loans"), or (ii) the Administrative Agent or the Required Lenders determine that for any reason the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurodollar Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended, (to the extent of the affected Eurodollar Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Lenders described in clause (ii) of Section 3.03(a), until the Administrative Agent upon instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

(b) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (i) of Section 3.03(a), the Administrative Agent, in consultation with the Borrower, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (i) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (i) of the first sentence of Section 3.03(a), (ii) the Administrative Agent or the Required Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (iii) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or

any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

(c) Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Borrower) that the Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining LIBOR for any Interest Period hereunder or any other tenors of LIBOR, including, without limitation, because the LIBOR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent or such administrator has made a public statement identifying a specific date after which LIBOR or the LIBOR Screen Rate shall no longer be made available, or used for determining the interest rate of loans, provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide LIBOR after such specific date (such specific date, the “Scheduled Unavailability Date”); or

(iii) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over such administrator has made a public statement announcing that all Interest Periods and other tenors of LIBOR are no longer representative; or

(iv) syndicated loans currently being executed, or that include language similar to that contained in this Section 3.03, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR;

then, in the case of clauses (i)-(iii) above, on a date and time determined by the Administrative Agent (any such date, the “LIBOR Replacement Date”), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and shall occur within a reasonable period of time after the occurrence of any of the events or circumstances under clauses (i), (ii) or (iii) above and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, LIBOR will be replaced hereunder and under any Loan Document with, subject to the proviso below, the first available alternative set forth in the order below for any payment period for interest calculated that can be determined by the Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (the “LIBOR Successor Rate”; and any such rate before giving effect to the Related Adjustment, the “Pre-Adjustment Successor Rate”):

(x) Term SOFR plus the Related Adjustment; and

(y) SOFR plus the Related Adjustment;

and in the case of clause (iv) above, the Borrower and Administrative Agent may amend this Agreement solely for the purpose of replacing LIBOR under this Agreement and under any other Loan Document in accordance with the definition of "LIBOR Successor Rate" and such amendment will become effective at 5:00 p.m., on the fifth Business Day after the Administrative Agent shall have notified all Lenders and the Borrower of the occurrence of the circumstances described in clause (iv) above unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to the implementation of a LIBOR Successor Rate pursuant to such clause;

provided that, if the Administrative Agent determines that Term SOFR has become available, is administratively feasible for the Administrative Agent and would have been identified as the Pre-Adjustment Successor Rate in accordance with the foregoing if it had been so available at the time that the LIBOR Successor Rate then in effect was so identified, and the Administrative Agent notifies the Borrower and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Pre-Adjustment Successor Rate shall be Term SOFR and the LIBOR Successor Rate shall be Term SOFR plus the relevant Related Adjustment.

The Administrative Agent will promptly (in one or more notices) notify the Borrower and each Lender of (x) any occurrence of any of the events, periods or circumstances under clauses (i) through (iii) above, (y) a LIBOR Replacement Date and (z) the LIBOR Successor Rate.

Any LIBOR Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such LIBOR Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

Notwithstanding anything else herein, if at any time any LIBOR Successor Rate as so determined would otherwise be less than zero, the LIBOR Successor Rate will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

In connection with the implementation of a LIBOR Successor Rate, the Administrative Agent will have the right to make LIBOR Successor Rate Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such LIBOR Successor Rate Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such LIBOR Successor Rate Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.



If the events or circumstances of the type described in 3.03(c)(i)-(iii) have occurred with respect to the LIBOR Successor Rate then in effect, then the successor rate thereto shall be determined in accordance with the definition of “LIBOR Successor Rate.”

(d) Notwithstanding anything to the contrary herein, (i) after any such determination by the Administrative Agent or receipt by the Administrative Agent of any such notice described under Section 3.03(c)(i)-(iii), as applicable, if the Administrative Agent determines that none of the LIBOR Successor Rates is available on or prior to the LIBOR Replacement Date, (ii) if the events or circumstances described in Section 3.03(c)(iv) have occurred but none of the LIBOR Successor Rates is available, or (iii) if the events or circumstances of the type described in Section 3.03(c)(i)-(iii) have occurred with respect to the LIBOR Successor Rate then in effect and the Administrative Agent determines that none of the LIBOR Successor Rates is available, then in each case, the Administrative Agent and the Borrower may amend this Agreement solely for the purpose of replacing LIBOR or any then current LIBOR Successor Rate in accordance with this Section 3.03 at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such alternative benchmarks and, in each case, including any Related Adjustments and any other mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such benchmarks, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a LIBOR Successor Rate. Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

(e) If, at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, no LIBOR Successor Rate has been determined in accordance with clauses (c) or (d) of this Section 3.03 and the circumstances under clauses (c)(i) or (c)(iii) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended, (to the extent of the affected Eurodollar Rate Loans, Interest Periods, interest payment dates or payment periods), and (y) the Eurodollar Rate component shall no longer be utilized in determining the Base Rate, until the LIBOR Successor Rate has been determined in accordance with clauses (c) or (d). Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans, Interest Periods, interest payment dates or payment periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans (subject to the foregoing clause (y)) in the amount specified therein.

3.04 Increased Costs; Reserves on Eurodollar Rate Loans.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e)) or any L/C Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or any L/C Issuer or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Eurodollar Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or such L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or such L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or such L/C Issuer, the Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any L/C Issuer determines that any Change in Law affecting such Lender or such L/C Issuer or any Lending Office of such Lender or such Lender's or such L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or such L/C Issuer's capital or on the capital of such Lender's or such L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swing Line Loans held by, such Lender, or the Letters of Credit issued by such L/C Issuer, to a level below that which such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such L/C Issuer's policies and the policies of such Lender's or such L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or such L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or such L/C Issuer or such Lender's or such L/C Issuer's holding company for any such reduction suffered. Notwithstanding any other provision herein, no Lender shall demand compensation pursuant to this Section 3.04(b) as a result of a Change in Law resulting from Basel III or the Dodd-Frank

Wall Street Reform and Consumer Protection Act if it shall not at the time be the general policy or practice of such Lender to demand such compensation from similarly situated borrowers (to the extent that, with respect to such Change in Law, such Lender has the right to do so under its credit facilities with similarly situated borrowers).

(c) Certificates for Reimbursement. A certificate of a Lender or an L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or such L/C Issuer or its holding company, as the case may be, as specified in clauses (a) or (b) of this Section 3.04 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or such L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or any L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's or such L/C Issuer's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or an L/C Issuer pursuant to the foregoing provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or such L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on Eurodollar Rate Loans. The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 11.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

**3.06 Mitigation Obligations; Replacement of Lenders.** (a) **Designation of a Different Lending Office.** Each Lender may make any Credit Extension to the Borrower through any Lending Office, provided that the exercise of this option shall not affect the obligation of the Borrower to repay the Credit Extension in accordance with the terms of this Agreement. If any Lender requests compensation under Section 3.04, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender, any L/C Issuer, or any Governmental Authority for the account of any Lender or any L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then at the request of the Borrower such Lender or such L/C Issuer shall, as applicable, 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 judgment of such Lender or such L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or such L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or such L/C Issuer, as the case may be. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or any L/C Issuer in connection with any such designation or assignment.

(b) **Replacement of Lenders.** If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, and in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06(a), the Borrower may replace such Lender in accordance with Section 11.13.

3.07 Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

#### ARTICLE IV. CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Closing Date. The obligation of each Lender or L/C Issuer, as applicable, to make a Credit Extension on the Closing Date is subject to the satisfaction, or waiver in accordance with Section 11.01, of the following conditions on or before the Closing Date:

(a) Loan Documents. Administrative Agent and Arrangers shall have received sufficient copies of each Loan Document as Administrative Agent shall request, originally executed and delivered by each Loan Party and each other Person party thereto.

(b) Organizational Documents; Incumbency. Administrative Agent and Arrangers shall have received, in respect of each Loan Party, (i) sufficient copies of each Organizational Document as Administrative Agent shall request, and, to the extent applicable, certified as of the Closing Date or a recent date prior thereto by the appropriate Governmental Authority; (ii) signature and incumbency certificates of the officers of such Loan Party; (iii) resolutions of the Board of Directors or similar governing body of such Loan Party approving and authorizing the execution, delivery and performance of this Agreement and the other Loan Documents and the Related Documents to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; (iv) a good standing certificate from the applicable Governmental Authority of such Loan Party's jurisdiction of incorporation, organization or formation and in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business, each dated the Closing Date or a recent date prior thereto; and (v) signature and incumbency certificates of one or more officers of Borrower who are authorized to execute Committed Loan Notices delivered under this Agreement, in substantially the form of Exhibit P (with such amendments or modifications as may be approved by Administrative Agent).

(c) Organizational and Capital Structure. The organizational structure and capital structure of Borrower and its Subsidiaries, both before and after giving effect to the Initial Public Offering, shall be as set forth on Schedule 4.01.

(d) Initial Public Offering. Administrative Agent and Arrangers shall have received evidence reasonably satisfactory to each of them of the consummation of the Initial Public Offering.

(e) Borrowing of the Bridge Loans.

(i) (1) all conditions to the borrowing of the Bridge Loans on the Closing Date set forth in the Bridge Credit Agreement shall have been satisfied, or the fulfillment of any such conditions shall have been waived in accordance with the terms thereof, and (2) the Bridge Loans shall be fully funded on the Closing Date;

(ii) Administrative Agent and Arrangers shall have received a fully executed or conformed copy of each Related Agreement and any documents executed in connection therewith. Each Related Agreement shall be in full force and effect, shall include terms and provisions reasonably satisfactory to Administrative Agent and no provision thereof shall have been modified or waived in any respect determined by Administrative Agent to be material, in each case without the consent of Administrative Agent.

(f) Existing Indebtedness. On the Closing Date, the Borrower and its Subsidiaries shall have repaid in full all Existing Indebtedness (it being understood that such repayment may be funded with the proceeds of the Term Loans).

(g) Engagement of Financial Institution. The Borrower shall have engaged one or more investment and/or commercial banks satisfactory to the Arrangers (collectively, the “Financial Institution”) on terms and conditions satisfactory to the Arrangers, to publicly sell or privately place one or more series or tranches of debt securities, the net proceeds of which will be used to refinance the Bridge Loans (“Permanent Debt”).

(h) [Reserved].

(i) Financial Statements. Administrative Agent and Arrangers shall have received from the Borrower (i) the Historical Financial Statements, (ii) any audited (to the extent available) or unaudited financial statements relating to acquisitions of or substantially all of the assets of, all Equity Interests of, or a business line or unit or a division of, any Person, carried out by the Borrower or any of its Subsidiaries within the twelve months preceding the Closing Date, or which are contemplated or pending as of such date, and (iii) pro forma consolidated balance sheets of the Borrower and its Subsidiaries as at the Closing Date, reflecting the consummation of the transactions contemplated by the Loan Documents the borrowing of the Bridge Loans and the Initial Public Offering, in each case meeting the requirements of Regulation S X for Form S 1 registration statements.

(j) Evidence of Insurance. Administrative Agent shall have received a certificate from the applicable Loan Party’s insurance broker or other evidence reasonably satisfactory to it that all insurance required to be maintained pursuant to Section 6.5 is in full force and effect.

(k) Opinions of Counsel to Loan Parties. Agents, L/C Issuer and Lenders and their respective counsel shall have received an executed copy of a customary written opinion of Sullivan & Cromwell LLP, New York counsel to the Loan Parties, and of other outside counsel in the jurisdiction of organization of each Loan Party that is not organized in New York, substantially in the form of Exhibit L (and each Loan Party hereby instructs each such counsel to deliver such opinions to Agents, L/C Issuer and Lenders).

(l) Fees. Borrower shall have paid to Administrative Agent and each Arranger and Lender the fees payable on or before the Closing Date referred to in Section 2.09 and all expenses payable on the Closing Date pursuant to Section 11.04, to the extent invoiced at least three Business Days prior to the Closing Date.

(m) Solvency Certificate; Solvency Appraisal. On the Closing Date, Administrative Agent and Arranger shall have received a Solvency Certificate from a Financial Officer of the Borrower.

(n) Closing Date Certificate. The Borrower shall have delivered to Administrative Agent and Arranger an originally executed Closing Date Certificate, together with all attachments thereto.

(o) Closing Date. Lenders shall have made the Term Loans to Borrower on or before [            ], 2021.

(p) Letter of Direction. Administrative Agent and Arrangers shall have received a duly executed letter of direction from Borrower addressed to Administrative Agent and Arrangers, on behalf of themselves and Lenders, directing the disbursement on the Closing Date of the proceeds of the Loans made on such date.

(q) At least 10 days prior to the Closing Date, (x) the Lenders shall have received all documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001) the “PATRIOT Act”), and (y) any Loan Party that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation shall have delivered, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

#### 4.02 Conditions to Each Credit Extension.

(a) Conditions Precedent. The obligation of each Lender to make any Loan, or any L/C Issuer to issue any Letter of Credit (or, at Borrower’s request, to amend any Letter of Credit to extend its term or increase its amount), on any Credit Date, including the Closing Date, are subject to the satisfaction, or waiver in accordance with Section 11.01, of the following conditions precedent:

(i) Administrative Agent shall have received a fully executed and delivered Committed Loan Notice or issuance notice in respect of Letters of Credit, as the case may be;

(ii) after making the Credit Extensions requested on such Credit Date, the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Commitments then in effect;

(iii) as of such Credit Date, the representations and warranties contained herein and in the other Loan Documents shall be true and correct in all material respects on and as of that Credit Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; provided that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof;

(iv) as of such Credit Date, no event shall have occurred and be continuing or would result from the consummation of the applicable Credit Extension that would constitute an Event of Default or a Default; and

(v) on or before the date of issuance of any Letter of Credit, Administrative Agent and the applicable L/C Issuer shall have received all other information required under Section 2.03(b), and such other documents or information as the applicable L/C Issuer may reasonably require in connection with the issuance of such Letter of Credit.

(b) [Reserved.]

(c) Each borrowing of a Loan by and issuance, extension or increase of a Letter of Credit for the account of Borrower hereunder shall constitute a representation and warranty by Borrower as of the applicable Credit Date that the conditions contained in clauses (ii), (iii), and (iv) of Section 4.02(a) have been satisfied.

#### **ARTICLE V. REPRESENTATIONS AND WARRANTIES**

In order to induce Agents, Lenders and L/C Issuers to enter into this Agreement and to make each Credit Extension to be made thereby, each Loan Party represents and warrants to each Agent, Lender and L/C Issuer, on the Closing Date and on each Credit Date, that the following statements are true and correct:

5.01 Organization; Requisite Power and Authority; Qualification. Each of the Borrower and its Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as identified in Schedule 5.01, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.



5.02 Equity Interests and Ownership. Except as set forth on Schedule 5.02, as of the date hereof, there is no existing option, warrant, call, right, commitment or other agreement to which the Borrower or any of its Subsidiaries is a party requiring, and there is no membership interest or other Equity Interests of any Subsidiary of the Borrower outstanding which upon conversion or exchange would require, the issuance by any Subsidiary of the Borrower of any additional membership interests or other Equity Interests of any Subsidiary of the Borrower or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Equity Interests of any Subsidiary of the Borrower. Schedule 5.02 correctly sets forth the ownership interest of the Borrower and each of its Subsidiaries in their respective Subsidiaries as of the Closing Date.

5.03 Due Authorization. The execution, delivery and performance of the Loan Documents have been duly authorized by all necessary action on the part of each Loan Party that is a party thereto.

5.04 No Conflict. The execution, delivery and performance by Loan Parties of the Loan Documents to which they are parties and the consummation of the transactions contemplated by the Loan Documents do not and will not (a) violate (i) any provision of any law or any governmental rule or regulation applicable to the Borrower or any of its Subsidiaries, (ii) any of the Organizational Documents of such Loan Party, or (iii) any order, judgment or decree of any court or other agency of government binding on the Borrower or any of its Subsidiaries; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation the Borrower or any of its Subsidiaries; or (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of the Borrower or any of its Subsidiaries, except for any violation set forth in clause (a)(i), any conflict, breach or default set forth in clause (b) or any imposition of a Lien referred to in clause (c) which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.05 Governmental Consents. The execution, delivery and performance by Loan Parties of the Loan Documents to which they are parties and the consummation of the transactions contemplated by the Loan Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority, except for (a) such as have been made or obtained and are in full force and effect, (b) such other actions, registrations, consents and approvals with respect to which the failure to be obtained or made would not reasonably be expected to have a Material Adverse Effect [and (c) filings or other actions listed on Schedule 5.05].

5.06 Binding Obligation. Each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

5.07 Historical Financial Statements. The Historical Financial Statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial

position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments. As of the Closing Date, neither the Borrower nor any of its Subsidiaries has any contingent liability or liability for Taxes, long term lease or unusual forward or long term commitment that is not reflected in the Historical Financial Statements or disclosed in the notes thereto and which in any such case is material in relation to the business, operations, properties, assets or financial condition of the Borrower and its Subsidiaries taken as a whole.

5.08 Projections. The projections of the Borrower and its Subsidiaries for the period of Fiscal Year 2020 through and including Fiscal Year 2025 furnished by or on behalf of the Borrower to the Arrangers (the “Projections”) have been prepared in good faith based on assumptions believed by the management of the Borrower to be reasonable at the time made, at the time such Projections were furnished and on the Closing Date (it being understood that Projections are not to be viewed as facts and that actual results during the period or periods covered by the Projections may differ from such Projections and such differences may be material).

5.09 No Material Adverse Effect. Since December 31, 2020, no event, circumstance or change has occurred that has had, either in any case or in the aggregate, a Material Adverse Effect.

5.10 [Reserved.]

5.11 Adverse Proceedings, Etc. There are no Adverse Proceedings, individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect. Neither the Borrower nor any of its Subsidiaries (a) is in violation of any Applicable Laws (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.12 Payment of Taxes. Except as otherwise permitted under Section 5.03, all Tax returns and reports of the Borrower and its Subsidiaries required to be filed by any of them have been timely filed, and all Taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon the Borrower and its Subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable. There is no proposed Tax assessment against the Borrower or any of its Subsidiaries which is not being actively contested by the Borrower or such Subsidiary in good faith and by appropriate proceedings; provided, such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

5.13 Properties. Each of the Borrower and its Subsidiaries has (i) good, sufficient and legal title to (in the case of fee interests in Real Property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), (iii) valid licensed rights in (in the case of licensed interests in intellectual property) and (iv) good title to (in the case of all other personal property), all of their respective properties and assets reflected in their respective Historical Financial Statements referred to in Section 5.07 and in the most recent financial statements delivered pursuant to Section 6.01, in each case except for assets disposed of since the date of such financial statements in the ordinary course of business or as otherwise permitted under Section 7.08, and except where failure to have such title, interests or licensed rights would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.

5.14 Environmental Matters. Neither the Borrower nor any of its Subsidiaries nor any of their respective Facilities or operations are subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. There are and, to each of the Borrower' and its Subsidiaries' knowledge, have been, no conditions, occurrences, or Hazardous Materials Activities which could reasonably be expected to form the basis of an Environmental Claim against the Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Neither the Borrower nor any of its Subsidiaries nor, to any Loan Party's knowledge, any predecessor of the Borrower or any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility, and none of the Borrower' or any of its Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260 270 or any state equivalent. Compliance with all current or reasonably foreseeable future requirements pursuant to or under Environmental Laws could not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. No event or condition has occurred or is occurring with respect to the Borrower or any of its Subsidiaries relating to any Environmental Law, any Release of Hazardous Materials, or any Hazardous Materials Activity which individually or in the aggregate has had, or could reasonably be expected to have, a Material Adverse Effect.

5.15 [Reserved.]

5.16 [Reserved.]

5.17 Governmental Regulation. Neither the Borrower nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. Neither the Borrower nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

5.18 Federal Reserve Regulations; Exchange Act.

(a) None of the Borrower or any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No portion of the proceeds of any Credit Extension shall be used in any manner, whether directly or indirectly, that causes or could reasonably be expected to cause, such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors or any other regulation thereof or to violate the Exchange Act.

5.19 Employee Matters. Neither the Borrower nor any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against the Borrower or any of its Subsidiaries, or to the best knowledge of the Borrower, threatened against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against the Borrower or any of its Subsidiaries or to the best knowledge of the Borrower, threatened against any of them, (b) no strike or work stoppage in existence or threatened involving the Borrower or any of its Subsidiaries, and (c) to the best knowledge of the Borrower, no union representation question existing with respect to the employees of the Borrower or any of its Subsidiaries and, to the best knowledge of the Borrower, no union organization activity that is taking place, except (with respect to any matter specified in clause (a), (b) or (c) above, either individually or in the aggregate) such as is not reasonably likely to have a Material Adverse Effect.

5.20 Plans. The Borrower, each of its Subsidiaries and each of their respective ERISA Affiliates are in compliance in all material respects with all applicable provisions and requirements of ERISA and the Code and the regulations and published interpretations thereunder with respect to each Plan, and have performed all their obligations under each Plan in all material respects. Each Plan which is intended to qualify under Section 401(a) of the Code has received a favorable determination letter, opinion letter or advisory letter from the IRS indicating that such Plan is so qualified and nothing has occurred subsequent to the issuance of such determination letter which could cause such Plan to lose its qualified status, except as could not reasonably be expected to have a Material Adverse Effect. No liability to the PBGC (other than required premium payments), the IRS, any Plan or any trust established under Title IV of ERISA has been or is expected to be incurred by the Borrower, any of its Subsidiaries or any of their ERISA Affiliates, except as could not reasonably be expected to have, a Material Adverse Effect. No ERISA Event has occurred or is reasonably expected to occur, except as could not reasonably be expected to have a Material Adverse Effect. Except to the extent required under Section 4980B of the Code or similar state laws, no Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates, except as could not reasonably be expected to have, a Material Adverse Effect. The present value of the aggregate benefit liabilities under each Pension Plan sponsored, maintained or contributed to by the

Borrower, any of its Subsidiaries or any of their ERISA Affiliates (determined as of the end of the most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan), did not exceed the aggregate current value of the assets of such Pension Plan, except as could not reasonably be expected to have, a Material Adverse Effect. As of the most recent valuation date for each Multiemployer Plan for which the actuarial report is available, the potential liability of the Borrower, its Subsidiaries and their respective ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 4221(e) of ERISA is zero, except as could not reasonably be expected to have, a Material Adverse Effect. The Borrower, each of its Subsidiaries and each of their ERISA Affiliates have complied with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan and are not in material “default” (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan, except as could not reasonably be expected to have, a Material Adverse Effect.

5.21 Certain Fees. No broker’s or finder’s fee or commission will be payable with respect to the transactions contemplated by this Agreement and the Related Documents, except as payable to Agents, Arrangers and Lenders.

5.22 Solvency. On the Closing Date, after giving effect to the consummation of the Transactions, including the making of Loans hereunder and the Bridge Loans, and after giving effect to the application of proceeds of thereof:

(a) the fair value of the assets of the Borrower and its subsidiaries, on a consolidated basis, exceeds, on a consolidated basis, their debts and liabilities, subordinated, contingent or otherwise;

(b) the present fair saleable value of the property of the Borrower and its subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured;

(c) the Borrower and its subsidiaries, on a consolidated basis, have not incurred and do not intend to incur, or believe (nor should they reasonably believe) that they will incur, debts (including current obligations and contingent liabilities) beyond their ability to pay such debts as they mature (whether at maturity or otherwise);

(d) the Borrower and its subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured; and

(e) the Borrower and its subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.

For the purposes hereof, the amount of any contingent liability at any time shall be computed as the amount that could reasonably be expected to become an actual and matured liability.

5.23 [Reserved]

5.24 Compliance with Statutes, Etc. Each of the Borrower and its Subsidiaries is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all governmental authorities, in respect of the conduct of its business and the ownership of its property (including compliance with all applicable Environmental Laws with respect to any Real Estate Asset or governing its business and the requirements of any permits issued under such Environmental Laws with respect to any such Real Estate Asset or the operations of the Borrower or any of its Subsidiaries), except such non-compliance that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

5.25 Disclosure. All written information (other than the Projections, estimates, forecasts, forward looking information and information of a general economic nature or general industry nature) (the "Information") concerning the Borrower or any of its Subsidiaries and furnished by or on behalf of the Loan Parties and made available to any Lender or the Administrative Agent in connection with the Transactions or the other transactions contemplated hereby, when taken as a whole, was true and correct in all material respects as of the date such Information was furnished to the Lenders and as of the Closing Date and did not, taken as a whole, contain any untrue statement of a material fact as of any such date or omit to state a material fact necessary in order to make the statements contained therein, taken as a whole, not materially misleading in any material respect in light of the circumstances under which such statements were made (after giving effect to all supplements and updates thereto delivered to the Arrangers prior to such time).

5.26 Sanctioned Persons; Anti-Corruption Laws; PATRIOT Act. None of the Borrower or any of its Subsidiaries or any of their respective directors, officers or, to the knowledge of Borrower, employees, agents, advisors or Affiliates is (a) a Person named on any list of designated persons maintained by the U.S. Department of State or the U.S. Department of Treasury (including the Office of Foreign Assets Control) or any other applicable sanctions authority that imposes, administers or enforces economic or financial sanctions or trade embargoes (collectively, "Sanctions", and the associated laws, rules, regulations and orders, collectively, "Sanctions Laws"), (b) located, organized or resident in any country or territory that is the subject or target of Sanctions, (c) owned or controlled by any such Person or Persons, or (d) otherwise the subject of Sanctions. Each of the Borrower and its Subsidiaries and their respective directors, officers and, to the knowledge of Borrower, employees, agents, advisors and Affiliates is in compliance, in all material respects, with (i) all Sanctions Laws, (ii) the United States Foreign Corrupt Practices Act of 1977, as amended, and any other applicable anti-bribery or anti-corruption laws, rules, regulations and orders (collectively, "Anti-Corruption Laws") and (iii) the PATRIOT Act and any other applicable terrorism and money laundering laws, rules, regulations and orders. No part of the proceeds of the Loans or Letters of Credit will be used,

directly or indirectly, (A) for the purpose of funding, financing or facilitating any activities, transactions, or business of or with any Person or in any country or territory that at such time is the subject of any Sanctions or (B) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of any Anti-Corruption Law.

5.27 EEA Financial Institutions. No Loan Party is an EEA Financial Institution.

5.28 Beneficial Ownership Certificate. As of the Closing Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

5.29 Covered Entities. No Loan Party is a Covered Entity.

## ARTICLE VI. AFFIRMATIVE COVENANTS

Each Loan Party covenants and agrees that, so long as any Commitment is in effect and until payment in full of all Obligations (other than amounts in respect of indemnification, expense reimbursement, yield protection or tax gross-up and other contingent obligations with respect to which no claim has been made) and cancellation or expiration of (without any pending drawing on) all Letters of Credit, each Loan Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants set forth in this Article VI.

6.01 Financial Statements and Other Reports. The Borrower will deliver to Administrative Agent and Lenders:

(a) [Reserved.]

(b) Quarterly Financial Statements. 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, commencing with the Fiscal Quarter in which the Closing Date occurs, the consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such Fiscal Quarter (including, during any Unrestricted Subsidiary Reporting Period, with respect to the consolidated balance sheet, any adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) (which may be in footnote form only) from the consolidated balance sheet) and the related consolidated statements of income, stockholders' equity and cash flows of the Borrower and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto (it being understood that filing by the Borrower of a Quarterly Report on Form 10-Q with the SEC shall satisfy the requirements of this Section 6.01(b), without prejudice to the obligation of the Borrower, during any Unrestricted Subsidiary Reporting Period, to deliver a statement setting forth any adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries from the consolidated balance sheet);

(c) Annual Financial Statements. As soon as available, and in any event within 90 days after the end of each Fiscal Year, commencing with the Fiscal Year in which the Closing Date occurs, (i) the consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such Fiscal Year (including, during any Unrestricted Subsidiary Reporting Period, with respect to the consolidated balance sheet, any adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) (which may be in footnote form only) from the consolidated balance sheet) and the related consolidated statements of income, stockholders' equity and cash flows of the Borrower and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of [\_\_\_\_] or other independent certified public accountants of recognized national standing selected by the Borrower and reasonably satisfactory to Administrative Agent (which report and/or the accompanying financial statements shall be unqualified as to going concern (except any "going concern" qualification due to the impending maturity of any indebtedness under this Agreement within one year from the date of such opinion or any prospective default of any financial maintenance covenant included in this Agreement) and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards) (it being understood that the filing by the Borrower of an Annual Report on Form 10-K with the SEC shall satisfy the requirements of paragraph (i) of this Section 6.01(c), without prejudice to the obligation of the Borrower, during any Unrestricted Subsidiary Reporting Period, to deliver a statement setting forth any adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries from the consolidated balance sheet);

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

(e) [Reserved].

(f) Notice of Default. Promptly upon any officer of the Borrower or Borrower obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default; (ii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, a certificate of a Responsible Officer specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, event or condition, and what action Borrower has taken, is taking and proposes to take with respect thereto;



(g) Notice of Litigation. Promptly upon any officer of the Borrower or Borrower obtaining knowledge of (i) any Adverse Proceeding not previously disclosed in writing by Borrower to Lenders, or (ii) any development in any Adverse Proceeding that, in the case of either clause (i) or (ii) could be reasonably expected to have a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to the Borrower to enable Lenders and their counsel to evaluate such matters;

(h) ERISA. (i) Promptly upon becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the IRS, the Department of Labor or the PBGC with respect thereto; and (ii) with reasonable promptness, copies of (1) all notices received by the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and (2) copies of such other documents or governmental reports or filings relating to any Plan as Administrative Agent shall reasonably request.

(i) Financial Plan. As soon as practicable and in any event no later than ninety days after the beginning of each Fiscal Year, a forecast prepared by management of the Borrower of the consolidated statement of income of the Borrower and its Subsidiaries on a quarterly basis for such Fiscal Year (a "Financial Plan").

(j) [Reserved].

(k) Other Information. Such other information and data with respect to the Borrower or any of its Subsidiaries as from time to time may be reasonably requested by Administrative Agent or any Lender; and

(l) Designation of Public Information. The 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 6.01 or otherwise are being distributed through Debt Domain, Intralinks, SyndTrak or another relevant website or other information platform (the "Platform"), any document or notice that the Borrower has indicated contains Private-Side Information shall not be posted on that portion of the Platform designated for such Public Lenders. The Borrower agrees to clearly designate all information provided to Administrative Agent by or on behalf of the Borrower which contains only Public-Side Information, and by doing so shall be deemed to have represented that such information contains only Public-Side Information. If the Borrower has not indicated whether a document or notice delivered pursuant to this Section 6.01 contains Private-Side Information, Administrative Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Private Lenders.

6.02 Existence. Except as otherwise permitted under Section 7.08, each Loan Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business;

provided, no Loan Party (other than the Borrower with respect to existence) or any of its Subsidiaries shall be required to preserve any such existence, right or franchise, licenses and permits if the failure to do so would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

6.03 Payment of Taxes and Claims. Each Loan Party will, and will cause each of its Subsidiaries to, pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor. No Loan Party will, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than the Borrower or any of its Subsidiaries).

6.04 Maintenance of Properties. Each Loan Party will, and will cause each of its Subsidiaries 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 the Borrower and its Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof, except where the failure to do so would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

6.05 Insurance. Each Loan Party will maintain or cause to be maintained, with financially sound and reputable insurers, such public liability insurance, third party property damage insurance, business interruption insurance and casualty insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of the Borrower and its Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons.

6.06 Books and Records; Inspections. Each Loan Party will, and will cause each of its Subsidiaries to, keep proper books of record and accounts in which full, true and correct entries in conformity in all material respects with GAAP shall be made of all dealings and transactions in relation to its business and activities. Each Loan Party will, and will cause each of its Subsidiaries to, permit any authorized representatives designated by the Administrative Agent to visit and inspect any of the properties of any Loan Party and any of its respective Subsidiaries, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants, all upon reasonable notice and at such reasonable times during normal business hours and, unless an Event of Default has occurred and is continuing, no more than once per year.

6.07 [Reserved].

6.08 Compliance with Laws. Each Loan Party will comply, and shall cause each of its Subsidiaries and all other Persons, if any, on or occupying any Facilities to comply, with the requirements of all Applicable Laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws), except to the extent that noncompliance therewith could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect (or, in the case of the laws, rules, regulations and orders referred to in Section 5.26, except to the extent that noncompliance therewith is not material).

6.09 Environmental. Each Loan Party shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by such Loan Party or its Subsidiaries that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (ii) make an appropriate response to any Environmental Claim against such Loan Party or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

6.10 Subsidiaries. In the event that any Person becomes a Domestic Subsidiary of Borrower (including by virtue of a Division) or any Unrestricted Subsidiary is converted into a Restricted Subsidiary that is a Domestic Subsidiary after the Closing Date, Borrower shall (a) promptly cause such Domestic Subsidiary to become a Guarantor hereunder by executing and delivering to Administrative Agent a Counterpart Agreement, and (b) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates reasonably requested by Administrative Agent, including those which are similar to those described in Sections 4.01(b), 4.01(k) and 4.01(l). With respect to each Subsidiary, Borrower shall promptly send to Administrative Agent written notice setting forth with respect to such Person (i) the date on which such Person became a Subsidiary of Borrower or was converted into a Restricted Subsidiary, as applicable, and (ii) all of the data required to be set forth in Schedules 5.01 and 5.02 with respect to all Subsidiaries of Borrower; and such written notice shall be deemed to supplement Schedule 5.01 and 5.02 for all purposes hereof.

6.11 Further Assurances. At any time or from time to time upon the request of Administrative Agent, each Loan Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as Administrative Agent may reasonably request in order to effect fully the purposes of the Loan Documents. In furtherance and not in limitation of the foregoing, each Loan Party shall take such actions as Administrative Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors.

6.12 [Reserved].

6.13 Designation of Subsidiaries. The Borrower may at any time designate any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (i) immediately before and after such designation, no

Default or Event of Default shall have occurred and be continuing, (ii) immediately after giving effect to such designation, the Borrower and its Subsidiaries shall be in pro forma compliance with each of the covenants set forth in Section 7.07, (iii) no Subsidiary may be designated as an Unrestricted Subsidiary if it is a “Restricted Subsidiary” for the purpose of the Bridge Credit Agreement or the documentation relating to the Permanent Debt, (iv) no Restricted Subsidiary may be designated as an Unrestricted Subsidiary if it was previously designated an Unrestricted Subsidiary, and (v) Borrower shall deliver to Administrative Agent at least five Business Days prior to such designation a certificate of a Responsible Officer of Borrower certifying as to compliance with the foregoing clauses (i)-(iv) of this Section 6.13 and, if applicable, certifying that such subsidiary meets the requirements of an “Unrestricted Subsidiary”. The designation of any subsidiary as an Unrestricted Subsidiary shall constitute an Investment by Borrower therein at the date of designation in an amount equal to the fair market value of Borrower’s Investment therein; provided that upon a redesignation of such subsidiary as a Restricted Subsidiary, Borrower shall be deemed to continue to have a permanent Investment in an Unrestricted Subsidiary in an amount (if positive) equal to (i) the lesser of (A) the fair market value of Investments of Borrower and its Subsidiaries in such Unrestricted Subsidiary at the time of such redesignation, combination or transfer (or of the assets transferred or conveyed, as applicable) and (B) the fair market value of Investments of Borrower and its Subsidiaries made in connection with the designation of such Subsidiary as an Unrestricted Subsidiary minus (ii) the portion (proportionate to Borrower’s and its Subsidiaries’ Equity Interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness or Liens of such Subsidiary existing at such time.

## **ARTICLE VII. NEGATIVE COVENANTS**

Each Loan Party covenants and agrees that, so long as any Commitment is in effect and until payment in full of all Obligations (other than amounts in respect of indemnification, expense reimbursement, yield protection or tax gross-up and other contingent obligations with respect to which no claim has been made) and cancellation or expiration of (without any pending drawing on) all Letters of Credit, such Loan Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Article VII.

