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**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**SCHEDULE 13D**

(Rule 13d-101)

**INFORMATION TO BE INCLUDED IN STATEMENTS FILED PURSUANT TO § 240.13d-1(a)  
AND AMENDMENTS THERE TO FILED PURSUANT TO § 240.13d-2(a)**

**UNDER THE SECURITIES EXCHANGE ACT OF 1934  
(Amendment No.    )\***

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**ACTIVISION BLIZZARD, INC.**

(Name of Issuer)

**COMMON STOCK, \$0.000001 PAR VALUE**  
(Title of Class of Securities)

**00507V109**  
(CUSIP Number)

**ASAC II LP**  
**c/o Northern Trust Private Equity Administration**  
**Department 2008**  
**801 South Canal**  
**Chicago, Illinois 60607**  
**(312) 557-5687**

With a copy to:

**Alison S. Ressler**  
**Sullivan & Cromwell LLP**  
**1888 Century Park East**  
**Los Angeles, California 90067-1725**  
**(310) 712-6600**

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

**October 11, 2013**  
(Date of Event which Requires Filing of This Statement)

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If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this Schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box .

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**Note.** Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-7 for other parties to whom copies are to be sent.

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\* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

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|  |   |                                       |
|--|---|---------------------------------------|
| 1.   | NAME OF REPORTING PERSON<br>ASAC II LP  |                                       |
| 2.   | CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP:<br>(a) <input type="checkbox"/> (b) <input checked="" type="checkbox"/> |                                       |
| 3.   | SEC Use Only  |                                       |
| 4.   | SOURCE OF FUNDS<br>WC, BK   |                                       |
| 5.   | CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(e) OR 2(f) <input type="checkbox"/>          |                                       |
| 6.   | CITIZENSHIP OR PLACE OF ORGANIZATION<br>Cayman Islands  |                                       |
| Number Of<br>Shares<br>Beneficially<br>Owned By<br>Each<br>Reporting<br>Person<br>With | 7.  | SOLE VOTING POWER<br>171,968,042      |
|  | 8.  | SHARED VOTING POWER<br>-0-            |
|  | 9.  | SOLE DISPOSITIVE POWER<br>171,968,042 |
|  | 10.   | SHARED DISPOSITIVE POWER<br>-0-       |
| 11.  | AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON<br>171,968,042   |                                       |
| 12.  | CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES <input type="checkbox"/>                            |                                       |
| 13.  | PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)<br>24.7% (1)   |                                       |
| 14.  | TYPE OF REPORTING PERSON<br>PN  |                                       |

(1) Based on 695,291,745 shares of Common Stock outstanding.

|  |   |                                       |
|--|---|---------------------------------------|
| 1.   | NAME OF REPORTING PERSON<br>ASAC II LLC   |                                       |
| 2.   | CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP:<br>(a) <input type="checkbox"/> (b) <input checked="" type="checkbox"/> |                                       |
| 3.   | SEC Use Only  |                                       |
| 4.   | SOURCE OF FUNDS<br>Not Applicable   |                                       |
| 5.   | CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(e) OR 2(f) <input type="checkbox"/>          |                                       |
| 6.   | CITIZENSHIP OR PLACE OF ORGANIZATION<br>Delaware  |                                       |
| Number Of<br>Shares<br>Beneficially<br>Owned By<br>Each<br>Reporting<br>Person<br>With | 7.  | SOLE VOTING POWER<br>171,968,042      |
|  | 8.  | SHARED VOTING POWER<br>-0-            |
|  | 9.  | SOLE DISPOSITIVE POWER<br>171,968,042 |
|  | 10.   | SHARED DISPOSITIVE POWER<br>-0-       |
| 11.  | AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON<br>171,968,042   |                                       |
| 12.  | CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES <input type="checkbox"/>                            |                                       |
| 13.  | PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)<br>24.7% (1)   |                                       |
| 14.  | TYPE OF REPORTING PERSON<br>OO  |                                       |

(1) Based on 695,291,745 shares of Common Stock outstanding.

|  |   |                          |
|--|---|--------------------------|
| 1.   | NAME OF REPORTING PERSON  |                          |
|  | Robert A. Kotick  |                          |
| 2.   | CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP:<br>(a) <input type="checkbox"/> (b) <input checked="" type="checkbox"/> |                          |
| 3.   | SEC Use Only  |                          |
| 4.   | SOURCE OF FUNDS   |                          |
|  | SC, PF  |                          |
| 5.   | CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(e) OR 2(f) <input type="checkbox"/>          |                          |
| 6.   | CITIZENSHIP OR PLACE OF ORGANIZATION  |                          |
|  | USA   |                          |
| Number Of<br>Shares<br>Beneficially<br>Owned By<br>Each<br>Reporting<br>Person<br>With | 7.  | SOLE VOTING POWER        |
|  |   | 6,092,827 (1)            |
|  | 8.  | SHARED VOTING POWER      |
|  |   | 171,968,042 (2)          |
|  | 9.  | SOLE DISPOSITIVE POWER   |
|  |   | 6,092,827 (1)            |
|  | 10.   | SHARED DISPOSITIVE POWER |
|  |   | 171,968,042 (2)          |
| 11.  | AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  |                          |
|  | 178,060,869   |                          |
| 12.  | CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES <input type="checkbox"/>                            |                          |
| 13.  | PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  |                          |
|  | 25.5% (1)   |                          |
| 14.  | TYPE OF REPORTING PERSON  |                          |
|  | IN  |                          |

- (1) Of these shares of Common Stock, 979,731 shares and 3,962,998 options to purchase shares are held by 10122B Trust, of which Mr. Kotick is the trustee, 1,076,598 shares may be deemed to be beneficially owned by Mr. Kotick as controlling person of 1011 Foundation, Inc., as to which Mr. Kotick disclaims beneficial ownership, and 4,800 shares may be deemed to be beneficially owned by Mr. Kotick solely in his capacity as custodian of a UTMA account for the benefit of Mr. Kotick's minor relative, as to which Mr. Kotick disclaims beneficial ownership.
- (2) These shares may be deemed to be beneficially owned by Mr. Kotick solely in his capacity as one of two controlling persons of ASAC II LLC.
- (3) Based on 699,323,443 shares of Common Stock outstanding, which includes 695,291,745 shares of Common Stock outstanding, 3,962,998 shares of Common Stock represented by options held by 10122B Trust and 68,700 shares represented by restricted share units scheduled to vest within 60 days held by 10122B Trust.

|  |   |   |
|--|---|---|
| 1.   | NAME OF REPORTING PERSON<br>Brian G. Kelly  |   |
| 2.   | CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP:<br>(a) <input type="checkbox"/> (b) <input checked="" type="checkbox"/> |   |
| 3.   | SEC Use Only  |   |
| 4.   | SOURCE OF FUNDS<br>SC, PF   |   |
| 5.   | CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(e) OR 2(f) <input type="checkbox"/>          |   |
| 6.   | CITIZENSHIP OR PLACE OF ORGANIZATION<br>USA   |   |
| Number Of<br>Shares<br>Beneficially<br>Owned By<br>Each<br>Reporting<br>Person<br>With | 7.  | SOLE VOTING POWER<br>2,883,905 (1)          |
|  | 8.  | SHARED VOTING POWER<br>171,968,042 (2)      |
|  | 9.  | SOLE DISPOSITIVE POWER<br>2,883,905 (1)     |
|  | 10.   | SHARED DISPOSITIVE POWER<br>171,968,042 (2) |
| 11.  | AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON<br>174,851,947   |   |
| 12.  | CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES <input type="checkbox"/>                            |   |
| 13.  | PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)<br>25.1% (3)   |   |
| 14.  | TYPE OF REPORTING PERSON<br>IN  |   |

- (1) Of these shares of Common Stock, 472,865 shares are held in the Kelly Family 2006 Irrevocable Trust, of which Mr. Kelly is trustee, 210,962 shares and 35,370 restricted stock units scheduled to vest within 60 days are held by Brian G. Kelly 2012 Annuity Trust, of which Mr. Kelly is grantor, 666,884 shares are held by Brian & Joelle Kelly Family Foundation, of which Mr. Kelly is trustee and as to which Mr. Kelly disclaims beneficial ownership, 860,291 shares and 14,181 options to purchase shares of Common Stock are held in the 45121I Trust, of which Mr. Kelly is the trustee and as to which Mr. Kelly disclaims beneficial ownership, 9,600 shares are held in UTMA accounts for the benefit of Mr. Kotick's minor children, of which Mr. Kelly is custodian and as to which Mr. Kelly disclaims beneficial ownership, and 350,754 shares and 262,998 options to purchase shares of Common Stock are held directly by Mr. Kelly.
- (2) These shares may be deemed to be beneficially owned by Mr. Kelly solely in his capacity as one of two controlling persons of ASAC II LLC.
- (3) Based on 695,604,294 shares of Common Stock outstanding, which includes 695,291,745 shares of Common Stock outstanding, 35,370 shares of Common Stock represented by restricted share units held by the Brian G. Kelly 2012 Annuity Trust scheduled to vest within 60 days, 14,181 shares of Common Stock represented by options held by 45121I Trust and 262,998 shares of Common Stock represented by options held by Mr. Kelly.

**ITEM 1. Security and Issuer.**

This statement on Schedule 13D (the "Schedule 13D") relates to the common stock, \$0.00001 par value (the "Common Stock"), of Activision Blizzard, Inc., a Delaware corporation ("Activision" or the "Issuer"). The principal executive offices of the Issuer are located at 3100 Ocean Park Boulevard, Santa Monica, CA 90405.

**ITEM 2. Identity and Background.**

(a) The undersigned hereby file this Schedule 13D Statement on behalf of ASAC II LP, an exempted limited partnership established under the laws of the Cayman Islands ("ASAC"), ASAC II LLC, a Delaware limited liability company ("ASAC GP"), Robert A. Kotick ("RAK") and Brian G. Kelly ("BGK"). ASAC, ASAC GP, RAK and BGK are sometimes hereinafter referred to as the "Reporting Persons." The Reporting Persons are making this single, joint filing because they may be deemed to constitute a "group" within the meaning of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (the "Act"), although neither the fact of this filing nor anything contained herein shall be deemed to be an admission by the Reporting Persons that a group exists.