7.01 Indebtedness. No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(a) the Obligations;

(b) (i) the Bridge Loans in a principal amount not to exceed \$350,000,000 and any (ii) Refinancing Indebtedness with respect thereto;

(c) Indebtedness of any Subsidiary to Borrower or to any other Subsidiary, or of Borrower to any Subsidiary; provided (i) all such Indebtedness shall be unsecured and subordinated in right of payment to the payment in full of the Obligations pursuant to the terms

of the Intercompany Subordination Agreement, and (ii) such Indebtedness is permitted as an Investment under Section 7.06(b) or (d);

(d) Indebtedness incurred by the Borrower or any of its Subsidiaries arising from agreements providing for indemnification, adjustment of purchase price or similar obligations (including, Indebtedness consisting of the deferred purchase price of property acquired in a Permitted Acquisition), or from guaranties or letters of credit, surety bonds or performance bonds securing the performance of Borrower or any such Subsidiary pursuant to such agreements, in connection with Permitted Acquisitions or permitted dispositions of any business, assets or Subsidiary of the Borrower or any of its Subsidiaries;

(e) Indebtedness which may be deemed to exist pursuant to any guaranties, performance, surety, statutory, appeal or similar obligations or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto in each case incurred in the ordinary course of business in an aggregate amount not to exceed at any time \$100,000,000;

(f) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts;

(g) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations in the ordinary course of business, including (i) those incurred to secure health, safety and environmental obligations in the ordinary course of business and (ii) guaranties in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of Borrower and its Subsidiaries;

(h) guaranties (i) of Indebtedness of a Loan Party otherwise permitted to be incurred pursuant to this Section 7.01, (ii) of Indebtedness of a Subsidiary (other than a Loan Party) otherwise permitted to be incurred pursuant to this Section 7.01 to the extent such guaranties are permitted by Section 7.06, or (iii) by a Subsidiary that is not a Loan Party of Indebtedness of another Subsidiary that is not a Loan Party otherwise permitted to be incurred pursuant to this Section 7.01; provided, that if the Indebtedness that is being guarantied is unsecured and/or subordinated to the Obligations, the guaranty shall also be unsecured and/or subordinated to the Obligations;

(i) Indebtedness with respect to Capital Leases and purchase money Indebtedness, in each case of Borrower and its Subsidiaries, in an aggregate amount not to exceed at any time \$150,000,000; provided, any such Indebtedness shall be secured only by the asset acquired in connection with the incurrence of such Indebtedness;

(j) (A)(i) Indebtedness of a Person or Indebtedness attaching to assets of a Person that, in either case, becomes a Subsidiary or Indebtedness attaching to assets that are acquired by Borrower or any of its Subsidiaries, in each case after the Closing Date as the result of a Permitted Acquisition, provided that (x) such Indebtedness existed at the time such Person became a Subsidiary or at the time such assets were acquired and, in each case, was not created in anticipation thereof and (y) such Indebtedness is not guaranteed in any respect by Borrower or any Subsidiary (other than by any such person that so becomes a Subsidiary), and (ii)

Indebtedness incurred by the Borrower or any of its Subsidiaries to finance a Permitted Acquisition; provided that in each case of (i) and (ii) above at the time of any such incurrence of Indebtedness and after giving pro forma effect thereto and the use of the proceeds thereof the Total Net Leverage Ratio as of the last day of the Fiscal Quarter last ended would not exceed 3.25 :1.00; and (B) and Refinancing Indebtedness incurred to Refinance such Indebtedness;

(k) Indebtedness of the Borrower or any of its Subsidiaries in connection with the discounting or factoring of receivables in an aggregate amount not to exceed at any time \$300,000,000;

(l) Indebtedness incurred by the Borrower or any of its Subsidiary in connection with credit card programs entered into in accordance with past practice;

(m) Indebtedness of the Borrower or any Guarantor so long as at the time of any such incurrence of Indebtedness and after giving pro forma effect thereto and the use of the proceeds thereof the Total Net Leverage Ratio as of the last day of the Fiscal Quarter last ended would not exceed 3:25:1:00, provided that (i) such Indebtedness shall not mature prior to the date that is ninety-one days following the Maturity Date; (ii) the weighted average maturity of such Indebtedness shall occur after the weighted-average maturity of the Term Loans; (iii) the affirmative and negative covenants and financial covenants set out in the governing documents of such Indebtedness shall not be materially more restrictive, taken as a whole, than the provisions set forth in the Loan Documents (as determined in good faith and certified in writing to the Administrative Agent by a Responsible Officer of the Borrower), and such governing documents shall not provide for any mandatory offers or obligations to repay, prepay or repurchase any amount under such Indebtedness prior to the final maturity thereof, other than pursuant to customary asset sale and change of control provisions; and (iv) such Indebtedness is unsecured;

(n) Indebtedness of Borrower and its Subsidiaries in an aggregate principal amount not to exceed at any time \$50,000,000, provided that the aggregate principal amount of Indebtedness outstanding in reliance on this clause in respect of which the primary obligor or a guarantor is a Subsidiary that is not a Guarantor shall not exceed at any time \$25,000,000;

(o) (i) Indebtedness existing on the Closing Date set forth on Schedule 7.01 and any Refinancing Indebtedness incurred to Refinance such Indebtedness, (ii) any Refinancing Indebtedness incurred to Refinance such Indebtedness, and (iii) any Indebtedness in respect of Capital Leases of property acquired to replace property subject to Capital Leases set forth on Schedule 7.01, provided that the amount of such Indebtedness permitted under this clause (iii) does not exceed the amount of Indebtedness existing on the Closing Date in respect of Capital Leases of the property being replaced;

(p) Indebtedness owed to, and obligations in respect of letters of credit or bank guarantees or similar instruments for the benefit of, any person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance pursuant to reimbursement or indemnification obligations to such person, in each case, in the ordinary course of business; provided that, upon the incurrence of Indebtedness with

respect to reimbursement obligations regarding workers' compensation claims, such obligations are reimbursed not later than sixty (60) days following such incurrence;

(q) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or other cash management treasury services in the ordinary course of business;

(r) Indebtedness consisting of (x) the financing of insurance premiums or (y) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(s) Indebtedness representing deferred compensation to employees, directors or consultants incurred in the ordinary course of business; and

(t) Indebtedness in respect of letters of credit, bank guarantees, warehouse receipts or similar instruments issued to support performance obligations and trade letters of credit (other than obligations in respect of other Indebtedness) in the ordinary course of business.

7.02 Liens. No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of the Borrower or any of its Subsidiaries, whether now owned or hereafter acquired or licensed, or any income, profits or royalties therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income, profits or royalties under the UCC of any State or under any similar recording or notice statute or under any applicable intellectual property laws, rules or procedures, except:

(a) Liens on Cash Collateral for the benefit of any L/C Issuer as required under this Agreement;

(b) Liens for Taxes if not yet delinquent or the obligations with respect to such Taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and adequate reserves have been made in accordance with GAAP;

(c) statutory Liens of landlords, carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 430(k) of the Code or ERISA or a violation of Section 436 of the Code), in each case incurred in the ordinary course of business (i) for amounts not yet overdue or (ii) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of 60 days) are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(d) Liens incurred in the ordinary course of business 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, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness);

(e) easements, rights of way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of the Borrower or any of its Subsidiaries;

(f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;

(g) Liens solely on any cash earnest money deposits made by the Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any Real Property;

(k) outbound licenses of patents, copyrights, trademarks and other intellectual property rights granted by the Borrower or any of its Subsidiaries in the ordinary course of business and not interfering in any material respect with the ordinary conduct of or materially detracting from the value of the business of Borrower or such Subsidiary;

(l) Liens solely on Cash collateral securing Indebtedness consisting of reimbursement obligations in respect of the letters of credit permitted pursuant to Section 7.01(e);

(m) Liens on accounts receivable securing Indebtedness permitted by Section 7.01(k);

(n) Liens securing Indebtedness permitted pursuant to Section 7.01(i) provided, any such Lien shall encumber only the asset acquired with the proceeds of such Indebtedness;

(o) Liens on assets that are acquired as the result of a Permitted Acquisition securing (i) Indebtedness in respect of Capital Leases permitted by Section 7.1(j)(i) or (ii) other Indebtedness permitted by Section 7.1(j)(i), in the case of clause (ii), in an aggregate amount not to exceed \$25,000,000 at any time outstanding; provided any such Lien shall not extend to any additional property other than (1) after-acquired property that is affixed or incorporated into the property covered by such Lien and (2) proceeds and products thereof;



(p) Liens arising in the ordinary course of business by virtue of any statutory or common law provisions or similar provisions applicable in foreign jurisdictions relating to banker's liens, rights of set-off or similar rights;

(q) Liens on assets of Subsidiaries of the Borrower that are not Guarantors securing Indebtedness permitted under Section 7.01(n) in an aggregate amount not to exceed \$50,000,000 at any time outstanding;

(r) other Liens securing Indebtedness in an aggregate amount not to exceed \$25,000,000 at any time outstanding;

(s) Liens on Equity Interests of any Joint Venture or Unrestricted Subsidiary (i) securing obligations of such Joint Venture or Unrestricted Subsidiary, as the case may be, or (ii) pursuant to the relevant Joint Venture agreement or arrangement;

(t) Liens arising out of consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;

(u) Liens securing judgments that do not constitute an Event of Default under Section 8.01(h);

(v) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts or cash pooling arrangements (including with respect to any joint and several liability provisions in relation thereto) of the Borrower or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower and the Restricted Subsidiaries or (iii) relating to purchase orders and other agreements (other than Indebtedness for borrowed money) entered into with customers in the ordinary course of business;

(w) Liens existing on the Closing Date and set forth on Schedule 7.02.

7.03 Equitable Lien. If any Loan Party or any of its Subsidiaries shall create or assume any Lien upon any of its properties or assets, whether now owned or hereafter acquired, other than Liens permitted pursuant to Section 7.02 (including as a result of an amendment or waiver of Section 7.02 made with the consent of the Required Lenders), it shall make or cause to be made effective provisions whereby the Obligations will be secured by such Lien equally and ratably with any and all other Indebtedness secured thereby as long as any such Indebtedness shall be so secured; provided, notwithstanding the foregoing, this covenant shall not be construed as a consent by Required Lenders to the creation or assumption of any such Lien not otherwise permitted hereby.

7.04 Restricted Junior Payments. The Borrower shall not and shall not permit any of its Subsidiaries through any manner or means or through any other Person to, directly or

indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Junior Payment except that:

(a) Any Subsidiary of Borrower may declare and pay dividends or make other distributions ratably to its equity holders;

(b) The Borrower may make Restricted Junior Payments to its equity holders in the form of dividends on the Borrower's common stock in an aggregate amount not to exceed \$10,000,000 per annum, provided that, immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(c) The Borrower may make Restricted Junior Payments up to an amount not to exceed the Cumulative Amount as in effect immediately prior to the making of such Restricted Junior Payments, provided that (A) immediately prior to, and after giving effect thereto, (i) no Default or Event of Default shall have occurred and be continuing or would result therefrom, and (ii) the Borrower and its Subsidiaries shall be in compliance on a pro forma basis with the financial covenants set forth in Section 7.07 and with a Total Net Leverage Ratio of [2.50]:1.00 or less, in each case, as of the last day of the Fiscal Quarter most recently ended and (B) Borrower shall have delivered to Administrative Agent a Compliance Certificate, together with all relevant financial information reasonably requested by Administrative Agent, demonstrating in reasonable detail the calculation of the Cumulative Amount immediately prior to the making of such Restricted Junior Payment and the amount thereof elected to be so applied and evidencing compliance with Section 7.07 and the Total Net Leverage Ratio as required under clause (A)(ii) above;

(d) The Borrower may make other Restricted Junior Payments in an aggregate amount of up to \$25,000,000 during the term of this Agreement;

(e) the payment by the Borrower or any Subsidiary of any dividend or the consummation of any irrevocable redemption within 60 days after the date of declaration thereof or giving the notice of the redemption, if on the date of declaration or notice the payment would have complied with this Section 7.04 (assuming, in the case of redemption, the giving of the notice would have been deemed to be a Restricted Junior Payment at such time and such deemed Restricted Junior Payment would have been permitted at such time); provided that any Restricted Junior Payment pursuant to this clause (e) shall be deemed to have utilized capacity under the exception that such Restricted Junior Payment would have been permitted to have been made in reliance of at the time of declaration or notice of redemption, as applicable;

(f) the Borrower may declare or make a Restricted Junior Payment with respect to its Equity Interest payable solely in Qualified Equity Interests or redeem any of its Equity Interests in exchange for, or out of the proceeds of the substantially concurrent issuance and sale of, Qualified Equity Interests or through accretion or accumulation of such dividends on such Equity Interests;

(g) repurchase, redemption or other acquisition for value by the Borrower of, Equity Interests of the Borrower held by officers, directors or employees or former officers, directors or

employees of the Borrower and any Restricted Subsidiary (or their transferees, estates or beneficiaries under their estates), upon their death, disability, retirement, severance or termination of employment or service; and

(h) repurchases of Equity Interests deemed to occur (a) upon the exercise of stock options, warrants, or similar rights if the Equity Interests represent all or a portion of the exercise price thereof or (b) in connection with the satisfaction of any withholding Tax obligations incurred relating to the vesting or exercise of stock options, warrants, restricted stock units or similar rights.

7.05 Restrictions on Subsidiary Distributions. Except as provided herein, no Loan Party shall, nor shall it permit any of its Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of Borrower to (a) pay dividends or make any other distributions on any of such Subsidiary's Equity Interests owned by Borrower or any other Subsidiary of Borrower, (b) repay or prepay any Indebtedness owed by such Subsidiary to Borrower or any other Subsidiary of Borrower, (c) make loans or advances to Borrower or any other Subsidiary of Borrower, or (d) transfer, lease or license any of its property or assets to Borrower or any other Subsidiary of Borrower other than restrictions (i) in agreements evidencing Indebtedness permitted by Sections 7.01(i) and 7.01(j) that impose restrictions on the property so acquired, (ii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business, (iii) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Equity Interests not otherwise prohibited under this Agreement, (iv) existing under or by reason of Applicable Law, regulation or order, (v) customary provisions in partnership agreements, limited liability company organizational governance documents, joint venture agreements, shareholder agreements and other similar agreements that restrict the transfer of ownership interests in such partnership, limited liability company, joint venture, corporation or similar Person, (vi) restrictions on cash or other deposits or net worth imposed by suppliers, customers or landlords under contracts entered into in the ordinary course of business, or (vii) described on Schedule 7.05.

7.06 Investments. The Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including any Joint Venture, except:

(a) Investments in Cash and Cash Equivalents;

(b) equity Investments owned as of the Closing Date in any Subsidiary and Investments made after the Closing Date in the Borrower and any Guarantor that is a Subsidiary of Borrower;

(c) Investments (i) in any Securities received in satisfaction or partial satisfaction thereof from financially troubled account debtors and (ii) deposits, prepayments and other credits to suppliers made in the ordinary course of business consistent with the past practices of the Borrower and its Subsidiaries;

(d) intercompany loans to the extent permitted under Section 7.01(c) and other Investments in Subsidiaries other than Guarantors, provided that such Investments (including through intercompany loans and any Permitted Acquisition) in Subsidiaries other than Guarantors, together with any Investment permitted under Section 7.06(k), shall not exceed at any time an aggregate amount equal the sum of (x) \$75,000,000 plus (y) the aggregate amount of all cash payments made since February [26], 2021 by Subsidiaries that are not Guarantors to the Borrower and the Guarantors in the form of dividends, distributions, return of capital, repurchases of Equity Interests, repayment of loans or advances, without duplication, in each case, with any item already deducted from the calculation of the amount of any Investment pursuant to the last sentence of the definition thereof ((x) plus (y), the “Non-Guarantor Basket”);

(e) loans and advances to employees of the Borrower and its Subsidiaries made in the ordinary course of business in an aggregate principal amount not to exceed \$10,000,000;

(f) Permitted Acquisitions permitted pursuant to Section 7.08;

(g) Investments described in Schedule 7.06;

(h) Hedge Agreements which constitute Investments

(i) other Investments in an aggregate amount not to exceed the Cumulative Amount as in effect immediately prior to the making of such Investment; provided that (A) immediately prior to, and after giving effect thereto, (i) no Default or Event of Default shall have occurred and be continuing or would result therefrom and (ii) the Borrower and its Subsidiaries shall be in compliance on a pro forma basis with the financial covenants set forth in Section 7.07 and with a Total Net Leverage Ratio of 2.50:1.00 or less, in each case, as of the last day of the Fiscal Quarter most recently ended and (B) Borrower shall have delivered to Administrative Agent a Compliance Certificate, together with all relevant financial information reasonably requested by Administrative Agent, demonstrating in reasonable detail the calculation of the Cumulative Amount immediately prior to the making of such Investment and the amount thereof elected to be so applied and evidencing compliance with Section 7.7 and the Total Net Leverage Ratio as required under clause (A)(ii) above;

(j) Investments received in exchange for the issuance of Equity Interests (other than Disqualified Equity Interests) of the Borrower;

(k) Investments in Joint Ventures and Unrestricted Subsidiaries in an aggregate amount not exceeding, together with any Investment permitted under the proviso to Section 7.06(d) in Subsidiaries other than Guarantors, the Non-Guarantor Basket;

(l) Investments so long as the Total Net Leverage Ratio will not exceed on a pro forma basis 1:75:1:00 as of the last day of the Fiscal Quarter most recently ended;

(m) other Investments in an aggregate amount outstanding at any time not to exceed \$50,000,000 during the term of this Agreement.

Notwithstanding the foregoing, in no event shall any Loan Party make any Investment which results in or facilitates in any manner any Restricted Junior Payment not otherwise permitted under the terms of Section 7.04.

#### 7.07 Financial Covenants.

(a) Net Interest Coverage Ratio. The Borrower shall not permit the Net Interest Coverage Ratio as of the last day of any Fiscal Quarter, beginning with the Fiscal Quarter ending on June 30, 2021, to be less than 3.25 to 1.00.

(b) Total Net Leverage Ratio. The Borrower shall not permit the Total Net Leverage Ratio as of the last day of any Fiscal Quarter, beginning with the Fiscal Quarter ending on June 30, 2021, to exceed 3.75 to 1.00.

(c) Certain Calculations. With respect to any period during which (x) a Permitted Acquisition or an Asset Sale has occurred or (y) a subsidiary has been designated an Unrestricted Subsidiary or a Restricted Subsidiary, as applicable, pursuant to Section 6.13 (each, a “Subject Transaction”), for purposes of determining compliance with the financial covenants set forth in this Section 7.07, Consolidated Adjusted EBITDA and the components of Consolidated Net Interest Expense shall be calculated with respect to such period on a pro forma basis using the historical (audited, to the extent available) financial statements of any business so acquired or to be acquired or sold or to be sold or designated or to be designated as a Restricted Subsidiary or an Unrestricted Subsidiary and the consolidated financial statements of the Borrower and its Subsidiaries which shall be reformulated as if such Subject Transaction, and any Indebtedness incurred or repaid in connection therewith, had been consummated or incurred or repaid at the beginning of such period (and assuming that such Indebtedness bears interest during any portion of the applicable measurement period prior to the relevant acquisition at the weighted average of the interest rates applicable to outstanding Loans incurred during such period).

7.08 Fundamental Changes; Disposition of Assets; Acquisitions. No Loan Party shall, nor shall it permit any of its Subsidiaries to, enter into any transaction of merger or consolidation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or license, exchange, transfer or otherwise dispose of (including, in each case, pursuant to a Division), in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased or licensed, or acquire by purchase or otherwise (other than purchases or other acquisitions of inventory, materials and equipment and capital expenditures in the ordinary course of business) the business, property or fixed assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person, except:

(a) any Subsidiary of Borrower may be merged with or into Borrower or any Guarantor, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to Borrower or any Guarantor; provided, in the case of such a merger, Borrower or such Guarantor, as applicable, shall be the continuing or surviving Person;

(b) sales or other dispositions of assets that do not constitute Asset Sales;

(c) as long as no Default is continuing or would result therefrom, Asset Sales, provided that, with respect to any Asset Sale made pursuant to this Section 7.08(c), (1) the consideration received shall be in an amount at least equal to the fair market value thereof (determined in good faith by the board of directors of Borrower (or similar governing body)) and (2) no less than 75% thereof shall be paid in Cash or Cash Equivalents; provided further that any Designated Non-Cash Consideration received in respect of such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this Section 7.08(c) that is at any time outstanding, not in excess of \$25,000,000 at the time of the receipt of such Designated Non Cash Consideration, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value, shall be deemed to be cash or Cash Equivalents;

(d) disposals of obsolete, worn out or surplus equipment;

(e) Permitted Acquisitions, provided that the consideration for Permitted Acquisitions of Equity Interests in any Person which does not become a Guarantor shall not exceed, collectively with any Investment permitted under the proviso to Section 7.06(d) in Subsidiaries other than Guarantors and any Investment permitted under Section 7.06(k), an aggregate amount equal to the Non-Guarantor Basket during the term of this Agreement; and

(f) Investments made in accordance with Section 7.06;

7.09 [Reserved.].

7.10 [Reserved.].

7.11 Transactions with Shareholders and Affiliates. No Loan Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Borrower on terms that are materially less favorable to the Borrower or that Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not such a holder or Affiliate; provided, the foregoing restriction shall not apply to (a) any transaction between Borrower and any Guarantor; (b) reasonable and customary fees paid to members of the board of directors (or similar governing body) of the Borrower and its Subsidiaries; (c) compensation arrangements for officers and other employees of the Borrower and its Subsidiaries entered into in the ordinary course of business; and (d) transactions described in Schedule 7.11.

7.12 Conduct of Business. From and after the Closing Date, no Loan Party shall, nor shall it permit any of its Subsidiaries to, engage in any business other than (i) the businesses engaged in by such Loan Party on the Closing Date and similar or related businesses and (ii) such other lines of business as may be consented to by Required Lenders.

7.13 Amendments or Waivers of Organizational Documents and Certain Related Documents. No Loan Party shall nor shall it permit any of its Subsidiaries to, agree to any material amendment, restatement, supplement or other modification to, or waiver of, any of its Organizational Documents or any of its material rights under any Related Document after the Closing Date , in each case that would be materially adverse to the Lenders.

7.14 Amendments or Waivers of with respect to Certain Indebtedness. No Loan Party shall, nor shall it permit any of its Subsidiaries to, amend or otherwise change the terms of any Subordinated Indebtedness, or make any payment consistent with an amendment thereof or change thereto, if the effect of such amendment or change is to increase the interest rate on such Subordinated Indebtedness, change (to earlier dates) any dates upon which payments of principal or interest are due thereon, change the redemption, prepayment or defeasance provisions thereof in a manner adverse to the Lenders, change the subordination provisions of such Subordinated Indebtedness (or of any guaranty thereof) in a manner adverse to the Lenders, or if the effect of such amendment or change, together with all other amendments or changes made, is to increase materially the obligations of the obligor thereunder or to confer any additional rights on the holders of such Subordinated Indebtedness (or a trustee or other representative on their behalf) which would be materially adverse to the Lenders.

7.15 Fiscal Year. No Loan Party shall, nor shall it permit any of its Subsidiaries to change its Fiscal Year end from December 31.

7.16 Sanctions. No Loan Party shall, directly or indirectly, use the proceeds of any Credit Extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, to fund any activities of or business with any Person that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Arranger, Administrative Agent, L/C Issuer, Swing Line Lender, or otherwise) of Sanctions.

7.17 Anti-Corruption Laws. No Loan Party shall directly or indirectly use the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other anti-corruption legislation in other jurisdictions.

## **ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES**

8.01 Events of Default. Any of the following shall constitute an event of default (each, an “Event of Default”):

(a) Failure to Make Payments When Due. Failure by Borrower to pay (i) when due any installment of principal of any Loan, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise; (ii) when due any amount payable to L/C Issuer in reimbursement of any drawing under a Letter of Credit; or any Cash Collateralization required pursuant to Section 2.17(d), or (iii) any interest on any Loan or any fee or any other amount due hereunder within five Business Days after the date due; or

(b) Default in Other Agreements. (i) Failure of any Loan Party or any of their respective Subsidiaries to pay when due any principal of or interest on or any other amount, including any payment in settlement, payable in respect of Indebtedness (other than Indebtedness referred to in Section 8.01(a)) with a principal amount (or Net Mark-to-Market Exposure), individually or in the aggregate, of \$50,000,000 or more, in each case beyond the grace period, if any, provided therefor; or (ii) breach or default by any Loan Party with respect to any other material term of (1) Indebtedness in the individual or aggregate principal amount (or Net Mark-to-Market Exposure) referred to in clause (i) above or (2) any loan agreement, mortgage, indenture or other agreement relating to such Indebtedness, in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; or

(c) Breach of Certain Covenants. Failure of any Loan Party to perform or comply with any term or condition contained in (i) Section 2.18, Section 6.01(f) or Section 6.02 or (ii) Article VII unless, in the case of this clause (ii), such default is capable of remedy and shall have been remedied or waived within thirty days after the earlier of (A) an officer of such Loan Party becoming aware of such default or (B) receipt by Borrower of notice from Administrative Agent or any Lender of such default; or

(d) Breach of Representations, Etc. Any representation, warranty, certification or other statement made or deemed made by any Loan Party in any Loan Document or in any statement or certificate at any time given by any Loan Party or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made or deemed made; or

(e) Other Defaults Under Loan Documents. Any Loan Party shall default in the performance of or compliance with any term contained herein or any of the other Loan Documents, other than any such term referred to in any other paragraph of this Section 8.01, and such default shall not have been remedied or waived within thirty days after the earlier of (i) an officer of such Loan Party becoming aware of such default or (ii) receipt by Borrower of notice from Administrative Agent or any Lender of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, Etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of the Borrower or any of its Subsidiaries in an involuntary case under any Debtor Relief Laws now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against the Borrower or any of its Subsidiaries under any Debtor Relief Laws now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over the Borrower or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver,



trustee or other custodian of the Borrower or any of its Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of the Borrower or any of its Subsidiaries, and any such event described in this clause (ii) shall continue for sixty days without having been dismissed, bonded or discharged; or

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

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving, individually or in the aggregate at any time an amount in excess of \$50,000,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against the Borrower or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty days (or in any event later than five days prior to the date of any proposed sale thereunder); or

(i) [Reserved].

(j) Plans. (i) There shall occur one or more ERISA Events which individually or in the aggregate results in or might reasonably be expected to result in liability of the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates in excess of \$50,000,000 during the term hereof; or (ii) there exists any fact or circumstance that reasonably could be expected to result in the imposition of a Lien or security interest pursuant to Section 430(k) of the Code or ERISA or a violation of Section 436 of the Code; or

(k) [Reserved]

(l) Guaranties, and other Loan Documents. At any time after the execution and delivery thereof, (i) the Guaranty for any reason, other than the satisfaction in full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement ceases to be in full force and effect (other than by reason of satisfaction in full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or (iii) any Loan Party shall contest the validity or enforceability of any Loan Document in writing

or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Loan Document to which it is a party.

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

(a) declare the commitment of each Lender to make Loans and any obligation of each L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuer[s] all rights and remedies available to it, the Lenders and the L/C Issuers under the Loan Documents;

provided, however, that upon the occurrence of an event described in Section 8.01(f), the obligation of each Lender to make Loans and any obligation of each L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.16 and 2.17, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuers (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuers) arising under the Loan Documents and amounts payable under

Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations arising under the Loan Documents, ratably among the Lenders and the L/C Issuers in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Borrowings and Obligations then owing under Hedge Agreements, ratably among the Lenders, the L/C Issuers and the Hedge Banks in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of the applicable L/C Issuers, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrower pursuant to Sections 2.03 and 2.16; and

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

Subject to Sections 2.03(c) and 2.16, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Notwithstanding the foregoing, Obligations arising under Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may request, from the applicable Hedge Bank. Each Hedge Bank not a party to the Credit Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX hereof for itself and its Affiliates as if a “Lender” party hereto.

8.04 Borrower’s Right to Cure. Notwithstanding anything to the contrary contained in Section 8.01, for purposes of determining whether an Event of Default has occurred under any financial covenant set forth in Section 7.07, any equity contribution (in the form of Qualified Equity Interests) made to Borrower after the last day of any Fiscal Quarter and on or prior to the day that is 10 days after the day on which financial statements are required to be delivered for that Fiscal Quarter will, at the request of Borrower, be included in the calculation of Consolidated Adjusted EBITDA solely for the purposes of determining compliance with the financial covenants at the end of such Fiscal Quarter and any subsequent period that includes such Fiscal Quarter (any such equity contribution, a “Specified Equity Contribution”); provided that (a) Borrower shall not be permitted to so request that a Specified Equity Contribution be included in the calculation of Consolidated Adjusted EBITDA with respect to any Fiscal Quarter

unless, after giving effect to such requested Specified Equity Contribution, there shall be no more than two Fiscal Quarters in the Relevant Four Fiscal Quarter Period in respect of which a Specified Equity Contribution is made, (b) no more than 4 Specified Equity Contributions will be made in the aggregate, (c) the amount of any Specified Equity Contribution and the use of proceeds therefrom will be no greater than the amount required to cause Borrower to be in compliance with the financial covenants, and (d) all Specified Equity Contributions and the use of proceeds therefrom will be disregarded for all other purposes under the Loan Documents (including calculating Consolidated Adjusted EBITDA for purposes of determining basket levels, Applicable Rate, Applicable Fee Rate, and other items governed by reference to Consolidated Adjusted EBITDA, calculating the amount of Unrestricted Cash to be deducted pursuant to clause (b) of the definition of Consolidated Total Net Debt, and for purposes of the Restricted Junior Payments covenant in Section 7.04). To the extent that the proceeds of the Specified Equity Contribution are used to repay Indebtedness, such Indebtedness shall not be deemed to have been repaid for purposes of calculating any financial covenant set forth in Section 7.07 for the Relevant Four Fiscal Quarter Period. For purposes of this paragraph, the term “Relevant Four Fiscal Quarter Period” shall mean, with respect to any requested Specified Equity Contribution, the four Fiscal Quarter period ending on (and including) the Fiscal Quarter in which Consolidated Adjusted EBITDA will be increased as a result of such Specified Equity Contribution.

#### **ARTICLE IX. ADMINISTRATIVE AGENT**

9.01 Appointment and Authority. Each of the Lenders and the L/C Issuers hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article IX are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative 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 as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank) and the L/C Issuers hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Cash Collateral or other Lien granted under the Loan Documents (or any portion thereof granted under

the Loan Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article XI (including Section 11.04(c)), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

9.02 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. The Administrative Agent or the Arranger, as applicable, shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent or the Arranger, as applicable:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law;

(c) shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, to any Lender or any L/C Issuer, any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their Affiliates, that is communicated to, obtained or in the possession of, the Administrative Agent, Arranger or any of their Related Parties in any capacity, except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent herein;

(d) shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under

the circumstances as provided in Sections 11.01 and 8.02) 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. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or an L/C Issuer;

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

(f) shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or prospective Lender is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment of Loans, or disclosure of confidential information, to any Disqualified Institution.

9.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or such L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or such L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or

through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article IX shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.06 Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuers and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuers, appoint a successor Administrative Agent meeting the qualifications set forth above, provided that in no event shall any such successor Administrative Agent be a Defaulting Lender or Disqualified Institution. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by Applicable Law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other

than as provided in Section 3.01(g) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article IX and Section 11.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them (i) while the retiring or removed Administrative Agent was acting as Administrative Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including (a) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Lenders and (b) in respect of any actions taken in connection with transferring the agency to any successor Administrative Agent.

(d) Any resignation by Bank of America as Administrative Agent pursuant to this Section 9.06 shall also constitute its resignation as an L/C Issuer and Swing Line Lender. If Bank of America resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment by the Borrower of a successor L/C Issuer or Swing Line Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as applicable, (b) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

9.07 Non-Reliance on the Administrative Agent, the Arranger and the Other Lenders. Each Lender and each L/C Issuer expressly acknowledges that none of the Administrative Agent nor the Arranger has made any representation or warranty to it, and that no act by the Administrative Agent or the Arranger hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Loan Party of any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent or the Arranger



to any Lender or each L/C Issuer as to any matter, including whether the Administrative Agent or the Arranger have disclosed material information in their (or their Related Parties') possession. Each Lender and each L/C Issuer represents to the Administrative Agent and the Arranger that it has, independently and without reliance upon the Administrative Agent, the Arranger, any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Borrower hereunder. Each Lender and each L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Arranger, any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties. Each Lender and each L/C Issuer represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender or L/C Issuer for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender or L/C Issuer, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender and each L/C Issuer agrees not to assert a claim in contravention of the foregoing. Each Lender and each L/C Issuer represents and warrants that it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such L/C Issuer, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers, Syndication Agents or Documentation Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an L/C Issuer hereunder.

9.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and

irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuers and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuers and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuers and the Administrative Agent under Sections 2.03(i) and (j), 2.09 and 11.04) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each L/C Issuer to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuers, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 11.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or any L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or any L/C Issuer or in any such proceeding.

9.10 Guaranty Matters. Each of the Lenders (including in its capacities as a potential Hedge Bank) and the L/C Issuers irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Hedge Agreements as to which arrangements satisfactory to the applicable Hedge Bank shall have been made) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the L/C Issuer shall have been made), or (ii) if approved, authorized or ratified in writing in accordance with Section 11.01; and

(b) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of any Liens on any property granted to or held by the Administrative Agent or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

The Administrative 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 Cash Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Cash Collateral.

9.11 Hedge Agreements. Except as otherwise expressly set forth herein or] in any Guaranty no Hedge Bank that obtains the benefits of Section 8.03, or any Guaranty by virtue of the provisions hereof or otherwise shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Hedge Bank.

9.12 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain

transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

9.13 Recovery of Erroneous Payments. Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Lender or any L/C Issuer (the "Credit Party"), whether or not in respect of an Obligation due and owing by the Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Credit Party receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Credit Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank

compensation. Each Credit Party irrevocably waives any and all defenses, including any “discharge for value” (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Credit Party promptly upon determining that any payment made to such Credit Party comprised, in whole or in part, a Rescindable Amount.

## ARTICLE X. GUARANTY

10.01 Guaranty of the Obligations. Subject to the provisions of Section 10.02, Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to Administrative Agent, for the ratable benefit of the Beneficiaries, the due and punctual payment in full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the “Guaranteed Obligations”).

10.02 Contribution by Guarantors. All Guarantors desire to allocate among themselves (collectively, the “Contributing Guarantors”), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a “Funding Guarantor”) under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor’s Aggregate Payments to equal its Fair Share as of such date. “Fair Share” means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Contributing Guarantor to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the Guaranteed Obligations. “Fair Share Contribution Amount” means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the “Fair Share Contribution Amount” with respect to any Contributing Guarantor for purposes of this Section 10.02, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. “Aggregate Payments” means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including in respect of this Section 10.2), minus (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 10.02. The amounts payable as contributions hereunder shall be determined as of the

date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 10.02 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 10.02.

10.03 Payment by Guarantors. Subject to Section 10.02, Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of Borrower to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), Guarantors will upon demand pay, or cause to be paid, in Cash, to Administrative Agent for the ratable benefit of Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for Borrower's becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Borrower for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to Beneficiaries as aforesaid.

10.04 Liability of Guarantors Absolute. Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability. This Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) Administrative Agent may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between Borrower and any Beneficiary with respect to the existence of such Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of Borrower and the obligations of any other guarantor (including any other Guarantor) of the obligations of Borrower, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against Borrower or any of such other guarantors and whether or not Borrower is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed

Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith or the applicable Hedge Agreement and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any other Loan Party or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Loan Documents or any Hedge Agreements; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Loan Documents or any Hedge Agreements, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Loan Documents, any of the Hedge Agreements or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Loan Document, such Hedge Agreement or any agreement relating to such other guaranty or security; (iii) the Guaranteed

Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Loan Documents or any of the Hedge Agreements or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Borrower or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set offs or counterclaims which Borrower may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

10.05 Waivers by Guarantors. Each Guarantor hereby waives, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against Borrower, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from Borrower, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any Deposit Account or credit on the books of any Beneficiary in favor of any Loan Party or any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Borrower or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Borrower or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder, the Hedge Agreements or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to Borrower and notices of any of the matters referred



to in Section 10.04 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

10.06 Guarantors' Rights of Subrogation, Contribution, Etc. Until the Guaranteed Obligations shall have been indefeasibly paid in full and the Revolving Credit Commitments shall have terminated and all Letters of Credit shall have expired or been cancelled without any pending drawing thereon, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against Borrower or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against Borrower with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against Borrower, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations shall have been indefeasibly paid in full and the Revolving Credit Commitments shall have terminated and all Letters of Credit shall have expired or been cancelled without any pending drawing thereon, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations, including any such right of contribution as contemplated by Section 10.02. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against Borrower or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against Borrower, to all right, title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations shall not have been finally and indefeasibly paid in full, such amount shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

10.07 Subordination of Other Obligations. Any Indebtedness of Borrower or any Guarantor now or hereafter held by any Guarantor (the "Obligee Guarantor") is hereby subordinated in right of payment to the Guaranteed Obligations, and any such Indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

10.08 Continuing Guaranty. This Guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations shall have been paid in full and the Revolving Credit Commitments shall have terminated and all Letters of Credit shall have expired or been cancelled without any pending drawing thereon. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

10.09 Authority of Guarantors or Borrower. It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or Borrower or the officers, directors or any agents acting or purporting to act on behalf of any of them.

10.10 Financial Condition of Borrower. Any Credit Extension may be made to Borrower or continued from time to time, and any Hedge Agreements may be entered into from time to time, in each case without notice to or authorization from any Guarantor regardless of the financial or other condition of Borrower at the time of any such grant or continuation or at the time such Hedge Agreement is entered into, as the case may be. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor's assessment, of the financial condition of Borrower. Each Guarantor has adequate means to obtain information from Borrower on a continuing basis concerning the financial condition of Borrower and its ability to perform its obligations under the Loan Documents and the Hedge Agreements, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of Borrower and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of Borrower now known or hereafter known by any Beneficiary.

10.11 Bankruptcy, Etc. (a) So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of Administrative Agent acting pursuant to the instructions of Required Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against Borrower or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Borrower or any other Guarantor or by any defense which Borrower or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and Beneficiaries that the Guaranteed Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve Borrower of any portion of such Guaranteed Obligations.

Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person to pay Administrative Agent, or allow the claim of Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by Borrower, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

10.12 Keepwell. Each Loan Party that is a Qualified ECP Guarantor at the time the Guaranty or the grant of the security interest hereunder, in each case, by any Specified Loan Party, becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under this Guaranty and the other Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Article X voidable under Applicable Law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Qualified ECP Guarantor intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

#### ARTICLE XI. MISCELLANEOUS

11.01 Amendments, Etc. Subject to Section 3.03(c) and the last paragraph of this Section 11.01, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) waive any condition set forth in Section 4.01 or, in the case of any Credit Extension to be made on the Closing Date, Section 4.02, without the written consent of each Lender;

(b) [Reserved];

(c) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(d) postpone any date fixed by this Agreement or any other Loan Document for (i) any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each Lender entitled to such payment or (ii) any scheduled reduction of any Facility hereunder or under any other Loan Document without the written consent of each Appropriate Lender;

(e) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 11.01) any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of each Lender entitled to such amount; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend the provisions of Section 2.08(b) or to waive any obligation of the Borrower thereunder or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(f) change (i) Section 8.03 or (ii) the order of application of any reduction in the Commitments or any prepayment of Loans among the Facilities from the application thereof set forth in the applicable provisions of Section 2.05(b) or 2.06(b), respectively, in any manner that materially and adversely affects the Lenders under a Facility without the written consent of (i) if such Facility is the Term A Facility, the Required Term A Lenders and (y) if such Facility is the Revolving Credit Facility, the Required Revolving Lenders;

(g) change (i) any provision of this Section 11.01 or the definition of "Required Lenders" or "Required Class Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder (other than the definitions specified in clause (ii) of this Section 11.01(g)), without the written consent of each Lender or (ii) the definition of "Required Revolving Lenders," or "Required Term A Lenders," without the written consent of each Lender under the applicable Facility;

(h) [Reserved];

(i) release, or have the effect of releasing, all or substantially all of the value of the Guaranty, without the written consent of each Lender, except to the extent the release of any Subsidiary from the Guaranty is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

(j) impose any greater restriction on the ability of any Lender under a Facility to assign any of its rights or obligations hereunder without the written consent of (i) if such Facility is the Term A Facility, the Required Term A Lenders, and (ii) if such Facility is the Revolving Credit Facility, the Required Revolving Lenders; or

(k) directly and materially adversely affect the rights of Lenders holding Commitments or Loans of one Class differently from the rights of Lenders holding Commitments or Loans of any other Class without the written consent of the applicable Required Class Lenders;

and provided, further, that (i) no amendment, waiver or consent shall, (A) unless in writing and signed by the L/C Issuers in addition to the Lenders required above, affect the rights or duties of the L/C Issuers under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) the Fee Letters may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended and the Maturity Date of any of its Loans may not be extended, the rate of interest on any of its Loans may not be reduced and the principal amount of any of its Loans may not be forgiven, in each case without the consent of such Defaulting Lender and (y) any waiver, amendment, consent or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely relative to other affected Lenders shall require the consent of such Defaulting Lender and (B) without the prior written consent of each Lender directly affected thereby, (i) modify Sections 2.05, 2.13 or any other provision hereof in a manner that would have the effect of altering the ratable reduction of Commitments or the pro rata sharing of payments otherwise required hereunder, or (ii) subordinate, or have the effect of subordinating, the Obligations hereunder to any other Indebtedness or other obligation, or (iii) amend or waive any provision of Section 7.03 (or release, or consent to the release, of any security interest granted thereunder), or (iii) amend, modify, terminate or waive Section 2.05(b)(i), any defined terms used therein or the constituent definitions thereof.

Notwithstanding any provision herein to the contrary, if the Administrative Agent and the Borrower acting together identify any ambiguity, omission, mistake, typographical error or other defect in any provision of this Agreement or any other Loan Document (including the schedules and exhibits thereto), then the Administrative Agent and the Borrower shall be permitted to amend, modify or supplement such provision to cure such ambiguity, omission, mistake, typographical error or other defect, and such amendment shall become effective without any further action or consent of any other party to this Agreement.

11.02 Notices; Effectiveness; Electronic Communications. (a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in clause (b) below), all notices and other communications

provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, the Administrative Agent, any L/C Issuer or the Swing Line Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 11.02; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in sub clause (b) below shall be effective as provided in such clause (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuers hereunder may be delivered or furnished by electronic communication (including e-mail, FpML messaging, and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or any L/C Issuer pursuant to Article II if such Lender or such L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article II by electronic communication. The Administrative Agent, the Swing Line Lender, any L/C Issuer or the Borrower may each, 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, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) The Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to the Borrower, any Lender, any L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower’s, any Loan Party’s or the Administrative Agent’s transmission of materials and/or information provided by or on behalf of the Borrower hereunder or any notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet.

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent, each L/C Issuer and the Swing Line Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, each L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and Applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuers and Lenders. The Administrative Agent, the L/C Issuers and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices, Committed Loan Notices, Letter of Credit Applications and Swing Line Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Loan Parties shall indemnify the Administrative Agent, each L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other

telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

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

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuers; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) [the][any] L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

11.04 Expenses; Indemnity; Damage Waiver. (a) Costs and Expenses. The Borrower shall pay (i) all reasonable, documented and invoiced out-of-pocket expenses incurred by the Agents (including the reasonable, documented and invoiced fees, charges and disbursements of one outside counsel for the Agents, one local counsel in each appropriate jurisdiction and, in the case of any conflict of interest, one additional counsel for the Agents subject to such conflict), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable, documented and invoiced out-of-pocket expenses incurred by the L/C Issuers in connection with the issuance, amendment, extension, reinstatement or renewal of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by



any Agent, any Lender or any L/C Issuer (including the reasonable, documented and invoiced fees, charges and disbursements of one outside counsel for the Agents, Lenders and L/C Issuers, one local counsel in each appropriate jurisdiction and, in the case of any conflict of interest, one additional counsel for the Agents, Lenders and L/C Issuers subject to such conflict), in connection with the enforcement of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 11.04, or (B) in connection with Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify each Agent (and any sub-agent thereof), each Lender and each L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable, documented and invoiced fees, charges and disbursements of one outside counsel for all the Indemnitees, if necessary, one local counsel in each appropriate jurisdiction and, in the case of any conflict of interest, one additional counsel for the Indemnitees subject to such conflict), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Claim related in any way to the Borrower or any of its Subsidiaries, or (iv) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, 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 (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim not involving an act or omission of the Borrower and that is brought by an Indemnitee against another Indemnitee (other than against the Arranger or any Agent in their capacities as such). Without limiting the provisions of Section 3.01(c), this Section 11.04(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) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under clauses (a) or (b) of this Section 11.04 to be paid

by it to the Administrative Agent (or any sub-agent thereof), any L/C Issuer, the Swing Line Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such L/C Issuer, the Swing Line Lender or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), such L/C Issuer or the Swing Line Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), such L/C Issuer or the Swing Line Lender in connection with such capacity. The obligations of the Lenders under this clause (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, the Borrower shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in clause (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section 11.04 shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section 11.04 and the indemnity provisions of Section 11.02(e) shall survive the resignation of the Administrative Agent, the L/C Issuer[s] and the Swing Line Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

11.05 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, any L/C Issuer or any Lender, or the Administrative Agent, any L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part

thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuers under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

11.06 Successors and Assigns. (a) Successors and Assigns Generally. 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 neither the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 11.06(b) and (ii) by way of participation in accordance with the provisions of Section 11.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 11.06(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in clause (d) of this Section 11.06 and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuers and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans (including for purposes of this Section 11.06(b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that (in each case with respect to any Facility) any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and/or the Loans at the time owing to it (in each case with respect to any Facility) or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in clause (b)(i)(B) of this Section 11.06 in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in clause (b)(i)(A) of this Section 11.06, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the

principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$10,000,000 with respect to any assignment of the each of the Revolving Credit Facility and the Term Facility unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to the Swing Line Lender’s rights and obligations in respect of Swing Line Loans;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by clause (b)(i)(B) of this Section 11.06 and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) any Revolving Credit Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the applicable Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (ii) any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consent of each L/C Issuer and the Swing Line Lender shall be required for any assignment in respect of the Revolving Credit Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated by or for the primary benefit of one or more natural Persons).

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, any L/C Issuer or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this clause (vi), then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(vii) Subject to acceptance and recording thereof by the Administrative Agent pursuant to clause (c) of this Section 11.06, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this clause (b) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with clause (d) of this Section 11.06.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower (and such agency being solely for Tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of one or more natural Persons, a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line 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) the Borrower, the Administrative Agent, the Lenders and the L/C Issuers shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.04(c) without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section 11.06 (it being understood that the documentation required under Section 3.01(g) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section 11.06; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 11.13 as if it were an assignee under clause (b) of this Section 11.06 and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to

effectuate the provisions of Section 3.06 with respect to any Participant. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (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) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

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

(f) [Reserved.]

(g) Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time any L/C Issuer/Swing Line Lender assigns all of its Revolving Credit Commitment and Revolving Credit Loans pursuant to clause (b) above, such L/C Issuer/Swing Line Lender may, (i) upon [30] days' notice to the Administrative Agent, the Borrower and the Lenders, resign as an L/C Issuer and/or (ii) upon [30] days' notice to the Borrower, resign as a Swing Line Lender. In the event of any such resignation as an L/C Issuer or a Swing Line Lender, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder which agrees in writing to serve in any such capacity; provided, however, that no failure by the Borrower to appoint any such successor shall affect the resignation of the applicable L/C Issuer/Swing Line Lender as an L/C Issuer or a Swing Line Lender, as the case may be. If the applicable L/C Issuer resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit issued by it and outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If the Swing Line Lender resigns as a Swing Line Lender, it shall retain all the rights of a Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the

appointment of a successor L/C Issuer and/or Swing Line Lender, (x) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (y) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the applicable retiring L/C Issuer to effectively assume the obligations of the applicable retiring L/C Issuer with respect to such Letters of Credit.

(h) [Reserved.]

(i) [Reserved.]

(j) [Reserved.]

(k) [Reserved.]

(l) Disqualified Institutions. (i) No assignment or shall be made to any Person that was a Disqualified Institution as of the date (the "Trade Date") on which the applicable Lender entered into a binding agreement to sell and assign all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment as otherwise contemplated by this Section 11.06, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment). Any assignment in violation of this clause (l)(i) shall not be void, but the other provisions of this clause (l) shall apply.

(ii) If any assignment is made to any Disqualified Institution without the Borrower's prior consent in violation of clause (i) above the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) terminate any Revolving Credit Commitment of such Disqualified Institution and repay all obligations of the Borrower owing to such Disqualified Institution in connection with such Revolving Credit Commitment, (B) in the case of outstanding Term Loans held by Disqualified Institutions, prepay such Term Loan by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such Term Loans, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and under the other Loan Documents and/or (C) require such Disqualified Institution to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in this Section 11.06), all of its interest, rights and obligations under this Agreement and related Loan Documents to an Eligible Assignee that shall assume such obligations at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and other the other Loan Documents; provided that (i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.06(b), (ii) such assignment does not conflict with Applicable Laws and (iii) in the case of clause (B), the Borrower shall not use the proceeds from any Loans to prepay Term Loans held by Disqualified Institutions.



(iii) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Institutions (A) will not (x) have the right to receive information, reports or other materials provided to Lenders by the Borrower, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter, and (y) for purposes of voting on any plan of reorganization or plan of liquidation pursuant to any Debtor Relief Laws (“Plan of Reorganization”), each Disqualified Institution party hereto hereby agrees (1) not to vote on such Plan of Reorganization, (2) if such Disqualified Institution does vote on such Plan of Reorganization notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be “designated” pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Plan of Reorganization in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the Bankruptcy Court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(iv) The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to (A) post the list of Disqualified Institutions provided by the Borrower and any updates thereto from time to time (collectively, the “DQ List”) on the Platform, including that portion of the Platform that is designated for “public side” Lenders or (B) provide the DQ List to each Lender requesting the same.

11.07 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and the L/C Issuers agrees to maintain the confidentiality of the Confidential Information (as defined below), except that Confidential Information may be disclosed (a) to its Affiliates, its auditors and its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Confidential Information and instructed to keep such Confidential Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by Applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 11.07, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which

payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, in reliance on this clause (f), (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the application, issuance, publishing and monitoring of CUSIP numbers of other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Borrower or (i) to the extent such Confidential Information (x) becomes publicly available other than as a result of a breach of this Section 11.07, (y) becomes available to the Administrative Agent, any Lender, any L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower or (z) is independently discovered or developed by a party hereto without utilizing any Confidential Information received from the Borrower or violating the terms of this Section 11.07. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments.

For purposes of this Section 11.07, “Confidential Information” means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any L/C Issuer on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary, provided that, in the case of information received from the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Confidential Information as provided in this Section 11.07 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 Confidential Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuers acknowledges that (a) the Confidential Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with Applicable Law, including United States Federal and state securities Laws.

11.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, each L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower or any other Loan Party against any and all of the obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or such L/C Issuer, irrespective of whether or not such Lender or the L/C Issuer shall

have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Loan Party may be contingent or unmaturing or are owed to a branch or office or Affiliate of such Lender or the L/C Issuer different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each L/C Issuer and their respective Affiliates under this Section 11.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender, such L/C Issuer or their respective Affiliates may have. Each Lender and each L/C Issuer agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

11.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by Applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

11.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, and the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent or any L/C Issuer, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

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

11.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 11.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, any L/C Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

11.13 Replacement of Lenders. If the Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with Applicable Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Each party hereto agrees that (a) an assignment required pursuant to this Section 11.13 may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and (b) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided, further that any such documents shall be without recourse to or warranty by the parties thereto.

Notwithstanding anything in this Section 11.13 to the contrary, (i) any Lender that acts as an L/C Issuer may not be replaced hereunder at any time it has any Letter of Credit outstanding hereunder unless arrangements satisfactory to such Lender (including the furnishing of a backstop standby letter of credit in form and substance, and issued by an issuer, reasonably satisfactory to such L/C Issuer or the depositing of Cash Collateral into a Cash Collateral Account in amounts and pursuant to arrangements reasonably satisfactory to such L/C Issuer) have been made with respect to such outstanding Letter of Credit and (ii) the Lender that acts as the Administrative Agent may not be replaced hereunder except in accordance with the terms of Section 9.06.

11.14 Governing Law; Jurisdiction; Etc. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR 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.

(a) SUBMISSION TO JURISDICTION. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, THE L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE

TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS 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, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION 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 IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY OTHER AGENT, ANY LENDER OR ANY L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(b) WAIVER OF VENUE. THE BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN CLAUSE (B) OF THIS SECTION 11.14. 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.

(c) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

11.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF

LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.15.

11.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each of the Borrower and the other Loan Parties acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arrangers, and the Lenders are arm's-length commercial transactions between the Borrower, the other Loan Parties and their respective Affiliates, on the one hand, and the Administrative Agent, the Arrangers, and the Lenders, on the other hand, (B) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each of the Borrower and the other Loan Parties is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, the Arrangers and the Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, any of the other Loan Parties or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, any Arranger nor any Lender has any obligation to the Borrower, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Arrangers, the Lenders, and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, the Arrangers nor any Lender has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and the other Loan Parties hereby waives and releases any claims that it may have against the Administrative Agent, the Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

11.17 Electronic Execution of Assignments and Certain Other Documents. The words "execution," "execute", "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other modifications, Committed Loan Notices, Swing Line Loan Notices, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including

the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

11.18 USA PATRIOT Act. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), it is required to obtain, verify and record information that identifies the Borrower and each other Loan Party, which information includes the name and address of the Borrower and each other Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower and each other Loan Party in accordance with the Act. The Borrower and each other Loan Party shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

11.19 [Reserved.]

11.20 [Reserved.]

11.21 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Solely to the extent any Lender or L/C Issuer that is an EEA Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender or L/C Issuer that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender or L/C Issuer that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(A) a reduction in full or in part or cancellation of any such liability;

(B) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it



in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(C) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

11.22 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 11.22, the following terms have the following meanings:

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Covered Entity” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

*IN WITNESS WHEREOF*, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**LEONARDO DRS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**[GUARANTOR]**

By: \_\_\_\_\_  
Name:  
Title:

**[GUARANTOR]**

By: \_\_\_\_\_  
Name:  
Title:

**[GUARANTOR]**

By: \_\_\_\_\_  
Name:  
Title:

**BANK OF AMERICA, N.A., as**  
Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

[Signature Page to Credit Agreement]

**BANK OF AMERICA, N.A.,** as  
a Lender, [an] L/C Issuer and Swing Line  
Lender

By: \_\_\_\_\_

Name:

Title:

[Signature Page to Credit Agreement]

**BOFA SECURITIES, INC., as  
Lead Arranger and Bookrunner,**

By: \_\_\_\_\_

Name:

Title:

[Signature Page to Credit Agreement]

**GOLDMAN SACHS BANK USA**, as  
Syndication Agent, Lead Arranger,  
Bookrunner and a Lender

By: \_\_\_\_\_

Name:

Title:

*[for Lenders requiring two signature  
blocks]*

By: \_\_\_\_\_

Name:

Title:

[Signature Page to Credit Agreement]

**JPMORGAN CHASE BANK, N.A.,** as  
Syndication Agent, Lead Arranger,  
Bookrunner, and a Lender

By: \_\_\_\_\_  
Name:  
Title:

*[for Lenders requiring two signature  
blocks]*

By: \_\_\_\_\_  
Name:  
Title:



**BARCLAYS BANK PLC, as**  
Lead Arranger, Bookrunner,  
Documentation Agent and a Lender

By: \_\_\_\_\_  
Name:  
Title:

*[for Lenders requiring two signature  
blocks]*

By: \_\_\_\_\_  
Name:  
Title:

**CITIBANK, N.A., LONDON BRANCH**

as

Lead Arranger, Bookrunner and  
Documentation Agent

By: \_\_\_\_\_

Name:

Title:

*[for Lenders requiring two signature  
blocks]*

By: \_\_\_\_\_

Name:

Title:

[Signature Page to Credit Agreement]

**CITIBANK N.A., as  
a Lender**

By: \_\_\_\_\_

Name:

Title:

*[for Lenders requiring two signature  
blocks]*

By: \_\_\_\_\_

Name:

Title:

[Signature Page to Credit Agreement]

**CREDIT SUISSE LOAN FUNDING  
LLC, as**

Lead Arranger, Bookrunner and  
Documentation Agent

By: \_\_\_\_\_

Name:

Title:

*[for Lenders requiring two signature  
blocks]*

By: \_\_\_\_\_

Name:

Title:

**CREDIT SUISSE AG, NEW YORK  
BRANCH,**

as a Lender

By: \_\_\_\_\_

Name:

Title:

*[for Lenders requiring two signature  
blocks]*

By: \_\_\_\_\_

Name:

Title:

**MORGAN STANLEY SENIOR  
FUNDING INC., as**  
Lead Arranger, Bookrunner and  
Documentation Agent

By: \_\_\_\_\_  
Name:  
Title:

*[for Lenders requiring two signature  
blocks]*

By: \_\_\_\_\_  
Name:  
Title:

**MORGAN STANLEY BANK, N.A., as  
a Lender**

By: \_\_\_\_\_

Name:

Title:

*[for Lenders requiring two signature  
blocks]*

By: \_\_\_\_\_

Name:

Title:

[Signature Page to Credit Agreement]

**MUFG UNION BANK, N.A.**, as  
a Lender

By: \_\_\_\_\_

Name:

Title:

*[for Lenders requiring two signature  
blocks]*

By: \_\_\_\_\_

Name:

Title:

[Signature Page to Credit Agreement]



**CREDIT AGRICOLE CORPORATE  
AND INVESTMENT BANK, as**  
a Lender

By: \_\_\_\_\_

Name:

Title:

*[for Lenders requiring two signature  
blocks]*

By: \_\_\_\_\_

Name:

Title:

[Signature Page to Credit Agreement]

**INTESA SANPAOLO S.P.A., NEW  
YORK BRANCH, as**  
a Lender

By: \_\_\_\_\_

Name:

Title:

*[for Lenders requiring two signature  
blocks]*

By: \_\_\_\_\_

Name:

Title:

[Signature Page to Credit Agreement]

**UNICREDIT S.P.A., NEW YORK  
BRANCH,**  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

*[for Lenders requiring two signature  
blocks]*

By: \_\_\_\_\_  
Name:  
Title:

**BRIDGE CREDIT AND GUARANTY AGREEMENT**

**dated as of , 2021**

**among**

**LEONARDO DRS, INC.,  
as Borrower**

**CERTAIN SUBSIDIARIES OF LEONARDO DRS, INC.,  
as Guarantors,**

**VARIOUS LENDERS,**

**GOLDMAN SACHS BANK USA,  
BOFA SECURITIES, INC. ,  
JPMORGAN CHASE BANK, N.A.,  
BARCLAYS BANK PLC,  
CITIBANK, N.A., LONDON BRANCH,  
CREDIT SUISSE LOAN FUNDING LLC,  
MORGAN STANLEY SENIOR FUNDING, INC.,  
as Lead Arrangers and Bookrunners,**

**GOLDMAN SACHS BANK USA,  
JPMORGAN CHASE BANK, N.A.,  
as Syndication Agents,**

**GOLDMAN SACHS BANK USA,  
as Administrative Agent,**

**and**

**BARCLAYS BANK PLC,  
CITIBANK, N.A., LONDON BRANCH,  
CREDIT SUISSE LOAN FUNDING LLC,  
MORGAN STANLEY SENIOR FUNDING, INC.,  
as Documentation Agents**

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**\$ 350,000,000 Term Loan**

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## BRIDGE CREDIT AND GUARANTY AGREEMENT

This **BRIDGE CREDIT AND GUARANTY AGREEMENT**, dated as of \_\_\_\_\_, is entered into by and among **LEONARDO DRS, INC.**, a Delaware corporation ("**Borrower**"), **CERTAIN SUBSIDIARIES OF BORROWER**, as Guarantors, the Lenders party hereto from time to time, **GOLDMAN SACHS BANK USA** ("**Goldman Sachs**") and JPMorgan Chase Bank, N.A., as Syndication Agents (in such capacity, the "**Syndication Agents**"), Goldman Sachs, as Administrative Agent (together with its permitted successors in such capacity, "**Administrative Agent**"), Goldman Sachs, BofA Securities, Inc., JPMorgan Chase Bank, N.A., Barclays Bank PLC, Citibank, N.A., London Branch, Credit Suisse Loan Funding LLC, and Morgan Stanley Senior Funding, Inc., as Lead Arrangers (in such capacity, "**Arrangers**") and Bookrunners; and Barclays Bank PLC, Citibank, N.A., London Branch, Credit Suisse Loan Funding LLC and Morgan Stanley Senior Funding, Inc., as Documentation Agent (in such capacity, "**Documentation Agents**").

### RECITALS:

**WHEREAS**, capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in Section 1.1 hereof;

**WHEREAS**, Lenders have agreed to extend certain credit facilities to Borrower, in an aggregate principal amount not to exceed \$350,000,000 aggregate principal amount of Term Loans, the proceeds of which will be used to refinance certain existing debt of the Borrower and certain of its subsidiaries (including existing debt to the Borrower's direct or indirect parent entities), and (ii) to pay fees, commissions and expenses in connection with the Loans and the Senior Loans (in each case, as defined below; and

**WHEREAS**, Guarantors have agreed to guarantee the obligations of Borrower hereunder.

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

### SECTION 1. DEFINITIONS AND INTERPRETATION

**1.1. Definitions.** The following terms used herein, including in the preamble, recitals, exhibits and schedules hereto, shall have the following meanings:

**"Adjusted Eurodollar Rate"** means, for any Interest Rate Determination Date with respect to an Interest Period for a Eurodollar Rate Loan, the rate *per annum* obtained by dividing (i) (a) the rate *per annum* equal to the rate determined by Administrative Agent to be the London interbank offered rate administered by the ICE Benchmark Administration (or any other person which takes over the administration of that rate) for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars displayed on the ICE LIBOR USD page of the Reuters Screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to

time in place of Reuters, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (b) in the event the rate referenced in the preceding clause (a) is not available, the rate *per annum* equal to the offered quotation rate to first class banks in the London interbank market by Bank of America, N.A. for deposits (for delivery on the first day of the relevant period) in Dollars of amounts in same day funds comparable to the principal amount of the applicable Loan of Administrative Agent, in its capacity as a Lender, for which the Adjusted Eurodollar Rate is then being determined with maturities comparable to such period as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, by (ii) an amount equal to (a) one minus (b) the Applicable Reserve Requirement; provided, however, that notwithstanding the foregoing, the Adjusted Eurodollar Rate shall at no time be less than zero.

**“Administrative Agent”** as defined in the preamble hereto.

**“Adverse Proceeding”** means any action, suit, proceeding, hearing (in each case, whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of the Borrower or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the knowledge of the Borrower or any of its Subsidiaries, threatened against or affecting the Borrower or any of its Subsidiaries or any property of the Borrower or any of its Subsidiaries.

**“Affected Lender”** as defined in Section 2.18(b).

**“Affected Loans”** as defined in Section 2.18(b).

**“Affiliate”** means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

**“Agent”** means each of the following (i) Administrative Agent, (ii) Syndication Agents, (iii) Documentation Agents, (iv) Bookrunners and (v) any other Person appointed under the Credit Documents to serve in an agent or similar capacity.

**“Agent Affiliates”** as defined in Section 10.1(b)(iii).

**“Aggregate Amounts Due”** as defined in Section 2.17.

**“Aggregate Payments”** as defined in Section 7.2.

**“Agreement”** means this Credit and Guaranty Agreement, as it may be amended, restated, supplemented or otherwise modified from time to time.

**“Anti-Corruption Laws”** as defined in Section 4.25.

**“Applicable Margin”** means (i) for Eurodollar Rate Loans, 225 basis point per annum, and (ii) for Base Rate Loans, 125 basis point per annum, in each case plus the Spread.

**“Applicable Reserve Requirement”** means, at any time, for any Eurodollar Rate Loan, the maximum rate, expressed as a decimal, at which reserves (including any basic marginal, special, supplemental, emergency or other reserves) are required to be maintained with respect thereto against “Eurocurrency liabilities” (as such term is defined in Regulation D) under regulations issued from time to time by the Board of Governors or other applicable banking regulator. Without limiting the effect of the foregoing, the Applicable Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (i) any category of liabilities which includes deposits by reference to which the applicable Adjusted Eurodollar Rate or any other interest rate of a Loan is to be determined, or (ii) any category of extensions of credit or other assets which include Eurodollar Rate Loans. A Eurodollar Rate Loan shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of credit for proration, exceptions or offsets that may be available from time to time to the applicable Lender. The rate of interest on Eurodollar Rate Loans shall be adjusted automatically on and as of the effective date of any change in the Applicable Reserve Requirement.

**“Approved Electronic Communications”** means any notice, demand, communication, information, document or other material that any Credit Party provides to Administrative Agent pursuant to any Credit Document or the transactions contemplated therein which is distributed to Agents or Lenders by means of electronic communications pursuant to Section 10.1(b).

**“Arranger”** as defined in the preamble hereto.

**“Asset Sale”** means a sale, lease or sub-lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, exclusive license (as licensor or sublicense), transfer or other disposition to, or any exchange of property with, any Person (other than the Borrower or any Guarantor), in one transaction or a series of transactions, of all or any part of the Borrower’s or any of its Subsidiaries’ businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased or licensed, including the Equity Interests of any of the Borrower’s Subsidiaries, other than (i) inventory (or other assets) sold, leased or licensed out in the ordinary course of business (excluding any such sales, leases or licenses out by operations or divisions discontinued or to be discontinued), (ii) sales, leases or licenses out of other assets for aggregate consideration of less than \$5,000,000 with respect to any transaction or series of related transactions and less than \$20,000,000 in the aggregate during any Fiscal Year and (iii) the issuance or sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary.

**“Assignment Agreement”** means an Assignment and Assumption Agreement substantially in the form of Exhibit D, with such amendments or modifications as may be approved by Administrative Agent and Borrower.

**“Assignment Effective Date”** as defined in Section 10.6(b).

**“Authorized Officer”** means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president, vice president (or the equivalent thereof), chief financial officer or treasurer of such Person; provided that the secretary or assistant secretary of such Person shall have delivered an incumbency certificate to Administrative Agent as to the authority of such Authorized Officer.

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

**“Base Rate”** means, for any day, a rate *per annum* equal to the greatest of (i) the Prime Rate in effect on such day, (ii) the Federal Funds Effective Rate in effect on such day plus ½ of 1% and (iii) the sum of (a) the Adjusted Eurodollar Rate (after giving effect to any Adjusted Eurodollar Rate “floor”) that would be payable on such day for a Eurodollar Rate Loan with a one-month interest period plus (b) the difference between the Applicable Margin for Eurodollar Rate Loans and the Applicable Margin for Base Rate Loans. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective on the effective day of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

**“Base Rate Loan”** means a Loan bearing interest at a rate determined by reference to the Base Rate.

**“Beneficiary”** means each Agent and Lender.

**“Benefit Plan”** means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Internal Revenue Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Internal Revenue Code) the assets of any such “employee benefit plan” or “plan”.

**“Board of Governors”** means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

**“Bookrunners”** means the Arrangers, in their capacity as lead arrangers and bookrunners.

**“Borrower”** as defined in the preamble hereto.

**“Business Day”** means (i) any day excluding 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 such state are authorized or required by law or other governmental action to close and (ii) with respect to all notices, determinations, fundings and payments in connection with the Adjusted Eurodollar Rate or any Eurodollar Rate Loans, the term **“Business Day”** means any day which is a Business Day described in clause (i) and which is also a day for trading by and between banks in Dollar deposits in the London interbank market.

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

**“Cash”** means money, currency or a credit balance in any demand or Deposit Account.

**“Cash Equivalents”** means, as at any date of determination, any of the following: (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government or (b) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in the case of each of subclauses (a) and (b), maturing within one year after such date; (ii) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within one year after such date and having, at the time of the acquisition thereof, a rating of at least A-2 from S&P or at least P-2 from Moody’s; (iii) commercial paper maturing no more than one year from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-2 from S&P or at least P-2 from Moody’s; (iv) certificates of deposit or bankers’ acceptances (or, in the case of Foreign Subsidiaries, the foreign equivalent) maturing within one year after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof or the District of Columbia that (a) is at least “adequately capitalized” (as defined in the regulations of its primary Federal banking regulator) and (b) has Tier 1 capital (as defined in such regulations) of not less than \$250,000,000 (or, in the case of Foreign Subsidiaries, any local office of any commercial bank organized under the law of the relevant jurisdiction or any political subdivision thereof which has combined capital and surplus and undivided profits in excess of \$250,000,000 or the foreign currency equivalent); (v) repurchase obligations for underlying securities of the types described in clauses (i) through (iv) above; and (vi) shares of any money market mutual fund that (a) has substantially all of its assets invested continuously in the types of investments referred to in clauses (i) and (ii) above, (b) has net assets of not less than \$500,000,000, and (c) has one of the two highest ratings obtainable from either S&P or Moody’s. In the case of any Investment by any Foreign Subsidiary of the Borrower, “Cash Equivalents” shall also include: (x) 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), in each case, maturing within a year after such date and having, at the time of the acquisition thereof, a rating equivalent to at least A-2 from S&P and at least P-2 from Moody’s, (y) investments of the type and maturity described in clauses (i) through (vi) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (z) shares of any money market mutual or similar fund that has substantially all its assets invested continuously in the types of investments otherwise satisfying the requirements of this definition.

**“Change in Law”** means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation 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 or in the implementation thereof 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, issued or implemented.

“**Change of Control**” means, (i) any Person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) other than Parent shall have acquired beneficial ownership of Equity Interests representing more than 35% of the aggregate ordinary voting power for the election of directors represented by the issued and outstanding Equity Interests of the Borrower and the percentage of aggregate ordinary voting power for the election of directors so acquired is in excess of the percentage of the aggregate ordinary voting power for the election of directors represented by the Equity Interests beneficially owned by the Parent at such time; or (ii) any “change of control” or similar event under the Senior Credit Agreement or the documentation relating to the Permanent Debt shall occur.

“**Change of Control Acceptance Notice**” as defined in Section 2.14(e).

“**Change of Control Payment Date**” as defined in Section 2.14(e).

“**Change of Control Prepayment Offer**” as defined in Section 2.14(e).

“**Closing Date**” means the date on which the Term Loans are made.

“**Closing Date Certificate**” means a Closing Date Certificate substantially in the form of Exhibit F-1.

“**Commitment**” means any Term Loan Commitment.

“**Commodity Exchange Act**” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“**Compliance Certificate**” means a Compliance Certificate substantially in the form of Exhibit C.

“**Connection Income Taxes**” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“**Consolidated Adjusted EBITDA**” means, for any period, an amount determined for the Borrower and its Subsidiaries on a consolidated basis equal to

(i) Consolidated Net Income, plus, to the extent reducing Consolidated Net Income, the sum, without duplication, of amounts for:

- (a) consolidated interest expense;
- (b) provisions for taxes based on income;
- (c) total depreciation expense;
- (d) total amortization expense;
- (e) other non-Cash charges, expenses or losses reducing Consolidated Net Income (including any impairment) (excluding any such non-Cash charge to the extent that it represents an accrual or reserve for potential Cash charge in any future period or amortization of a prepaid Cash charge that was paid in a prior period);
- (f) the actual amount of any restructuring charges; *provided* that amounts added back pursuant to this subclause (f), when aggregated with amounts added back pursuant to subclause (g) below, shall not exceed 25% of Consolidated Adjusted EBITDA (calculated before giving effect to such adjustments) during such period;
- (g) the amount of net cost savings and synergies projected by the Borrower in good faith as a result of actions taken or expected to be taken in connection with acquisitions, and dispositions of assets, net of the amount of actual benefits realized during such period from such actions; *provided* that (A) such cost savings and synergies are reasonably identifiable and factually supportable, (B) such actions are taken or expected to be taken within twelve (12) months after the consummation of the relevant acquisition or disposition, (C) no cost savings shall be added pursuant to this subclause (g) to the extent duplicative of any such expenses or charges added back pursuant to subclauses (e) above, or (h) below, and (D) the benefits resulting therefrom are anticipated by the Borrower to be realized within twelve (12) months of such actions having been taken, and (E) amounts added back pursuant to this subclause (g), when aggregated with amounts added back pursuant to subclause (f) above, shall not exceed 25% of Consolidated Adjusted EBITDA (calculated before giving effect to such adjustments) during such period;
- (h) all extraordinary, unusual or nonrecurring expenses, losses and charges for such period;
- (i) expenses, losses and charges relating to the Transactions, the Initial Public Offering or any Asset Sale, regardless of when paid;



- (j) proceeds of business interruption insurance (whether or not received, so long as the Borrower or any Subsidiary is expected to receive the same within the next four fiscal quarters (it being understood that to the extent not actually received within such four fiscal quarter period, such proceeds shall be deducted in calculating Consolidated Adjusted EBITDA for the next four fiscal quarter period)); and
- (k) the amount of any minority interest expense deducted from subsidiary income attributable to minority equity interests of third parties in any non-wholly owned subsidiary;

minus (ii) the sum of (a) non-Cash gains increasing Consolidated Net Income for such period (excluding any such non-Cash gain to the extent it represents the reversal of an accrual or reserve for potential Cash gain in any prior period) and (b) all extraordinary, unusual or nonrecurring income or gains for such period.

**“Consolidated Net Interest Expense”** means, for any period, total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) of the Borrower and its Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness of the Borrower and its Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and net costs under Interest Rate Agreements, but excluding, however, any amount not payable in Cash and any amounts referred to in Section 2.11(d) payable on or before the Closing Date minus total cash interest income of the Borrower and its Subsidiaries on a consolidated basis for such period. Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated Net Interest Expense for any period that would otherwise start before the Closing Date, such period shall instead start on the Closing Date and Consolidated Net Interest Expense shall be an amount equal to Consolidated Net Interest Expense from the Closing Date through the last day of such period multiplied by a fraction the numerator of which is 365 and the denominator of which is the number of days from the Closing Date through the last day of such period.