(b) – (c)

ASAC is an exempted limited partnership established under the laws of the Cayman Islands, the principal purpose of which is to hold shares of the Common Stock. The principal place of business and the principal office address of ASAC is c/o Northern Trust Private Equity Administration, Department 2008, 801 South Canal, Chicago, Illinois 60607.

ASAC GP is a Delaware limited liability company, the principal purpose of which is to be the general partner of ASAC. The principal place of business and the principal office address of ASAC GP is c/o Northern Trust Private Equity Administration, Department 2008, 801 South Canal, Chicago, Illinois 60607.

RAK is President and Chief Executive Officer of the Issuer. The principal address of the Issuer is located at 3100 Ocean Park Boulevard, Santa Monica, CA 90405, and the principal business of the Issuer is worldwide online, personal computer, video game console, handheld, and mobile game publishing.

BGK is Chairman of the Board of Directors of the Issuer. The principal address of the Issuer is located at 3100 Ocean Park Boulevard, Santa Monica, CA 90405, and the principal business of the Issuer is worldwide online, personal computer, video game console, handheld, and mobile game publishing.

(d) None of the entities or persons identified in this Item 2 has, during the last five years, been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors).

(e) None of the entities or persons identified in this Item 2 has, during the last five years, been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

(f) All of the natural persons identified in this Item 2 are citizens of the United States of America.

### **ITEM 3. Source and Amount of Funds or Other Consideration.**

On July 25, 2013, ASAC, Vivendi S.A. (“Vivendi”) and Activision entered into a stock purchase agreement (the “Stock Purchase Agreement”) in which, among other things, ASAC agreed to purchase 171,968,042 shares of Common Stock (the “Shares”) from Vivendi for approximately \$2.34 billion in cash or \$13.60 per share. The Stock Purchase Agreement is incorporated as Exhibit A hereto by reference to Exhibit 2.01 to the Issuer’s Report on Form 8-K dated July 26, 2013 and filed with the Securities and Exchange Commission on July 26, 2013 and any description thereof is qualified in its entirety by reference thereto. The transactions contemplated under the Stock Purchase Agreement were completed on October 11, 2013.

ASAC used equity investments from its partners of \$1.623 million and debt financing of \$643 million to purchase the Shares. On October 11, 2013, ASAC entered into (i) a loan agreement with JPMorgan Chase Bank, N.A., London Branch and the several lenders from time to time a party thereto and (ii) a loan agreement with Merrill Lynch International, Merrill Lynch Professional Clearing Corp. and the several lenders from time to time a party thereto to secure debt financing, in the amounts of \$429 million and \$214 million, respectively. The loan agreements are incorporated as Exhibit B and Exhibit C hereto and any description thereof is qualified in its entirety by reference thereto. The loans are secured by the Shares and will mature on October 11, 2017.

### **ITEM 4. Purpose of Transaction.**

The Reporting Persons have acquired the shares of Common Stock reported herein for investment purposes. RAK and BGK are members of the Issuer’s Board of Directors, and RAK is the Issuer’s President and Chief Executive Officer.

In connection with the purchase of the Shares, Activision, ASAC and, for the limited purposes set forth therein, RAK and BGK, entered into a stockholders agreement, dated October 11, 2013 (the “Stockholders Agreement”). The Stockholders Agreement is incorporated as Exhibit D hereto and any description thereof is qualified in its entirety by reference thereto. The Stockholders Agreement provides for a standstill that will prohibit ASAC and its controlled affiliates from, among other things, acquiring additional shares of Common Stock, calling a meeting of Activision’s stockholders, initiating any stockholder proposal for action by Activision’s stockholders or engaging in the “solicitation” of “proxies” (as such terms are used in the proxy rules of the Securities and Exchange Commission) or consents to vote any of Activision’s voting securities, in each case from the date of the purchase of the Shares until six months after the time at which the percentage of shares of Common Stock held by ASAC and any member of a group with ASAC and RAK and BGK, divided by the total number of shares of Common Stock issued and outstanding, falls below 5% of the issued and outstanding shares of Common Stock (subject to certain exceptions set forth in the Stockholders Agreement).

Other than as described in this Schedule 13D, the Reporting Persons do not have any present plans or proposals that relate to or would result in: (i) the acquisition by any person of additional securities of the Issuer, or the disposition of securities of the Issuer; (ii) an extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the Issuer or any of its subsidiaries; (iii) a sale or transfer of a material amount of assets of the Issuer or any of its subsidiaries; (iv) any change in the present board of directors or management of the Issuer, including any plans or proposals to change the number or term of directors or to fill any existing vacancies on the board; (v) any material change in the present capitalization or dividend policy of the Issuer; (vi) any other

material change in the Issuer's business or corporate structure; (vii) changes in the Issuer's charter, by-laws or instruments corresponding thereto or other actions which may impede the acquisition of control of the Issuer by any person; (viii) causing a class of securities of the Issuer to be de-listed from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association; (ix) a class of equity securities of the Issuer becoming eligible for termination of registration pursuant to Section 12(g)(4) of the Act; or (x) any action similar to any of those enumerated above.

**ITEM 5. Interest in Securities of the Issuer.**

(a) Unless otherwise indicated, percentage interest calculations for each Reporting Person are based upon the Issuer having 695,291,745 shares of Common Stock outstanding after the completion of the transactions described in this Schedule 13D as provided by the Issuer.

**ASAC**

The aggregate number of shares of Common Stock that ASAC owns beneficially, pursuant to Rule 13d-3 of the Act, is 171,968,042 shares of Common Stock, which constitutes approximately 24.7% of the outstanding shares of Common Stock.

**ASAC GP**

Because of its position as the sole general partner of ASAC, ASAC GP may, pursuant to Rule 13d-3 of the Act, be deemed to be the beneficial owner of 171,968,042 shares of Common Stock, which constitutes approximately 24.7% of the outstanding shares of Common Stock.

**RAK**

As one of the controlling persons of ASAC GP, trustee of 10122B Trust, the controlling person of 1011 Foundation, Inc. and the custodian of the Eli Sporn UTMA account, RAK may, pursuant to Rule 13d-3 of the Act, be deemed to be the beneficial owner of 178,060,869 shares of Common Stock, which constitutes 25.5% of the outstanding shares of Common Stock, which for purposes of this calculation includes 695,291,745 shares of Common Stock outstanding after the completion of the transactions described in this Schedule 13D as provided by the Issuer, 3,962,998 shares of Common Stock represented by options held by 10122B Trust and 68,700 shares represented by restricted share units scheduled to vest within the next 60 days. RAK disclaims beneficial ownership of any shares of Common Stock held by 1011 Foundation, Inc. or the Eli Sporn UTMA account.

**BGK**

Individually, and because of his positions as one of the controlling persons of ASAC GP, trustee of the Kelly Family 2006 Irrevocable Trust ("2006 Kelly Trust"), grantor of the Brian G. Kelly 2012 Annuity Trust ("2012 Kelly Trust"), trustee of the Brian & Joelle Kelly Family Foundation ("Kelly Family Foundation"), trustee of the 45121I Trust, custodian of the Grace Kotick UTMA account and custodian of the Audrey Kotick UTMA account, BGK may, pursuant to Rule 13d-3 of the Act, be deemed to be the beneficial owner of 174,851,947 shares of Common Stock, which constitutes 25.1% of the outstanding shares of Common Stock, which for purposes of this calculation includes 695,291,745 shares of Common Stock outstanding after the completion of the transactions described in this Schedule 13D as provided by the Issuer, 35,370 shares represented by restricted share units held by 2012 Kelly Trust scheduled to vest within the next 60 days, 14,181 shares of Common Stock represented by options held by 45121I Trust and 262,998 shares of Common Stock represented by options held by BGK. BGK disclaims beneficial ownership of any shares of Common Stock held by 45121I Trust, Kelly Family Foundation, the Grace Kotick UTMA account and the Audrey Kotick UTMA account.



(b) The power to vote or to direct the vote of shares of Common Stock described in this Item 5(b) is subject to the restrictions described in Item 6, which is incorporated by reference herein.

#### ASAC

Acting through its sole general partner, ASAC has the sole power to vote or to direct the vote and to dispose or to direct the disposition of 171,968,042 shares of Common Stock.

#### ASAC GP

Acting through its controlling persons and in its capacity as the sole general partner of ASAC, ASAC GP has the sole power to vote or to direct the vote and to dispose or to direct the disposition of 171,968,042 shares of Common Stock.

#### RAK

As one of two controlling persons of ASAC GP, which is the sole general partner of ASAC, RAK may be deemed to have shared power with BGK to vote or to direct the vote and to dispose or to direct the disposition of 171,968,042 shares held by ASAC. In addition, RAK has the sole power to vote or to direct the vote and to dispose or to direct the disposition of 5,011,429 shares of Common Stock held by 10122B Trust, of which RAK is trustee, 1,076,598 shares of Common Stock held by 1011 Foundation, Inc., of which RAK is the controlling person, and 4,800 shares of Common Stock held by the Eli Sporn UTMA account, of which RAK is the custodian.

#### BGK

As one of two controlling persons of ASAC GP, which is the sole general partner of ASAC, BGK may be deemed to have shared power with RAK to vote or to direct the vote and to dispose or to direct the disposition of 171,968,042 shares held by ASAC. In addition, BGK has the sole power to vote or to direct the vote and to dispose or to direct the disposition of 472,865 shares of Common Stock held by 2006 Kelly Trust, of which BGK is trustee, 246,332 shares of Common Stock held by 2012 Kelly Trust, of which BGK is grantor, 666,884 shares of Common Stock held by Kelly Family Foundation, of which BGK is trustee, 874,472 shares of Common Stock held by 45121I Trust, of which BGK is trustee, 4,800 shares of Common Stock held by the Grace Kotick UTMA account, of which BGK is custodian, 4,800 shares of Common Stock held by the Audrey Kotick UTMA account, of which BGK is custodian, and 613,752 shares of Common Stock held by BGK directly.

(c) On each of September 1, 2013 and October 1, 2013, 34,350 restricted stock units held by 10122B Trust vested. As allowed under the terms of RAK's restricted share unit agreement, the Issuer withheld 17,924 of the shares of Common Stock otherwise deliverable to 10122B Trust in order to satisfy the resulting tax withholding obligation.