**“Consolidated Net Income”** means, for any period, (i) the net income (or loss) of the Borrower and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP, minus (ii) (a) the income (or loss) of any Person (other than a Subsidiary of the Borrower) in which any other Person (other than the Borrower or any of its Subsidiaries) has a joint interest or any Person that is an Unrestricted Subsidiary, except to the extent of the amount of dividends or other distributions actually paid to the Borrower or any of its Subsidiaries by such Person during such period, (b) the income (or loss) of any Person or any Unrestricted Subsidiary accrued prior to the date it becomes a Subsidiary of the Borrower or is redesignated a Restricted Subsidiary, as applicable, or is merged into or consolidated with the Borrower or any of its Subsidiaries or that Person’s assets are acquired by the Borrower or any of its Subsidiaries, (c) the income of any Subsidiary of the Borrower to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter

or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, (d) any after-tax gains or losses attributable to Asset Sales or returned surplus assets of any Pension Plan, (e) the income (or loss) attributable to the early extinguishment of Indebtedness and (f) (to the extent not included in clauses (a) through (e) above) any net extraordinary gains or net extraordinary losses.

**“Consolidated Total Net Debt”** means, as of any date of determination, (a) the aggregate par value or stated face amount of all Indebtedness under clauses (i) through (iii) and (to the extent drawn and unreimbursed) (vi) of the definition thereof of the Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP, minus (b) the aggregate amount of Unrestricted Cash included in the consolidated balance sheet of the Borrower and its Subsidiaries as of such date. For clarity, Consolidated Total Net Debt does not include Indebtedness outstanding under credit card or receivables factoring programs.

**“Contractual Obligation”** means, as applied to any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

**“Contributing Guarantors”** as defined in Section 7.2.

**“Counterpart Agreement”** means a Counterpart Agreement substantially in the form of Exhibit G delivered by a Credit Party pursuant to Section 5.10.

**“Credit Date”** means the date of a Credit Extension.

**“Credit Document”** means any of this Agreement, the Notes, if any, and all other documents, certificates, instruments or agreements executed and delivered by or on behalf of a Credit Party for the benefit of any Agent or any Lender in connection herewith on or after the date hereof.

**“Credit Extension”** means the making of a Loan.

**“Credit Party”** means each Person (other than any Agent or any Lender or any other representative thereof) from time to time party to a Credit Document.

**“Cumulative Amount”** means at any time (the **“Cumulative Amount Reference Time”**), an amount (which shall not be less than zero) equal to:

(i) 50% of the Consolidated Net Income of the Borrower and its Subsidiaries for the period (taken as one accounting period) beginning on the first day of the Fiscal Quarter in which the Closing Date occurs to the end of the most recently ended Fiscal Quarter at the Cumulative Amount Reference Time; plus

(ii) the amount of Net Equity Proceeds received by the Borrower from any cash capital contributions or the sale or issuance of any Equity Interests Not Otherwise Applied during the period from and including the Business Day immediately following the Closing Date

through and including the Cumulative Amount Reference Time; provided that this clause (ii) excludes sales of Disqualified Equity Interests and Specified Equity Contributions; plus

(iii) the cumulative net cash proceeds from the sale of any Investments made pursuant to Section 6.6(i); plus

(iv) the cumulative amount of returns (including dividends, interest, distributions, returns of principal, repayments, income and similar amounts) received by the Borrower or any Restricted Subsidiary in cash or Cash Equivalents in respect of any Investments made pursuant to Section 6.4(c); plus

(v) in the event any Unrestricted Subsidiary has been redesignated as a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, the Borrower or any of its Restricted Subsidiaries, the lesser of (x) the fair market value of the Investments of the Borrower or the applicable Restricted Subsidiary made with the Cumulative Credit in such Unrestricted Subsidiary at the time of such redesignation, merger or consolidation (or of the assets transferred or conveyed, as applicable) and (y) the fair market value of the original Investments by the Borrower or the applicable Restricted Subsidiary made with the Cumulative Credit in such Unrestricted Subsidiary, in each case, as determined by the Borrower in good faith; minus

(vi) the aggregate amount of any Investments made pursuant to Section 6.6(i) and any Restricted Junior Payment made pursuant to Section 6.4(c), in each case, during the period commencing on the Closing Date and ending on or prior to the Cumulative Amount Reference Time (and, for purposes of this clause (vi), without taking account of the intended usage of the Cumulative Amount at such Cumulative Amount Reference Time).

**“Currency Agreement”** means any foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic cap or other similar agreement or arrangement, each of which is for the purpose of hedging the foreign currency risk associated with the Borrower’s and its Subsidiaries’ operations and not for speculative purposes.

**“Debtor Relief Laws”** means 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”** means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

**“Defaulting Lender”** means subject to Section 2.22(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder or (ii) pay to Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified Borrower or Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect, (c)

has failed, within three Business Days after written request by Administrative Agent or Borrower, to confirm in writing to Administrative Agent and Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by Administrative Agent and Borrower), or (d) Administrative Agent has received notification that such Lender has, or has a direct or indirect parent company that is (i) insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors or (ii) the subject of a bankruptcy, insolvency, reorganization, liquidation or similar proceeding, or a receiver, trustee, conservator, intervenor or sequestrator or the like has been appointed for such Lender or its direct or indirect parent company, or such Lender or its direct or indirect parent company has taken any action in furtherance of or indicating its consent to or acquiescence in any such proceeding or appointment; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

**“Deposit Account”** means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit.

**“Designated Non-Cash Consideration”** means the fair market value of non-cash consideration received in connection with an Asset Sale pursuant to Section 6.8(c) that is designated as Designated Non-Cash Consideration pursuant to a certificate of an Authorized Officer of the Borrower, setting forth the basis of such valuation.

**“Disqualified Equity Interests”** means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (i) matures or is mandatorily redeemable (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise, (ii) is redeemable at the option of the holder thereof (other than solely for Equity Interests which are not otherwise Disqualified Equity Interests), in whole or in part, or (iii) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 91 days after the Latest Maturity Date except, in the case of clauses (i) and (ii), if as a result of a change of control or asset sale, so long as any rights of the holders thereof upon the occurrence of such a change of control or asset sale event are subject to the prior payment in full of all Obligations and the termination of the Commitments.

**“Disqualified Institution”** means each Person listed on Schedule 1.1.

**“Documentation Agents”** as defined in the preamble hereto.

**“Dollars”** and the sign **“\$”** mean the lawful money of the United States of America.

**“Domestic Subsidiary”** means any Subsidiary organized under the laws of the United States of America, any State thereof or the District of Columbia.

**“EEA Financial Institution”** means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

**“EEA Member Country”** means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

**“EEA Resolution Authority”** means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

**“Eligible Assignee”** means any Person other than a Natural Person that is (i) a Lender, an affiliate of any Lender or a Related Fund (any two or more Related Funds being treated as a single Eligible Assignee for all purposes hereof), or (ii) a commercial bank, insurance company, investment or mutual fund or other entity that is an “accredited investor” (as defined in Regulation D under the Securities Act) and which extends credit or buys loans in the ordinary course of business; provided, no Defaulting Lender, Disqualified Institution, Credit Party or Affiliate of a Credit Party shall be an Eligible Assignee.

**“Employee Benefit Plan”** means any “employee benefit plan” as defined in Section 3(3) of ERISA which is or was sponsored, maintained or contributed to by, or required to be contributed by, the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates.

**“Engagement Letter”** as defined in Section 3.1(g).

**“Environmental Claim”** means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

**“Environmental Laws”** means any and all current or future foreign or domestic, federal or state (or any subdivision of either of them), statutes, ordinances, orders, rules, regulations, judgments, Governmental Authorizations, or any other requirements of

Governmental Authorities relating to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, in any manner applicable to the Borrower or any of its Subsidiaries or any Facility.

**“Equity Interests”** means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire any of the foregoing.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

**“ERISA Affiliate”** means, as applied to any Person, (i) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member. Any former ERISA Affiliate of the Borrower or any of its Subsidiaries shall continue to be considered an ERISA Affiliate of the Borrower or any such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of the Borrower or such Subsidiary and with respect to liabilities arising after such period for which the Borrower or such Subsidiary could be liable under the Internal Revenue Code or ERISA.

**“ERISA Event”** means (i) a “reportable event” within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for 30-day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue 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 the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to the Borrower, any of its Subsidiaries or any of their respective Affiliates 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 might 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 the Borrower, any of its Subsidiaries or any of their respective 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 the Borrower, any of its Subsidiaries or any of their respective 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 therefore, or the receipt by the Borrower, any of its Subsidiaries or any of their respective 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) the occurrence of an act or omission which could give rise to the imposition on the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Benefit Plan; (ix) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (x) 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 Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue 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 Internal Revenue Code; or (xi) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or ERISA or a violation of Section 436 of the Internal Revenue Code.

**“EU Bail-In Legislation Schedule”** means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

**“Eurodollar Rate Loan”** means a Loan bearing interest at a rate determined by reference to the Adjusted Eurodollar Rate.

**“Event of Default”** means each of the conditions or events set forth in Section 8.1.

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

**“Excluded Swap Obligation”** means, with respect to any Guarantor at any time, any obligation (a **“Swap 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, if, and to the extent that, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any guarantee thereof) is illegal at such time 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 at the time such

guarantee or grant of a security interest becomes effective with respect to such related Swap Obligation.

**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to a Lender or required to be withheld or deducted from a payment to a Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Lender being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan (other than with respect to a Lender that becomes a Lender pursuant to Section 2.23) or (ii) such Lender changes its lending office, except in each case to the extent that amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Lender's failure to comply with Section 2.20(c), Section 2.20(d) or Section 2.20(e), and (d) any withholding Taxes imposed under FATCA.

**“Existing Indebtedness”** means Indebtedness and other obligations under that certain agreement dated as of [\_\_\_\_] between Borrower and [\_\_\_\_], as amended prior to the Closing Date.

**“Facility”** means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by the Borrower or any of its Subsidiaries or any of their respective predecessors or Affiliates.

**“Fair Share”** as defined in Section 7.2.

**“Fair Share Contribution Amount”** as defined in Section 7.2.

**“FATCA”** means Sections 1471 through 1474 of the Internal Revenue Code, as of the date hereof (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such sections of the Internal Revenue Code.

**“Federal Funds Effective Rate”** means for any day, the rate *per annum* equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, (i) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding



Business Day, the Federal Funds Effective Rate for such day shall be the average rate charged to Administrative Agent on such day on such transactions as determined by Administrative Agent.

**“Fee Letter”** means any Fee Letter entered into between any of the Arrangers or the Administrative Agent, as the case may be, on the one side, and the Borrower, on the other side, setting out certain fees payable by the Borrower in connection with the transactions contemplated by this Agreement and/or the Senior Credit Agreement, as amended, restated, supplemented or otherwise modified from time to time.

**“Financial Officer”** means, with respect to any Person, the Chief Financial Officer, principal accounting officer, Treasurer, Assistant Treasurer or Controller of such Person (and, in the case of the Borrower, shall also mean each person performing similar duties as the foregoing).

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

**“Financial Plan”** as defined in Section 5.1(i).

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

**“Fiscal Year”** means the fiscal year of the Borrower and its Subsidiaries ending on December 31 of each calendar year.

**“Foreign Subsidiary”** means any Subsidiary that is not a Domestic Subsidiary.

**“Funding Guarantors”** as defined in Section 7.2.

**“Funding Notice”** means a notice substantially in the form of Exhibit A.

**“GAAP”** means, subject to the provisions of Section 1.2, United States generally accepted accounting principles in effect as of the date of determination thereof.

**“GAAP Change Event”** as defined in Section 1.2(a).

**“Goldman Sachs”** as defined in the preamble hereto.

**“Governmental Acts”** means any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority.

**“Governmental Authority”** means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity, officer or examiner exercising

executive, legislative, judicial, regulatory or administrative functions of or pertaining to 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.

**“Governmental Authorization”** means any permit, license, authorization, plan, directive, consent order or consent decree of or from any Governmental Authority.

**“Guaranteed Obligations”** as defined in Section 7.1.

**“Guarantor”** means each Domestic Subsidiary of the Borrower.

**“Guaranty”** means the guaranty of each Guarantor set forth in Section 7.

**“Hazardous Materials”** means any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or which may or could pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

**“Hazardous Materials Activity”** means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

**“Hedge Agreement”** means an Interest Rate Agreement or a Currency Agreement entered into with a Lender Counterparty.

**“Highest Lawful Rate”** means the maximum lawful interest rate, if any, that at any time or from time to time may be contracted for, charged, or received under the laws applicable to any Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow.

**“Historical Financial Statements”** means as of the Closing Date, (i) audited consolidated financial statements of the Borrower and its Subsidiaries, for each of the three (3) most recent Fiscal Years ended at least sixty days prior to the Closing Date, consisting of balance sheets and the related statements of income, stockholders’ equity and cash flows for such Fiscal Years, and (ii) the unaudited consolidated financial statements of the Borrower and its subsidiaries for any Fiscal Quarter (other than the fourth Fiscal Quarter) ended after the date of the most recent audited financial statements delivered pursuant to clause (i) above (and corresponding periods of any prior year) and at least forty-five days prior to the Closing Date, consisting of a balance sheet and the related consolidated statements of income, stockholders’ equity and cash flows for the three, six or nine month period, as applicable, ending on such date and, in each case (a) prepared in accordance with GAAP and (b) certified by the chief financial officer of Borrower that they fairly present, in all material respects, the financial condition of

Borrower and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments.

**“Increased-Cost Lenders”** as defined in Section 2.23.

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

**“Indebtedness”** means, as applied to any Person, without duplication, (i) all indebtedness for borrowed money; (ii) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (iv) any obligation owed for all or any part of the deferred purchase price of property or services, including any earn-out obligations (excluding any such obligations incurred under ERISA), which purchase price is (a) due more than six months from the date of incurrence of the obligation in respect thereof or (b) evidenced by a note or similar written instrument; (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; (vi) the face amount of any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings; (vii) Disqualified Equity Interests; (viii) the discounting with recourse or sale with recourse by such Person of the obligation of another Person; (ix) any liability of such Person for Indebtedness described in the other clauses of this definition of another Person through any agreement (contingent or otherwise) (a) to purchase, repurchase or otherwise acquire such Indebtedness or any security therefor, or to provide funds for the payment or discharge of such Indebtedness (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (b) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclauses (a) or (b) of this clause (x), the primary purpose or intent thereof is as described in clause (ix) above; and (x) all obligations of such Person in respect of any exchange traded or over the counter derivative transaction, including under any Interest Rate Agreement or Currency Agreement, in each case, whether entered into for hedging or speculative purposes or otherwise; provided, in no event shall obligations under any Hedge Agreement be deemed “Indebtedness” for any purpose under Section 6.7 unless such obligations relate to a derivatives transaction which has been terminated.

**“Indemnified Liabilities”** means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims (including Environmental Claims), actions, judgments, suits, costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), and reasonable, documented and invoiced out-of-pocket expenses and disbursements of any kind or nature whatsoever (including the reasonable, documented and invoiced fees and disbursements

of one outside counsel for all Indemnitees taken as a whole (and in the case of an actual conflict of interest, an additional counsel for all Indemnities subject to such conflict taken as a whole), in connection with any investigative, administrative or judicial proceeding or hearing commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any reasonable, documented and invoiced fees or out-of-pocket expenses incurred by Indemnitees in enforcing this indemnity), whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (i) this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby (including the Lenders' agreement to make Credit Extensions, the syndication of the credit facilities provided for herein or the use or intended use of the proceeds thereof), any amendments, waivers or consents with respect to any provision of this Agreement or any of the other Credit Documents, or any enforcement of any of the Credit Documents (including the enforcement of the Guaranty)); (ii) any engagement letter (and any related fee letter) delivered by any Agent or any Lender to Borrower with respect to the transactions contemplated by this Agreement; or (iii) any Environmental Claim or any Hazardous Materials Activity relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, or practice of the Borrower or any of its Subsidiaries; provided, however, that Indemnified Liabilities shall not include any special, indirect, consequential or punitive damages, except to the extent any such special, indirect, consequential or punitive damages are included in a claim by a third party unaffiliated with the applicable Indemnitee that is covered by this definition.

**"Indemnitee"** as defined in Section 10.3(a).

**"Initial Public Offering"** means the initial underwritten secondary public offering of the common stock of the Borrower by the selling stockholder, Leonardo US Holding Inc., a wholly owned subsidiary of the Parent, pursuant to an effective registration statement filed with the U.S. Securities and Exchange Commission in accordance with the Securities Act.

**"Installment"** as defined in Section 2.12.

**"Intercompany Subordination Agreement"** means the Intercompany Subordination Agreement among the Credit Parties, the other Subsidiaries party thereto, and the Administrative Agent, substantially in the form of Exhibit K.

**"Interest Payment Date"** means with respect to (i) any Loan that is a Base Rate Loan, the last Business Day of March, June, September and December of each year, commencing on the first such date to occur after the Closing Date and the final maturity date of such Loan; and (ii) any Loan that is a Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan.

**"Interest Period"** means, in connection with a Eurodollar Rate Loan (or, solely for the purpose of determining the Spread, a Base Rate Loan), an interest period (i) initially, commencing on the Credit Date or thereof and ending on the numerically corresponding day that

is three months thereafter (the **“First Interest Period”**); and (ii) thereafter, any period beginning on the date of expiration of the immediately preceding Interest Period and ending on the numerically corresponding day that is three months thereafter, provided (a) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day unless no further Business Day occurs in such month, in which case such Interest Period shall expire on the immediately preceding Business Day; (b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clauses (c) of this definition, end on the last Business Day of a calendar month; and (c) no Interest Period with respect to any portion of the Term Loans shall extend beyond the Maturity Date.

**“Interest Rate Agreement”** means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedging agreement or other similar agreement or arrangement, each of which is for the purpose of hedging the interest rate exposure associated with the Borrower’ and its Subsidiaries’ operations and not for speculative purposes.

**“Interest Rate Determination Date”** means, with respect to any Interest Period, the date that is two Business Days prior to the first day of such Interest Period.

**“Internal Revenue Code”** means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

**“Investment”** means (i) any direct or indirect purchase or other acquisition by the Borrower or any of its Subsidiaries of, or of a beneficial interest in, any of the Securities of any other Person (other than a Guarantor); (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary of the Borrower from any Person (other than the Borrower or any Guarantor), of any Equity Interests of such Person; (iii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contributions by the Borrower or any of its Subsidiaries to any other Person (other than the Borrower or any Guarantor), including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business and (iv) all investments consisting of any exchange traded or over the counter derivative transaction, including any Interest Rate Agreement and Currency Agreement, whether entered into for hedging or speculative purposes or otherwise. The amount of any Investment of the type described in clauses (i), (ii) and (iii) shall be the original cost of such Investment, plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment, minus the amount of any repayments of principal in the case of Investments in the form of loans and any return of capital or return on Investment in the case of equity Investments (whether as a distribution, dividend, redemption or sale but not in excess of the amount of the initial Investment).

**“Joint Venture”** means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided, in no event shall any corporate Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

**“Latest Maturity Date”** means, at any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time.

**“Lender”** means each financial institution listed on the signature pages hereto as a Lender, and any other Person that becomes a party hereto pursuant to an Assignment Agreement.

**“Lender Counterparty”** means each Lender, each Agent and each of their respective Affiliates counterparty to a Hedge Agreement (including any Person who is an Agent or a Lender (and any Affiliate thereof) as of the Closing Date but subsequently, whether before or after entering into a Hedge Agreement, ceases to be an Agent or a Lender, as the case may be); provided, at the time of entering into a Hedge Agreement, no Lender Counterparty shall be a Defaulting Lender.

**“Lien”** means (i) any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, and any lease or license in the nature thereof) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing and (ii) in the case of Securities (other than Securities representing an interest in a Joint Venture that is not a Subsidiary), any purchase option, call or similar right of a third party with respect to such Securities; provided that in no event shall an operating lease or an agreement to sell be deemed to constitute a Lien.

**“Loan”** means a Term Loan.

**“Margin Stock”** as defined in Regulation U.

**“Material Adverse Effect”** means a material adverse effect on (i) the business, operations, properties, assets or financial condition of the Borrower and its Subsidiaries taken as a whole; (ii) the ability of the Credit Parties to perform the Obligations; or (iii) the legality, validity, binding effect or enforceability of the Credit Documents; or (iv) the rights, remedies and benefits available to, or conferred upon, any Agent or any Lender under the Credit Documents.

**“Material Contract”** means any contract or other arrangement to which the Borrower or any of its Subsidiaries is a party (other than the Credit Documents) for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

**“Maturity Date”** means, with respect to the Term Loans, the earlier of (a) the date that is 364 days after the Closing Date, and (b) the date on which all Term Loans shall become due and payable in full hereunder, whether by acceleration or otherwise.

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

**“Multiemployer Plan”** means any Employee Benefit Plan which is a “multiemployer plan” as defined in Section 3(37) of ERISA.

**“NAIC”** means The National Association of Insurance Commissioners, and any successor thereto.

**“Narrative Report”** means, with respect to the financial statements for which such narrative report is required, a narrative report describing the operations of the Borrower and its Subsidiaries for the applicable month, Fiscal Quarter or Fiscal Year and for the period from the beginning of the then current Fiscal Year to the end of such period to which such financial statements relate.

**“Natural Person”** means a natural person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person.

**“Net Asset Sale Proceeds”** means, with respect to any Asset Sale, an amount equal to: (i) Cash payments (including any Cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise (including by way of milestone payment, if applicable), but only as and when so received) received by Borrower or any of its Subsidiaries from such Asset Sale, minus (ii) any bona fide direct costs incurred in connection with such Asset Sale, including (a) income or gains taxes payable by the seller as a result of any gain recognized in connection with such Asset Sale, (b) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale and (c) a reasonable reserve for any indemnification payments (fixed or contingent) attributable to seller’s indemnities and representations and warranties to purchaser in respect of such Asset Sale undertaken by Borrower or any of its Subsidiaries in connection with such Asset Sale; provided that upon release of any such reserve, the amount released shall be considered Net Asset Sale Proceeds.

**“Net Equity Proceeds”** means an amount equal to any Cash proceeds from a capital contribution to, or the issuance of any Equity Interests of, the Borrower or any of its Subsidiaries, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses.

**“Net Insurance/Condemnation Proceeds”** means an amount equal to: (i) any Cash payments or proceeds received by Borrower or any of its Subsidiaries (a) under any casualty insurance policy in respect of a covered loss thereunder or (b) as a result of the taking of any assets of Borrower or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (ii) (a) any actual and reasonable costs incurred by Borrower or any of its Subsidiaries in connection with the adjustment or settlement of any claims of Borrower or such Subsidiary in respect thereof, and (b) any bona fide direct costs incurred in connection with any sale of such assets as referred to in clause (i)(b) of this definition, including income taxes payable as a result of any gain recognized in connection therewith.

**“Net Interest Coverage Ratio”** means the ratio as of the last day of any Fiscal Quarter of (i) Consolidated Adjusted EBITDA for the four-Fiscal Quarter period ending on the same date to (ii) Consolidated Net Interest Expense for such four-Fiscal Quarter period.

**“Net Mark-to-Market Exposure”** of a Person means, as of any date of determination, the excess (if any) of all unrealized losses over all unrealized profits of such Person arising from Hedge Agreements or other Indebtedness of the type described in clause (x) of the definition thereof. As used in this definition, “unrealized losses” means the fair market value of the cost to such Person of replacing such Hedge Agreement or such other Indebtedness as of the date of determination (assuming the Hedge Agreement or such other Indebtedness were to be terminated as of that date), and “unrealized profits” means the fair market value of the gain to such Person of replacing such Hedge Agreement or such other Indebtedness as of the date of determination (assuming such Hedge Agreement or such other Indebtedness were to be terminated as of that date).

**“Non-Consenting Lender”** as defined in Section 2.23.

**“Non-Defaulting Lender”** means, at any time, each Lender that is not a Defaulting Lender at such time.

**“Non-US Lender”** as defined in Section 2.20(d).

**“Not Otherwise Applied”** means, with reference to any Net Equity Proceeds of any cash capital contributions or Net Equity Proceeds from the sale or issuance of any common Equity Interests or any other transaction or event, or the Cumulative Amount that is proposed to be applied to a particular use or transaction, that such amount (a) was not required to prepay Loans pursuant to Section 2.14 and (b) was not previously applied in determining the permissibility of a transaction under the Loan Documents where such permissibility was (or may have been) contingent on the receipt or availability of such amount (including any application of Specified Equity Contributions pursuant to Section 8.2).

**“Note”** means a Term Loan Note.

**“Notice”** means a Funding Notice.

**“Obligations”** means all obligations (whether now existing or hereafter arising, absolute or contingent, joint, several or independent) of every nature of each Credit Party, including obligations from time to time owed to Agents (including former Agents), Lenders or any of them, under any Credit Document (provided, for the avoidance of doubt, that any Hedge Agreement shall be deemed not to be a “Credit Document” for purposes of this definition), whether for principal, interest (including interest which, but for the filing of a petition in bankruptcy with respect to such Credit Party, would have accrued on any Obligation, whether or not a claim is allowed against such Credit Party for such interest in the related bankruptcy proceeding), fees, expenses, indemnification or otherwise, excluding, with respect to any Guarantor, Excluded Swap Obligations with respect to such Guarantor.



**“Obligee Guarantor”** as defined in Section 7.7.

**“Organizational Documents”** means (i) with respect to any corporation or company, its certificate, memorandum or articles of incorporation, organization or association, as amended, and its by-laws, as amended, (ii) with respect to any limited partnership, its certificate or declaration of limited partnership, as amended, and its partnership agreement, as amended, (iii) with respect to any general partnership, its partnership agreement, as amended, and (iv) with respect to any limited liability company, its certificate or articles of formation or organization, as amended, and its limited liability company or operating agreement, as amended. In the event any term or condition of this Agreement or any other Credit Document requires any Organizational Document to be certified by a secretary of state or similar governmental official, the reference to any such Organizational Document shall only be to a document of a type customarily certified by such governmental official.

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

**“Other Taxes”** means any and all present or future stamp or documentary Taxes or any other excise or property Taxes, charges or similar levies (and interest, fines, penalties and additions related thereto) arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Credit Document.

**“Parent”** means Leonardo S.p.A., a joint stock company (*società per azioni*) organized under the laws of the Republic of Italy.

**“Participant Register”** as defined in Section 10.6(g)(i).

**“PATRIOT Act”** as defined in Section 3.1(x).

**“PBGC”** means the Pension Benefit Guaranty Corporation or any successor thereto.

**“Pension Plan”** means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA.

**“Permanent Debt”** as defined in Section 3.1(g).

**“Permitted Acquisition”** means any acquisition, directly or indirectly, by Borrower or any of its Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Equity Interests of, or a business line or unit or a division of, any Person; provided,

(i) immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(ii) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable laws and in conformity with all applicable Governmental Authorizations;

(iii) the Borrower and its Subsidiaries shall be in compliance with the financial covenants set forth in Section 6.7 on a pro forma basis after giving effect to such acquisition as of the last day of the Fiscal Quarter most recently ended; and

(iv) any Person or assets or division as acquired in accordance herewith (y) shall be in same business or lines of business in which Borrower and/or its Subsidiaries are engaged as of the Closing Date or similar or related businesses.

**“Person”** means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and Governmental Authorities.

**“Platform”** as defined in Section 5.1(o).

**“Prime Rate”** means the rate of interest quoted in the print edition of *The Wall Street Journal*, Money Rates Section as the Prime Rate (currently defined as the base rate on corporate loans posted by at least 75% of the nation’s thirty (30) largest banks), as in effect from time to time. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. The Administrative Agent or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

**“Principal Office”** means Administrative Agent’s “Principal Office” as set forth on Appendix B, or such other office or office of a third party or sub-agent, as appropriate, as Administrative Agent may from time to time designate in writing to Borrower and each Lender.

**“Private Lenders”** means Lenders that wish to receive Private-Side Information.

**“Private-Side Information”** means any information with respect to the Borrower and its Subsidiaries that is not Public-Side Information.

**“Pro Rata Share”** means, with respect to all payments, computations and other matters relating to the Term Loan of any Lender, the percentage obtained by dividing (a) the Term Loan Exposure of that Lender by (b) the aggregate Term Loan Exposure of all Lenders

**“Projections”** as defined in Section 4.8.

**“PTE”** means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

**“Public Lenders”** means Lenders that do not wish to receive Private-Side Information.

**“Public-Side Information”** means information that is not material non-public information (for purposes of United States federal, state or other applicable securities laws).

**“Real Estate Asset”** means, at any time of determination, any interest (fee, leasehold or otherwise) then owned by any Credit Party in any real property.

**“Refinance”** as defined in the definition of “Refinancing Indebtedness”.

**“Refinancing Indebtedness”** means any Indebtedness issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund (collectively, to **“Refinance”**) the Indebtedness being Refinanced (or previous refinancings thereof constituting Refinancing Indebtedness); provided that (a) the principal amount (or accreted value, if applicable) of such Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced (plus the amount of unpaid accrued or capitalized interest and premiums thereon (including tender premiums), underwriting discounts, original issue discount, defeasance costs, fees (including upfront fees, underwriting fees, legal fees, accounting and audit fees and other similar or customary fees), commissions and expenses), (b) the weighted-average life to maturity of such Refinancing Indebtedness is greater than or equal to the weighted-average life to maturity of the Indebtedness being Refinanced, (c) if the Indebtedness being Refinanced is subordinated in right of payment to the Obligations, such Refinancing Indebtedness shall be subordinated in right of payment to such Obligations on terms at least as favorable taken as a whole to the Lenders as those contained in the documentation governing the Indebtedness being Refinanced (as determined in good faith and certified in writing to the Administrative Agent by an Authorized Officer of the Borrower); and (d) no Refinancing Indebtedness shall have different obligors, greater guarantees or substantially different collateral than, the Indebtedness being Refinanced (except to the extent that less collateral is granted to the holders of the Refinancing Indebtedness).

**“Register”** as defined in Section 2.7(b).

**“Regulation D”** means Regulation D of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

**“Regulation FD”** means Regulation FD as promulgated by the U.S. Securities and Exchange Commission under the Securities Act and Exchange Act as in effect from time to time.

**“Regulation T”** means Regulation T of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

**“Regulation U”** means Regulation U of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

**“Regulation X”** means Regulation X of the Board of Governors, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

**“Reimbursement Date”** as defined in Section 2.4(d).

**“Related Agreements”** means the Senior Credit Agreement.

**“Related Fund”** means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

**“Release”** means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

**“Replacement Lender”** as defined in Section 2.23.

**“Required Prepayment Date”** as defined in Section 2.15(c).

**“Requisite Lenders”** means one or more Lenders having or holding Term Loan Exposure and representing more than 50% of the aggregate Voting Power Determinants of all Lenders; provided that the amount of Voting Power Determinants shall be determined with respect to any Defaulting Lender, by disregarding the Voting Power Determinants of such Defaulting Lender.

**“Restricted Junior Payment”** means (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of stock of Borrower or any of its Subsidiaries (or any direct or indirect parent of Borrower) now or hereafter outstanding, except a dividend payable solely in shares of that class of stock to the holders of that class; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock of Borrower or any of its respective Subsidiaries (or any direct or indirect parent of Borrower) now or hereafter outstanding; (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of stock of Borrower or any of its Subsidiaries (or any direct or indirect parent of Borrower) now or hereafter outstanding and (iv) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Indebtedness.

**“Restricted Subsidiary”** means any subsidiary of the Borrower other than an Unrestricted Subsidiary; provided that upon the occurrence of any Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such subsidiary shall be included in the definition of “Restricted Subsidiary”.

**“S&P”** means S&P’s Global Ratings, a division of S&P Global, Inc.

**“Sanctions”** as defined in Section 4.26.

**“Sanctions Laws”** as defined in Section 4.26.

**“Securities”** means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

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

**“Senior Credit Agreement”** means the senior credit agreement, dated [as of the date hereof] among the Borrower, the Guarantors, the lenders from time to time party thereto, the Arrangers, Bank of America as Administrative Agent, and the other parties thereto, as it may be amended, restated, supplemented or otherwise modified from time to time.

**“Senior Loans”** means a “Loan” as defined under the Senior Credit Agreement.

**“Solvency Certificate”** means a certificate of the chief financial officer of the Borrower substantially in the form of Exhibit F-2.

**“Specified Bridge Parties”** as defined in Section 2.15(b).

**“Specified Equity Contribution”** as defined in Section 8.2.

**“Spread”** means a rate per annum equal to (i) during the first Interest Period, zero, and (ii) during any subsequent Interest Period, the sum of (x) the Spread for the immediately preceding Interest Period and (y) 0.25%.

**“Subject Transaction”** as defined in Section 6.7(c).

**“Subordinated Indebtedness”** means any Indebtedness (other than any intercompany Indebtedness owing to direct and indirect parent companies of the Borrower or the Borrower or any Subsidiary not prohibited under this Agreement) expressly subordinated in right of payment to the Obligations.

**“subsidiary”** means, with respect to any Person, any corporation, partnership, limited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the

power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding.

“**Subsidiary**” means, unless the context otherwise requires, a Restricted Subsidiary of Borrower. For purposes of Sections 4.2, 4.11, 4.12, 4.20, 4.24, 4.25, 5.1(b)-(e), 5.3 5.8 and 7.8(ii) only, references to Subsidiaries shall be deemed also to be references to Unrestricted Subsidiaries.

“**Swap Obligation**” as defined in “Excluded Swap Obligation”.

“**Syndication Agent**” as defined in the preamble hereto.

“**Tax**” means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (together with interest, penalties and other additions thereto) in the nature of a tax, imposed, levied, collected, withheld or assessed by any Governmental Authority; provided, “Tax on the overall net income” of a Person shall be construed as a reference to a tax imposed by the jurisdiction in which that Person is organized or in which that Person’s applicable principal office (and/or, in the case of a Lender, its lending office) is located on all or part of the overall net income, profits or gains (whether worldwide, or only insofar as such income, profits or gains are considered to arise in or to relate to a particular jurisdiction, or otherwise) of that Person (and/or, in the case of a Lender, its applicable lending office).

“**Term Loan**” means a Term Loan made by a Lender to Borrower pursuant to Section 2.1(a).

“**Term Loan Commitment**” means the commitment of a Lender to make or otherwise fund a Term Loan and “**Term Loan Commitments**” means such commitments of all Lenders in the aggregate. The amount of each Lender’s Term Loan Commitment, if any, is set forth on Appendix A or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Term Loan Commitments as of the Closing Date is \$350,000,000.

“**Term Loan Exposure**” means, with respect to any Lender, as of any date of determination, the outstanding principal amount of the Term Loans of such Lender; provided, at any time prior to the making of the Term Loans, the Term Loan Exposure of any Lender shall be equal to such Lender’s Term Loan Commitment.

“**Term Loan Note**” means a promissory note in the form of Exhibit B, as it may be amended, restated, supplemented or otherwise modified from time to time.

“**Terminated Lender**” as defined in Section 2.23.

**“Total Net Leverage Ratio”** means the ratio as of the last day of any Fiscal Quarter of (i) Consolidated Total Net Debt as of such day to (ii) Consolidated Adjusted EBITDA for the four-Fiscal Quarter period ending on such date.

**“Transactions”** means, collective, (a) the repayment of the Existing Indebtedness, (b) the borrowing of the Term Loans, and the Senior Loans to be made on the Closing Date and (c) the other transactions contemplated by the Credit Documents and the Related Agreements.

**“UCC”** means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect from time to time in any applicable jurisdiction.

**“Unrestricted Cash”** means the aggregate amount of cash and Cash Equivalents held in accounts on the consolidated balance sheet of Borrower and its Subsidiaries to the extent that the use of such Cash and Cash Equivalents for application to payment of the Obligations or other Indebtedness is not prohibited by law or any contract or other agreement and such Cash and Cash Equivalents are free and clear of all Liens (other than Liens described Section 6.2(p)).

**“Unrestricted Subsidiary”** means any subsidiary of Borrower designated by the Borrower as an Unrestricted Subsidiary pursuant to Section 5.13 subsequent to the date hereof. Borrower may designate any subsidiary of Borrower (including any existing subsidiary and any newly acquired or newly formed subsidiary) to be an Unrestricted Subsidiary unless such subsidiary or any of its subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on any property of, Borrower or any subsidiary of Borrower (other than any subsidiary of the subsidiary to be so designated); provided that each of (A) the subsidiary to be so designated and (B) its subsidiaries has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of Borrower or any Restricted Subsidiary.

**“Unrestricted Subsidiary Reporting Period”** means any Fiscal Quarter or Fiscal Year if, as of the end of such period, either (i) the combined revenues of the Unrestricted Subsidiaries exceed 15% of the combined revenues of the Borrower and its consolidated Subsidiaries for the four Fiscal Quarter period then ended, or (ii) the aggregate amount of the assets of the Unrestricted Subsidiaries as recorded on the balance sheet of the Borrower and its consolidated Subsidiaries exceeds 15% of the aggregate amount of the assets of the Borrower and its consolidated Subsidiaries on such balance sheet.

**“U.S. Lender”** as defined in Section 2.20(d).

**“U.S. Tax Compliance Certificate”** means a certificate substantially in the form of one of Exhibits E-1, E-2, E-3 or E-4, as applicable.

**“Write-Down and Conversion Powers”** means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority

from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

**“Voting Power Determinants”** means, collectively, the Term Loan Exposure.

## **1.2. Accounting Terms.**

(a) Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 on financial liabilities shall be disregarded. If at any time any change in GAAP would affect the computation of any financial ratio or other requirement set forth in any Credit Document (a **“GAAP Change Event”**), at Borrower’s request the Administrative Agent and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of Requisite Lenders); *provided* that until so amended, each such ratio or requirement shall continue to be computed in conformity with GAAP as in effect immediately prior to such change. Following any GAAP Change Event, and until such ratio or requirement is so amended, Borrower shall provide with any financial statements delivered under Sections 5.1(b) and (c) an internally-prepared reconciliation between such financial statements and any financial information required for the computation of such ratio or requirement in accordance with GAAP as in effect prior to such GAAP Change Event, in form and substance reasonably satisfactory to Administrative Agent.

(b) Notwithstanding anything to the contrary in Section 1.2(a) or in the definition of “Capital Lease,” any change in accounting for leases pursuant to GAAP resulting from the adoption of Financial Accounting Standards Board Accounting Standards Update No. 2016-02, Leases (Topic 842), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capital lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2015, such lease shall not be considered a capital lease, any lease that would have been treated as an operating lease under GAAP as in effect on December 31, 2015 shall continue to be considered an operating lease, and all calculations and deliverables under this Agreement or any other Credit Document shall be made or delivered, as applicable, in accordance therewith.

**1.3. Interpretation, Etc.** Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar



import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. The terms lease and license shall include sub-lease and sub-license, as applicable. Unless otherwise specifically indicated, the term “consolidated” with respect to any Person refers to such Person consolidated with its Restricted Subsidiaries, and excludes from such consolidation any Unrestricted Subsidiary as if such Unrestricted Subsidiary were not an Affiliate of such Person.

## **SECTION 2. LOANS**

### **2.1. Term Loans.**

(a) Loan Commitments. Subject to the terms and conditions hereof, each Lender severally agrees to make, on the Closing Date, a Term Loan to Borrower in an amount equal to such Lender’s Term Loan Commitment.

Borrower may make only one borrowing under the Term Loan Commitment which shall be on the Closing Date. Any amount borrowed under this Section 2.1(a) and subsequently repaid or prepaid may not be reborrowed. Subject to Sections 2.13 and 2.14, all amounts owed hereunder with respect to the Term Loan shall be paid in full no later than the Maturity Date. Each Lender’s Term Loan Commitment shall terminate immediately and without further action on the Closing Date after giving effect to the funding of such Lender’s Term Loan Commitment on such date.

#### **(b) Borrowing Mechanics for Term Loan.**

(i) Borrower shall deliver to Administrative Agent a fully executed Funding Notice no later than three days prior to the Closing Date with respect to Eurodollar Rate Loans (or such shorter period as may be acceptable to Administrative Agent). Promptly upon receipt by Administrative Agent of such Funding Notice, Administrative Agent shall notify each Lender of the proposed borrowing.

(ii) Each Lender shall make its Term Loan available to Administrative Agent not later than 2:00 p.m. (New York City time) on the Closing Date, by wire transfer of same day funds in Dollars, at the principal office designated by Administrative Agent. Upon satisfaction or waiver of the conditions precedent specified herein, Administrative Agent shall make the proceeds of the Term Loans available to Borrower on the Closing Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Loans received by Administrative Agent from Lenders to be credited to the account of Borrower at the Principal Office designated by Administrative Agent or to such other account as may be designated in writing to Administrative Agent by Borrower.

**2.2. [Reserved].**

**2.3. [Reserved].**

#### 2.4. [Reserved].

#### 2.5. Pro Rata Shares; Availability of Funds.

(a) Pro Rata Shares. All Loans shall be made, and all participations purchased, by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby nor shall any Term Loan Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Loan requested hereunder or purchase a participation required hereby.

(b) Availability of Funds. Unless Administrative Agent shall have been notified by any Lender prior to the applicable Credit Date that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Loan requested on such Credit Date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such Credit Date and Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to Borrower a corresponding amount on such Credit Date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the customary rate set by Administrative Agent for the correction of errors among banks for three Business Days and thereafter at the Base Rate. In the event that (i) Administrative Agent declines to make a requested amount available to Borrower until such time as all applicable Lenders have made payment to Administrative Agent, (ii) a Lender fails to fund to Administrative Agent all or any portion of the Loans required to be funded by such Lender hereunder prior to the time specified in this Agreement and (iii) such Lender's failure results in Administrative Agent failing to make a corresponding amount available to Borrower on the Credit Date, at Administrative Agent's option, such Lender shall not receive interest hereunder with respect to the requested amount of such Lender's Loans for the period commencing with the time specified in this Agreement for receipt of payment by Borrower through and including the time of Borrower's receipt of the requested amount. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor, Administrative Agent shall promptly notify Borrower and Borrower shall immediately pay such corresponding amount to Administrative Agent together with interest thereon, for each day from such Credit Date until the date such amount is paid to Administrative Agent, at the rate payable hereunder for Base Rate Loans. Nothing in this Section 2.5(b) shall be deemed to relieve any Lender from its obligation to fulfill its Term Loan Commitments hereunder or to prejudice any rights that Borrower may have against any Lender as a result of any default by such Lender hereunder.

**2.6. Use of Proceeds.** The proceeds of the Term Loans made on the Closing Date shall be applied by Borrower to repay the Existing Indebtedness and to pay fees and expenses in connection with this Agreement and the Related Agreements.

## 2.7. Evidence of Debt; Register; Lenders' Books and Records; Notes.

(a) Lenders' Evidence of Debt. Each Lender shall maintain on its internal records an account or accounts evidencing the Obligations of Borrower to such Lender, including the amounts of the Loans made by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Borrower, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect Borrower's Obligations in respect of any applicable Loans; and provided further, in the event of any inconsistency between the Register and any Lender's records, the recordations in the Register shall govern.

(b) Register. Administrative Agent (or its agent or sub-agent appointed by it) shall maintain at its Principal Office a register for the recordation of the names and addresses of Lenders, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The Register shall be available for inspection by Borrower or any Lender (with respect to (i) any entry relating to such Lender's Loans, (ii) the identity of the other Lender's (but not any information with respect to such other Lenders' Loans) and (iii) any entry relating to the Loans of Sponsor Affiliated Lenders) at any reasonable time and from time to time upon reasonable prior notice. Administrative Agent shall record, or shall cause to be recorded, in the Register the Loans in accordance with the provisions of Section 10.6, and each repayment or prepayment in respect of the principal amount of the Loans, and any such recordation shall be conclusive and binding on Borrower and each Lender, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect Borrower's Obligations in respect of any Loan. Borrower hereby designates Administrative Agent to serve as Borrower's non-fiduciary agent solely for purposes of maintaining the Register as provided in this Section 2.7, and Borrower hereby agrees that, to the extent Administrative Agent serves in such capacity, Administrative Agent and its officers, directors, employees, agents, sub-agents and affiliates shall constitute "Indemnitees."

(c) Notes. If so requested by any Lender by written notice to Borrower (with a copy to Administrative Agent) at least two Business Days prior to the Closing Date, or at any time thereafter, Borrower shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to Section 10.6) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after Borrower's receipt of such notice) a Note or Notes to evidence such Lender's Term Loan.

## 2.8. Interest on Loans.

(a) Except as otherwise set forth herein, each Loan shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

(i) if a Eurodollar Rate Loan,

(A) for the First Interest Period, at the Adjusted Eurodollar Rate plus the Applicable Margin;

(B) for any subsequent Interest Period, the sum of (1) the greater of (x) the Adjusted Eurodollar Rate as of the Reset Date for such Interest Period, and (y) the Adjusted Eurodollar Rate applicable to Eurodollar Rate Loans during the immediately preceding Interest Period, plus (2) the Applicable Margin; or

(ii) if a Base Rate Loan, at the Base Rate plus the Applicable Margin.

(b) [Reserved].

(c) As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Eurodollar Rate Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof to Borrower and each Lender.

(d) Interest payable pursuant to Section 2.8(a) shall be computed (i) in the case of Eurodollar Rate Loans, on the basis of a 360-day year, and (ii) in the case of Base Rate Loans, on the basis of a 360-day year (or, in the case of Base Rate Loans determined by reference to the "Prime Rate", a 365-day or 366-day year, as applicable), as the case may be, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Term Loan, the last Interest Payment Date with respect to such Term Loan or, with respect to a Base Rate Loan being converted from a Eurodollar Rate Loan, the date of conversion of such Eurodollar Rate Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a Eurodollar Rate Loan, the date of conversion of such Base Rate Loan to such Eurodollar Rate Loan, as the case may be, shall be excluded; provided, if a Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Loan.

(e) Except as otherwise set forth herein, interest on each Loan (i) shall accrue on a daily basis and shall be payable in arrears on each Interest Payment Date with respect to

interest accrued on and to each such payment date; (ii) shall accrue on a daily basis and shall be payable in arrears upon any prepayment of that Loan, whether voluntary or mandatory, to the extent accrued on the amount being prepaid; and (iii) shall accrue on a daily basis and shall be payable in arrears at maturity of the Loans, including final maturity of the Loans; provided, however, with respect to any voluntary prepayment of a Base Rate Loan, accrued interest shall instead be payable on the applicable Interest Payment Date.

## **2.9. [Reserved].**

**2.10. Default Interest.** Upon the occurrence and during the continuance of an Event of Default under Section 8.1(a), (c) (with respect to a breach of Section 6.7 only), (f) or (g), the principal amount of all Loans outstanding and, to the extent permitted by applicable law, any interest payments on the Loans or any fees or other amounts owed hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under Debtor Relief Laws) payable on demand at a rate that is 2% *per annum* in excess of the interest rate otherwise payable hereunder with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 2% *per annum* in excess of the interest rate otherwise payable hereunder for Base Rate Loans). Payment or acceptance of the increased rates of interest provided for in this Section 2.10 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent or any Lender.

**2.11. Fees.** Borrower agrees to pay to Agents, Arrangers and Lenders any fees in the amounts and at the times separately agreed upon (including all fees provided for under any Fee Letter).

**2.12. Scheduled Payments.** The aggregate amount of all outstanding Loans together with all other amounts owed hereunder with respect thereto shall be paid in full by the Borrower on the Maturity Date.

## **2.13. Voluntary Prepayments.**

(i) Any time and from time to time,

(1) with respect to Eurodollar Rate Loans, Borrower may prepay any such Loans on any Business Day in whole or in part in an aggregate minimum amount of \$2,000,000 and integral multiples of \$500,000 in excess of that amount; and

(2) with respect to Base Rate Loans, Borrower may prepay any such Loans on any Business Day in whole or in part, in an aggregate minimum amount of \$[500,000] and integral multiples of \$[100,000] in excess of that amount;

(ii) All such prepayments shall be made upon not less than five Business Days' prior written notice,

in each case given to Administrative Agent by 12:00 p.m. (New York City time) on the date required and, if given by telephone, promptly confirmed by delivery of written notice thereof to Administrative Agent (and Administrative Agent will promptly transmit such original notice for Term Loans, as the case may be, to each Lender). Upon the giving of any such notice, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein; provided that such prepayment obligation may be conditioned on the occurrence of any subsequent event (including a Change of Control, refinancing transaction or Permitted Acquisition or other Investment). Any such voluntary prepayment shall be applied as specified in Section 2.15(a).

#### **2.14. Mandatory Prepayments/Commitment Reductions.**

(a) Asset Sales. No later than the third Business Day following the date of receipt by Borrower or any of its Subsidiaries of any Net Asset Sale Proceeds, Borrower shall prepay the Loans in an aggregate amount equal to such Net Asset Sale Proceeds; provided, so long as no Default or Event of Default shall have occurred and be continuing, if the Borrower shall have delivered a certificate of an Authorized Officer of the Borrower to the Administrative Agent promptly following receipt of such Net Asset Sale Proceeds stating Borrower's intention to invest, directly or indirectly through one or more of its Subsidiaries, any portion of such Net Asset Sale Proceeds (the **"Reinvested Asset Sale Proceeds"**) within 9 months of receipt thereof in long-term productive assets of the general type used in the business of Borrower and its Subsidiaries, the Reinvested Asset Sale Proceeds shall not be required to be applied to prepay Loans pursuant to this Section 2.14(a). In the event that, at the end of such 9 month-period, all or a portion of the Reinvested Asset Sale Proceeds have not been reinvested as provided in this Section 2.14(a), the same shall be immediately applied to prepay the outstanding Loans.

(b) Insurance/Condemnation Proceeds. No later than the third Business Day following the date of receipt by Borrower or any of its Subsidiaries, or Administrative Agent as loss payee, of any Net Insurance/Condemnation Proceeds, Borrower shall prepay the Loans in an aggregate amount equal to such Net Insurance/Condemnation Proceeds; provided, so long as no Default or Event of Default shall have occurred and be continuing, if the Borrower shall have delivered a certificate of an Authorized Officer of the Borrower to the Administrative Agent promptly following receipt of such Net Insurance/Condemnation Proceeds stating Borrower's intention to invest, directly or indirectly through one or more of its Subsidiaries, any portion of such Net Insurance/Condemnation Proceeds (the **"Reinvested Insurance / Condemnation Proceeds"**) within 9 months of receipt thereof in long-term productive assets of the general type used in the business of Borrower and its Subsidiaries, such portion of such Net Insurance/Condemnation Proceeds shall not be required to be applied to prepay Loans pursuant to this Section 2.14(b). In the event that, at the end of such 9 month-period, all or a portion of the Reinvested Insurance / Condemnation Proceeds have not been reinvested as provided in this Section 2.14(b), the same shall be immediately applied to prepay the outstanding Loans.

(c) Issuance of Equity Securities. On the date of receipt by Borrower of any Net Equity Proceeds, Borrower shall prepay the Loans in an aggregate amount equal to 100% of such Net Equity Proceeds (other than the Cash proceeds from any equity or equity-linked securities issued in connection with any employee stock plan).

(d) Issuance of Debt. On the date of receipt by the Borrower or any of its Subsidiaries of any Cash proceeds from the incurrence of any Indebtedness of the Borrower or any of its Subsidiaries (other than with respect to any Indebtedness permitted to be incurred pursuant to Section 6.1, except for (i) Permanent Debt incurred to Refinance the Obligations, and (ii) Indebtedness permitted to be incurred under Section 6.1(m)), Borrower shall prepay the Loans in an aggregate amount equal to 100% of such proceeds, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses.

(e) Change of Control. Prior to or within 10 days following a Change of Control, the Borrower shall make an offer to prepay the entire principal amount of the Loans (the “**Change of Control Prepayment Offer**”) by notifying the Administrative Agent in writing of the Change of Control Prepayment Offer. Each such notice shall specify the date of such prepayment, which shall be no earlier than 15 days from the date such notice is delivered to the Administrative Agent and no later than 30 days from the date of such Change of Control (the date of such proposed payment, the “**Change of Control Payment Date**”) and, if delivered prior to the occurrence of the relevant Change of Control, may state that the Change of Control Prepayment Offer be conditional on the occurrence of such Change of Control. The Administrative Agent will promptly notify each Lender of the contents of any such prepayment notice and of such Lender’s pro rata share of the prepayment. Any Lender may elect, by delivering not less than five (5) Business Days prior to the Change of Control Payment Date, a written notice to the Administrative Agent (such notice, a “**Change of Control Acceptance Notice**”) that any change of control prepayment be made with respect to all or any portion of the Loans held by such Lender pursuant to this Section 2.14(e), in which case the Borrower shall prepay such Loans on the Change of Control Payment Date. If a Lender fails to deliver a Change of Control Acceptance Notice within the time frame specified above, any such failure will be deemed a rejection of the Change of Control Prepayment Offer as to all outstanding Loans of such Lender.

(f) [Reserved.]

(g) Prepayment Certificate. Concurrently with any prepayment of the Loans pursuant to Sections 2.14(a) through (d), Borrower shall deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the calculation of the amount of the applicable net proceeds. In the event that Borrower shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, Borrower shall promptly make an additional prepayment of the Loans in an amount equal to such excess, and Borrower shall concurrently therewith deliver to Administrative Agent a certificate of an Authorized Officer demonstrating the derivation of such excess.

## 2.15. Application of Prepayments/Reductions.

(a) Application of Voluntary Prepayments. Any prepayment of any Loan pursuant to Section 2.13 shall be applied, on a *pro rata* basis, to the Loans of the Lenders in accordance with their respective Term Loan Exposure.

(b) Application of Mandatory Prepayments. Any amount required to be paid pursuant to Sections 2.14(a) through (d), shall be applied, on a *pro rata* basis, to the Loans of the Lenders in accordance with their respective Term Loan Exposure; provided that, in respect of amounts required to be paid pursuant to Section 2.14(d) in connection with the issuance of any Permanent Debt, to the extent such Permanent Debt is issued to, and acquired or subscribed to, by (i) any Lender, (ii) any Person to which any Lender has sold a participation in all or any part of its Commitments pursuant to Section 10.6(g), or (iii) in each of the cases under (i) and (ii), any Affiliate thereof (such Lenders, participants of Affiliates, collectively, the “**Specified Bridge Parties**”), the Cash proceeds received by the Borrower or any of its Subsidiaries as a result of the incurrence of such Permanent Debt acquired or subscribed to by such Specified Bridge Parties may, at the option of the relevant Specified Bridge Party, be applied first to prepay the Loans of such Specified Bridge Party prior to being applied to prepay the Loans held by other Lenders on a *pro rata* basis.

(c) [Reserved.].

(d) Application of Prepayments of Loans to Base Rate Loans and Eurodollar Rate Loans. Any prepayment shall be applied first to Base Rate Loans to the full extent thereof before application to Eurodollar Rate Loans, in each case in a manner which minimizes the amount of any payments required to be made by Borrower pursuant to Section 2.18(c).

## 2.16. General Provisions Regarding Payments.

(a) All payments by Borrower of principal, interest, fees and other Obligations shall be made in Dollars in same day funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition, and delivered to Administrative Agent not later than 12:00 p.m. (New York City time) on the date due at the Principal Office of Administrative Agent for the account of the Persons entitled thereto. For purposes of computing interest and fees, funds received by Administrative Agent after that time on such due date shall be deemed to have been paid by Borrower on the next succeeding Business Day.

(b) All payments in respect of the principal amount of any Loan shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payments in respect of any Loan on a date when interest is due and payable with respect to such Loan) shall be applied to the payment of interest then due and payable before application to principal.

(c) Administrative Agent (or its agent or sub-agent appointed by it) shall promptly distribute to each Lender at such address as such Lender shall indicate in writing, such Lender’s applicable Pro Rata Share of all payments and prepayments of principal and



interest due hereunder, together with all other amounts due thereto, including all fees payable with respect thereto, to the extent received by Administrative Agent.

(d) Notwithstanding the foregoing provisions hereof, if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any Eurodollar Rate Loans, Administrative Agent shall give effect thereto in apportioning payments thereafter.

(e) Whenever any payment to be made hereunder with respect to any Loan shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day.

(f) [Reserved.]

(g) Administrative Agent shall deem any payment by or on behalf of Borrower hereunder that is not made in same day funds prior to 12:00 p.m. (New York City time) to be a non-conforming payment. Any such payment shall not be deemed to have been received by Administrative Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Administrative Agent shall give prompt notice to Borrower and each applicable Lender (confirmed in writing) if any payment is non-conforming. Any non-conforming payment may constitute or become a Default or Event of Default in accordance with the terms of Section 8.1(a). Interest shall continue to accrue on any principal as to which a non-conforming payment is made until such funds become available funds (but in no event less than the period from the date of such payment to the next succeeding applicable Business Day) at the rate determined pursuant to Section 2.10 from the date such amount was due and payable until the date such amount is paid in full.

(h) If an Event of Default shall have occurred and not otherwise been waived, and the maturity of the Obligations shall have been accelerated pursuant to Section 8.1, all payments or proceeds received by the Administrative Agent in respect of any of the Obligations, shall be applied as follows:

*first*, to pay any unpaid and unreimbursed costs, expenses and fees of the Administrative Agent (including to reimburse ratably any other Lender which have advanced any of the same to the Administrative Agent); and

*second, pro rata* toward payment of all amounts then due and owing and remaining unpaid in respect of the Obligations.

**2.17. Ratable Sharing.** Subject to Section 2.15(b), Lenders hereby agree among themselves that if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Loans made and applied in accordance with the terms hereof), through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Credit Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, amounts payable in respect of fees and other amounts then due and owing to such Lender hereunder or under the other Credit

Documents (collectively, the “**Aggregate Amounts Due**” to such Lender) which is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (a) notify Administrative Agent and each other Lender of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Borrower or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Borrower expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker’s lien, consolidation, set-off or counterclaim with respect to any and all monies owing by Borrower to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder. The provisions of this Section 2.17 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 (including the application of funds arising from the existence of a Defaulting Lender) or (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.

## **2.18. Making or Maintaining Eurodollar Rate Loans.**

(a) Inability to Determine Applicable Interest Rate. In the event that Administrative Agent shall have determined (which determination absent manifest error shall be final and conclusive and binding upon all parties hereto), on any Interest Rate Determination Date with respect to any Eurodollar Rate Loans, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such Loans on the basis provided for in the definition of “Adjusted Eurodollar Rate”, Administrative Agent shall on such date give notice to Borrower and each Lender of such determination, whereupon (i) no Loans may be made as Eurodollar Rate Loans until such time as Administrative Agent notifies Borrower and Lenders that the circumstances giving rise to such notice no longer exist, (ii) any Funding Notice given by Borrower with respect to the Loans in respect of which such determination was made shall be deemed to be rescinded by Borrower and (iii) such Loan will be automatically converted into a Base Rate Loan on the last day of the then-current Interest Period for such Loan.

(b) Illegality or Impracticability of Eurodollar Rate Loans. In the event that on any date (i) any Lender shall have determined (which determination shall be final and conclusive and binding upon all parties hereto) that the making, maintaining or continuation of its Eurodollar Rate Loans has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii)

Administrative Agent is advised by the Requisite Lenders (which determination shall be final and conclusive and binding upon all parties hereto) that the making, maintaining or continuation of its Eurodollar Rate Loans has become impracticable, as a result of contingencies occurring after the date hereof which materially and adversely affect the London interbank market or the position of the Lenders in that market, then, and in any such event, such Lenders (or in the case of the preceding clause (i), such Lender) shall be an **“Affected Lender”** and such Affected Lender shall on that day give notice (by e-mail or by telephone confirmed in writing) to Borrower and Administrative Agent of such determination (which notice Administrative Agent shall promptly transmit to each other Lender). If Administrative Agent receives a notice from (x) any Lender pursuant to clause (i) of the preceding sentence or (y) a notice from Lenders constituting Requisite Lenders pursuant to clause (ii) of the preceding sentence, then (1) the obligation of the Lenders (or, in the case of any notice pursuant to clause (i) of the preceding sentence, such Lender) to make Loans as Eurodollar Rate Loans shall be suspended until such notice shall be withdrawn by each Affected Lender, (2) to the extent such determination by the Affected Lender relates to a Eurodollar Rate Loan then being requested by Borrower pursuant to a Funding Notice, the Lenders (or in the case of any notice pursuant to clause (i) of the preceding sentence, such Lender) shall make such Loan as (or continue such Loan as or convert such Loan to, as the case may be) a Base Rate Loan, (3) the Lenders’ (or in the case of any notice pursuant to clause (i) of the preceding sentence, such Lender’s) obligations to maintain their respective outstanding Eurodollar Rate Loans (the **“Affected Loans”**) shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (4) the Affected Loans shall automatically convert into Base Rate Loans on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a Eurodollar Rate Loan then being requested by Borrower pursuant to a Funding Notice, Borrower shall have the option, subject to the provisions of Section 2.18(c), to rescind such Funding Notice as to all Lenders by giving written or telephonic notice (promptly confirmed by delivery of written notice thereof) to Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission Administrative Agent shall promptly transmit to each other Lender).

(c) Compensation for Breakage or Non-Commencement of Interest Periods. Borrower shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts), for all reasonable losses, expenses and liabilities (including any interest paid or payable by such Lender to Lenders of funds borrowed by it to make or carry its Eurodollar Rate Loans and any loss, expense or liability sustained by such Lender in connection with the liquidation or re-employment of such funds but excluding loss of anticipated profits) which such Lender may sustain: (i) if for any reason (other than a default by such Lender) a borrowing of any Eurodollar Rate Loan does not occur on a date specified therefor in a Funding Notice or a telephonic request for borrowing; (ii) if any prepayment or other principal payment of any of its Eurodollar Rate Loans occurs on a date prior to the last day of an Interest Period applicable to that Loan; or (iii) if any prepayment of any of its Eurodollar Rate Loans is not made on any date specified in a notice of prepayment given by Borrower.

(d) Booking of Eurodollar Rate Loans. Any Lender may make, carry or transfer Eurodollar Rate Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of such Lender.

(e) Assumptions Concerning Funding of Eurodollar Rate Loans. Calculation of all amounts payable to a Lender under this Section 2.18 and under Section 2.19 shall be made as though such Lender had actually funded each of its relevant Eurodollar Rate Loans through the purchase of a Eurodollar deposit bearing interest at the rate obtained pursuant to clause (i) of the definition of “Adjusted Eurodollar Rate” in an amount equal to the amount of such Eurodollar Rate Loan and having a maturity comparable to the relevant Interest Period and through the transfer of such Eurodollar deposit from an offshore office of such Lender to a domestic office of such Lender in the United States of America; provided, however, each Lender may fund each of its Eurodollar Rate Loans in any manner it sees fit and the foregoing assumptions shall be utilized only for the purposes of calculating amounts payable under this Section 2.18 and under Section 2.19.

(f) Benchmark Replacement Setting.

(i) *Benchmark Replacement*. Notwithstanding anything to the contrary herein or in any other Credit Document (and, for the avoidance of doubt, any Hedge Agreement shall be deemed not to be a “Credit Document” for purposes of this subclause (f) titled “Benchmark Replacement Setting”), if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Credit Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Credit Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Credit Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Credit Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Requisite Lenders.

(ii) *Benchmark Replacement Conforming Changes*. In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Credit Document, any amendments implementing such Benchmark Replacement Conforming Changes will

become effective without any further action or consent of any other party to this Agreement or any other Credit Document.

(iii) *Notices; Standards for Decisions and Determinations.* The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (d) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section titled “Benchmark Replacement Setting,” including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Credit Document, except, in each case, as expressly required pursuant to this subclause (f) titled “Benchmark Replacement Setting.”

(iv) *Unavailability of Tenor of Benchmark.* Notwithstanding anything to the contrary herein or in any other Credit Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or USD LIBOR) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of “Interest Period” for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) *Benchmark Unavailability Period.* Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may rescind any Funding Notice in respect of any Eurodollar Loans to be made or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have rescinded such notice and the Lenders shall make any such Loan as (or continue any such Loan as, or convert any such Loan to, as the case may be, a Base Rate Loan. During any Benchmark Unavailability Period or at any time that a tenor for the

then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

(vi) *Certain Defined Terms.* As used in this subclause (f) titled “Benchmark Replacement Setting”:

“**Available Tenor**” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to paragraph (iv) of this subclause (f) titled “Benchmark Replacement Setting.”

“**Benchmark**” means, initially, USD LIBOR; provided that if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to USD LIBOR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (i) of this subclause (f) titled “Benchmark Replacement Setting.”

“**Benchmark Replacement**” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

- (1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;
- (2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;
- (3) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated credit facilities at such time and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion. If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be

less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement and the other Credit Documents.

**“Benchmark Replacement Adjustment”** means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

- (1) for purposes of clauses (1) and (2) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by the Administrative Agent:
  - (a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;
  - (b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and
- (2) for purposes of clause (3) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities;

provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion.

**“Benchmark Replacement Conforming Changes”** means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Credit Documents).

**“Benchmark Replacement Date”** means the earliest to occur of the following events with respect to the then-current Benchmark: (1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); (2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein; or (3) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders. For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

**“Benchmark Transition Event”** means the occurrence of one or more of the following events with respect to the then-current Benchmark: (1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of



such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); (2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or (3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative. For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

**“Benchmark Unavailability Period”** means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Credit Document in accordance with this subclause (f) titled “Benchmark Replacement Setting” and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Credit Document in accordance with this subclause (f) titled “Benchmark Replacement Setting.”

**“Corresponding Tenor”** with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

**“Daily Simple SOFR”** means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

**“Early Opt-in Election”** means, if the then-current Benchmark is USD LIBOR, the occurrence of:

- (1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and
- (2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from USD LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.

**“ISDA Definitions”** means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

**“Reference Time”** with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by the Administrative Agent in its reasonable discretion.

**“Relevant Governmental Body”** means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

**“Reset Date”** means, with respect to an Interest Period, the first day of that Interest Period or, if that day is not a Business Day, the next following Business Day.

**“SOFR”** means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

**“SOFR Administrator”** means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

**“SOFR Administrator’s Website”** means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor

source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

**“Term SOFR”** means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

**“Unadjusted Benchmark Replacement”** means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

**“USD LIBOR”** means the London interbank offered rate for U.S. dollars.

## **2.19. Increased Costs; Capital Adequacy.**

(a) Compensation For Increased Costs and Taxes. Subject to the provisions of Section 2.20 (which shall be controlling with respect to the matters covered thereby), in the event that any Change in Law: (i) subjects such Lender (or its applicable lending office) or any company controlling such Lender to any additional Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) with respect to this Agreement or any of the other Credit Documents or any of its obligations hereunder or thereunder or any payments to such Lender (or its applicable lending office) of principal, interest, fees or any other amount payable hereunder; (ii) imposes, modifies or holds applicable any reserve (including any marginal, emergency, supplemental, special or other reserve), special deposit, liquidity, compulsory loan, FDIC insurance or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to Eurodollar Rate Loans that are reflected in the definition of “Adjusted Eurodollar Rate”) or any company controlling such Lender; or (iii) imposes any other condition (other than with respect to a Tax matter) on or affecting such Lender (or its applicable lending office) or any company controlling such Lender or such Lender’s obligations hereunder or the London interbank market; and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining Loans hereunder or to reduce any amount received or receivable by such Lender (or its applicable lending office) with respect thereto; then, in any such case, Borrower shall pay to such Lender, within 10 Business Days after receipt of the statement referred to in the next sentence, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or in a lump sum or otherwise as such Lender in its sole discretion shall determine) as may be necessary to compensate such Lender for any such increased cost or reduction in amounts received or receivable hereunder. Such Lender shall deliver to Borrower (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Lender under this Section 2.19(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(b) Capital Adequacy and Liquidity Adjustment. In the event that (i) any Change in Law regarding capital adequacy or liquidity or (ii) compliance by any Lender (or its

applicable lending office) or any company controlling such Lender with any Change in Law regarding capital adequacy or liquidity, has or would have the effect of reducing the rate of return on the capital of such Lender or any company controlling such Lender as a consequence of, or with reference to, such Lender's Loans or participations therein or other obligations hereunder with respect to the Loans to a level below that which such Lender or such controlling company could have achieved but for such Change in Law (taking into consideration the policies of such Lender or such controlling company with regard to capital adequacy and liquidity), then from time to time, within five Business Days after receipt by Borrower from such Lender of the statement referred to in the next sentence, Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling company on an after-tax basis for such reduction. Such Lender shall deliver to Borrower (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Lender under this Section 2.19(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

(c) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 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 pursuant to this Section for any increased costs incurred or reductions suffered more than three months 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 (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the three-month period referred to above shall be extended to include the period of retroactive effect thereof).

## **2.20. Taxes; Withholding, Etc.**

(a) Payments to Be Free and Clear. All sums payable by or on behalf of any Credit Party hereunder and under the other Credit Documents shall (except to the extent required by law) be paid free and clear of, and without any deduction or withholding on account of, any Tax (other than a Tax on the overall net income of any Lender).

(b) Withholding of Taxes. If any Credit Party or any other Person (acting as a withholding agent) is (in such withholding agent's reasonable good faith discretion) required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by any Credit Party to Administrative Agent or any Lender under any of the Credit Documents: (i) Borrower shall notify Administrative Agent of any such requirement or any change in any such requirement as soon as Borrower becomes aware of it; (ii) Borrower shall pay, or cause to be paid, any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Credit Party) for its own account or (if that liability is imposed on Administrative Agent or such Lender, as the case may be) on behalf of and in the name of Administrative Agent or such Lender; (iii) if such Tax is an Indemnified Tax, then unless otherwise provided on this Section 2.20, the sum payable by such Credit Party in respect of which the relevant deduction, withholding or payment is required

shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment (including any such Indemnified Tax imposed or asserted on or attributable to amounts payable under this Section 2.20), Administrative Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (iv) within thirty days after the due date of payment of any Tax which it is required by clause (ii) above to pay, Borrower shall deliver to Administrative Agent evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority.

(c) Status of Lenders. Any Lender that is entitled to an exemption from or reduction of withholding with respect to payments made under any Credit Document shall deliver to Administrative Agent for transmission to Borrower, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of Borrower or Administrative Agent (each in the reasonable exercise of its discretion), such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (c)(ii) and (d) of this Section) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(d) Without limiting the generality of the foregoing, each Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. federal income tax purposes (a "**Non-US Lender**") shall deliver to Administrative Agent for transmission to Borrower, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof on the Closing Date) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of Borrower or Administrative Agent (each in the reasonable exercise of its discretion), (i) two original copies of Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8ECI, W-8EXP and/or W-8IMY (or, in each case, any successor forms), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Borrower to establish that such Lender is not subject to (or is subject to a reduced rate of) deduction or withholding of United States federal income tax with respect to any payments to such Lender of principal, interest, fees or other amounts payable under any of the Credit Documents, or (ii) if such Lender is not a "bank" or other Person described in

Section 881(c)(3) of the Internal Revenue Code, a U.S. Tax Compliance Certificate together with two original copies of Internal Revenue Service Form W-8BEN or W-8BEN-E or W-8IMY (or any successor form), properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Borrower to establish that such Lender is not subject to (or is subject to a reduced rate of) deduction or withholding of United States federal income tax with respect to any payments to such Lender of interest payable under any of the Credit Documents. Each Lender that is a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for United States federal income tax purposes (a **“U.S. Lender”**) shall deliver to Administrative Agent and Borrower on or prior to the Closing Date (or, if later, on or prior to the date on which such Lender becomes a party to this Agreement) two original copies of Internal Revenue Service Form W-9 (or any successor form), properly completed and duly executed by such Lender, certifying that such U.S. Lender is entitled to an exemption from United States backup withholding tax, or otherwise prove that it is entitled to such an exemption. Each Lender required to deliver any forms, certificates or other evidence with respect to United States federal income tax withholding matters pursuant to this Section 2.20 hereby agrees, from time to time after the initial delivery by such Lender of such forms, certificates or other evidence, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence obsolete or inaccurate in any material respect, that such Lender shall promptly deliver to Administrative Agent for transmission to Borrower two new original copies of Internal Revenue Service Form W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, W-8IMY and/or W-9 (or, in each case, any successor form), or a U.S. Tax Compliance Certificate and two original copies of Internal Revenue Service Form W-8BEN or W-8BEN-E or W-8IMY (or, in each case, any successor form), as the case may be, properly completed and duly executed by such Lender, and such other documentation required under the Internal Revenue Code and reasonably requested by Borrower to confirm or establish that such Lender is not subject to deduction or withholding of United States federal income tax with respect to payments to such Lender under the Credit Documents, or notify Administrative Agent and Borrower of its inability to deliver any such forms, certificates or other evidence.

(e) If a payment made to a Lender under any Credit Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (d), “FATCA” shall include any amendments made to FATCA after the date hereof.

(f) Without limiting the provisions of Section 2.20(b), Borrower shall timely pay all Other Taxes to the relevant Governmental Authorities in accordance with applicable law. Borrower shall deliver to Administrative Agent official receipts or other evidence of such payment reasonably satisfactory to Administrative Agent in respect of any Other Taxes payable hereunder promptly after payment of such Other Taxes.

(g) Borrower shall indemnify Administrative Agent and any Lender for the full amount of Indemnified Taxes for which additional amounts are required to be paid pursuant to Section 2.20(b) arising in connection with payments made under this Agreement or any other Credit Document (including any such Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.20) paid or payable by Administrative Agent or Lender or any of their respective Affiliates and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to such Credit Party shall be conclusive absent manifest error. Such payment shall be due within ten (10) days of such Credit Party's receipt of such certificate.

(h) Each Lender shall severally indemnify Administrative Agent for (i) Indemnified Taxes for which additional amounts are required to be paid pursuant to Section 2.20(b) arising in connection with payments made under this Agreement or any other Credit Document (including any such Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.20) attributable to such Lender (but only to the extent that Borrower has not already indemnified Administrative Agent therefor and without limiting the obligation of Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.6(g)(i) relating to the maintenance of a Participant Register and (iii) any Taxes on overall net income attributable to such Lender, in each case, that are payable or paid by Administrative Agent in connection with any Credit 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 Administrative Agent shall be conclusive absent manifest error. Such payment shall be due within ten (10) days of such Lender's receipt of such certificate. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Credit Document or otherwise payable by Administrative Agent to such Lender from any other source against any amount due to Administrative Agent under this paragraph (g).