On each of September 1, 2013 and October 1, 2013, 17,685 restricted stock units held by 2012 Kelly Trust vested. As allowed under the terms of BGK's restricted share unit agreement, the Issuer withheld 9,872 of the shares of Common Stock otherwise deliverable to 2012 Kelly Trust in order to satisfy the resulting tax withholding obligation.

Except as described in this Schedule 13D, to the knowledge of any of the Reporting Persons, no other transactions in the Common Stock were effected by the Reporting Person or any of the entities or persons named in Item 2 hereto during the sixty days prior to the date of this Schedule 13D.

(d) To the knowledge of any of the Reporting Persons, no other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, the securities reported in this Item 5.

(e) Not applicable.

#### **ITEM 6. Contracts, Arrangements, Understandings or Relationships With Respect to Securities of the Issuer.**

The information set forth or incorporated in Items 3 and 4 is incorporated herein by reference.

##### *Stockholders Agreement*

The Stockholders Agreement, provides for, among other things, certain registration rights for ASAC and also imposes certain restrictions on the transfer of ASAC's (and its controlled affiliates') shares of Common Stock and its acquisition of additional shares of Common Stock, subject to the terms and conditions set forth therein.

The Stockholders Agreement provides that, prior to the end of the twelve-month period following the purchase of the Shares, and thereafter during any regularly scheduled black-out period of the Issuer or any other trading black-out declared by the Issuer pursuant to its insider trading policies, ASAC and its controlled affiliates are prohibited from transferring or announcing any intention to transfer their shares of Common Stock without the prior written consent of the majority of the members of the board of directors of Activision not affiliated with ASAC, subject to certain exceptions set forth in the Stockholders Agreement (including to sell shares to pay off debt).

The Stockholders Agreement also provides that at any time at which the percentage of shares of Common Stock held by ASAC, any member of a group with ASAC and RAK and BGK, divided by the total number of shares of Common Stock issued and outstanding, exceeds 24.7%, RAK and BGK will vote any shares in excess of 24.7% (other than shares of Common Stock held by ASAC) in a manner proportionally consistent with the vote of the share of Common Stock not owned by ASAC, RAK or BGK or in accordance with the recommendation, if any, of a majority of the members of the board of directors of Activision unaffiliated with ASAC, RAK or BGK.

The foregoing description of the Stockholders Agreement is qualified in its entirety by reference to the full text of the Stockholders Agreement incorporated as Exhibit D hereto.

##### *Amended and Restated Limited Partnership Agreement*

ASAC GP and each of the limited partners of ASAC entered into an amended and restated limited partnership, dated October 11, 2013 (the "LPA"), which sets forth the terms and provisions of the partnership. The LPA is incorporated as Exhibit E hereto and any description thereof is qualified in its entirety by reference thereto. Under the terms of the LPA, ASAC GP is authorized to administer the affairs of ASAC, including the voting and disposition of shares of Common Stock, subject to certain restrictions set forth therein. The LPA restricts ASAC from owning more than 25% of the outstanding shares of Common Stock. Under the terms of the LPA, ASAC will be terminated and its affairs shall be wound up at the earlier of (i) the election of ASAC GP, (ii) the fourth anniversary of the purchase of the

Shares, (iii) the election for termination by the limited partners if certain events occur and (iv) any other event which would cause commencement of winding up or dissolution of ASAC under the laws of the Cayman Islands (except as otherwise provided in the LPA). Upon the termination and winding up of ASAC, ASAC GP will distribute the shares of Common Stock to its partners after paying all outstanding indebtedness and fees and expenses of ASAC. Under the terms of the LPA, ASAC is prohibited from selling the shares of Common Stock except for the purpose of paying outstanding indebtedness and fees and expenses of ASAC.

The partners of ASAC made capital contributions to ASAC in return for the following preferred and common interests in ASAC:

Percentage Interests in ASAC II LP

|                  | <u>Preferred</u> | <u>Class A<br/>Common</u> | <u>Class B<br/>Common</u> | <u>Class C<br/>Common</u> | <u>Class D<br/>Common</u> |
|------------------|------------------|---------------------------|---------------------------|---------------------------|---------------------------|
| ASAC GP          | 5.585%           | 35.000%                   | 17.500%                   | 20.000%                   | 25.000%                   |
| Limited Partners | 94.415%          | 65.000%                   | 82.500%                   | 80.000%                   | 75.000%                   |

Upon the commencement of the winding up of ASAC no later than the fourth anniversary of the consummation of the transactions contemplated by the Stock Purchase Agreement, and upon the repayment of the bank loans and the payment of due provision for any other liabilities of ASAC, the remaining shares of Activision Blizzard common stock held by ASAC will be distributed to the partners (based on the average closing price of shares of Activision Blizzard common stock over the 15 trading days immediately preceding the distribution date) in the following order of priority:

- first, until the Preferred Return Threshold (defined below) has been met, to the partners pro rata in accordance with their respective percentage interests in respect of the Preferred Interests;
- second, until the First Return Threshold (defined below) has been met, to the partners pro rata in accordance with their respective percentage interests of the Class A Common Interests;
- third, until the Second Return Threshold (defined below) has been met, to the partners pro rata in accordance with their respective percentage interests in respect of Class B Common Interests;
- fourth, until the Third Return Threshold (defined below) has been met, to the partners pro rata in accordance with their respective percentage interests in respect of Class C Common Interests; and

Thereafter, to the partners pro rata in accordance with their respective percentage interests in respect of the Class D Common Interests.

The distribution thresholds are defined as follows:

- “Preferred Return Threshold” means, with respect to any partner, (a) the receipt of distributions by such partner in respect of its Preferred Interests that yields an internal rate of return of 7.0% on such partner’s capital contribution for its Preferred Interests, accruing from and including the date of the closing of the transactions contemplated by the Stock Purchase Agreement to but not including the date the last of such distributions is made, and (b) after the distributions under clause (a) have been made, the return to such partner of its capital contribution for its Preferred Interests.

- “First Return Threshold” means (a) the receipt of distributions by the partners in respect of their Preferred Interests and Common Interests that yield an internal rate of return of 12% on the partners’ aggregate capital contributions for their Preferred Interests, accruing from and including the date of the closing of the transactions contemplated by the Stock Purchase Agreement to but not including the date the last of such distributions is made, and (b) after the distributions under clause (a) have been made, the return to each partner of its capital contribution for its Class A Common Interests.
- “Second Return Threshold” means (a) the receipt of distributions by the partners in respect of their Preferred Interests and Common Interests (excluding the return of each partner’s capital contribution for its Class A Common Interests) that yield an internal rate of return of 18.0% on the partners’ aggregate capital contributions for their Preferred Interests, accruing from and including the date of the closing of the transactions contemplated by the Stock Purchase Agreement to but not including the date the last of such distributions is made, and (b) after the distributions under clause (a) have been made, the return to each partner of its capital contribution for its Class B Common Interests.
- “Third Return Threshold” means (a) the receipt of distributions by the partners in respect of their Preferred Interests and Common Interests (excluding the return of each partner’s capital contributions for its Class A Common Interests and Class B Common Interests) that yield an internal rate of return of 22.0% on the partners’ aggregate capital contributions for their Preferred Interests, accruing from and including the date of the closing of the transactions contemplated by the Stock Purchase Agreement to but not including the date the last of such distributions is made, and (b) after the distributions under clause (a) have been made, the return to each partner of its capital contribution for its Class C Common Interests.

The foregoing description of the LPA is qualified in its entirety by reference to the full text of the LPA.

**ITEM 7. Material to be Filed as Exhibits.**

Exhibit A – Stock Purchase Agreement, incorporated by reference to Exhibit 2.1 to Activision Blizzard Inc.’s Report on Form 8-K dated July 26, 2013 and filed with the Securities and Exchange Commission on July 26, 2013

Exhibit B – Loan Agreement, dated as of October 11, 2013, among ASAC II LP, ASAC II LLC, the several lenders from time to time party thereto and JPMorgan Chase Bank, N.A., London Branch\*

Exhibit C – Loan Agreement, dated as of October 11, 2013, among ASAC II LP, ASAC II LLC, the several lenders from time to time party thereto, Merrill Lynch International and Merrill Lynch Professional Clearing Corp.\*

Exhibit D – Stockholders Agreement, dated as of October 11, 2013, among Activision Blizzard, Inc., ASAC II LP and, for limited purposes set forth therein, Robert A. Kotick and Brian G. Kelly

Exhibit E – Amended and Restated Agreement of Limited Partnership of ASAC II LP, dated October 11, 2013

Exhibit F – Agreement pursuant to Rule 13d-1(k)

\*Certain portions of these exhibits have been redacted and separately filed with the Securities and Exchange Commission pursuant to a request for confidential treatment.

**SIGNATURE**

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Schedule 13D is true, complete and correct.

Dated: October 21, 2013

**ASAC II LP**  
By: ASAC II LLC  
Its: General Partner

By: /s/ Brian G. Kelly  
Name: Brian G. Kelly  
Title: Manager

**ASAC II LLC**

By: /s/ Brian G. Kelly  
Name: Brian G. Kelly  
Title: Manager

**Robert A. Kotick**

/s/ Robert A. Kotick

**Brian G. Kelly**

/s/ Brian G. Kelly

**EXHIBIT INDEX**

| <b>Exhibit</b> | <b>Document Description</b>  |
|----------------|--|
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| F              | Agreement Pursuant to Rule 13d-1(k)  |

\*Certain portions of these exhibits have been redacted and separately filed with the Securities and Exchange Commission pursuant to a request for confidential treatment.

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**LOAN AGREEMENT**

dated as of October 11, 2013

among

**ASAC II LP**  
*as Borrower,*

**ASAC II LLC**  
and

**The several Lenders**  
**from time to time party hereto,**

and

**JPMORGAN CHASE BANK, N.A., LONDON BRANCH,**  
*as Administrative Agent,*

and

**JPMORGAN CHASE BANK, N.A., LONDON BRANCH,**  
*as Collateral Agent and Calculation Agent*

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As used in this Exhibit B, “[\*\*\*\*\*]” indicates that material has been omitted herefrom pursuant to a request for confidential treatment. Such material has been filed separately with the Securities and Exchange Commission.



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Exhibit D - Form of Control Agreement

Exhibit E - Form of Assignment and Assumption

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Exhibit F-4 - Form of U.S. Tax Compliance Certificate

Exhibit G - Form of Issuer Acknowledgment

Exhibit H-1 - Form of Legal Opinion of Counsel to Borrower

Exhibit H-2 - Form of Legal Opinion of Lenders' Cayman Island Counsel

This **LOAN AGREEMENT** dated as of October 11, 2013, among **ASAC II LP**, a Cayman Islands exempted limited partnership ("**Borrower**"), **ASAC II LLC**, a Delaware limited liability company ("**General Partner**"), **JPMORGAN CHASE BANK, N.A., LONDON BRANCH** and each other lender from time to time party hereto (collectively, the "**Lenders**" and individually, a "**Lender**"), **JPMORGAN CHASE BANK, N.A., LONDON BRANCH**, as Administrative Agent, and **JPMORGAN CHASE BANK, N.A., LONDON BRANCH**, as Collateral Agent and Calculation Agent.

Borrower has requested that the Lenders make loans to it in an aggregate initial principal amount not in excess of \$428,773,651.33, and the Lenders are prepared to make such loans upon the terms and subject to the conditions set forth in this Agreement.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

**Section 1.01 Certain Defined Terms.** As used in this Agreement, the following terms shall have the following meanings:

"**Act**" has the meaning specified in **Section 8.16**.

"**Adjustment Event Effective Time**" has the meaning specified in **Section 8.01**.

"**Administrative Agent**" means JPMorgan Chase Bank, N.A., London Branch, in its capacity as administrative agent under any of the Facility Documents, or any successor administrative agent.

"**Administrative Agent's Office**" means Administrative Agent's address and, as appropriate, account as set forth in **Section 8.02**, or such other address or account as Administrative Agent may from time to time notify to Borrower and the Lenders.

"**Affiliate**" means, unless otherwise expressly specified, 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" (all within the meaning of Rule 144) the Person specified.

"**Agents**" means, collectively, Administrative Agent, Collateral Agent, and Calculation Agent.

"**Agreement**" means this Loan Agreement.

"**Applicable Exchange**" means initially The NASDAQ Global Select Market, subject to adjustment from time to time pursuant to the proviso set forth in the definition of "Issuer Delisting".

"**Applicable Percentage**" means, with respect to any Lender at any time, the percentage of the Facility represented by (a) on the Closing Date, such Lender's Commitment at such time and (b) thereafter, the principal amount of such Lender's Loans at such time. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on **Schedule I**, or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"**Applicable Floating Rate**" means, for any day, the sum of LIBOR plus the Spread; provided that if Calculation Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining LIBOR for the Compounding Period including such day, "**Applicable Floating Rate**" for such day means Base Rate plus the Spread for such day.

“**Applicable Rate**” means, for any day:

(a) if the Net PIK Amount on such day is \$0, the Fixed Rate, or

(b) if the Net PIK Amount on such day is greater than \$0, the sum of (A) (1) (x) the outstanding principal amount of Loans on such day less such Net PIK Amount *divided by* (y) such outstanding principal amount *multiplied by* (2) the Fixed Rate and (B) (1) (x) such Net PIK Amount *divided by* (y) such outstanding principal amount *multiplied by* (2) the Applicable Floating Rate for such day.

“**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.

“**Arrangement Fee**” has the meaning specified in **Section 2.05(a)**.

“**Assignment and Assumption**” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by **Section 8.06**), and accepted by Administrative Agent, in substantially the form of **Exhibit E** or any other form approved by Administrative Agent.

“**Available Cash Amount**” has the meaning specified in **Section 5.02(r)**.

“**Bankruptcy Action**” means any of the following: (a) to institute any proceedings to adjudicate Borrower as bankrupt or insolvent, (b) to institute or consent to the institution of bankruptcy, reorganization or insolvency proceedings against Borrower or file a bankruptcy petition or any other petition seeking, or consenting to, reorganization or relief with respect to Borrower under any Debtor Relief Law, (c) to file or consent to a petition seeking liquidation, reorganization, dissolution, winding up or similar relief with respect to Borrower, (d) to consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or conservator (or other similar official) of Borrower or any part of its property, (e) to make any assignment for the benefit of Borrower’s creditors, (f) to cause Borrower to admit in writing its inability to pay its debts, or (g) to take any action in furtherance of any of the foregoing.

“**Bankruptcy Code**” means the Federal Bankruptcy Code of 1978, Title 11 of the United States Code, as amended from time to time.

“**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 prime rate and (c) the BBA LIBOR determined, at approximately 11:00 a.m., London time two Business Days prior to such day for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day plus 1.00%. For purposes of this definition, the “**prime rate**” means the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank, N.A. as its prime rate; each change in the prime rate shall be effective from and including the date such change is publicly announced as being effective.

“**Benefit Plan**” means (a) an “employee benefit plan” within the meaning of Section 3(3) of ERISA, (b) a “Plan” within the meaning of Section 4975(e) (1) of the Code, or (c) an entity the underlying assets of which include assets of employee benefit plans or plans as a result of investments by such plans in the entity pursuant to Department of Labor Regulation Section 2510.3-101.

“**Borrower**” has the meaning specified in the preamble hereto.

“**Business Day**” means (a) any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized by law to remain closed and (b) with respect to all notices, determinations, fundings and payments in connection with LIBOR (excluding, for the avoidance of doubt, any notice, determination, funding or payment pursuant to **Section 2.08(d)** or **Section 2.09(a)**), the term “Business Day” shall mean any day that is a Business Day described in **clause (a)** and on which banks are open for dealings in Dollar deposits in the London interbank Eurodollar market.

“**Calculation Agent**” means JPMorgan Chase Bank, N.A., London Branch (or any Affiliate or designee of Administrative Agent). Unless otherwise expressly specified, calculations and determinations hereunder or in connection with the transactions contemplated hereby or as otherwise provided herein shall be made by Calculation Agent in good faith and in its commercially reasonable discretion and shall be conclusive absent manifest error.

“**Cash**” means all cash in Dollars at any time and from time to time deposited in the Collateral Account.

“**cash dividends**” means any cash dividends and distributions paid with respect to the Pledged Shares.

“**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; (b) any change in any Law 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, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “**Change in Law**”, regardless of the date enacted, adopted or issued.

“**Change of Control**” means any event or transaction or a series of related transactions, as a result of which the aggregate percentage of voting Equity Interests (determined by reference to voting power) in General Partner beneficially owned or controlled by Persons other than Parents or Parent Entities exceeds 30%.

“**Closing Date**” means the earliest date on which the conditions precedent set forth in **Section 3.01** shall have been satisfied or waived in accordance with **Section 8.01** of this Agreement and the funding under **Section 2.01** has occurred.

“**Closing Price**” means, as of any date, the closing sale price (or if no closing sale price is reported, the average of the last bid and ask prices or, if more than one in either case, the average of the average last bid and the average last ask prices) per Share on that date as reported in composite transactions for the Applicable Exchange. The “**Closing Price**” prior to 4:00 pm on any date of determination that is an Exchange Business Day or at any time on any date of determination that is not an Exchange Business Day will be the “**Closing Price**” determined on the immediately preceding Exchange Business Day. Notwithstanding the foregoing, if a Market Disruption Event or Issuer Delisting exists on such date of determination, the “**Closing Price**” on such date of determination shall be the price determined by Calculation Agent as the prevailing market price per Share on such date of determination.

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended (unless as specifically provided otherwise).

“**Collateral**” means, collectively, all of the personal property (including the Pledged Shares) in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations.

“**Collateral Account**” means that certain securities account of Borrower established and maintained by Custodian pursuant to the Control Agreement, including any subaccount, substitute, successor or replacement account, for purposes of holding all Cash, Shares and other property required or permitted to be pledged as Collateral hereunder or under the Pledge Agreement.

“**Collateral Agent**” means JPMorgan Chase Bank, N.A., London Branch, in its capacity as collateral agent for the Lenders.

“**Collateral Documents**” means the Pledge Agreement, the Control Agreement and all other instruments, documents and agreements delivered by Borrower pursuant to this Agreement or any of the other Facility Documents in order to grant to Collateral Agent, for the benefit of Administrative Agent and the Lenders, a Lien on any real, personal or mixed property of Borrower as security for the Obligations.

“**Collateral Requirement**” means, at any time, that all steps required under applicable Law or reasonably requested by Administrative Agent or Collateral Agent to ensure that the Collateral Documents create a valid and perfected First Priority Lien on all the Collateral shall have been taken.

“**Commitment**” means, as to each Lender, its obligation to make a Loan to Borrower pursuant to **Section 2.01** in an initial principal amount not to exceed the amount set forth opposite such Lender’s name on **Schedule I** under the caption “Initial Commitment” or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement; provided that the aggregate Commitments shall be permanently reduced *pro rata* for each Lender to be equal to the product of (a) the Maximum Initial LTV Ratio, (b) the Initial Share Price and (c) the number of Shares included in the Eligible Pledged Shares on the Closing Date, if such product is less than \$428,773,651.33.

“**Communication**” has the meaning specified in **Section 5.01(m)**.

“**Compounded Amounts**” means, with respect to any Loan on any date, initially \$0, (a) as increased, on any Compounding Period End Date, by the aggregate amount of (i) interest that accrued, pursuant to clause (x) of the first sentence of Section 2.04(a), on the then-outstanding principal amount of such Loan and (ii) interest that accrued, pursuant to clause (y) of the first sentence of Section 2.04(a), on all Compounded Amounts with respect to such principal amount, in each case, during the Compounding Period that ended on such Compounding Period End Date, and (b) as reduced to \$0 on each Interest Payment Date.

“**Compounding Period**” means each period (a) commencing on, and including, the calendar day immediately following any Compounding Period End Date, or in the case of the initial such period, the Closing Date, and (b) ending on, and including, the next succeeding Compounding Period End Date, or in the case of the final such period, the Maturity Date.

“**Compounding Period End Date**” means each March 19, June 19, September 19 and December 19 that occurs after the Closing Date and prior to the Maturity Date.

**“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.

**“Control”** means, unless otherwise expressly specified, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

**“Control Agreement”** means the control agreement dated as of the date hereof among Borrower, the Custodian, and Collateral Agent, in the form of **Exhibit D**.

**“Corporate Event”** means (a) an Issuer Delisting, (b) an Issuer Dissolution, (c) an Issuer Insolvency, (d) an Issuer Insolvency Filing, (e) an Issuer Nationalization, (f) an Issuer Trading Suspension or (g) an Issuer Default Event.