(i) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.20 (including additional amounts pursuant to this Section 2.20), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.20 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to

such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

**2.21. Obligation to Mitigate.** Each Lender agrees that, if such Lender requests payment under Section 2.18, 2.19 or 2.20, then such Lender will, to the extent not inconsistent with any applicable legal or regulatory restrictions, use reasonable efforts to make, issue, fund or maintain its Credit Extensions, including any Affected Loans, through another office of such Lender if, as a result thereof, the additional amounts payable to such Lender pursuant to Section 2.18, 2.19 or 2.20, as the case may be, in the future would be eliminated or reduced and if, as determined by such Lender in its reasonable judgment, the making, issuing, funding or maintaining of such Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Loans or the interests of such Lender; provided, such Lender will not be obligated to utilize such other office pursuant to this Section 2.21 unless Borrower agrees to pay all reasonable and documented out-of-pocket expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Borrower pursuant to this Section 2.21 (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Borrower (with a copy to Administrative Agent) shall be conclusive absent manifest error.

## **2.22. Defaulting Lenders.**

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 8 or otherwise) or received by Administrative Agent from a Defaulting Lender pursuant to Section 10.4 shall be applied at such time or times as may be determined by Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent hereunder; *second*, , as Borrower may request (so long as no Default or Event of Default shall have occurred and be continuing), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as



required by this Agreement, as determined by Administrative Agent; *third*, if so determined by Administrative Agent and Borrower, to be held in a Deposit Account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default or Event of Default shall have occurred and be continuing, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction provided that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in Section 3.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders pro rata in accordance with the applicable Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this Section 2.22(a)(i) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(ii) [Reserved].

(iii) [Reserved].

(b) Defaulting Lender Cure. If Borrower and Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Loans to be held pro rata by the Lenders in accordance with the applicable Commitments, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and provided further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

(c) [Reserved].

(d) [Reserved].

(e) Lender Counterparties. So long as any Lender is a Defaulting Lender, such Lender shall not be a Lender Counterparty with respect to any Hedge Agreement entered into while such Lender was a Defaulting Lender.

**2.23. Removal or Replacement of a Lender.** Anything contained herein to the contrary notwithstanding, in the event that: (a) (i) any Lender (an **“Increased-Cost Lender”**) shall give notice to Borrower that such Lender is an Affected Lender or that such Lender is entitled to receive payments under Section 2.19 or 2.20 and (ii) the circumstances which have caused such Lender to be an Affected Lender or which entitle such Lender to receive such payments shall remain in effect; or (b) any Lender shall become and continues to be a Defaulting Lender; or (c) in connection with any proposed amendment, modification, termination, waiver or consent with respect to any of the provisions hereof as contemplated by Section 10.5(b), the consent of the Requisite Lenders shall have been obtained but the consent of one or more of such other Lenders (each a **“Non-Consenting Lender”**) whose consent is required shall not have been obtained; then, with respect to each such Increased-Cost Lender, Defaulting Lender or Non-Consenting Lender (the **“Terminated Lender”**), Borrower may, by giving written notice to Administrative Agent and any Terminated Lender of its election to do so, elect to cause such Terminated Lender (and such Terminated Lender hereby irrevocably agrees) to assign its outstanding Loans, if any, in full to one or more Eligible Assignees (each a **“Replacement Lender”**) in accordance with the provisions of Section 10.6 and Borrower shall pay the fees, if any, payable thereunder in connection with any such assignment from an Increased-Cost Lender, a Non-Consenting Lender or a Defaulting Lender; provided, (1) on the date of such assignment, the Replacement Lender shall pay to Terminated Lender an amount equal to the sum of (A) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the Terminated Lender, (B) an amount equal to all unreimbursed drawings that have been funded by such Terminated Lender, together with all then unpaid interest with respect thereto at such time and (C) an amount equal to all accrued, but theretofore unpaid fees owing to such Terminated Lender pursuant to Section 2.11; (2) on the date of such assignment, Borrower shall pay any amounts payable to such Terminated Lender pursuant to Section 2.18(c), 2.19 or 2.20; (3) such assignment does not conflict with applicable law; and (4) in the event such Terminated Lender is a Non-Consenting Lender, each Replacement Lender shall consent, at the time of such assignment, to each matter in respect of which such Terminated Lender was a Non-Consenting Lender;. Upon the prepayment of all amounts owing to any Terminated Lender, such Terminated Lender shall no longer constitute a “Lender” for purposes hereof; provided, any rights of such Terminated Lender to indemnification hereunder shall survive as to such Terminated Lender. Each Lender agrees that if Borrower exercises its option hereunder to cause an assignment by such Lender as a Non-Consenting Lender or Terminated Lender, such Lender shall, promptly after receipt of written notice of such election, execute and deliver all documentation necessary to effectuate such assignment in accordance with Section 10.6. In the event that a Lender does not comply with the requirements of the immediately preceding sentence within one Business Day after receipt of such notice, each Lender hereby authorizes and directs Administrative Agent to execute and deliver such documentation as may be required to give effect to an assignment in accordance with Section 10.6 on behalf of a Non-Consenting Lender or Terminated Lender and any such documentation so executed by Administrative Agent shall be effective for purposes of documenting an assignment pursuant to Section 10.6. Any

removal of Goldman Sachs or its successor as a Terminated Lender pursuant to this Section shall also constitute the removal of Goldman Sachs or its successor as Administrative Agent pursuant to Section 9.7.

### SECTION 3. CONDITIONS PRECEDENT

**3.1. Closing Date.** The obligation of each Lender to make a Credit Extension on the Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before the Closing Date:

(a) Credit Documents. Administrative Agent and Arrangers shall have received sufficient copies of each Credit Document as Administrative Agent shall request, originally executed and delivered by each Credit Party and each other Person party thereto.

(b) Organizational Documents; Incumbency. Administrative Agent and Arrangers shall have received, in respect of each Credit Party, (i) sufficient copies of each Organizational Document as Administrative Agent shall request, and, to the extent applicable, certified as of the Closing Date or a recent date prior thereto by the appropriate Governmental Authority; (ii) signature and incumbency certificates of the officers of such Credit Party; (iii) resolutions of the Board of Directors or similar governing body of such Credit Party approving and authorizing the execution, delivery and performance of this Agreement and the other Credit Documents and the Related Agreements to which it is a party or by which it or its assets may be bound as of the Closing Date, certified as of the Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; (iv) a good standing certificate from the applicable Governmental Authority of such Credit Party's jurisdiction of incorporation, organization or formation and in each jurisdiction in which it is qualified as a foreign corporation or other entity to do business, each dated the Closing Date or a recent date prior thereto; and (v) signature and incumbency certificates of one or more officers of Borrower who are authorized to execute Funding Notices delivered under this Agreement, in substantially the form of Exhibit P (with such amendments or modifications as may be approved by Administrative Agent).

(c) Organizational and Capital Structure. The organizational structure and capital structure of Borrower and its Subsidiaries, both before and after giving effect to the Initial Public Offering, shall be as set forth on Schedule 3.1.

(d) Initial Public Offering. Administrative Agent and Arrangers shall have received evidence reasonably satisfactory to each of them of the consummation of the Initial Public Offering.

(e) Borrowing of the Senior Loans.

(i) (1) all conditions to the borrowing of the Senior Loans on the Closing Date set forth in the Senior Credit Agreement shall have been satisfied, or the fulfillment of any such conditions shall have been waived in accordance with the terms thereof, and (2) the Senior Loans constituting term loans shall be fully funded on the Closing Date;

(ii) Administrative Agent and Arrangers shall have received a fully executed or conformed copy of each Related Agreement and any documents executed in connection therewith. Each Related Agreement shall be in full force and effect, shall include terms and provisions reasonably satisfactory to Administrative Agent and no provision thereof shall have been modified or waived in any respect determined by Administrative Agent to be material, in each case without the consent of Administrative Agent.

(f) Existing Indebtedness. On the Closing Date, the Borrower and its Subsidiaries shall have repaid in full all Existing Indebtedness (it being understood that such repayment may be funded with the proceeds of the Loans).

(g) Engagement of Financial Institution. The Borrower shall have entered into an engagement letter (the “**Engagement Letter**”) with one or more investment and/or commercial banks satisfactory to the Arrangers (collectively, the “**Financial Institution**”) documenting the engagement of the Financial Institution, on terms and conditions satisfactory to the Arrangers, to publicly sell or privately place one or more series or tranches of debt securities, the net proceeds of which will be used to Refinance the Obligations (“**Permanent Debt**”).

(h) [Reserved].

(i) Financial Statements. Administrative Agent and Arrangers shall have received from the Borrower (i) the Historical Financial Statements, (ii) any audited (to the extent available) or unaudited financial statements relating to acquisitions of or substantially all of the assets of, all Equity Interests of, or a business line or unit or a division of, any Person, carried out by the Borrower or any of its Subsidiaries within the twelve months preceding the Closing Date, or which are contemplated or pending as of such date, and (iii) pro forma consolidated balance sheets of the Borrower and its Subsidiaries as at the Closing Date, reflecting the consummation of the transactions contemplated by the Credit Documents the borrowing of the Senior Loans and the Initial Public Offering, in each case meeting the requirements of Regulation S-X for Form S-1 registration statements.

(j) Evidence of Insurance. Administrative Agent shall have received a certificate from the applicable Credit Party’s insurance broker or other evidence reasonably satisfactory to it that all insurance required to be maintained pursuant to Section 5.5 is in full force and effect.

(k) Opinions of Counsel to Credit Parties. Agents and Lenders and their respective counsel shall have received an executed copy of a customary written opinion of Sullivan & Cromwell LLP, New York counsel to the Credit Parties, and of other outside counsel in the jurisdiction of organization of each Credit Party that is not organized in New York, substantially in the form of Exhibit L (and each Credit Party hereby instructs each such counsel to deliver such opinions to Agents and Lenders).

(l) Fees. Borrower shall have paid to each Agent, Arranger and Lender the fees payable on or before the Closing Date referred to in Section 2.11 and all expenses payable on the Closing Date pursuant to Section 10.2, to the extent invoiced at least three Business Days prior to the Closing Date.

(m) Solvency Certificate; Solvency Appraisal. On the Closing Date, Administrative Agent and Arranger shall have received a Solvency Certificate from a Financial Officer of the Borrower.

(n) Closing Date Certificate. The Borrower shall have delivered to Administrative Agent and Arrangers an originally executed Closing Date Certificate, together with all attachments thereto.

(o) Closing Date. Lenders shall have made the Term Loans to Borrower on or before \_\_\_\_\_, 2021.

(p) Letter of Direction. Administrative Agent and Arrangers shall have received a duly executed letter of direction from Borrower addressed to Administrative Agent and Arrangers, on behalf of themselves and Lenders, directing the disbursement on the Closing Date of the proceeds of the Loans made on such date.

(q) At least 10 days prior to the Closing Date, the Lenders shall have received all documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and anti-money laundering rules and regulations, including the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001) the “**PATRIOT Act**”).

### **3.2. Conditions to Each Credit Extension.**

(a) Conditions Precedent. The obligation of each Lender to make any Loan, on any Credit Date, including the Closing Date, are subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions precedent:

(i) Administrative Agent shall have received a fully executed and delivered Funding Notice, as the case may be;

(ii) [Reserved];

(iii) as of such Credit Date, the representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects on and as of that Credit Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; provided that, in each case, such

materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and

(iv) as of such Credit Date, no event shall have occurred and be continuing or would result from the consummation of the applicable Credit Extension that would constitute an Event of Default or a Default.

(a) **Notices.** Any Notice shall be executed by an Authorized Officer in a writing delivered to Administrative Agent. In lieu of delivering a Notice, Borrower may give Administrative Agent telephonic notice by the required time of any proposed borrowing; provided each such notice shall be promptly confirmed in writing by delivery of the applicable Notice to Administrative Agent on or before the close of business on the date that the telephonic notice is given. In the event of a discrepancy between the telephone notice and the written Notice, the written Notice shall govern. In the case of any Notice that is irrevocable once given, if Borrower provides telephonic notice in lieu thereof, such telephone notice shall also be irrevocable once given. Neither Administrative Agent nor any Lender shall incur any liability to Borrower in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by a duly authorized officer or other person authorized on behalf of Borrower or for otherwise acting in good faith..

(b) Each borrowing of a Loan hereunder shall constitute a representation and warranty by Borrower as of the applicable Credit Date that the conditions contained in clauses (iii), and (iv) of Section 3.2(a) have been satisfied.

#### **SECTION 4. REPRESENTATIONS AND WARRANTIES**

In order to induce Agents and Lenders to enter into this Agreement and to make each Credit Extension to be made thereby, each Credit Party represents and warrants to each Agent and Lender, on the Closing Date and on each Credit Date, that the following statements are true and correct:

**4.1. Organization; Requisite Power and Authority; Qualification.** Each of the Borrower and its Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as identified in Schedule 4.1, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted, to enter into the Credit Documents to which it is a party and to carry out the transactions contemplated thereby, and (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect.

**4.2. Equity Interests and Ownership.** Except as set forth on Schedule 4.2, as of the date hereof, there is no existing option, warrant, call, right, commitment or other agreement to which the Borrower or any of its Subsidiaries is a party requiring, and there is no membership interest or other Equity Interests of any Subsidiary of the Borrower outstanding which upon conversion or exchange would require, the issuance by any Subsidiary of the Borrower of any

additional membership interests or other Equity Interests of any Subsidiary of the Borrower or other Securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Equity Interests of any Subsidiary of the Borrower. Schedule 4.2 correctly sets forth the ownership interest of the Borrower and each of its Subsidiaries in their respective Subsidiaries as of the Closing Date.

**4.3. Due Authorization.** The execution, delivery and performance of the Credit Documents have been duly authorized by all necessary action on the part of each Credit Party that is a party thereto.

**4.4. No Conflict.** The execution, delivery and performance by Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not (a) violate (i) any provision of any law or any governmental rule or regulation applicable to the Borrower or any of its Subsidiaries, (ii) any of the Organizational Documents of such Credit Party, or (iii) any order, judgment or decree of any court or other agency of government binding on the Borrower or any of its Subsidiaries; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation the Borrower or any of its Subsidiaries; or (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of the Borrower or any of its Subsidiaries, except for any violation set forth in clause (a)(i), any conflict, breach or default set forth in clause (b) or any imposition of a Lien referred to in clause (c) which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**4.5. Governmental Consents.** The execution, delivery and performance by Credit Parties of the Credit Documents to which they are parties and the consummation of the transactions contemplated by the Credit Documents do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority, except for (a) such as have been made or obtained and are in full force and effect, (b) such other actions, registrations, consents and approvals with respect to which the failure to be obtained or made would not reasonably be expected to have a Material Adverse Effect [and (c) filings or other actions listed on Schedule 4.5].

**4.6. Binding Obligation.** Each Credit Document has been duly executed and delivered by each Credit Party that is a party thereto and is the legally valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

**4.7. Historical Financial Statements.** The Historical Financial Statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial position, on a consolidated basis, of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows, on a consolidated basis, of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments.

As of the Closing Date, neither the Borrower nor any of its Subsidiaries has any contingent liability or liability for Taxes, long-term lease or unusual forward or long-term commitment that is not reflected in the Historical Financial Statements or disclosed in the notes thereto and which in any such case is material in relation to the business, operations, properties, assets or financial condition of the Borrower and its Subsidiaries taken as a whole.

**4.8. Projections.** The projections of the Borrower and its Subsidiaries for the period of Fiscal Year 2020 through and including Fiscal Year 2025 furnished by or on behalf of the Borrower to the Arrangers (the “**Projections**”) have been prepared in good faith based on assumptions believed by the management of the Borrower to be reasonable at the time made, at the time such Projections were furnished and on the Closing Date (it being understood that Projections are not to be viewed as facts and that actual results during the period or periods covered by the Projections may differ from such Projections and such differences may be material).

**4.9. No Material Adverse Effect.** Since December 31, 2020, no event, circumstance or change has occurred that has had, either in any case or in the aggregate, a Material Adverse Effect.

**4.10. [Reserved.]**

**4.11. Adverse Proceedings, Etc.** There are no Adverse Proceedings, individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect. Neither the Borrower nor any of its Subsidiaries (a) is in violation of any applicable laws (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**4.12. Payment of Taxes.** Except as otherwise permitted under Section 5.3 and except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect, all Tax returns and reports of the Borrower and its Subsidiaries required to be filed by any of them have been timely filed, and all Taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon the Borrower and its Subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable. Except as could not reasonably be expected to have a Material Adverse Effect, there is no proposed Tax assessment against the Borrower or any of its Subsidiaries other than assessments actively contested by the Borrower or such Subsidiary in good faith and by appropriate proceedings; for which such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP have been made or provided.

**4.13. Properties.** Each of the Borrower and its Subsidiaries has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the



case of leasehold interests in real or personal property), (iii) valid licensed rights in (in the case of licensed interests in intellectual property) and (iv) good title to (in the case of all other personal property), all of their respective properties and assets reflected in their respective Historical Financial Statements referred to in Section 4.7 and in the most recent financial statements delivered pursuant to Section 5.1, in each case except for assets disposed of since the date of such financial statements in the ordinary course of business or as otherwise permitted under Section 6.8, and except where failure to have such title, interests or licensed rights would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.

**4.14. Environmental Matters.** Neither the Borrower nor any of its Subsidiaries nor any of their respective Facilities or operations are subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. There are and, to each of the Borrower' and its Subsidiaries' knowledge, have been, no conditions, occurrences, or Hazardous Materials Activities which could reasonably be expected to form the basis of an Environmental Claim against the Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect. Neither the Borrower nor any of its Subsidiaries nor, to any Credit Party's knowledge, any predecessor of the Borrower or any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility, and none of the Borrower' or any of its Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any state equivalent. Compliance with all current or reasonably foreseeable future requirements pursuant to or under Environmental Laws could not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. No event or condition has occurred or is occurring with respect to the Borrower or any of its Subsidiaries relating to any Environmental Law, any Release of Hazardous Materials, or any Hazardous Materials Activity which individually or in the aggregate has had, or could reasonably be expected to have, a Material Adverse Effect.

**4.15. [Reserved.]**

**4.16. [Reserved.]**

**4.17. Governmental Regulation.** Neither the Borrower nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. Neither the Borrower nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

**4.18. Federal Reserve Regulations; Exchange Act.**

(a) None of the Borrower or any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No portion of the proceeds of any Credit Extension shall be used in any manner, whether directly or indirectly, that causes or could reasonably be expected to cause, such Credit Extension or the application of such proceeds to violate Regulation T, Regulation U or Regulation X of the Board of Governors or any other regulation thereof or to violate the Exchange Act.

**4.19. Employee Matters.** Neither the Borrower nor any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to have a Material Adverse Effect. There is (a) no unfair labor practice complaint pending against the Borrower or any of its Subsidiaries, or to the best knowledge of the Borrower, threatened against any of them before the National Labor Relations Board and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is so pending against the Borrower or any of its Subsidiaries or to the best knowledge of the Borrower, threatened against any of them, (b) no strike or work stoppage in existence or threatened involving the Borrower or any of its Subsidiaries, and (c) to the best knowledge of the Borrower, no union representation question existing with respect to the employees of the Borrower or any of its Subsidiaries and, to the best knowledge of the Borrower, no union organization activity that is taking place, except (with respect to any matter specified in clause (a), (b) or (c) above, either individually or in the aggregate) such as is not reasonably likely to have a Material Adverse Effect.

**4.20. Employee Benefit Plans.** The Borrower, each of its Subsidiaries and each of their respective ERISA Affiliates are in compliance in all material respects with all applicable provisions and requirements of ERISA and the Internal Revenue Code and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each Employee Benefit Plan in all material respects. Each Employee Benefit Plan which is intended to qualify under Section 401(a) of the Internal Revenue Code has received a favorable determination letter, opinion letter or advisory letter from the Internal Revenue Service indicating that such Employee Benefit Plan is so qualified and nothing has occurred subsequent to the issuance of such determination letter which would cause such Employee Benefit Plan to lose its qualified status, except as could reasonably be expected to have a Material Adverse Effect. No liability to the PBGC (other than required premium payments), the Internal Revenue Service, any Employee Benefit Plan or any trust established under Title IV of ERISA has been or is expected to be incurred by the Borrower, any of its Subsidiaries or any of their ERISA Affiliates, except as could not reasonably be expected to have a Material Adverse Effect. No ERISA Event has occurred or is reasonably expected to occur, except as could not reasonably be expected to have a Material Adverse Effect. Except to the extent required under Section 4980B of the Internal Revenue Code or similar state laws, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates, except as could not reasonably be expected to have a Material Adverse Effect. The present value of the aggregate benefit liabilities under each Pension Plan

sponsored, maintained or contributed to by the Borrower, any of its Subsidiaries or any of their ERISA Affiliates (determined as of the end of the most recent plan year on the basis of the actuarial assumptions specified for funding purposes in the most recent actuarial valuation for such Pension Plan), did not exceed the aggregate current value of the assets of such Pension Plan, except as could reasonably be expected to have a Material Adverse Effect. As of the most recent valuation date for each Multiemployer Plan for which the actuarial report is available, the potential liability of the Borrower, its Subsidiaries and their respective ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 4221(e) of ERISA is zero, except as could reasonably be expected to have a Material Adverse Effect. The Borrower, each of its Subsidiaries and each of their ERISA Affiliates have complied with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan and are not in material “default” (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan, except as could reasonably be expected to have a Material Adverse Effect.

**4.21. Certain Fees.** No broker’s or finder’s fee or commission will be payable with respect to the transactions contemplated by this Agreement and the Related Agreements, except as payable to Agents, Arrangers and Lenders.

**4.22. Solvency.** On the Closing Date, after giving effect to the consummation of the Transactions, including the making of Loans hereunder and the Senior Loans, and after giving effect to the application of proceeds thereof:

(a) the fair value of the assets of the Borrower and its subsidiaries, on a consolidated basis, exceeds, on a consolidated basis, their debts and liabilities, subordinated, contingent or otherwise;

(b) the present fair saleable value of the property of the Borrower and its subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise as such debts and other liabilities become absolute and matured;

(c) the Borrower and its subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured;

(d) the Borrower and its subsidiaries, on a consolidated basis, have not incurred and do not intend to incur, or believe (nor should they reasonably believe) that they will incur, debts beyond their ability to pay such debts as they become due (whether at maturity or otherwise); and

(e) the Borrower and its subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.

For the purposes hereof, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

#### **4.23. [Reserved]**

**4.24. Compliance with Statutes, Etc.** Each of the Borrower and its Subsidiaries is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in respect of the conduct of its business and the ownership of its property (including compliance with all applicable Environmental Laws with respect to any Real Estate Asset or governing its business and the requirements of any permits issued under such Environmental Laws with respect to any such Real Estate Asset or the operations of the Borrower or any of its Subsidiaries), except such non-compliance that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**4.25. Disclosure.** All written information (other than the Projections, estimates, forecasts, forward looking information and information of a general economic nature or general industry nature) (the “**Information**”) concerning the Borrower or any of its Subsidiaries and furnished by or on behalf of the Credit Parties and made available to any Lender or the Administrative Agent in connection with the Transactions or the other transactions contemplated hereby, when taken as a whole, was true and correct in all material respects as of the date such Information was furnished to the Lenders and as of the Closing Date and did not, taken as a whole, contain any untrue statement of a material fact as of any such date or omit to state a material fact necessary in order to make the statements contained therein, taken as a whole, not materially misleading in any material respect in light of the circumstances under which such statements were made (after giving effect to all supplements and updates thereto delivered to the Arrangers prior to such time).

**4.26. Sanctioned Persons; Anti-Corruption Laws; PATRIOT Act.** None of the Borrower or any of its Subsidiaries or any of their respective directors, officers or, to the knowledge of Borrower, employees, agents, advisors or Affiliates is (a) a Person named on any list of designated persons maintained by the U.S. Department of State or the U.S. Department of Treasury (including the Office of Foreign Assets Control) or any other applicable sanctions authority that imposes, administers or enforces economic or financial sanctions or trade embargoes (collectively, “**Sanctions**”, and the associated laws, rules, regulations and orders, collectively, “**Sanctions Laws**”), (b) located, organized or resident in any country or territory that is the subject or target of Sanctions, (c) owned or controlled by any such Person or Persons, or (d) otherwise the subject of Sanctions . Each of the Borrower and its Subsidiaries and their respective directors, officers and, to the knowledge of Borrower, employees, agents, advisors and Affiliates is in compliance, in all material respects, with (i) all Sanctions Laws, (ii) the United States Foreign Corrupt Practices Act of 1977, as amended, and any other applicable anti-bribery or anti-corruption laws, rules, regulations and orders (collectively, “**Anti-Corruption Laws**”) and (iii) the PATRIOT Act and any other applicable terrorism and money laundering laws, rules, regulations and orders. No part of the proceeds of the Loans will be used, directly or indirectly,

(A) for the purpose of funding, financing or facilitating any activities, transactions, or business of or with any Person or in any country or territory that at such time is the subject of any Sanctions, (B) in any manner that would result in a violation of any Sanctions Laws applicable to any party hereto, or (C) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of any Anti-Corruption Law.

## SECTION 5. AFFIRMATIVE COVENANTS

Each Credit Party covenants and agrees that, so long as any Commitment is in effect and until payment in full of all Obligations (other than amounts in respect of indemnification, expense reimbursement, yield protection or tax gross-up and other contingent obligations with respect to which no claim has been made), each Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants set forth in this Section 5.

**5.1. Financial Statements and Other Reports.** The Borrower will deliver to Administrative Agent and Lenders:

(a) [Reserved.]

(b) Quarterly Financial Statements. 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, commencing with the Fiscal Quarter in which the Closing Date occurs, the consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such Fiscal Quarter (including, during any Unrestricted Subsidiary Reporting Period, with respect to the consolidated balance sheet, any adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) (which may be in footnote form only) from the consolidated balance sheet) and the related consolidated statements of income, stockholders' equity and cash flows of the Borrower and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto (it being understood that filing by the Borrower of a Quarterly Report on Form 10-Q with the SEC shall satisfy the requirements of this Section 5.1(b), without prejudice to the obligation of the Borrower, during any Unrestricted Subsidiary Reporting Period, to deliver a statement setting forth any adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries from the consolidated balance sheet);

(c) Annual Financial Statements. As soon as available, and in any event within 90 days after the end of each Fiscal Year, commencing with the Fiscal Year in which the Closing Date occurs, (i) the consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such Fiscal Year (including, during any Unrestricted Subsidiary Reporting Period, with respect to the consolidated balance sheet, any adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) (which may be in footnote form only) from the consolidated balance sheet) and the related consolidated statements of income, stockholders'

equity and cash flows of the Borrower and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, in reasonable detail, together with a Financial Officer Certification and a Narrative Report with respect thereto; and (ii) with respect to such consolidated financial statements a report thereon of [\_\_\_] or other independent certified public accountants of recognized national standing selected by the Borrower and reasonably satisfactory to Administrative Agent (which report and/or the accompanying financial statements shall be unqualified as to going concern (except any “going concern” qualification due to the impending maturity of any indebtedness under this Agreement within one year from the date of such opinion or any prospective default of any financial maintenance covenant included in this Agreement) and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards) (it being understood that the filing by the Borrower of an Annual Report on Form 10-K with the SEC shall satisfy the requirements of paragraph (i) of this Section 5.1(c), without prejudice to the obligation of the Borrower, during any Unrestricted Subsidiary Reporting Period, to deliver a statement setting forth any adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries from the consolidated balance sheet);

(d) Compliance Certificate. Together with each delivery of financial statements of the Borrower and its Subsidiaries pursuant to Sections 5.1(b) and 5.1(c), a duly executed and completed Compliance Certificate;

(e) [Reserved].

(f) Notice of Default. Promptly upon any officer of the Borrower or Borrower obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default; (ii) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, a certificate of an Authorized Officer specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, event or condition, and what action Borrower has taken, is taking and proposes to take with respect thereto;

(g) Notice of Litigation. Promptly upon any officer of the Borrower or Borrower obtaining knowledge of (i) any Adverse Proceeding not previously disclosed in writing by Borrower to Lenders, or (ii) any development in any Adverse Proceeding that, in the case of either clause (i) or (ii) could be reasonably expected to have a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to the Borrower to enable Lenders and their counsel to evaluate such matters;

(h) ERISA. (i) Promptly upon becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto; and (ii) with reasonable promptness, copies of (1) all notices received by the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and (2) copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan as Administrative Agent shall reasonably request.

(i) Financial Plan. As soon as practicable and in any event no later than ninety days after the beginning of each Fiscal Year, a forecast prepared by management of the Borrower of the consolidated statement of income of the Borrower and its Subsidiaries on a quarterly basis for such Fiscal Year (a "Financial Plan").

(j) [Reserved].

(k) Other Information. Such other information and data with respect to the Borrower or any of its Subsidiaries as from time to time may be reasonably requested by Administrative Agent or any Lender; and

(l) Designation of Public Information. The 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 5.1 or otherwise are being distributed through Debt Domain, Intralinks, SyndTrak or another relevant website or other information platform (the "**Platform**"), any document or notice that the Borrower has indicated contains Private-Side Information shall not be posted on that portion of the Platform designated for such Public Lenders. The Borrower agrees to clearly designate all information provided to Administrative Agent by or on behalf of the Borrower which contains only Public-Side Information, and by doing so shall be deemed to have represented that such information contains only Public-Side Information. If the Borrower has not indicated whether a document or notice delivered pursuant to this Section 5.1 contains Private-Side Information, Administrative Agent reserves the right to post such document or notice solely on that portion of the Platform designated for Private Lenders.

**5.2. Existence.** Except as otherwise permitted under Section 6.8, each Credit Party will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business; provided, no Credit Party (other than the Borrower with respect to existence) or any of its Subsidiaries shall be required to preserve any such existence, right or franchise, licenses and permits if the failure to do so would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

**5.3. Payment of Taxes and Claims.** Except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect, each Credit Party will, and will

cause each of its Subsidiaries to, pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor. No Credit Party will, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than the Borrower or any of its Subsidiaries).

**5.4. Maintenance of Properties.** Each Credit Party will, and will cause each of its Subsidiaries 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 the Borrower and its Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof, except where the failure to do so would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

**5.5. Insurance.** Each Credit Party will maintain or cause to be maintained, with financially sound and reputable insurers, such public liability insurance, third party property damage insurance, business interruption insurance and casualty insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of the Borrower and its Subsidiaries as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons.

**5.6. Books and Records; Inspections.** Each Credit Party will, and will cause each of its Subsidiaries to, keep proper books of record and accounts in which full, true and correct entries in conformity in all material respects with GAAP shall be made of all dealings and transactions in relation to its business and activities. Each Credit Party will, and will cause each of its Subsidiaries to, permit any authorized representatives designated by the Administrative Agent to visit and inspect any of the properties of any Credit Party and any of its respective Subsidiaries, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants, all upon reasonable notice and at such reasonable times during normal business hours and, unless an Event of Default has occurred and is continuing, no more than once per year.

**5.7. [Reserved].**

**5.8. Compliance with Laws.** Each Credit Party will comply, and shall cause each of its Subsidiaries and all other Persons, if any, on or occupying any Facilities to comply, with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority (including all Environmental Laws), except to the extent that noncompliance therewith could not



reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect (or, in the case of the laws, rules, regulations and orders referred to in Section 4.26, except to the extent that noncompliance therewith is not material).

**5.9. Environmental.** Each Credit Party shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by such Credit Party or its Subsidiaries that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and (ii) make an appropriate response to any Environmental Claim against such Credit Party or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**5.10. Subsidiaries.** In the event that any Person becomes a Domestic Subsidiary of Borrower or any Unrestricted Subsidiary is converted into a Restricted Subsidiary that is a Domestic Subsidiary after the Closing Date, Borrower shall (a) promptly cause such Domestic Subsidiary to become a Guarantor hereunder by executing and delivering to Administrative Agent a Counterpart Agreement, and (b) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates reasonably requested by Administrative Agent, including those which are similar to those described in Sections [3.1(b), 3.1(k) and 3.1(l)]. With respect to each Subsidiary, Borrower shall promptly send to Administrative Agent written notice setting forth with respect to such Person (i) the date on which such Person became a Subsidiary of Borrower or was converted into a Restricted Subsidiary, as applicable, and (ii) all of the data required to be set forth in Schedules 4.1 and 4.2 with respect to all Subsidiaries of Borrower; and such written notice shall be deemed to supplement Schedule 4.1 and 4.2 for all purposes hereof.

**5.11. Further Assurances.** At any time or from time to time upon the request of Administrative Agent, each Credit Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as Administrative Agent may reasonably request in order to effect fully the purposes of the Credit Documents. In furtherance and not in limitation of the foregoing, each Credit Party shall take such actions as Administrative Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors.

**5.12. Engagement Letter and Fee Letters.** The Borrower will comply, and will cause each of its Subsidiaries to comply, with the terms of any Fee Letter and the Engagement Letter.

**5.13. Designation of Subsidiaries.** The Borrower may at any time designate any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; provided that (i) immediately before and after such designation, no Default or Event of Default shall have occurred and be continuing, (ii) immediately after giving effect to such designation, the Borrower and its Subsidiaries shall be in pro forma compliance with each of the covenants set forth in Section 6.7, (iii) no Subsidiary may be designated as an Unrestricted Subsidiary if it is a “Restricted Subsidiary” for the purpose of the Senior Credit Agreement or the documentation relating to the Permanent Debt, (iv) no Restricted Subsidiary may be designated as an Unrestricted Subsidiary if it was previously designated an Unrestricted

Subsidiary and (v) Borrower shall deliver to Administrative Agent at least five Business Days prior to such designation a certificate of an Authorized Officer of Borrower certifying as to compliance with the foregoing clauses (i) through (iv) of this Section 5.13 and, if applicable, certifying that such subsidiary meets the requirements of an “Unrestricted Subsidiary”. The designation of any subsidiary as an Unrestricted Subsidiary shall constitute an Investment by Borrower therein at the date of designation in an amount equal to the fair market value of Borrower’s Investment therein; provided that upon a redesignation of such subsidiary as a Restricted Subsidiary, Borrower shall be deemed to continue to have a permanent Investment in an Unrestricted Subsidiary in an amount (if positive) equal to (i) the lesser of (A) the fair market value of Investments of Borrower and its Subsidiaries in such Unrestricted Subsidiary at the time of such redesignation, combination or transfer (or of the assets transferred or conveyed, as applicable) and (B) the fair market value of Investments of Borrower and its Subsidiaries made in connection with the designation of such Subsidiary as an Unrestricted Subsidiary minus (ii) the portion (proportionate to Borrower’s and its Subsidiaries’ Equity Interest in such Subsidiary) of the fair market value of the net assets of such Subsidiary at the time of such redesignation. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness or Liens of such Subsidiary existing at such time.

## SECTION 6. NEGATIVE COVENANTS

Each Credit Party covenants and agrees that, so long as any Commitment is in effect and until payment in full of all Obligations (other than amounts in respect of indemnification, expense reimbursement, yield protection or tax gross-up and other contingent obligations with respect to which no claim has been made), such Credit Party shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 6.