**“Custodian”** means The Bank of New York Mellon or its designee or nominee, acting in its capacity as custodian, or any other custodian selected by Administrative Agent.

**“Debt”** means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP, (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments; (b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments; (c) net obligations of such Person under any Swap Contract; (d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than sixty (60) days after the date on which such trade account payable was created); (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse; (f) capital leases and Synthetic Lease Obligations; (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and (h) all Guarantees of such Person in respect of any of the foregoing. For all purposes hereof, the Debt of any Person shall include the Debt of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Debt is expressly made non-recourse to such Person.

**“Debt Purchase Transaction”** means, in relation to a Person, a transaction where such Person:

(a) purchases by way of assignment or transfer any Commitment or Loan;

(b) enters into any sub-participation in respect of any Commitment or Loan; or

(c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of any Commitment or Loan.

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



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

“**Designated Jurisdiction**” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“**Dollars**” and “**\$**” mean the lawful money of the United States.

“**Early Termination Fee**” means the early termination fee required under **Section 2.05(b)**.

“**Eligible Assignee**” means (a) a Lender, an Affiliate of any Lender or an Approved Fund that makes the Purchaser Representations, (b) any of Bank of America, N.A., Barclays Bank PLC, BNP Paribas, Citibank, N.A., Credit Agricole Corporate & Investment Bank, Credit Suisse AG, Deutsche Bank AG, Goldman Sachs Bank USA, Morgan Stanley Bank, N.A., Natixis, Nomura International PLC, Royal Bank of Canada or UBS AG or any Affiliate thereof that makes the Purchaser Representations, or (c) any other Person (other than a natural Person) approved by the Borrower (such approval not to be unreasonably withheld, conditioned or delayed) that makes the Purchaser Representations; provided that no such approval shall be required if an Event of Default has occurred and is continuing; and provided further that (1) if Borrower has not consented to or disapproved of any prospective assignee in writing within five Business Days of any request that Borrower consent to such assignee, Borrower’s consent shall have been deemed to have been received with respect to such assignee and (2) none of (x) any Parent or any Affiliate thereof, (y) Borrower or any owner of Equity Interests therein or any Affiliate thereof or (z) the Issuer or any Affiliate thereof shall be an Eligible Assignee.

“**Eligible Cash Collateral**” means Cash to the extent such Cash is Eligible Collateral.

“**Eligible Collateral**” means Collateral over which Collateral Agent, for the benefit of Administrative Agent and the Lenders, has a valid and perfected First Priority Lien created under the Collateral Documents.

“**Eligible Equity Value**” means, on any date, the amount equal to the product of (a) the number of Shares included in the Eligible Pledged Shares on such date, excluding any Shares that have been sold pursuant to **Section 2.09(a)(iii)** and are being held in the Collateral Account pending settlement of such sale, and (b) the Closing Price as of such date.

“**Eligible Exchange**” means any of any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market, or any successor thereto.

“**Eligible Non-Share Collateral**” means Eligible Cash Collateral and securities (other than Eligible Pledged Shares) acceptable to Administrative Agent in its sole discretion to the extent such securities are Eligible Collateral.

“**Eligible Pledged Shares**” means the Pledged Shares to the extent such Pledged Shares (a) are Eligible Collateral, (b) are (i) registered in the name of The Depository Trust Company’s nominee, (ii) maintained in the form of book entries on the books of The Depository Trust Company and (iii) allowed to be settled through The Depository Trust Company’s regular book-entry settlement services, (c) are not subject to any Transfer Restrictions (other than the Existing Transfer Restrictions), (d) have been duly authorized and validly issued and are fully paid and non-assessable, and (e) are not subject to any

shareholders agreement, investor rights agreements, lock up agreement, or any other similar agreements or any voting or other contractual restrictions except for (x) the Purchase Agreement, (y) the Stockholders Agreement and (z) the Amended and Restated Limited Partnership Agreement of Borrower, in each case of (y) or (z), substantially in the form reviewed by the Administrative Agent and, in each case of (x), (y) or (z), without giving effect to any amendment thereto or waiver thereunder following the date thereof.

**“Environmental, Health or Safety Laws”** means any and all Laws, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution, protection of natural resources or the environment, the generation, use, handling, transportation, storage, treatment, disposal, presence, discharge or release of or exposure to any Hazardous Materials, or human health or safety.

**“Environmental, Health or Safety Liability”** means any liability, contingent or otherwise (including any liability for damages, costs of investigation, remediation, monitoring or other response action, fines, penalties or indemnities), of Borrower directly or indirectly resulting from or based upon (a) violation of any Environmental, Health or Safety Laws, (b) the generation, use, handling, transportation, storage, treatment, disposal, presence, discharge or release of or exposure to any Hazardous Materials, whether actual or threatened or (c) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

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

**“ERISA”** means the Employee Retirement Income Security Act of 1974.

**“Events of Default”** has the meaning specified in **Section 6.01**.

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

**“Exchange Business Day”** means a Scheduled Trading Day on which trading occurs on the Applicable Exchange. If an Issuer Delisting has occurred and is continuing, “Exchange Business Day” means a “Business Day”.

**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, or engaging in a trade or business in or through a permanent establishment in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Foreign Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in 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 or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to **Section 2.11**, 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 2.11(e)** and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

**"Existing Transfer Restrictions"** means, with respect to the Pledged Shares, (a) any Transfer Restrictions arising under the federal securities laws of the United States solely as a result of (i) such Collateral constituting "restricted securities" (within the meaning of Rule 144) that have a holding period (calculated in accordance with paragraph (d) of Rule 144) commencing on the Closing Date or (ii) Borrower's status as an Affiliate of the Issuer and (b) the Transfer Restrictions set forth in Sections 3.02 and 3.03 of the Stockholders Agreement and Section 7.4(e) of the Purchase Agreement.

**"Facility"** means, at any time, (a) on or prior to the Closing Date, the aggregate amount of the Commitments at such time and (b) thereafter, the aggregate principal amount of the Loans of all Lenders outstanding at such time.

**"Facility Documents"** means, collectively, this Agreement, each Collateral Document, the Representation Letter, the Issuer Acknowledgment, each document delivered pursuant to the Collateral Requirement and each other agreement or instrument executed or delivered in connection herewith or therewith.

**"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), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code; provided that solely for purposes of **Section 2.11(e)(ii)(D)**, FATCA shall include any amendments made to FATCA after the date hereof (without regard to whether any amended or successor version is substantively comparable or materially more onerous to comply with).

**"Federal Funds Rate"** means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to JPMorgan Chase Bank, N.A., London Branch on such day on such transactions as reasonably determined by Administrative Agent.

**"First Priority"** means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is the only Lien to which such Collateral is subject (subject only to Permitted Liens).

**"Fixed Rate"** means [\*\*\*\*\*].

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

\*Certain portions of these exhibits have been redacted and separately filed with the Securities and Exchange Commission pursuant to a request for confidential treatment.

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

“**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 or similar extensions of credit in the ordinary course of its activities.

“**GAAP**” means 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.

“**General Partner**” has the meaning specified in the preamble hereto.

“**Governmental Authority**” means the government of the United States of America 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).

“**Guarantee**” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Debt or other obligation of the payment or performance of such Debt or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Debt or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt or other obligation of the payment or performance thereof; provided that the term “Guarantee” shall not include any endorsement of an instrument for deposit or collection in the ordinary course of business or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Debt or other obligation of any other Person, whether or not such Debt or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Debt to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “**Guarantee**” as a verb has a corresponding meaning.

“**Hazardous Materials**” means all hazardous or toxic substances, materials, wastes, agents or other pollutants, including petroleum or any fraction thereof, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, explosive or radioactive substance or wastes, infectious or medical substances or wastes and all other substances or wastes of any nature regulated pursuant to any Environmental, Health or Safety Laws.

**“Immediate Family Relative”** means, in respect of any individual, such individual’s issue (including by adoption or remarriage), siblings, parents, first cousins, aunts, uncles, nieces, nephews, grandparents and the respective current or former household partners and current or former spouses of such individual or any of the foregoing.

**“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 Borrower under any Facility Document and (b) to the extent not otherwise described in (a), Other Taxes.

**“Indemnitee”** has the meaning specified in **Section 8.04(b)**.

**“Information”** has the meaning specified in **Section 8.11**.

**“Initial Share Price”** means the Closing Price on the Exchange Business Day immediately prior to the Closing Date.

**“Interest Payment Date”** means (a) each June 20 that occurs after the Closing Date and prior to the Maturity Date and (b) the Maturity Date.

**“Interest Rate Hedge”** means, for any Lender, any interest rate swap(s) entered into for the purpose of hedging the interest rate risk with respect to the Loans held by such Lender (which, for the avoidance of doubt, may include inter-Affiliate transaction(s) entered into on arms-length terms substantially identical to those that would apply to a transaction with a non-Affiliate and shall include any replacement or amendment thereof from time to time).

**“Interest Rate Hedge Unwind Amount”** means, in respect of any prepayment (including, for the avoidance of doubt, upon acceleration) of a Loan and any Interest Rate Hedge, the amount of loss incurred by the fixed rate payer thereunder (in which case, the “Interest Rate Hedge Unwind Amount” will be expressed as a positive number) or the amount of gain realized by the fixed rate payer thereunder (in which case, the “Interest Rate Hedge Unwind Amount” will be expressed as a negative number) in connection with unwinding the Interest Rate Hedge (or the relevant portion thereof) on account of such prepayment, taking into account any related costs or expenses incurred by Lender or its Affiliates, as determined by Calculation Agent. For the avoidance of doubt, any such loss or gain may be determined by reference to internal measures of profit and loss.

**“Investment Company Act”** means the Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder.

**“Issuer”** means Activision Blizzard, Inc., a Delaware corporation.

**“Issuer Acknowledgment”** means an agreement substantially in the form of **Exhibit G** hereto, pursuant to which, among other provisions, the Issuer provides certain acknowledgments and agreements to the Lenders in respect of the Facility Documents and the transactions contemplated thereunder.

**“Issuer ADTV”** means, in respect of any date of determination, the average daily trading volume of the Shares on the Applicable Exchange measured over a 90 Scheduled Trading Day period ending on the immediately preceding Scheduled Trading Day (excluding elements of such average daily trading volume that may be attributed to any block trade that occurs on any such Scheduled Trading Day), as determined by Calculation Agent.

**“Issuer ADTV Event”** means [\*\*\*\*\*].

\*Certain portions of these exhibits have been redacted and separately filed with the Securities and Exchange Commission pursuant to a request for confidential treatment.

**“Issuer Change of Control”** means an event or series of events by which any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, of Shares entitling such person or group to exercise 30% or more of the total voting power of all Shares entitled to vote generally in elections of directors, other than an acquisition of such Shares by the Issuer, any of its wholly-owned Subsidiaries or any of its employee benefit plans.

**“Issuer Default Event”** means (i) Issuer (A) shall fail to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Debt (other than Debt under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than \$100 million, or (B) shall fail to observe or perform any other agreement or condition relating to any such Debt referred to in clause (A) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Debt or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Debt to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Debt to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there shall occur under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which Issuer is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which Issuer is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by Issuer under all such Swap Contracts as a result thereof is greater than \$100 million.

**“Issuer Delisting”** means that the Applicable Exchange announces that pursuant to the rules of the Applicable Exchange, the Shares cease (or will cease) to be listed, traded or publicly quoted on the Applicable Exchange, for any reason (other than as a result of an Issuer Merger Event); provided that if the Shares are immediately re-listed, re-traded or re-quoted on any other Eligible Exchange, such cessation shall not constitute an Issuer Delisting and such other Eligible Exchange shall thereafter constitute the “Applicable Exchange.”

**“Issuer Dissolution”** means that (a) the Issuer is liquidated or dissolved, or (b) holders of Shares approve any plan or proposal for the Issuer’s liquidation or dissolution.

**“Issuer Insolvency”** means that by reason of the voluntary or involuntary liquidation, bankruptcy, insolvency, dissolution or winding-up of or any analogous proceeding affecting the Issuer, (a) all the Shares are required to be transferred to a trustee, liquidator or other similar official, or (b) holders of Shares become legally prohibited from transferring them.

**“Issuer Insolvency Filing”** means that (a) the Issuer institutes or has instituted against it by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, or the Issuer consents to, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights with respect to the Issuer or (b) a petition is presented by any such Person for the Issuer’s winding-up or liquidation or the Issuer consents to such a petition; provided that any proceedings instituted, or petitions presented, by creditors and not consented to by the Issuer shall not be deemed Issuer Insolvency Filings.

**“Issuer Merger Event”** means any (a)(i) reclassification or change of the Shares that results in a transfer of or an irrevocable commitment to transfer more than 50% of the outstanding Shares to another Person, (ii) consolidation, amalgamation, merger or binding share exchange of the Issuer or any Subsidiary thereof with or into another Person, or (iii) takeover offer, tender offer, exchange offer, solicitation, proposal or other event by any Person to purchase or otherwise obtain more than 50% of the outstanding Shares that results in a transfer of or an irrevocable commitment to transfer more than 50% of the outstanding Shares (other than Shares owned or controlled by such Person), or (b) the public announcement, including any public announcement as defined in Rule 165(f) of the Securities Act, by any entity at any time, of any intention to engage in a transaction (whether or not subsequently amended) that, if completed, would lead to any event set forth in the immediately preceding **clause (a)**.

**“Issuer Nationalization”** means that (a) all or substantially all of the Shares or the assets of the Issuer are nationalized, expropriated or are otherwise required to be transferred to any governmental agency, authority, entity or instrumentality thereof, or (b) the adoption, promulgation, enactment, order, decree, announcement or such other action or statement as Calculation Agent deems relevant, by or with effect on any governmental agency, authority, entity or instrumentality thereof at any time, of any event or circumstance (whether or not subsequently amended or appealed) that, if completed, would lead to any event set forth in the immediately preceding **clause (a)**.

**“Issuer Tender Offer”** means (a) a takeover offer, tender offer, exchange offer, solicitation, proposal or other event by any entity or person that results in such entity or person purchasing, or otherwise obtaining or having the right to obtain, by conversion or other means, greater than 15% of the outstanding voting shares of the Issuer, as determined by Calculation Agent, based upon the making of filings with governmental or self-regulatory agencies or such other information as Calculation Agent deems relevant, or (b) the public announcement, including any public announcement as defined in Rule 165(f) of the Securities Act, by any entity at any time, of any intention to purchase or otherwise obtain such number of voting shares of the Issuer (whether or not subsequently amended) that, if completed, would lead to any event set forth in the immediately preceding **clause (a)**.

**“Issuer Trading Suspension”** means that the Shares have been suspended from trading on the Applicable Exchange for three consecutive Scheduled Trading Days or the Shares have not traded on the Applicable Exchange for any other reason for three consecutive Scheduled Trading Days; provided that trading in securities of other issuers generally occurs on the Applicable Exchange on such Scheduled Trading Days.

**“Law”** 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.

**“Lender”** has the meaning specified in the preamble hereto.

**“Lender Party”** means any Agent or Lender.

**“Lending Office”** means, with respect to any Lender, the office of such Lender specified as its “Lending Office” opposite its name on **Schedule I** hereto or in the Assignment and Assumption pursuant to which it became a Lender, or such other office of such Lender as such Lender may from time to time specify in writing to Administrative Agent.

“**LIBOR**” means, with respect to each Compounding Period, the London interbank offered rate administered by the British Bankers Association (or any other Person that takes over the administration of such rate) for Dollars for a period equal in length to such Compounding Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen or, in the event such rate does not appear on either of such Reuters pages, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate as shall be selected by Calculation Agent from time to time in its reasonable discretion (“**BBA LIBOR**”) as of 11:00 a.m. London time on the date two (2) Business Days prior to the commencement of such Compounding Period.

“**Lien**” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“**Loan**” has the meaning specified in Section 2.01.

“**LTV Breach**” means that the LTV Ratio on any date exceeds the LTV Maximum Ratio.

“**LTV Breach Notice**” has the meaning specified in **Section 2.09(a)**.

“**LTV Maximum Ratio**” means [\*\*\*\*\*].

“**LTV Ratio**” means, on any date of determination, the quotient (expressed as a percentage) of (a) the Total Net Outstandings at such time divided by (b) the sum of (i) the Eligible Equity Value on such date and (ii) the aggregate Value of all Eligible Non-Share Collateral (other than Eligible Cash Collateral) on such date.

“**LTV Reset Ratio**” means [\*\*\*\*\*].

“**Margin Call Satisfaction**” has the meaning specified in **Section 2.09(a)**.

“**Margin Cash Collateral**” means Eligible Cash Collateral deposited into the Collateral Account pursuant to **Section 2.09(a)**.

“**Margin Loan Facilities**” means this Facility and the “Facility” (as defined in the Other Loan Agreement).

“**Market Disruption Event**” means, with respect to the Shares, any of the following events:

(a) the occurrence or existence during the one-half hour period ending on the scheduled close of trading on any Scheduled Trading Day of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the Applicable Exchange or otherwise) in the Shares or in any options contracts or futures contracts relating to the Shares;

\*Certain portions of these exhibits have been redacted and separately filed with the Securities and Exchange Commission pursuant to a request for confidential treatment.



(b) any event that disrupts or impairs the ability of market participants in general to effect transactions in, or obtain market values for, such Shares on the Applicable Exchange on any Scheduled Trading Day as determined by Calculation Agent, or the inability of Calculation Agent for any other reason to determine the Closing Price of the Shares by reference to transactions or bid or ask prices for the Shares on the Applicable Exchange on any Scheduled Trading Day;

(c) the failure of the Applicable Exchange to open for trading during its regular trading session on any Scheduled Trading Day; or

(d) the closure on any Scheduled Trading Day of the Applicable Exchange prior to its scheduled closing time for such day.

**“Material Adverse Effect”** means (a) a material impairment of the ability of Borrower to perform any of its obligations under any of the Facility Documents, (b) a material adverse effect upon the legality, validity, binding effect or enforceability of any provision of this Agreement or any other Facility Document, (c) an imposition of any material liability on Borrower or (d) a material adverse change in, a material adverse effect upon, or a material impairment of, (i) the priority of Collateral Agent’s security interest in the Collateral or (ii) the rights, remedies and benefits available to, or conferred upon, any Lender Party under any Facility Document or any Lender Party’s ability to foreclose on the Shares at the times and in the manner contemplated by the Pledge Agreement (including, but not limited to, trading or other restrictions imposed by the Issuer or changes in applicable Law), in each case with respect to the foregoing **clauses (a) to (d)**, as determined by Administrative Agent in its reasonable discretion.

**“Maturity Date”** means, the earliest of: (a) the Scheduled Maturity Date; (b) the date on which such Facility is terminated pursuant to **Section 2.08**; and (c) the date on which the Lenders’ commitment to make the Loans under such Facility otherwise terminates pursuant to **Section 6.01**.

**“Maximum Initial LTV Ratio”** means 27.5%.

**“Maximum Lawful Rate”** has the meaning specified in **Section 2.06(b)**.

**“Net PIK Amount”** means, initially \$0, (a) as increased, from time to time, by the amount of any interest paid in kind pursuant to the proviso in the first sentence of **Section 2.04(a)**, and (b) as reduced, from time to time, but not below \$0, by the amount of any prepayment of principal pursuant to **Section 2.08(b)**.

**“NOLs Restrictions”** means any condition to or restriction on the ability of the holder of any Share to sell, assign or otherwise transfer such Shares under any trading or transfer restrictions arising under any Organization Documents of the Issuer, security, material contract, rights agreement, poison pill, policy or similar agreement implemented by the Issuer or to which any Share is subject in connection with any Person’s ability to utilize net operating losses, capital losses, tax credit carryforwards and/or similar tax attributes as an offset against taxable income.

**“Non-public Information”** means information that has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD.

**“Notice of Borrowing”** has the meaning specified in **Section 2.02(a)**.

**“Obligations”** means all Loans to, and all debts, liabilities, obligations, covenants, indemnifications, and duties of, Borrower arising at any time and from time to time, whether matured or unmatured, fixed or contingent, liquidated or unliquidated, under any Facility Document, 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 Borrower of any proceeding under any Debtor Relief Laws naming Borrower as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

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

**“Other Connection Taxes”** means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising solely 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 Facility Document, or sold or assigned an interest in any Loan or Facility Document).