**6.1. Indebtedness.** No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

(a) (i) the Obligations and (ii) any Refinancing Indebtedness with respect thereto in the form of Permanent Debt;

(b) Senior Loans in an aggregate principal amount not to exceed \$300,000,000;

(c) Indebtedness of any Subsidiary to Borrower or to any other Subsidiary, or of Borrower to any Subsidiary; provided (i) all such Indebtedness shall be unsecured and subordinated in right of payment to the payment in full of the Obligations pursuant to the terms of the Intercompany Subordination Agreement, and (ii) such Indebtedness is permitted as an Investment under Section 6.6(b) or (d);

(d) Indebtedness incurred by the Borrower or any of its Subsidiaries arising from agreements providing for indemnification, adjustment of purchase price or similar obligations (including, Indebtedness consisting of the deferred purchase price of property acquired in a Permitted Acquisition), or from guaranties or letters of credit, surety bonds or

performance bonds securing the performance of Borrower or any such Subsidiary pursuant to such agreements, in connection with Permitted Acquisitions or permitted dispositions of any business, assets or Subsidiary of the Borrower or any of its Subsidiaries;

(e) Indebtedness which may be deemed to exist pursuant to any guaranties, performance, surety, statutory, appeal or similar obligations or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto in each case incurred in the ordinary course of business in an aggregate amount not to exceed at any time \$100,000,000;

(f) Indebtedness in respect of netting services, overdraft protections and otherwise in connection with deposit accounts;

(g) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds and completion guarantees and similar obligations in the ordinary course of business, including (i) those incurred to secure health, safety and environmental obligations in the ordinary course of business and (ii) guaranties in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of Borrower and its Subsidiaries;

(h) guaranties (i) of Indebtedness of a Credit Party otherwise permitted to be incurred pursuant to this Section 6.1, (ii) of Indebtedness of a Subsidiary (other than a Credit Party) otherwise permitted to be incurred pursuant to this Section 6.1 to the extent such guaranties are permitted by Section 6.6, or (iii) by a Subsidiary that is not a Credit Party of Indebtedness of another Subsidiary that is not a Credit Party otherwise permitted to be incurred pursuant to this Section 6.1; provided, that if the Indebtedness that is being guarantied is unsecured and/or subordinated to the Obligations, the guaranty shall also be unsecured and/or subordinated to the Obligations;

(i) Indebtedness with respect to Capital Leases and purchase money Indebtedness, in each case of Borrower and its Subsidiaries, in an aggregate amount not to exceed at any time \$150,000,000; provided, any such Indebtedness shall be secured only by the asset acquired in connection with the incurrence of such Indebtedness;

(j) (A)(i) Indebtedness of a Person or Indebtedness attaching to assets of a Person that, in either case, becomes a Subsidiary or Indebtedness attaching to assets that are acquired by Borrower or any of its Subsidiaries, in each case after the Closing Date as the result of a Permitted Acquisition, provided that (x) such Indebtedness existed at the time such Person became a Subsidiary or at the time such assets were acquired and, in each case, was not created in anticipation thereof and (y) such Indebtedness is not guaranteed in any respect by Borrower or any Subsidiary (other than by any such person that so becomes a Subsidiary), and (ii) Indebtedness incurred by the Borrower or any of its Subsidiaries to finance a Permitted Acquisition; provided that in each case of (i) and (ii) above at the time of any such incurrence of Indebtedness and after giving pro forma effect thereto and the use of the proceeds thereof the Total Net Leverage Ratio as of the last day of the Fiscal Quarter last ended would not exceed 3.25 :1.00; and (B) and Refinancing Indebtedness incurred to Refinance such Indebtedness;

(k) Indebtedness of the Borrower or any of its Subsidiaries in connection with the discounting or factoring of receivables in an aggregate amount not to exceed at any time \$300,000,000;

(l) Indebtedness incurred by the Borrower or any of its Subsidiary in connection with credit card programs entered into in accordance with past practice;

(m) Indebtedness of the Borrower or any Guarantor so long as at the time of any such incurrence of Indebtedness and after giving pro forma effect thereto and the use of the proceeds thereof the Total Net Leverage Ratio as of the last day of the Fiscal Quarter last ended would not exceed 3.25:1.00, provided that (i) such Indebtedness shall not mature prior to the date that is ninety-one days following the Maturity Date; (ii) the weighted average maturity of such Indebtedness shall occur after the weighted-average maturity of the Term Loans; (iii) the affirmative and negative covenants and financial covenants set out in the governing documents of such Indebtedness shall not be materially more restrictive, taken as a whole, than the provisions set forth in the Credit Documents (as determined in good faith and certified in writing to the Administrative Agent by a Authorized Officer of the Borrower), and such governing documents shall not provide for any mandatory offers or obligations to repay, prepay or repurchase any amount under such Indebtedness prior to the final maturity thereof, other than pursuant to customary asset sale and change of control provisions; and (iv) such Indebtedness is unsecured;

(n) Indebtedness of Borrower and its Subsidiaries in an aggregate principal amount not to exceed at any time \$50,000,000, provided that the aggregate principal amount of Indebtedness outstanding in reliance on this clause in respect of which the primary obligor or a guarantor is a Subsidiary that is not a Guarantor shall not exceed at any time \$25,000,000;

(o) (i) Indebtedness existing on the Closing Date set forth on Schedule 6.1 and any Refinancing Indebtedness incurred to Refinance such Indebtedness; (ii) any Refinancing Indebtedness incurred to Refinance such Indebtedness, and (iii) any Indebtedness in respect of Capital Leases of property acquired to replace property subject to Capital Leases set forth on Schedule 6.1, provided that the amount of such Indebtedness permitted under this clause (iii) does not exceed the amount of Indebtedness existing on the Closing Date in respect of Capital Leases of the property being replaced;

(p) Indebtedness owed to, and obligations in respect of letters of credit or bank guarantees or similar instruments for the benefit of, any person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance pursuant to reimbursement or indemnification obligations to such person, in each case, in the ordinary course of business; provided that, upon the incurrence of Indebtedness with respect to reimbursement obligations regarding workers' compensation claims, such obligations are reimbursed not later than sixty (60) days following such incurrence;

(q) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the

ordinary course of business or other cash management treasury services in the ordinary course of business;

(r) Indebtedness consisting of (x) the financing of insurance premiums or (y) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(s) Indebtedness representing deferred compensation to employees, directors or consultants incurred in the ordinary course of business; and

(t) Indebtedness in respect of letters of credit, bank guarantees, warehouse receipts or similar instruments issued to support performance obligations and trade letters of credit (other than obligations in respect of other Indebtedness) in the ordinary course of business.

**6.2. Liens.** No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of the Borrower or any of its Subsidiaries, whether now owned or hereafter acquired or licensed, or any income, profits or royalties therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income, profits or royalties under the UCC of any State or under any similar recording or notice statute or under any applicable intellectual property laws, rules or procedures, except:

(a) [Reserved];

(b) Liens for Taxes if not yet delinquent or the obligations with respect to such Taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and adequate reserves have been made in accordance with GAAP;

(c) statutory Liens of landlords, carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law (other than any such Lien imposed pursuant to Section 430(k) of the Internal Revenue Code or ERISA or a violation of Section 436 of the Internal Revenue Code), in each case incurred in the ordinary course of business (i) for amounts not yet overdue or (ii) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of 60 days) are being contested in good faith by appropriate proceedings, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;

(d) Liens incurred in the ordinary course of business 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, trade contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money or other Indebtedness);

(e) easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of the Borrower or any of its Subsidiaries;

(f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;

(g) Liens solely on any cash earnest money deposits made by the Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement permitted hereunder;

(h) purported Liens evidenced by the filing of precautionary UCC financing statements relating solely to operating leases of personal property entered into in the ordinary course of business;

(i) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(j) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(k) outbound licenses of patents, copyrights, trademarks and other intellectual property rights granted by the Borrower or any of its Subsidiaries in the ordinary course of business and not interfering in any material respect with the ordinary conduct of or materially detracting from the value of the business of Borrower or such Subsidiary;

(l) Liens solely on Cash collateral securing Indebtedness consisting of reimbursement obligations in respect of the letters of credit permitted pursuant to Section 6.1(e);

(m) Liens on accounts receivable securing Indebtedness permitted by Section 6.1(k);

(n) Liens securing Indebtedness permitted pursuant to Section 6.1(i) provided, any such Lien shall encumber only the asset acquired with the proceeds of such Indebtedness;

(o) Liens on assets that are acquired as the result of a Permitted Acquisition securing (i) Indebtedness in respect of Capital Leases permitted by Section 6.1(j)(i) or (ii) other Indebtedness permitted by Section 6.1(j)(i), in the case of clause (ii), in an aggregate amount not to exceed \$25,000,000 at any time outstanding; provided any such Lien shall not extend to any additional property other than (1) after-acquired property that is affixed or incorporated into the property covered by such Lien and (2) proceeds and products thereof;

(p) Liens arising in the ordinary course of business by virtue of any statutory or common law provisions or similar provisions applicable in foreign jurisdictions relating to banker's liens, rights of set-off or similar rights;

(q) Liens on assets of Subsidiaries of the Borrower that are not Guarantors securing Indebtedness permitted under Section 6.1(n) in an aggregate amount not to exceed \$50,000,000 at any time outstanding;

(r) other Liens securing Indebtedness in an aggregate amount not to exceed \$25,000,000 at any time outstanding;

(s) Liens on Equity Interests of any Joint Venture or Unrestricted Subsidiary (i) securing obligations of such Joint Venture or Unrestricted Subsidiary, as the case may be, or (ii) pursuant to the relevant Joint Venture agreement or arrangement;

(t) Liens arising out of consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;

(u) Liens securing judgments that do not constitute an Event of Default under Section 8.1(h);

(v) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts or cash pooling arrangements (including with respect to any joint and several liability provisions in relation thereto) of the Borrower or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Borrower and the Restricted Subsidiaries or (iii) relating to purchase orders and other agreements (other than Indebtedness for borrowed money) entered into with customers in the ordinary course of business;

(w) Liens existing on the Closing Date and set forth on Schedule 6.2.

**6.3. Equitable Lien.** If any Credit Party or any of its Subsidiaries shall create or assume any Lien upon any of its properties or assets, whether now owned or hereafter acquired, other than Liens permitted pursuant to Section 6.2 (including as a result of an amendment or waiver of Section 6.2 made with the consent of the Requisite Lenders), it shall make or cause to be made effective provisions whereby the Obligations will be secured by such Lien equally and ratably with any and all other Indebtedness secured thereby as long as any such Indebtedness shall be so secured; provided, notwithstanding the foregoing, this covenant shall not be construed as a consent by Requisite Lenders to the creation or assumption of any such Lien not otherwise permitted hereby.

**6.4. Restricted Junior Payments.** The Borrower shall not and shall not permit any of its Subsidiaries through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Junior Payment except that:

(a) Any Subsidiary of Borrower may declare and pay dividends or make other distributions ratably to its equity holders;

(b) The Borrower may make Restricted Junior Payments to its equity holders in the form of dividends on the Borrower's common stock in an aggregate amount not to exceed \$10,000,000 per annum, provided that, immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(c) The Borrower may make Restricted Junior Payments up to an amount not to exceed the Cumulative Amount as in effect immediately prior to the making of such Restricted Junior Payments, provided that (A) immediately prior to, and after giving effect thereto, (i) no Default or Event of Default shall have occurred and be continuing or would result therefrom, and (ii) the Borrower and its Subsidiaries shall be in compliance on a pro forma basis with the financial covenants set forth in Section 6.7 and with a Total Net Leverage Ratio of [2.50]:1.00 or less, in each case, as of the last day of the Fiscal Quarter most recently ended and (B) Borrower shall have delivered to Administrative Agent a Compliance Certificate, together with all relevant financial information reasonably requested by Administrative Agent, demonstrating in reasonable detail the calculation of the Cumulative Amount immediately prior to the making of such Restricted Junior Payment and the amount thereof elected to be so applied and evidencing compliance with Section 6.7 and the Total Net Leverage Ratio as required under clause (A)(ii) above;

(d) The Borrower may make other Restricted Junior Payments in an aggregate amount of up to \$25,000,000 during the term of this Agreement;

(e) the payment by the Borrower or any Subsidiary of any dividend or the consummation of any irrevocable redemption within 60 days after the date of declaration thereof or giving the notice of the redemption, if on the date of declaration or notice the payment would have complied with this Section 6.4 (assuming, in the case of redemption, the giving of the notice would have been deemed to be a Restricted Payment at such time and such deemed Restricted Payment would have been permitted at such time); provided that any Restricted Payment pursuant to this clause (i) shall be deemed to have utilized capacity under the exception that such Restricted Payment would have been permitted to have been made in reliance of at the time of declaration or notice of redemption, as applicable;

(f) the Borrower may declare or make a Restricted Payment with respect to its Equity Interest payable solely in Qualified Equity Interests or redeem any of its Equity Interests in exchange for, or out of the proceeds of the substantially concurrent issuance and sale of, Qualified Equity Interests or through accretion or accumulation of such dividends on such Equity Interests;

(g) repurchase, redemption or other acquisition for value by the Borrower of, Equity Interests of the Borrower held by officers, directors or employees or former officers, directors or employees of the Borrower and any Restricted Subsidiary (or their transferees, estates or beneficiaries under their estates), upon their death, disability, retirement, severance or termination of employment or service; and



(h) repurchases of Equity Interests deemed to occur (a) upon the exercise of stock options, warrants, or similar rights if the Equity Interests represent all or a portion of the exercise price thereof or (b) in connection with the satisfaction of any withholding Tax obligations incurred relating to the vesting or exercise of stock options, warrants, restricted stock units or similar rights.

**6.5. Restrictions on Subsidiary Distributions.** Except as provided herein, no Credit Party shall, nor shall it permit any of its Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of Borrower to (a) pay dividends or make any other distributions on any of such Subsidiary's Equity Interests owned by Borrower or any other Subsidiary of Borrower, (b) repay or prepay any Indebtedness owed by such Subsidiary to Borrower or any other Subsidiary of Borrower, (c) make loans or advances to Borrower or any other Subsidiary of Borrower, or (d) transfer, lease or license any of its property or assets to Borrower or any other Subsidiary of Borrower other than restrictions (i) in agreements evidencing Indebtedness permitted by Sections 6.1(i) and 6.1(j) that impose restrictions on the property so acquired, (ii) by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business, (iii) that are or were created by virtue of any transfer of, agreement to transfer or option or right with respect to any property, assets or Equity Interests not otherwise prohibited under this Agreement, (iv) existing under or by reason of applicable law, regulation or order, (v) customary provisions in partnership agreements, limited liability company organizational governance documents, joint venture agreements, shareholder agreements and other similar agreements that restrict the transfer of ownership interests in such partnership, limited liability company, joint venture, corporation or similar Person, (vi) restrictions on cash or other deposits or net worth imposed by suppliers, customers or landlords under contracts entered into in the ordinary course of business, or (vii) described on Schedule 6.5.

**6.6. Investments.** The Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including any Joint Venture, except:

(a) Investments in Cash and Cash Equivalents;

(b) equity Investments owned as of the Closing Date in any Subsidiary and Investments made after the Closing Date in the Borrower and any Guarantor that is a Subsidiary of Borrower;

(c) Investments (i) in any Securities received in satisfaction or partial satisfaction thereof from financially troubled account debtors and (ii) deposits, prepayments and other credits to suppliers made in the ordinary course of business consistent with the past practices of the Borrower and its Subsidiaries;

(d) intercompany loans to the extent permitted under Section 6.1(c) and other Investments in Subsidiaries other than Guarantors, provided that such Investments (including through intercompany loans and any Permitted Acquisition) in Subsidiaries other than

Guarantors, together with any Investment permitted under Section 6.06(k), shall not exceed at any time an aggregate amount equal to the sum of (x) \$75,000,000 plus (y) the aggregate amount of all cash payments made since [ ], 2021 by Subsidiaries that are not Guarantors to the Borrower and the Guarantors in the form of dividends, distributions, return of capital, repurchases of Equity Interests, repayment of loans or advances, without duplication, in each case, with any item already deducted from the calculation of the amount of any Investment pursuant to the last sentence of the definition thereof ((x) plus (y), the “**Non-Guarantor Basket**”);

(e) loans and advances to employees of the Borrower and its Subsidiaries made in the ordinary course of business in an aggregate principal amount not to exceed \$10,000,000;

(f) Permitted Acquisitions permitted pursuant to Section 6.8;

(g) Investments described in Schedule 6.6;

(h) Hedge Agreements which constitute Investments

(i) other Investments in an aggregate amount not to exceed the Cumulative Amount as in effect immediately prior to the making of such Investment; provided that (A) immediately prior to, and after giving effect thereto, (i) no Default or Event of Default shall have occurred and be continuing or would result therefrom and (ii) the Borrower and its Subsidiaries shall be in compliance on a pro forma basis with the financial covenants set forth in Section 6.7 and with a Total Net Leverage Ratio of 2.50:1.00 or less, in each case, as of the last day of the Fiscal Quarter most recently ended and (B) Borrower shall have delivered to Administrative Agent a Compliance Certificate, together with all relevant financial information reasonably requested by Administrative Agent, demonstrating in reasonable detail the calculation of the Cumulative Amount immediately prior to the making of such Investment and the amount thereof elected to be so applied and evidencing compliance with Section 6.7 and the Total Net Leverage Ratio as required under clause (A)(ii) above;

(j) Investments received in exchange for the issuance of Equity Interests (other than Disqualified Equity Interests) of the Borrower;

(k) Investments in Joint Ventures and Unrestricted Subsidiaries in an aggregate amount not exceeding, together with any Investment permitted under the proviso to Section 6.06(d) in Subsidiaries other than Guarantors, the Non-Guarantor Basket;

(l) Investments so long as the Total Net Leverage Ratio does not exceed on a pro forma basis 1.75:1.00 as of the last day of the Fiscal Quarter most recently ended.

(m) other Investments in an aggregate amount outstanding at any time not to exceed \$50,000,000 during the term of this Agreement.

Notwithstanding the foregoing, in no event shall any Credit Party make any Investment which results in or facilitates in any manner any Restricted Junior Payment not otherwise permitted under the terms of Section 6.4.

### **6.7. Financial Covenants.**

(a) Net Interest Coverage Ratio. The Borrower shall not permit the Net Interest Coverage Ratio as of the last day of any Fiscal Quarter, beginning with the Fiscal Quarter ending on June 30, 2021, to be less than 3.25 to 1.00.

(b) Total Net Leverage Ratio. The Borrower shall not permit the Total Net Leverage Ratio as of the last day of any Fiscal Quarter, beginning with the Fiscal Quarter ending on June 30, 2021, to exceed 3.75 to 1.00.

(c) Certain Calculations. With respect to any period during which (x) a Permitted Acquisition or an Asset Sale has occurred or (y) a subsidiary has been designated an Unrestricted Subsidiary or a Restricted Subsidiary, as applicable, pursuant to Section 5.13 (each, a “**Subject Transaction**”), for purposes of determining compliance with the financial covenants set forth in this Section 6.7, Consolidated Adjusted EBITDA and the components of Consolidated Net Interest Expense shall be calculated with respect to such period on a pro forma basis using the historical (audited, to the extent available) financial statements of any business so acquired or to be acquired or sold or to be sold or designated or to be designated as a Restricted Subsidiary or an Unrestricted Subsidiary and the consolidated financial statements of the Borrower and its Subsidiaries which shall be reformulated as if such Subject Transaction, and any Indebtedness incurred or repaid in connection therewith, had been consummated or incurred or repaid at the beginning of such period (and assuming that such Indebtedness bears interest during any portion of the applicable measurement period prior to the relevant acquisition at the weighted average of the interest rates applicable to outstanding Loans incurred during such period).

**6.8. Fundamental Changes; Disposition of Assets; Acquisitions.** No Credit Party shall, nor shall it permit any of its Subsidiaries to, enter into any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or license, exchange, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, assets or property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased or licensed, or acquire by purchase or otherwise (other than purchases or other acquisitions of inventory, materials and equipment and capital expenditures in the ordinary course of business) the business, property or fixed assets of, or stock or other evidence of beneficial ownership of, any Person or any division or line of business or other business unit of any Person, except:

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

such a merger, Borrower or such Guarantor, as applicable, shall be the continuing or surviving Person;

(b) sales or other dispositions of assets that do not constitute Asset Sales;

(c) as long as no Default is continuing or would result therefrom, Asset Sales, provided that, with respect to any Asset Sale made pursuant to this Section 6.8(c), (1) the consideration received shall be in an amount at least equal to the fair market value thereof (determined in good faith by the board of directors of Borrower (or similar governing body)) and (2) no less than 75% thereof shall be paid in Cash or Cash Equivalents and (3) the Net Asset Sale Proceeds thereof shall be applied as required by Section 2.14(a); provided further that any Designated Non-Cash Consideration received in respect of such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this Section 6.8(c) that is at any time outstanding, not in excess of \$25,000,000 at the time of the receipt of such Designated Non-Cash Consideration, with the fair market value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value, shall be deemed to be cash or Cash Equivalents;

(d) disposals of obsolete, worn out or surplus equipment;

(e) Permitted Acquisitions, provided that the consideration for Permitted Acquisitions of Equity Interests in any Person which does not become a Guarantor shall not exceed, collectively with any Investment permitted under the proviso to Section 6.6(d) in Subsidiaries other than Guarantors and any Investment permitted under Section 6.06(k), an aggregate amount during the term of this Agreement equal to the Non-Guarantor Basket; and

(f) Investments made in accordance with Section 6.6;

**6.9. [Reserved].**

**6.10. [Reserved].**

**6.11. Transactions with Shareholders and Affiliates.** No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Borrower on terms that are materially less favorable to the Borrower or that Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not such a holder or Affiliate; provided, the foregoing restriction shall not apply to (a) any transaction between Borrower and any Guarantor; (b) reasonable and customary fees paid to members of the board of directors (or similar governing body) of the Borrower and its Subsidiaries; (c) compensation arrangements for officers and other employees of the Borrower and its Subsidiaries entered into in the ordinary course of business; and (d) transactions described in Schedule 6.11.

**6.12. Conduct of Business.** From and after the Closing Date, no Credit Party shall, nor shall it permit any of its Subsidiaries to, engage in any business other than (i) the businesses engaged in by such Credit Party on the Closing Date and similar or related businesses and (ii) such other lines of business as may be consented to by Requisite Lenders.

**6.13. Amendments or Waivers of Organizational Documents and Certain Related Agreements.** No Credit Party shall nor shall it permit any of its Subsidiaries to, agree to any material amendment, restatement, supplement or other modification to, or waiver of, any of its Organizational Documents or any of its material rights under any Related Agreement after the Closing Date, in each case that would be materially adverse to the Lenders.

**6.14. Amendments or Waivers of with respect to Certain Indebtedness.** No Credit Party shall, nor shall it permit any of its Subsidiaries to, amend or otherwise change the terms of any Subordinated Indebtedness, or make any payment consistent with an amendment thereof or change thereto, if the effect of such amendment or change is to increase the interest rate on such Subordinated Indebtedness, change (to earlier dates) any dates upon which payments of principal or interest are due thereon, change the redemption, prepayment or defeasance provisions thereof in a manner adverse to the Lenders, change the subordination provisions of such Subordinated Indebtedness (or of any guaranty thereof) in a manner adverse to the Lenders, or if the effect of such amendment or change, together with all other amendments or changes made, is to increase materially the obligations of the obligor thereunder or to confer any additional rights on the holders of such Subordinated Indebtedness (or a trustee or other representative on their behalf) which would be materially adverse to the Lenders.

**6.15. Fiscal Year.** No Credit Party shall, nor shall it permit any of its Subsidiaries to change its Fiscal Year-end from December 31.

## SECTION 7. GUARANTY

**7.1. Guaranty of the Obligations.** Subject to the provisions of Section 7.2, Guarantors jointly and severally hereby irrevocably and unconditionally guaranty to Administrative Agent, for the ratable benefit of the Beneficiaries, the due and punctual payment in full of all Obligations when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)) (collectively, the “**Guaranteed Obligations**”).

**7.2. Contribution by Guarantors.** All Guarantors desire to allocate among themselves (collectively, the “**Contributing Guarantors**”), in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor (a “**Funding Guarantor**”) under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Funding Guarantor shall be entitled to a contribution from each of the other Contributing Guarantors in an amount sufficient to cause each Contributing Guarantor’s Aggregate Payments to equal its Fair Share as of such date. “**Fair Share**” means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such

Contributing Guarantor to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Contributing Guarantors multiplied by (b) the aggregate amount paid or distributed on or before such date by all Funding Guarantors under this Guaranty in respect of the obligations Guaranteed. **“Fair Share Contribution Amount”** means, with respect to a Contributing Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Contributing Guarantor under this Guaranty that would not render its obligations hereunder or thereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the **“Fair Share Contribution Amount”** with respect to any Contributing Guarantor for purposes of this Section 7.2, any assets or liabilities of such Contributing Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Contributing Guarantor. **“Aggregate Payments”** means, with respect to a Contributing Guarantor as of any date of determination, an amount equal to (1) the aggregate amount of all payments and distributions made on or before such date by such Contributing Guarantor in respect of this Guaranty (including in respect of this Section 7.2), minus (2) the aggregate amount of all payments received on or before such date by such Contributing Guarantor from the other Contributing Guarantors as contributions under this Section 7.2. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Funding Guarantor. The allocation among Contributing Guarantors of their obligations as set forth in this Section 7.2 shall not be construed in any way to limit the liability of any Contributing Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 7.2.

**7.3. Payment by Guarantors.** Subject to Section 7.2, Guarantors hereby jointly and severally agree, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law or in equity against any Guarantor by virtue hereof, that upon the failure of Borrower to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a)), Guarantors will upon demand pay, or cause to be paid, in Cash, to Administrative Agent for the ratable benefit of Beneficiaries, an amount equal to the sum of the unpaid principal amount of all Guaranteed Obligations then due as aforesaid, accrued and unpaid interest on such Guaranteed Obligations (including interest which, but for Borrower’s becoming the subject of a case under the Bankruptcy Code, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Borrower for such interest in the related bankruptcy case) and all other Guaranteed Obligations then owed to Beneficiaries as aforesaid.

**7.4. Liability of Guarantors Absolute.** Each Guarantor agrees that its obligations hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other

than payment in full of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(a) this Guaranty is a guaranty of payment when due and not of collectability. This Guaranty is a primary obligation of each Guarantor and not merely a contract of surety;

(b) Administrative Agent may enforce this Guaranty upon the occurrence of an Event of Default notwithstanding the existence of any dispute between Borrower and any Beneficiary with respect to the existence of such Event of Default;

(c) the obligations of each Guarantor hereunder are independent of the obligations of Borrower and the obligations of any other guarantor (including any other Guarantor) of the obligations of Borrower, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against Borrower or any of such other guarantors and whether or not Borrower is joined in any such action or actions;

(d) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if Administrative Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not, except to the extent satisfied by such Guarantor, limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;

(e) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guaranties of the Guaranteed Obligations, or any other obligation of any Person (including any other Guarantor) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith and any applicable security agreement, including foreclosure on any such security pursuant to one or more judicial or

nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any other Credit Party or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Credit Documents; and

(f) this Guaranty and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations), including the occurrence of any of the following, whether or not any Guarantor shall have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Credit Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guaranty of or security for the payment of the Guaranteed Obligations; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Credit Documents or any agreement or instrument executed pursuant thereto, or of any other guaranty or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Credit Document or any agreement relating to such other guaranty or security; (iii) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (iv) the application of payments received from any source (other than payments received pursuant to the other Credit Documents or from the proceeds of any security for the Guaranteed Obligations, except to the extent such security also serves as collateral for indebtedness other than the Guaranteed Obligations) to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (v) any Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Borrower or any of its Subsidiaries and to any corresponding restructuring of the Guaranteed Obligations; (vi) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (vii) any defenses, set-offs or counterclaims which Borrower may allege or assert against any Beneficiary in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; and (viii) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations.

**7.5. Waivers by Guarantors.** Each Guarantor hereby waives, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against Borrower, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from Borrower, any such other guarantor or any other Person, (iii) proceed against or have resort to any balance of any Deposit Account or credit on the books of any



Beneficiary in favor of any Credit Party or any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Borrower or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Borrower or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to Borrower and notices of any of the matters referred to in Section 7.4 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

**7.6. Guarantors' Rights of Subrogation, Contribution, Etc.** Until the Guaranteed Obligations shall have been indefeasibly paid in full, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against Borrower or any other Guarantor or any of its assets in connection with this Guaranty or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against Borrower with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against Borrower, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations shall have been indefeasibly paid in full, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other guarantor (including any other Guarantor) of the Guaranteed Obligations, including any such right of contribution as contemplated by Section 7.2. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against Borrower or against any collateral or security, and any rights of contribution such Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights any Beneficiary may have against Borrower, to all right,

title and interest any Beneficiary may have in any such collateral or security, and to any right any Beneficiary may have against such other guarantor. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations shall not have been finally and indefeasibly paid in full, such amount shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

**7.7. Subordination of Other Obligations.** Any Indebtedness of Borrower or any Guarantor now or hereafter held by any Guarantor (the “**Obligee Guarantor**”) is hereby subordinated in right of payment to the Guaranteed Obligations, and any such Indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for Administrative Agent on behalf of Beneficiaries and shall forthwith be paid over to Administrative Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

**7.8. Continuing Guaranty.** This Guaranty is a continuing guaranty and shall remain in effect until all of the Guaranteed Obligations shall have been paid in full. Each Guarantor hereby irrevocably waives any right to revoke this Guaranty as to future transactions giving rise to any Guaranteed Obligations.

**7.9. Authority of Guarantors or Borrower.** It is not necessary for any Beneficiary to inquire into the capacity or powers of any Guarantor or Borrower or the officers, directors or any agents acting or purporting to act on behalf of any of them.

**7.10. Financial Condition of Borrower.** Any Credit Extension may be made to Borrower or continued from time to time without notice to or authorization from any Guarantor regardless of the financial or other condition of Borrower at the time of any such grant or continuation. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor’s assessment, of the financial condition of Borrower. Each Guarantor has adequate means to obtain information from Borrower on a continuing basis concerning the financial condition of Borrower and its ability to perform its obligations under the Credit Documents, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of Borrower and of all circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of Borrower now known or hereafter known by any Beneficiary.

**7.11. Bankruptcy, Etc.** (a) So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of Administrative Agent acting pursuant to the instructions of Requisite Lenders, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against Borrower or any other Guarantor. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding,

voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Borrower or any other Guarantor or by any defense which Borrower or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if such case or proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantors and Beneficiaries that the Guaranteed Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve Borrower of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar Person to pay Administrative Agent, or allow the claim of Administrative Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

(c) In the event that all or any portion of the Guaranteed Obligations are paid by Borrower, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

**7.12. Discharge of Guaranty Upon Sale of Guarantor.** If (A) all of the Equity Interests of any Guarantor or any of its successors in interest hereunder shall be sold or otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof or (B) if a Guarantor is designated as an Unrestricted Subsidiary in accordance with Section 5.13, then in the case of each of clauses (A) and (B), the Guaranty of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Beneficiary or any other Person effective as of the time of such Asset Sale.

## **SECTION 8. EVENTS OF DEFAULT**

**8.1. Events of Default.** If any one or more of the following conditions or events shall occur:

(a) Failure to Make Payments When Due. Failure by Borrower to pay (i) when due any installment of principal of any Loan, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise; or (ii) any interest on any Loan or any fee or any other amount due hereunder within five Business Days after the date due; or

(b) Default in Other Agreements. (i) Failure of any Credit Party or any of their respective Subsidiaries to pay when due any principal of or interest on or any other amount, including any payment in settlement, payable in respect of Indebtedness (other than Indebtedness referred to in Section 8.1(a)) with a principal amount (or Net Mark-to-Market Exposure), individually or in the aggregate, of \$50,000,000 or more, in each case beyond the grace period, if any, provided therefor; or (ii) breach or default by any Credit Party with respect to any other material term of (1) Indebtedness in the individual or aggregate principal amount (or Net Mark-to-Market Exposure) referred to in clause (i) above or (2) any loan agreement, mortgage, indenture or other agreement relating to such Indebtedness, in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; or

(c) Breach of Certain Covenants. Failure of any Credit Party to perform or comply with any term or condition contained in (i) Section 2.6, Section 5.1(f) or Section 5.2 or (ii) Section 6 unless, in the case of this clause (ii), such default is capable of remedy and shall have been remedied or waived within thirty days after the earlier of (A) an officer of such Credit Party becoming aware of such default or (B) receipt by Borrower of notice from Administrative Agent or any Lender of such default; or

(d) Breach of Representations, Etc. Any representation, warranty, certification or other statement made or deemed made by any Credit Party in any Credit Document or in any statement or certificate at any time given by any Credit Party or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made or deemed made; or

(e) Other Defaults Under Credit Documents. Any Credit Party shall default in the performance of or compliance with any term contained herein or any of the other Credit Documents, other than any such term referred to in any other paragraph of this Section 8.1, and such default shall not have been remedied or waived within thirty days after the earlier of (i) an officer of such Credit Party becoming aware of such default or (ii) receipt by Borrower of notice from Administrative Agent or any Lender of such default; or

(f) Involuntary Bankruptcy; Appointment of Receiver, Etc. (i) A court of competent jurisdiction shall enter a decree or order for relief in respect of the Borrower or any of its Subsidiaries in an involuntary case under any Debtor Relief Laws now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against the Borrower or any of its Subsidiaries under any Debtor Relief Laws now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over the Borrower or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim

receiver, trustee or other custodian of the Borrower or any of its Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of the Borrower or any of its Subsidiaries, and any such event described in this clause (ii) shall continue for sixty days without having been dismissed, bonded or discharged; or

(g) Voluntary Bankruptcy; Appointment of Receiver, Etc. (i) The Borrower or any of its Subsidiaries shall have an order for relief entered with respect to it or shall commence a voluntary case under any Debtor Relief Laws now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or the Borrower or any of its Subsidiaries shall make any assignment for the benefit of creditors; or (ii) the Borrower or any of its Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the board of directors (or similar governing body) of the Borrower or any of its Subsidiaries (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to herein or in Section 8.1(f); or

(h) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving, individually or in the aggregate at any time an amount in excess of \$50,000,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against the Borrower or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of sixty days (or in any event later than five days prior to the date of any proposed sale thereunder); or

(i) [Reserved].

(j) Employee Benefit Plans. (i) There shall occur one or more ERISA Events which individually or in the aggregate results in or might reasonably be expected to result in liability of the Borrower, any of its Subsidiaries or any of their respective ERISA Affiliates in excess of \$50,000,000 during the term hereof; or (ii) there exists any fact or circumstance that reasonably could be expected to result in the imposition of a Lien or security interest pursuant to Section 430(k) of the Internal Revenue Code or ERISA or a violation of Section 436 of the Internal Revenue Code; or

(k) [Reserved]; or

(l) Guaranties, and other Credit Documents. At any time after the execution and delivery thereof, (i) the Guaranty for any reason, other than the satisfaction in full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement ceases to be in full force and effect (other than by reason of satisfaction in full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or (iii) any Credit Party shall contest the validity or enforceability of any Credit

Document in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Credit Document to which it is a party.

**THEN**, (1) upon the occurrence of any Event of Default described in Section 8.1(f) or 8.1(g), automatically, and (2) upon the occurrence and during the continuance of any other Event of Default, at the request of (or with the consent of) Requisite Lenders, upon notice to Borrower by Administrative Agent, each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Credit Party: (I) the unpaid principal amount of and accrued interest and premium on the Loans, and (II) all other Obligations.

**8.2. Borrower's Right to Cure.** Notwithstanding anything to the contrary contained in Section 8.1, for purposes of determining whether an Event of Default has occurred under any financial covenant set forth in Section 6.7, any equity contribution (in the form of Qualified Equity Interests) made to Borrower after the last day of any Fiscal Quarter and on or prior to the day that is 10 days after the day on which financial statements are required to be delivered for that Fiscal Quarter will, at the request of Borrower, be included in the calculation of Consolidated Adjusted EBITDA solely for the purposes of determining compliance with the financial covenants at the end of such Fiscal Quarter and any subsequent period that includes such Fiscal Quarter (any such equity contribution, a **"Specified Equity Contribution"**); provided that (a) Borrower shall not be permitted to so request that a Specified Equity Contribution be included in the calculation of Consolidated Adjusted EBITDA with respect to any Fiscal Quarter unless, after giving effect to such requested Specified Equity Contribution, there shall be no more than two Fiscal Quarters in the Relevant Four Fiscal Quarter Period in respect of which a Specified Equity Contribution is made, (b) no more than 4 Specified Equity Contributions will be made in the aggregate, (c) the amount of any Specified Equity Contribution and the use of proceeds therefrom will be no greater than the amount required to cause Borrower to be in compliance with the financial covenants, and (d) all Specified Equity Contributions and the use of proceeds therefrom will be disregarded for all other purposes under the Credit Documents (including calculating Consolidated Adjusted EBITDA for purposes of determining basket levels and other items governed by reference to Consolidated Adjusted EBITDA, calculating the amount of Unrestricted Cash to be deducted pursuant to clause (b) of the definition of Consolidated Total Net Debt, and for purposes of the Restricted Junior Payments covenant in Section 6.4). To the extent that the proceeds of the Specified Equity Contribution are used to repay Indebtedness, such Indebtedness shall not be deemed to have been repaid for purposes of calculating any financial covenant set forth in Section 6.7 for the Relevant Four Fiscal Quarter Period. For purposes of this paragraph, the term **"Relevant Four Fiscal Quarter Period"** shall mean, with respect to any requested Specified Equity Contribution, the four Fiscal Quarter period ending on (and including) the Fiscal Quarter in which Consolidated Adjusted EBITDA will be increased as a result of such Specified Equity Contribution.