**“Other Facility Collateral”** means the “Collateral” (as defined in the Other Loan Agreement). For the avoidance of doubt, **“Other Facility Collateral”** shall not include any Collateral.

**“Other Facility Documents”** means the “Facility Documents” (as defined in the Other Loan Agreement).

**“Other Loan Agreement”** means that certain Loan Agreement, of even date herewith, among Borrower, General Partner, Merrill Lynch International, as administrative agent, Merrill Lynch Professional Clearing Corp., as collateral agent and calculation agent and the several lenders from time to time party thereto, as in effect on the Closing Date.

**“Other Pledge Agreement”** means that certain Pledge and Security Agreement, of even date herewith, between Merrill Lynch Professional Clearing Corp., as collateral agent, and Borrower, as pledgor.

**“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 Facility Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

**“Parent Entity”** means (a) any Affiliates of any Parent (other than Borrower, the Issuer or any of their respective Subsidiaries), (b) any Immediate Family Relatives of any Parent, (c) any trust controlled for the primary benefit of a Parent and/or one or more of such Parent’s Immediate Family Relatives, or his or her successors upon death, (d) any partnership, the partners of which consist of a Parent and/or one or more of such Parent’s Immediate Family Relatives or (e) any family or private (operating or non-

operating) foundation of any Parent; provided that, in each case of **clauses (b)** through **(e)** the relevant Parent shall retain voting control of the Equity Interests in General Partner held by such Person; provided further that in each case of **clauses (a)** through **(e)**, such Person (x) holds Equity Interests in General Partner and (y) is reasonably acceptable to Administrative Agent and has delivered to each Lender and Administrative Agent any information reasonably requested in connection with such Lender's or Administrative Agent's standard "on boarding" process. For the purposes of this definition, "Affiliate" of a Parent shall mean (i) any Person that, directly or indirectly through one or more intermediaries is controlled by such Parent or (ii) any Person of which such Parent is, directly or indirectly, the beneficial owner of a majority of the voting Equity Interests.

**"Parents"** means (a) Robert A. Kotick and Brian G. Kelly, (b) with respect to any natural person set forth in clause (a), the estate of such person, and (c) any other Person approved by Administrative Agent in writing; provided that such Person holds (A) Equity Interests in General Partner and (B) has executed a Representation Letter.

**"Participant"** has the meaning specified in **Section 8.06(d)**.

**"Participant Register"** has the meaning specified in **Section 8.06(d)**.

**"Pending Litigation"** means each of the cases listed on Schedule II hereto, including any related claim that is transferred for coordinated or consolidated proceedings therewith by order of any court of competent jurisdiction.

**"Permitted Liens"** means Liens permitted under **Section 5.02(b)**.

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

**"Pledge Agreement"** means that certain Pledge and Security Agreement, dated as of the date hereof, executed by Borrower in favor of Collateral Agent for the benefit of Administrative Agent and the Lenders, in the form of **Exhibit B**, as it may be amended from time to time.

**"Pledged Shares"** means, as of the Closing Date, a *pro rata* portion (determined based on the Commitments hereunder and the "Commitments" (as defined in the Other Loan Agreement)) of all Shares purchased by Borrower pursuant to the Purchase Agreement and, after the Closing Date, all other Shares required to be pledged as Collateral hereunder or under the Pledge Agreement and any distribution or dividend in Shares distributed in respect of any Pledged Shares, in each case, to the extent such Shares, distribution or dividend constitutes Collateral under the Collateral Documents.

**"Potential Adjustment Event"** means any of the following:

(a) a subdivision, consolidation or reclassification of Shares, or a free distribution or dividend of any Shares to existing holders by way of bonus, capitalization or similar issue;

(b) a distribution, issue or dividend to existing holders of Shares of (A) Shares, or (B) other share capital or securities granting the right to payment of dividends and/or the proceeds of liquidation of the Issuer equally or proportionately with such payments to holders of Shares, or (C) share capital or other securities of another issuer acquired or owned (directly or indirectly) by the Issuer as a result of a spin-off or other similar transaction, or (D) any other type of securities, rights or warrants or other assets, in any case for payment (cash or other consideration) at less than the prevailing market price as determined by Calculation Agent;

(c) an extraordinary dividend or distribution paid or made on the Shares, as determined by Calculation Agent;

(d) a call by the Issuer in respect of Shares that are not fully paid;

(e) a repurchase by the Issuer or any of its Subsidiaries of Shares whether out of profits or capital and whether the consideration for such repurchase is cash, securities or otherwise;

(f) in respect of the Issuer, an event that results in any shareholder rights being distributed or becoming separated from Shares or other shares of the capital stock of the Issuer pursuant to a shareholder rights plan or arrangement directed against hostile takeovers that provides upon the occurrence of certain events for a distribution of preferred stock, warrants, debt instruments or stock rights at a price below their market value, as determined by Calculation Agent, provided that any adjustment effected as a result of such an event shall be readjusted upon any redemption of such rights;

(g) any other event that may have a diluting or concentrative effect on the theoretical value of the Shares, as determined by the Calculation Agent;  
or

(h) an Issuer Merger Event, Issuer Tender Offer or Issuer Change of Control;

provided that the repurchase of Shares by Issuer pursuant to the Purchase Agreement shall not constitute any Potential Adjustment Event.

**“Purchase Agreement”** means the Stock Purchase Agreement, dated July 25, 2013, between Issuer, Borrower and Vivendi, S.A.

**“Purchaser Representations”** means the following representations, warranties and agreements made by an assignee or participant, as applicable: (a) a representation and warranty that such assignee or participant is a QIB, a QP and an “accredited investor” as defined in Section 2(a)(15)(ii) of the Securities Act and is entering into such assignment or participation as principal and not for the benefit of any third party, (b) a representation that such assignee or participant is not Borrower or the Issuer or an Affiliate of Borrower or the Issuer, (c) an acknowledgment that such assignee or participant fully understands any restrictions on transfers, sales and other dispositions in the Facility Documents or relating to any Collateral consisting of the Pledged Shares, (d) an acknowledgment that such assignee or participant is able to bear the economic risk of its investment in the participation and is currently able to afford a complete loss of such investment, (e) a covenant that such assignee or participant will only assign its Loan or sell its participation or participations therein pursuant to documentation including such Purchaser Representations, (f) an acknowledgement by such assignee or participant that the Pledged Shares forming part of the Collateral cannot be sold without registration under the Securities Act or under an available exemption from the registration requirements under the Securities Act, including, if available, the exemption provided by Rule 144, (g) an acknowledgment that such assignee or participant is not entering into such assignment or participation on the basis of any material Non-public Information with respect to Borrower, the Issuer, its Subsidiaries or their securities, and that, if applicable, it has implemented reasonable policies and procedures, taking into consideration the nature of its business, to ensure that individuals making investment decisions would not violate the laws prohibiting trading on the basis of material Non-public Information (it being understood that such assignee or participant may have material Non-public Information on the private side of its information wall, sometimes referred to as an “Information Wall,” at the time of such assignment or participation); provided that, for the avoidance of doubt, “material Non-public Information concerning Borrower, the Issuer, its Subsidiaries or their

securities” shall not include any information made available to both the assignee and the assignor or both the participant and the seller of a participation interest, as the case may be, and (h) an acknowledgment that it has made an independent decision to purchase its Loan or participation based on information available to it, which information it has determined adequate for the purpose.

“**QIB**” means a “qualified institutional buyer” as defined in Rule 144A under the Securities Act.

“**QP**” means a “qualified purchaser” within the meaning of Section 2(a)(51) of the Investment Company Act.

“**Recipient**” means (a) Administrative Agent, (b) any Lender and (c) any other Agent, as applicable.

“**Register**” has the meaning specified in **Section 8.06(c)**.

“**Regulation FD**” means Regulation FD as promulgated by the SEC under the Securities Act and Exchange Act as in effect from time to time.

“**Regulation T**” means Regulation T issued by the FRB.

“**Regulation U**” means Regulation U issued by the FRB.

“**Regulation X**” means Regulation X issued by the FRB.

“**Regulatory Event**” means (a) any investigation made by any Governmental Authority for violation or breach of Law by Borrower, or (b) the revocation, suspension or termination of any license, permit or approval held by Borrower that, in each case of (a) and (b) above, could reasonably be expected to have a Material Adverse Effect.

“**Relevant Documents**” has the meaning specified in **Section 2.18**.

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person’s Affiliates.

“**Representation Letter**” means each of those certain Parent Representation Letters, dated as of the date hereof, executed by each Parent in favor of Collateral Agent for the benefit of Administrative Agent and the Lenders, in the form of **Exhibit C**.

“**Required SPV Provisions**” has the meaning specified in **Section 5.01(j)**.

“**Required Lenders**” means, as of any date of determination, Lenders holding more than 50% of the sum of the (a) the aggregate outstanding principal amount of all Loans and (b) the aggregate unused Commitments, if any.

“**Responsible Officer**” of a Person means its chief executive officer, director or its chief financial officer (whether or not the Person performing such duties is so designated) or any authorized designee thereof.

**“Restricted Transaction”** means, with respect to Borrower, (a) any financing or other transaction (other than the transactions contemplated hereby or by other Facility Documents) secured by the Pledged Shares, (b) any grant, occurrence or existence of any Lien on the Pledged Shares (other than pursuant to the transactions contemplated hereby or by other Facility Documents) and (c) any sale, swap, hedge (including by means of a physical or cash settled derivative referencing Shares or otherwise) or transfer of the Pledged Shares (other than those permitted under the Facility Documents).

**“Rule 144”** means Rule 144 promulgated under the Securities Act.

**“Sanction(s)”** means any international economic sanction administered or enforced by the United States government (including OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

**“Scheduled Maturity Date”** means the fourth anniversary of the Closing Date.

**“Scheduled Trading Day”** means a day that is scheduled to be a trading day on the Applicable Exchange. If an Issuer Delisting has occurred and is continuing, “Scheduled Trading Day” means a “Business Day”.

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

**“Securities Act”** means the United States Securities Act of 1933, as amended.

**“Set-off Party”** has the meaning specified in **Section 8.13**.

**“Share Price Threshold Level”** means an amount equal to the lesser of (a) 40.0% of the Closing Price as of July 26, 2013 and (b) \$5.44 (subject to adjustment as provided herein).