## SECTION 9. AGENTS

**9.1. Appointment of Agents.** Goldman Sachs and JPMorgan Chase Bank, N.A. are hereby appointed Syndication Agents and Goldman Sachs, BofA Securities, Inc., JPMorgan

Chase Bank, N.A., Barclays Bank PLC, Citibank, N.A., London Branch, Credit Suisse Loan Funding LLC and Morgan Stanley Senior Funding, Inc. are hereby appointed Bookrunners hereunder, and each Lender hereby authorizes them to act, respectively, as Syndication Agents and Bookrunners in accordance with the terms hereof and the other Credit Documents. Goldman Sachs is hereby appointed Administrative Agent hereunder and under the other Credit Documents and each Lender hereby authorizes Goldman Sachs to act as Administrative Agent in accordance with the terms hereof and the other Credit Documents. Barclays Bank PLC, Citibank, N.A., London Branch, Credit Suisse Loan Funding LLC and Morgan Stanley Senior Funding, Inc. are hereby appointed Documentation Agents hereunder, and each Lender hereby authorizes Barclays Bank PLC, Citibank, N.A., London Branch, Credit Suisse Loan Funding LLC and Morgan Stanley Senior Funding, Inc. to act as Documentation Agents in accordance with the terms hereof and the other Credit Documents. Each Agent hereby agrees to act in its capacity as such upon the express conditions contained herein and the other Credit Documents, as applicable. The provisions of this Section 9 are solely for the benefit of Agents and Lenders and no Credit Party shall have any rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, each Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for the Borrower or any of its Subsidiaries. Each Syndication Agents and Documentation Agent, without consent of or notice to any party hereto, may assign any and all of its rights or obligations hereunder to any of its Affiliates. As of the Closing Date, neither Goldman Sachs nor JPMorgan Chase Bank, N.A., in their capacity as Syndication Agents, nor Goldman Sachs, BofA Securities, Inc., JPMorgan Chase Bank, N.A., Barclays Bank PLC, Citibank, N.A., London Branch, Credit Suisse Loan Funding LLC or Morgan Stanley Senior Funding, Inc., in their capacity as Bookrunners, nor Barclays Bank PLC, Citibank, N.A., London Branch, Credit Suisse Loan Funding LLC or Morgan Stanley Senior Funding, Inc., in their capacity as Documentation Agent, shall have any obligations but shall be entitled to all benefits of this Section 9. Each Syndication Agent, Documentation Agent, Bookrunner and any Agent described in clause (g) of the definition thereof may resign from such role at any time, with immediate effect, by giving prior written notice thereof to Administrative Agent and Borrower. It is understood and agreed that the use of the term “agent” herein or in any other Credit Documents (or any other similar term) with reference to the Administrative 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 as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

**9.2. Powers and Duties.** Each Lender irrevocably authorizes each Agent to take such action on such Lender’s behalf and to exercise such powers, rights and remedies hereunder and under the other Credit Documents as are specifically delegated or granted to such Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Each Agent shall have only those duties and responsibilities that are expressly specified herein and the other Credit Documents. Each Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. No Agent shall have, by reason hereof or any of the other Credit Documents, a fiduciary relationship in respect of any Lender or any other Person; and nothing herein or any of the other Credit Documents,

expressed or implied, is intended to or shall be so construed as to impose upon any Agent any obligations in respect hereof or any of the other Credit Documents except as expressly set forth herein or therein.

### **9.3. General Immunity.**

(a) No Responsibility for Certain Matters. No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Credit Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by any Agent to Lenders or by or on behalf of any Credit Party to any Agent or any Lender in connection with the Credit Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Credit Party or any other Person liable for the payment of any Obligations, nor shall any Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Credit Documents or as to the use of the proceeds of the Loans or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the contrary notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans or the component amounts thereof.

(b) Exculpatory Provisions. No Agent nor any of its officers, partners, directors, employees or agents shall be liable to Lenders for any action taken or omitted by any Agent under or in connection with any of the Credit Documents except to the extent caused by such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. Each Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Credit Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5) and, upon receipt of such instructions from Requisite Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions, including for the avoidance of doubt refraining from any action that, in its opinion or the opinion of its counsel, may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for the Borrower and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or (where so instructed)



refraining from acting hereunder or any of the other Credit Documents in accordance with the instructions of Requisite Lenders (or such other Lenders as may be required to give such instructions under Section 10.5).

(c) Delegation of Duties. Administrative Agent may perform any and all of its duties and exercise its rights and powers under this Agreement or under any other Credit Document by or through any one or more sub-agents appointed by Administrative Agent. Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Affiliates. The exculpatory, indemnification and other provisions of this Section 9.3 and of Section 9.6 shall apply to any the Affiliates of Administrative Agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. All of the rights, benefits, and privileges (including the exculpatory and indemnification provisions) of this Section 9.3 and of Section 9.6 shall apply to any such sub-agent and to the Affiliates of any such sub-agent, and shall apply to their respective activities as sub-agent as if such sub-agent and Affiliates were named herein. Notwithstanding anything herein to the contrary, with respect to each sub-agent appointed by Administrative Agent, (i) such sub-agent shall be a third party beneficiary under this Agreement with respect to all such rights, benefits and privileges (including exculpatory rights and rights to indemnification) and shall have all of the rights and benefits of a third party beneficiary, including an independent right of action to enforce such rights, benefits and privileges (including exculpatory rights and rights to indemnification) directly, without the consent or joinder of any other Person, against any or all of Credit Parties and the Lenders, (ii) such rights, benefits and privileges (including exculpatory rights and rights to indemnification) shall not be modified or amended without the consent of such sub-agent, and (iii) such sub-agent shall only have obligations to Administrative Agent and not to any Credit Party, Lender or any other Person and no Credit Party, Lender or any other Person shall have any rights, directly or indirectly, as a third party beneficiary or otherwise, against such sub-agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

**9.4. Agents Entitled to Act as Lender.** The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, any Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans, each Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term “Lender” shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. Any Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with the Borrower or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Borrower for services in connection herewith and otherwise without having to account for the same to Lenders.

## **9.5. Lenders' Representations, Warranties and Acknowledgment.**

(a) Each Lender represents and warrants that it has made its own independent investigation of the financial condition and affairs of the 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 the 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 Lenders.

(b) Each Lender, by delivering its signature page to this Agreement or an Assignment Agreement and funding its Term Loan on the Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Credit Document and each other document required to be approved by any Agent, Requisite Lenders or Lenders, as applicable on the Closing Date.

**9.6. Right to Indemnity.** Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent, to the extent that such Agent shall not have been reimbursed by any Credit Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Agent in exercising its powers, rights and remedies or performing its duties hereunder or under the other Credit Documents or otherwise in its capacity as such Agent in any way relating to or arising out of this Agreement, the other Credit Documents, or the use of proceeds thereof; provided, no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct, as determined by a final, non-appealable judgment of a court of competent jurisdiction. If any indemnity furnished to any Agent for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Lender's Pro Rata Share thereof; and provided further, this sentence shall not be deemed to require any Lender to indemnify any Agent against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

## **9.7. Successor Administrative Agent .**

(a) Administrative Agent shall have the right to resign at any time by giving prior written notice thereof to Lenders and Borrower and Administrative Agent may be removed at any time with or without cause by an instrument or concurrent instruments in

writing delivered to Borrower and Administrative Agent and signed by the Requisite Lenders. Administrative Agent shall have the right to appoint a financial institution to act as Administrative Agent hereunder, subject to the reasonable satisfaction of Borrower and the Requisite Lenders, and Administrative Agent's resignation shall become effective on the earliest of (i) 30 days after delivery of the notice of resignation (regardless of whether a successor has been appointed or not), (ii) the acceptance of such successor Administrative Agent by Borrower and the Requisite Lenders or (iii) such other date, if any, agreed to by the Requisite Lenders. Upon any such notice of resignation or any such removal, if a successor Administrative Agent has not already been appointed by the resigning Administrative Agent, the Requisite Lenders shall have the right, upon five Business Days' notice to Borrower, to appoint a successor Administrative Agent. If neither the Requisite Lenders nor Administrative Agent have appointed a successor Administrative Agent, the Requisite Lenders shall be deemed to have succeeded to and become vested with all the rights, powers, privileges and duties of the resigning Administrative Agent. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the resigning or removed Administrative Agent and the resigning or removed Administrative Agent shall promptly (i) transfer to such successor Administrative Agent all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent under the Credit Documents, and (ii) take such other actions, as may be necessary or appropriate in connection with the performance of the duties of the successor Administrative Agent, whereupon such resigning or removed Administrative Agent shall be discharged from its duties and obligations hereunder. After any resigning or removed Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent hereunder.

#### **9.8. Guaranty.**

(a) Agents under Guaranty. Each Lender hereby further authorizes Administrative Agent, on behalf of and for the benefit of the Lenders, to be the agent for and representative of the Lenders with respect to the Guaranty. Subject to Section 10.5, without further written consent or authorization from any Lender, Administrative Agent may execute any documents or instruments necessary to release any Guarantor from the Guaranty pursuant to Section 7.12 or with respect to which Requisite Lenders (or such other Lenders as may be required to give such consent under Section 10.5) have otherwise consented.

(b) Right to Enforce Guaranty. Anything contained in any of the Credit Documents to the contrary notwithstanding, Borrower, Administrative Agent and each Lender hereby agree that (i) no Lender shall have any right individually to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies hereunder and under any of the Credit Documents may be exercised solely by Administrative Agent for the benefit of the Lenders in accordance with the terms hereof.

(c) [Reserved].

(d) Release of Guarantees, Termination of Credit Documents. Notwithstanding anything to the contrary contained herein or any other Credit Document, when all Obligations have been paid in full, all Commitments have terminated or expired, Administrative Agent shall (without notice to, or vote or consent of, any Lender) take such actions as shall be required to release all guarantee obligations provided for in any Credit Document. Any such release of guarantee obligations shall be deemed subject to the provision that such guarantee obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of 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.

**9.9. Withholding Taxes.** To the extent required by any applicable law, Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. Without duplication of the provisions of Section 2.20(h), if the Internal Revenue Service or any other Governmental Authority asserts a claim that 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 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 Administrative Agent fully for all amounts paid, directly or indirectly, by 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.

**9.10. 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 Credit Party, 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 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 Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its

respective agents and counsel and all other amounts due the Lenders and Administrative Agent under Sections 2.11, 10.2 and 10.3 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 Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under Sections 2.11, 10.2 and 10.3. To the extent that the payment of any such compensation, expenses, disbursements and advances of Administrative Agent, its agents and counsel, and any other amounts due Administrative Agent under Sections 2.11, 10.2 and 10.3 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 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 Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

## **SECTION 10. MISCELLANEOUS**

### **10.1. Notices.**

(a) Notices Generally. Any notice or other communication herein required or permitted to be given to a Credit Party, Syndication Agents, Administrative Agent or Documentation Agent, shall be sent to such Person's address as set forth on Appendix B or in the other relevant Credit Document, and in the case of any Lender, the address as indicated on Appendix B or otherwise indicated to Administrative Agent in writing. Except as otherwise set forth in Section 3.2(b) or paragraph (b) below, each notice hereunder shall be in writing and may be personally served or sent by facsimile (except for any notices sent to Administrative Agent) or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of facsimile, or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided, no notice to any Agent shall be effective until received by such Agent; provided further, any such notice or other communication shall at the request of Administrative Agent be provided to any sub-agent appointed pursuant to Section 9.3(c) as designated by Administrative Agent from time to time.

(b) Electronic Communications.

(i) Notices and other communications to any Agent and Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites, including the Platform) pursuant to procedures approved by Administrative Agent, provided that the foregoing shall not apply to notices to any Agent or any Lender if such Person has notified Administrative Agent that it is incapable of receiving notices under such Section by electronic communication. 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 Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an 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 (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(ii) Each Credit 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 Administrative Agent, as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(iii) The Platform and any Approved Electronic Communications are provided "as is" and "as available". None of the Agents or any of their respective officers, directors, employees, agents, advisors or representatives (the "**Agent Affiliates**") warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications or the Platform and each expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects is made by the Agent Affiliates in connection with the Platform or the Approved Electronic Communications. In no event shall the Agent Affiliates have any liability to Borrower or the other Credit Parties, any Lender or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of Borrower's, any Credit Party's or Administrative Agent's transmission of communications through the Platform.

(iv) Each Credit Party, each Lender and each Agent agrees that Administrative Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with Administrative Agent's customary document retention procedures and policies.

(v) Any notice of Default or Event of Default may be provided by telephone if confirmed promptly thereafter by delivery of written notice thereof.

(c) Private Side Information Contacts. 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 Private-Side Information. 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 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 Credit Documents.

**10.2. Expenses.** Whether or not the transactions contemplated hereby shall be consummated, Borrower agrees to pay promptly (a) all the actual and reasonable, documented and invoiced out-of-pocket costs and expenses incurred in connection with the negotiation, preparation and execution of the Credit Documents and any consents, amendments, waivers or other modifications thereto; (b) all the costs of furnishing all opinions by counsel for Borrower and the other Credit Parties; (c) the reasonable, documented and invoiced fees and disbursements of one outside counsel to Agents in connection with the negotiation, preparation, execution and administration of the Credit Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Borrower; (d) all the actual and reasonable, documented and invoiced out-of-pocket costs and reasonable, documented and invoiced fees and disbursements of any auditors, accountants, consultants or appraisers; (e) all other actual and reasonable, documented and invoiced out-of-pocket costs and expenses incurred by each Agent in connection with the syndication of the Loans and Commitments and the transactions contemplated by the Credit Documents and any consents, amendments, waivers or other modifications thereto and (f) after the occurrence of an Event of Default, all documented and invoiced out-of-pocket costs and expenses, including reasonable, documented and invoiced fees of one outside counsel for all the Agents and Lenders and costs of settlement, incurred by any Agent and Lenders in enforcing any Obligations of or in collecting any payments due from any Credit Party hereunder or under the other Credit Documents by reason of such Default or Event of Default (including in connection with the enforcement of the Guaranty) or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out" or pursuant to any insolvency or bankruptcy cases or proceedings.

### 10.3. Indemnity.

(a) In addition to the payment of expenses pursuant to Section 10.2, whether or not the transactions contemplated hereby shall be consummated, each Credit Party agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless, each Agent and Lender and each of their respective officers, partners, members, directors, trustees, advisors, employees, agents, sub-agents and affiliates (each, an **"Indemnitee"**), from and against any and all Indemnified Liabilities; provided, no Credit Party shall have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise directly from the gross negligence or willful misconduct of such Indemnitee, in each case, as determined by a final, non-appealable judgment of a court of competent jurisdiction. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, the applicable Credit Party shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

(b) To the fullest extent permitted by applicable law, no Credit Party shall assert, and each Credit Party hereby waives, any claim against each Lender and each Agent and their respective Affiliates, directors, employees, attorneys, agents or sub-agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. None of any Lender or any Agent or any of their respective Affiliates, directors, employees, attorneys, agents or sub-agents shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby.

(c) Each Credit Party also agrees that no Lender or Agent nor their respective Affiliates, directors, employees, attorneys, agents or sub-agents will have any liability to any Credit Party or any person asserting claims on behalf of or in right of any Credit Party or any other person in connection with or as a result of this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan, or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, in each case, except in the case of any Credit Party to the extent that any losses, claims, damages, liabilities or expenses incurred by such Credit Party or its affiliates, shareholders, partners or other equity holders have been found by a final, non-appealable judgment of a court of competent jurisdiction to have resulted directly from the gross negligence or willful misconduct of such Lender or Agent or their respective Affiliates, directors, employees, attorneys, agents or sub-agents in performing its obligations under this Agreement or any Credit Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein; provided, however, that in no event will such Lender or Agent, or their respective Affiliates, directors, employees,



attorneys, agents or sub-agents have any liability for any indirect, consequential, special or punitive damages in connection with or as a result of such Lender's or Agent's, or their respective Affiliates', directors', employees', attorneys', agents' or sub-agents' activities related to this Agreement, any Credit Document, or any agreement or instrument contemplated hereby or thereby or referred to herein or therein.

**10.4. Set-Off.** In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default each Lender is hereby authorized by each Credit Party at any time or from time to time subject to the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed), without notice to any Credit Party or to any other Person (other than Administrative Agent), any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by such Lender to or for the credit or the account of any Credit Party against and on account of the obligations and liabilities of any Credit Party to such Lender hereunder, and under the other Credit Documents, including all claims of any nature or description arising out of or connected hereto, or with any other Credit Document, irrespective of whether or not (a) such Lender shall have made any demand hereunder or (b) the principal of or the interest on the Loans or any other amounts due hereunder shall have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to Administrative Agent for further application in accordance with the provisions of Sections 2.17 and 2.22 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section 10.4 are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have.

#### **10.5. Amendments and Waivers.**

(a) Requisite Lenders' Consent. Subject to the additional requirements of Sections 10.5(b) and 10.5(c), no amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall in any event be effective without the written concurrence of the Borrower and the Requisite Lenders; provided that Administrative Agent may, with the consent of Borrower only, amend, modify or supplement this Agreement or any other Credit Document to cure any ambiguity, omission, defect or inconsistency (as reasonably determined by Administrative Agent), so long as such amendment, modification or supplement does not adversely affect the rights of any Lender or the Lenders shall have received at least five Business Days' prior written notice thereof and Administrative Agent shall not have received, within five Business

Days of the date of such notice to the Lenders, a written notice from the Requisite Lenders stating that the Requisite Lenders object to such amendment.

(b) Affected Lenders' Consent. Without the written consent of each Lender that would be directly affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:

(i) extend the scheduled final maturity of any Loan or Note;

(ii) waive, reduce or postpone any scheduled repayment (but not prepayment);

(iii) amend, modify, terminate or waive any provision of Section 2.14(a) through Section 2.14(e) (or any defined terms used therein or the constituent definitions thereof);

(iv) reduce the rate of interest on any Loan (other than any waiver of any increase in the interest rate applicable to any Loan pursuant to Section 2.10) or any fee or any premium payable hereunder;

(v) extend the time for payment of any such interest, fees or premium;

(vi) reduce the principal amount of any Loan;

(vii) amend, modify, terminate or waive any provision of this Section 10.5(b), Section 10.5(c) or any other provision of this Agreement that expressly provides that the consent of all Lenders is required;

(viii) amend the definition of "Requisite Lenders" or "Pro Rata Share";

(ix) release all or substantially all of the Guarantors from the Guaranty except as expressly provided in the Credit Documents;

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

(xi) amend or waive any provision of Section 6.3 (or release, or consent to the release, of any security interest granted thereunder);

provided that, for the avoidance of doubt, all Lenders shall be deemed directly affected thereby with respect to any amendment described in clauses (vii), (viii), (ix), (x) and (xi).

(c) Other Consents. No amendment, modification, termination or waiver of any provision of the Credit Documents, or consent to any departure by any Credit Party therefrom, shall:

(i) [Reserved];

(ii) [Reserved];

(iii) [Reserved];

(iv) [Reserved];

(v) [Reserved];

(vi) amend, modify, terminate or waive any provision of the Credit Documents as the same applies to any Agent, Arranger, or any other provision hereof as the same applies to the rights or obligations of any Agent or Arranger, in each case without the consent of such Agent or Arranger.

(d) Execution of Amendments, Etc. Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of such Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by a Credit Party, on such Credit Party.

(e) Cashless Settlement. Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue or rollover all or a portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by Borrower, Administrative Agent and such Lender.

#### **10.6. Successors and Assigns; Participations.**

(a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders. No Credit Party's rights or obligations hereunder nor any interest therein may be assigned or delegated by any Credit Party without the prior written consent of all Lenders. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of each of the Agents and Lenders and other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Register. Borrower, Administrative Agent and Lenders shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof, and no assignment or transfer of any such Commitment or Loan shall be effective, in each case, unless and until recorded in the Register following receipt of a fully executed Assignment Agreement

effecting the assignment or transfer thereof, together with the required forms and certificates regarding tax matters and any fees payable in connection with such assignment, in each case, as provided in Section 10.6(d). Each assignment shall be recorded in the Register promptly following receipt by Administrative Agent of the fully executed Assignment Agreement and all other necessary documents and approvals, prompt notice thereof shall be provided to Borrower and a copy of such Assignment Agreement shall be maintained, as applicable. The date of such recordation of a transfer shall be referred to herein as the “**Assignment Effective Date.**” Any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans.

(c) Right to Assign. Each Lender shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Commitment or Loans owing to it or other Obligations (provided, however, that pro rata assignments shall not be required and each assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable Loan and any related Commitments):

(i) to any Person meeting the criteria of clause (i) of the definition of the term “Eligible Assignee” upon the giving of notice to Borrower and Administrative Agent; and

(ii) to any Person meeting the criteria of clause (ii) of the definition of the term “Eligible Assignee” upon giving of notice to Borrower and Administrative Agent (except in the case of assignments made by or to the Arrangers), consented to Administrative Agent (such consent not to be unreasonably withheld or delayed); provided further that each such assignment pursuant to this Section 10.6(c)(ii) shall be in an aggregate amount of not less than (w) \$10,000,000, (x) such lesser amount as agreed to by Borrower and Administrative Agent, (y) the aggregate amount of the Term Loans of the assigning Lender or (z) the amount assigned by an assigning Lender to an Affiliate or Related Fund of such Lender.

(d) Mechanics.

(i) Assignments and assumptions of Loans and Commitments by Lenders shall be effected by manual execution and delivery to Administrative Agent of an Assignment Agreement. Assignments made pursuant to the foregoing provision shall be effective as of the Assignment Effective Date. In connection with all assignments there shall be delivered to Administrative Agent such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment Agreement may be required to deliver pursuant to Section 2.20(c) or 2.20(d), together with payment to Administrative Agent of a registration and processing fee of \$3,500 (except that no such registration and processing fee shall be payable (y) in connection with an assignment by or to Goldman Sachs or any Affiliate

thereof or (z) in the case of an assignee which is already a Lender or is an affiliate or Related Fund of a Lender or a Person under common management with a Lender).

(ii) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of Borrower and Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to Administrative Agent and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(e) Representations and Warranties of Assignee. Each Lender, upon execution and delivery hereof or upon succeeding to an interest in the Commitments and Loans, as the case may be, represents and warrants as of the Closing Date or as of the Assignment Effective Date that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the making of or investing in commitments or loans such as the applicable Commitments or Loans, as the case may be; (iii) it will make or invest in, as the case may be, its Commitments or Loans for its own account in the ordinary course and without a view to distribution of such Commitments or Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this Section 10.6, the disposition of such Commitments or Loans or any interests therein shall at all times remain within its exclusive control); and (iv) it will not provide any information obtained by it in its capacity as a Lender to Sponsor or any Affiliate of Sponsor.

(f) Effect of Assignment. Subject to the terms and conditions of this Section 10.6, as of the Assignment Effective Date (i) the assignee thereunder shall have the rights and obligations of a “Lender” hereunder to the extent of its interest in the Loans and Commitments as reflected in the Register and shall thereafter be a party hereto and a “Lender” for all purposes hereof; (ii) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned to the assignee, relinquish its rights (other than any rights which survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of an assignment covering all or the remaining portion of an assigning Lender’s rights and obligations hereunder, such Lender shall cease to be a party hereto on the Assignment Effective Date; provided, anything contained in any of the Credit 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 assigning Lender as a Lender hereunder); (iii) the Commitments shall be modified to reflect any Commitment of such assignee; and (iv) if any such assignment occurs after the issuance of any Note hereunder, the assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to Administrative Agent for cancellation, and thereupon Borrower shall issue and deliver new Notes, if so requested by the assignee and/or assigning Lender, to such assignee and/or to such assigning Lender, with appropriate insertions, to reflect the new outstanding Loans of the assignee and/or the assigning Lender.

(g) Participations.

(i) Each Lender shall have the right at any time, without the consent of, or notice to, the Borrower, to sell one or more participations to any Person (other than the Borrower, any of its Subsidiaries or any of its Affiliates or any Natural Person) in all or any part of its Commitments, Loans or in any other Obligation. Each Lender that sells a participation pursuant to this Section 10.6(g) shall, acting solely for U.S. federal income tax purposes as a non-fiduciary agent of Borrower, maintain a register on which it records the name and address of each participant and the principal amounts (and stated interest) of each participant's participation interest with respect to the Term Loan (each, a **"Participant Register"**); provided that 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 or its other obligations under this Agreement) except to the extent that the relevant parties, acting reasonably and in good faith, determine 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. Unless otherwise required by the Internal Revenue Service, any disclosure required by the foregoing sentence shall be made by the relevant Lender directly and solely to the Internal Revenue Service. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of a participation with respect to the Term Loan for all purposes under this Agreement, notwithstanding any notice to the contrary. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(ii) The holder of any such participation, other than an Affiliate of the Lender granting such participation, shall not be entitled to require such Lender to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (A) extend the final scheduled maturity of any Loan or Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction

in the Commitment shall not constitute a change in the terms of such participation, and that an increase in any Commitment or Loan shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (B) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under this Agreement or (C) release all or substantially all of the Guarantors from the Guaranty (in each case, except as expressly provided in the Credit Documents) supporting the Loans hereunder in which such participant is participating.

(iii) Borrower agrees that each participant shall be entitled to the benefits of Sections 2.18(c), 2.19 and 2.20 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (c) of this Section; provided, (x) a participant shall not be entitled to receive any greater payment under Section 2.19 or 2.20 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after such participant acquired the participation or unless the sale of the participation to such participant is made with Borrower's prior written consent (not to be unreasonably withheld or delayed) and (y) a participant that would be a Non-US Lender if it were a Lender shall not be entitled to the benefits of Section 2.20 unless Borrower is notified of the participation sold to such participant and such participant agrees, for the benefit of Borrower, to comply with Section 2.20 as though it were a Lender; provided further that, except as specifically set forth in clauses (x) and (y) of this sentence, nothing herein shall require any notice to Borrower or any other Person in connection with the sale of any participation. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 10.4 as though it were a Lender, provided such participant agrees to be subject to Section 2.17 as though it were a Lender.

(h) Certain Other Assignments and Participations. In addition to any other assignment or participation permitted pursuant to this Section 10.6 any Lender may assign, pledge and/or grant a security interest in all or any portion of its Loans, the other Obligations owed by or to such Lender, and its Notes, if any, to secure obligations of such Lender including any Federal Reserve Bank as collateral security pursuant to Regulation A of the Board of Governors and any operating circular issued by such Federal Reserve Bank, or other central banks; provided, that no Lender, as between Borrower and such Lender, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided further, that in no event shall the applicable Federal Reserve Bank, pledgee or trustee, be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder.

(i) Certain ERISA Matters.

(i) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto,

for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower, that at least one of the following is and will be true:

(A) such Lender is not using “plan assets” (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments or this Agreement,

(B) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement,

(C) (1) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (2) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Commitments and this Agreement, (3) the entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84- 14 and (4) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement, or

(D) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(ii) In addition, unless either (1) subclause (A) in the immediately preceding clause (i) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with subclause (D) in the immediately preceding clause (i), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and not, for the avoidance of doubt, to or for the benefit of the Borrower, that the Administrative Agent is not a fiduciary with respect to the assets of such Lender involved in such Lender’s entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights



by the Administrative Agent under this Agreement, any Credit Document or any documents related hereto or thereto).

**10.7. Independence of Covenants.** All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

**10.8. Survival of Representations, Warranties and Agreements.** All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the making of any Credit Extension. Notwithstanding anything herein or implied by law to the contrary, the agreements of each Credit Party set forth in Sections 2.18(c), 2.19, 2.20, 10.2, 10.3 and 10.4 and the agreements of Lenders set forth in Sections 2.17, 9.3(b) and 9.6 shall survive the payment of the Loans and the termination hereof.

**10.9. No Waiver; Remedies Cumulative.** No failure or delay on the part of any Agent, or any Lender in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. The rights, powers and remedies given to each Agent and each Lender hereby are cumulative and shall be in addition to and independent of all rights, powers and remedies existing by virtue of any statute or rule of law or in any of the other Credit Documents or any of the Hedge Agreements. Any forbearance or failure to exercise, and any delay in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

**10.10. Marshalling; Payments Set Aside.** None of Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit 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 bankruptcy law, any other state or federal law, common 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.

**10.11. Severability.** In case any provision in or obligation hereunder or under any other Credit Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

**10.12. Obligations Several; Independent Nature of Lenders' Rights.** The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitment of any other Lender hereunder. Nothing contained herein or in any other Credit Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

**10.13. Headings.** Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

**10.14. APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING, WITHOUT LIMITATION, ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.**

**10.15. CONSENT TO JURISDICTION. SUBJECT TO CLAUSE (E) OF THE FOLLOWING SENTENCE, ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER CREDIT DOCUMENTS, OR ANY OF THE OBLIGATIONS, SHALL BE BROUGHT IN ANY FEDERAL COURT OF THE UNITED STATES OF AMERICA SITTING IN THE BOROUGH OF MANHATTAN OR, IF THAT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, IN ANY STATE COURT LOCATED IN THE CITY AND COUNTY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH CREDIT PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (A) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE (SUBJECT TO CLAUSE (E) BELOW) JURISDICTION AND VENUE OF SUCH COURTS; (B) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (C) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE CREDIT PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 10.1; (D) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (C) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE CREDIT PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (E) AGREES THAT AGENTS AND LENDERS RETAIN THE RIGHT**

TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY CREDIT PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY CREDIT DOCUMENT OR AGAINST ANY COLLATERAL OR THE ENFORCEMENT OF ANY JUDGMENT, AND HEREBY SUBMITS TO THE JURISDICTION OF, AND CONSENTS TO VENUE IN, ANY SUCH COURT.

**10.16. WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER CREDIT DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. 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 CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.16 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER CREDIT DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

**10.17. Confidentiality.** Each Agent and each Lender shall hold all non-public information regarding the Borrower and its Subsidiaries, Affiliates and their businesses identified as such by Borrower and obtained by such Agent or such Lender pursuant to the requirements hereof in accordance with such Agent's and such Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by Borrower that, in any event, Administrative Agent may disclose such information to the Lenders and each Agent and each Lender and each Agent may make (i) disclosures of such information to Affiliates of such Lender or Agent and to their respective officers, directors, partners, members, employees, legal counsel, independent auditors and other advisors, experts or agents who need to know such

information and on a confidential basis (and to other Persons authorized by a Lender or Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.17), (ii) disclosures of such information reasonably required by any potential or prospective assignee, transferee or participant in connection with the contemplated assignment, transfer or participation of any Loans or any participations therein or by any direct or indirect contractual counterparties (or the professional advisors thereto) to any swap or derivative or insurance transaction relating to Borrower and its obligations, this Agreements or payments hereunder (provided, such assignees, transferees, participants, counterparties and advisors are advised of and agree to be bound by either the provisions of this Section 10.17 or other provisions at least as restrictive as this Section 10.17), (iii) disclosure on a confidential basis to any rating agency when required by it, (iv) disclosure on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Loans, (v) disclosures in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder, (vi) disclosures made pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, or otherwise as required by applicable law or compulsory legal process (in which case such Person agrees to inform Borrower promptly thereof to the extent not prohibited by law), (vii) disclosures made upon the request or demand of any regulatory or quasi-regulatory authority purporting to have jurisdiction over such Person or any of its Affiliates and (viii) disclosures with the consent of Borrower. In addition, each Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to market data collectors, similar services providers to the lending industry, and service providers to the Agents and the Lenders in connection with the administration and management of this Agreement and the other Credit Documents.

**10.18. Usury Savings Clause.** Notwithstanding any other provision herein, the aggregate interest rate charged with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Loans made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Borrower shall pay to Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and Borrower to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at such

Lender's option be applied to the outstanding amount of the Loans made hereunder or be refunded to Borrower.

**10.19. Effectiveness; Counterparts; Electronic Execution of Credit Documents.**

(a) This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto and receipt by Borrower and Administrative Agent of written notification of such execution and authorization of delivery thereof. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic format (i.e., "pdf" or "tif" shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) The words "execution," "signed," "signature," and words of like import in this Agreement and any other Credit Documents shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**10.20. Acknowledgment and Consent to Bail-In of EEA Financial Institutions.** Solely to the extent any Lender that is an EEA Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(A) a reduction in full or in part or cancellation of any such liability;

(B) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Credit Document; or

(C) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

**10.21. PATRIOT Act.** Each Lender and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies each Credit Party that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Lender or Administrative Agent, as applicable, to identify such Credit Party in accordance with the PATRIOT Act.

**10.22. Electronic Execution of Assignments.** The words “execution,” “signed,” “signature,” and words of like import in any Assignment Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**10.23. No Fiduciary Duty.** Each Agent, Lender and their Affiliates (collectively, solely for purposes of this paragraph, the “**Lenders**”), may have economic interests that conflict with those of the Credit Parties, their stockholders and/or their affiliates. Each Credit Party agrees that nothing in the Credit Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and such Credit Party, its stockholders or its affiliates, on the other. The Credit Parties acknowledge and agree that (i) the transactions contemplated by the Credit Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Lenders, on the one hand, and the Credit Parties, on the other, and (ii) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of any Credit Party, its stockholders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Credit Party, its stockholders or its Affiliates on other matters) or any other obligation to any Credit Party except the obligations expressly set forth in the Credit Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of any Credit Party, its management, stockholders, creditors or any other Person. Each Credit Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Credit Party agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Credit Party, in connection with such transaction or the process leading thereto.

[Remainder of page intentionally left blank]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**LEONARDO DRS, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**[GUARANTOR]**

By: \_\_\_\_\_  
Name:  
Title:

**[GUARANTOR]**

By: \_\_\_\_\_  
Name:  
Title:

**[GUARANTOR]**

By: \_\_\_\_\_  
Name:  
Title:

**GOLDMAN SACHS BANK USA,**  
as Administrative Agent, Syndication Agent, Lead Arranger,  
Bookrunner and a Lender

By: \_\_\_\_\_  
Authorized Signatory

Bridge Credit and Guaranty Agreement



**BOFA SECURITIES, INC.,** as Lead Arranger and  
Bookrunner,

By: \_\_\_\_\_  
Authorized Signatory

Bridge Credit and Guaranty Agreement

**BANK OF AMERICA, N.A.,**  
as a Leader

By: \_\_\_\_\_  
Authorized Signatory

Bridge Credit and Guaranty Agreement

**JPMORGAN CHASE BANK, N.A.,**  
As Syndication Agent, Lead Arranger, Bookrunner, and a  
Lender

By: \_\_\_\_\_  
Authorized Signatory

Bridge Credit and Guaranty Agreement

**BARCLAYS BANK PLC,**  
as Lead Arranger, Bookrunner, Documentation Agent and a  
Lender

By: \_\_\_\_\_  
Name:  
Title:

Bridge Credit and Guaranty Agreement

**CITIBANK, N.A., LONDON BRANCH**  
as Lead Arranger, Bookrunner, and Documentation Agent

By: \_\_\_\_\_  
Name:  
Title:

Bridge Credit and Guaranty Agreement

**CITIBANK, N.A.**  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

Bridge Credit and Guaranty Agreement

**CREDIT SUISSE LOAN FUNDING LLC,**  
as Lead Arranger, Bookrunner and Documentation Agent

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,**  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Bridge Credit and Guaranty Agreement



**MORGAN STANLEY SENIOR FUNDING, INC.,**  
as Lead Arranger, Bookrunner and Documentation Agent

By: \_\_\_\_\_  
Name:  
Title:

Bridge Credit and Guaranty Agreement

**MORGAN STANLEY BANK, N.A.,**  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

Bridge Credit and Guaranty Agreement

**MUFG UNION BANK, N.A.,**  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

Bridge Credit and Guaranty Agreement

**CREDIT AGRICOLE CORPORATE AND  
INVESTMENT BANK,**  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**INTESA SANPAOLO S.P.A., NEW YORK BRANCH,**  
as a Lender

By: \_\_\_\_\_  
Name:  
Title:

Bridge Credit and Guaranty Agreement

**UNICREDIT S.P.A., NEW YORK BRANCH,**  
as a Lender

By: \_\_\_\_\_

Name:

Title:

Bridge Credit and Guaranty Agreement

**Consent of Independent Registered Public Accounting Firm**

The Board of Directors  
Leonardo DRS, Inc.

We consent to the use of our report included herein and to the reference to our firm under the heading 'Experts' in the prospectus.

Our report refers to a change to the method of accounting for leases.

/s/ KPMG LLP

McLean, VA  
March 15, 2021

**CONSENT OF PERSON NAMED AS ABOUT TO BECOME DIRECTOR**

Pursuant to Rule 438 under the Securities Act of 1933, as amended, the undersigned hereby consents to being named in the Registration Statement on Form S-1 of Leonardo DRS, Inc. (the "Registrant"), and all amendments thereto and any related prospectus or prospectus supplement filed pursuant to Rule 424 under the Securities Act of 1933, as amended (the "Registration Statement"), as a prospective director of the Registrant, and to the filing or attachment of this consent with the Registration Statement.

March 15, 2021

By: /s/ Gail Baker

Name: Gail Baker



**CONSENT OF PERSON NAMED AS ABOUT TO BECOME DIRECTOR**

Pursuant to Rule 438 under the Securities Act of 1933, as amended, the undersigned hereby consents to being named in the Registration Statement on Form S-1 of Leonardo DRS, Inc. (the "Registrant"), and all amendments thereto and any related prospectus or prospectus supplement filed pursuant to Rule 424 under the Securities Act of 1933, as amended (the "Registration Statement"), as a prospective director of the Registrant, and to the filing or attachment of this consent with the Registration Statement.

March 15, 2021

By: /s/ Mary Gallagher  
Name: Mary Gallagher