**“Share Price Trigger Event”** means that, at any time, the Closing Price is below the Share Price Threshold Level.

**“Shares”** means the common stock, par value \$0.001 per share, of the Issuer.

**“Spread”** means [\*\*\*\*\*].

**“Stated Rate”** has the meaning specified in **Section 2.06(b)**.

**“Stockholders Agreement”** means the Stockholders Agreement, dated as of October 11, 2013, by and among Issuer, Borrower and certain other parties thereto.

**“Subscription Agreements”** means the subscription agreements, each by and between General Partner, as general partner of Borrower, and an investor in Borrower.

**“Subsidiary”** of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person.

\*Certain portions of these exhibits have been redacted and separately filed with the Securities and Exchange Commission pursuant to a request for confidential treatment.

**“Swap Contract”** means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, total return swaps, 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, that are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a **“Master Agreement”**), including any such obligations or liabilities under any Master Agreement.

**“Swap Termination Value”** means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in **clause (a)**, the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

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

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

**“Total Accrued Loan Amount”** means, at any time, the aggregate outstanding principal amount of all Loans plus all accrued and unpaid interest in respect thereof.

**“Total Net Outstandings”** means, at any time, the amount, if any, by which (a) the Total Accrued Loan Amount at such time exceeds (b) the sum of (i) the aggregate Value of all Eligible Cash Collateral at such time, (ii) following the execution of, and prior to the scheduled settlement date for, any sale of Shares pursuant to **Section 2.09(a)(iii)**, an amount equal to the aggregate sale price thereof and (iii) following the ex-dividend date for any cash dividend on the Shares, as long as the scheduled payment date therefor is within 60 calendar days thereof, and prior to the earlier of the actual payment date and such scheduled payment date, an amount equal to the product of (A) the per Share amount of such dividend less the per Share amount of any Taxes that the Calculation Agent determines are likely to be withheld or deducted therefrom and (B) the number of Eligible Pledged Shares, excluding any Pledged Shares as to which a sale has been executed, as of such ex-dividend date.

**“Transaction Documents”** means, collectively, the Facility Documents, the Other Facility Documents, the Subscription Agreements, the Stockholders Agreement, the Organization Documents of Borrower and General Partner, the Purchase Agreement and any other related documents.

“**Transfer Restrictions**” means, with respect to any property (including, in the case of securities, security entitlements in respect thereof), any condition to or restriction on the ability of the holder thereof (or, if an Event of Default occurs hereunder and Collateral Agent chooses to exercise its remedies under the Collateral Documents, Collateral Agent) to sell, assign or otherwise transfer such property or to enforce the provisions thereof or of any document related thereto whether set forth in the terms of such property itself or in any other document, including without limitation (a) any requirement that any sale, assignment or transfer or enforcement of such property be subject to any volume limitations, limitations to address tax matters, or be consented to or approved by any Person, including the issuer thereof or any other obligor thereon, (b) any limitations on the type or status, financial or otherwise, of any purchaser, pledgee, assignee or transferee of such property, (c) any requirement of the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document of any Person to the issuer of, any other obligor on or any registrar or transfer agent for, such property, prior to the sale, pledge, assignment or other transfer or enforcement of such property, (d) any registration or qualification requirement or prospectus delivery requirement for such property pursuant to any federal, state or foreign securities law (including any such requirement arising under the Securities Act), (e) any NOLs Restriction and (f) any legend or other notification appearing on any certificate representing such property to the effect that any such condition or restriction exists; except that the required delivery of any customary assignment, instruction or entitlement order from Borrower or any pledgor, assignor or transferor of such property, together with any evidence of the corporate or other authority of such Person, shall not constitute such a condition or restriction.

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

“**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 2.11(e)(ii)(B)(3)**.

“**Value**” means, as of any date of determination, (a) with respect to Cash, the amount of such Cash; and (b) with respect to all other Collateral (other than Eligible Pledged Shares), the product of (x) the fair market value of such Collateral as determined by Calculation Agent and (y) a percentage (expressed as a fraction) with respect to such Collateral determined by Calculation Agent (taking into account the particular property constituting Collateral, the resale market for such property, any Transfer Restrictions relating to such property (whether in the hands of Borrower or in the hands of a Lender Party exercising its rights and remedies under the Facility Documents) and such other factors as Calculation Agent deems relevant) for purposes of determining **clause (b)(ii)** of the definition of “LTV Ratio” with respect to such Collateral.

**Section 1.02 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to New York time (daylight or standard, as applicable).

**Section 1.03 Accounting Terms.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP 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 annual financial statements of the applicable Person, except as otherwise specifically prescribed herein. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Facility Document, and Borrower shall so request, the Lenders and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, (a) such ratio or



requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrower shall provide to Administrative Agent financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

#### **Section 1.04 Principles of Construction.**

(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 Facility Document), (ii) except to the extent Administrative Agent’s or Lenders’ consent is required as provided herein, any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Facility Document, shall be construed to refer to such Facility Document in its entirety and not to any particular provision thereof, (iv) all references in a Facility 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 Facility 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 or regulation shall, unless otherwise specified, refer to such law 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 Facility Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Facility Document.

(d) Any reference to a particular section of the Other Loan Agreement shall be deemed to refer to such section of the Other Loan Agreement, as in effect on the date hereof, or, following any amendment or supplement to the Other Loan Agreement, any successor to such section.

## **ARTICLE II AMOUNTS AND TERMS OF THE ADVANCES**

**Section 2.01 The Loans.** Subject to the terms and conditions set forth herein, each Lender severally agrees to make a single loan in Dollars (each such loan, a “*Loan*”) to Borrower on the Closing Date in an amount specified in the Notice of Borrowing (as defined below) not to exceed such Lender’s Commitment. The Loans shall be made available by the Lenders based on their Applicable Percentages in respect of the Facility. Amounts borrowed under this **Section 2.01** and repaid or prepaid may not be reborrowed.

## Section 2.02 Making the Loans.

(a) (i) Each Loan shall be made on notice given no later than 10:00 a.m. on the Closing Date (or such later time as may be agreed by Administrative Agent in its sole discretion) by Borrower to Administrative Agent, who shall give to each applicable Lender prompt notice thereof.

(ii) Such notice (a "**Notice of Borrowing**") shall be irrevocable and shall be in writing in substantially the form of **Exhibit A**, signed by Borrower, specifying therein (x) the requested date of the Loans, (y) the type and amount of such Loans and (z) the account to which such Loans shall be made.

(b) Each Lender shall, before 1:00 p.m. on the Closing Date, make available for the account of its Lending Office to Administrative Agent (to an account designated by Administrative Agent), in immediately available funds, such Lender's Applicable Percentage of such Loans. After Administrative Agent's (or its Affiliate's) receipt of such funds and upon fulfillment of the applicable conditions set forth in **Section 3.01**, Administrative Agent (or its Affiliate) will make such funds as it has received available to Borrower by depositing such funds into the Collateral Account; provided that Administrative Agent (or its Affiliate) may net any Loan due to Borrower against any amount payable hereunder.

**Section 2.03 Repayment of Loans.** Borrower shall repay to the Administrative Agent (or any Affiliate thereof designated by Administrative Agent) for the account of the Lenders on the Maturity Date the aggregate principal amount of all Loans outstanding on such date.

## Section 2.04 Interest.

(a) Ordinary Interest. Borrower shall pay interest (x) on the unpaid principal amount of each Loan, which interest shall accrue on a daily basis, from the date of such Loan until such principal amount shall be paid in full, at a rate *per annum* equal to the Applicable Rate for such day, and (y) on any Compounded Amounts with respect to each Loan, which interest shall accrue on a daily basis at a rate *per annum* equal to the Applicable Floating Rate for such day, with such interest, in the case of clause (x) and (y), being payable annually in arrears on each Interest Payment Date; provided that if, as of the date one Business Day prior to any Interest Payment Date, the aggregate amount of cash dividends per Share paid by the Issuer during the year ending on such date (or with respect to the first Interest Payment Date, such period from the Closing Date to the date one Business Day prior to such Interest Payment Date) is less than \$0.19, Borrower may elect on such date by written notice to Administrative Agent, with respect to all or any portion of the interest that would otherwise be payable in cash on such Interest Payment Date, to instead pay such interest in kind, in which case (i) the amount of such interest or the portion thereof that will be paid in kind, as the case may be, will be added to the outstanding principal amount of the Loans on a ratable basis among the Lenders as of such Interest Payment Date, and (ii) the remainder of such interest (if any) shall continue to be payable in cash on the Interest Payment Date. For the avoidance of doubt, any interest that accrues on Compounded Amounts with respect to any Loan shall, for all purposes hereunder (other than clause (x) of the immediately preceding sentence), be deemed to have accrued on the principal amount of such Loan. The total amount of interest due on each Interest Payment Date shall be computed by

Calculation Agent on the Business Day immediately preceding such Interest Payment Date. Interest shall be computed by Calculation Agent based on a year of 360 days and the actual number of days elapsed in each Compounding Period. Interest (including the default interest set forth below) 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.

(b) Default Interest. Notwithstanding the foregoing, if any amount is not paid when due hereunder, whether at stated maturity, by acceleration or otherwise, such amount that is not paid when due shall thereafter bear interest at a rate per annum equal at all times to two percent (2%) above the Applicable Floating Rate from the date such amount shall be due until such amount shall be paid in full, payable on demand (and in any event in arrears on the date such amount shall be paid in full).

#### **Section 2.05 Fees.**

(a) Arrangement Fee. Subject to the occurrence of the Closing Date, on the first Interest Payment Date (or, if earlier, any date on which the Loans are prepaid in full under **Section 2.08**, **Section 2.09(a)(i)** or **Section 6.01** or otherwise), Borrower shall pay to JPMorgan Chase Bank, N.A., London Branch, for its own account and not for the account of the Lenders or Agents, in consideration for its efforts in arranging the Facility, an arrangement fee (the "**Arrangement Fee**") in an amount equal to [\*\*\*\*\*]% ([\*\*\*\*\*] basis points) of the aggregate principal amount of Loans made on the Closing Date. The Arrangement Fee is due and payable in full on the first Interest Payment Date (or such earlier prepayment date, if applicable) and shall be fully earned when paid and be non-refundable for any reason whatsoever.

(b) Early Termination Fee. If, on or before the third anniversary of the Closing Date, Borrower (i) voluntarily prepays any portion of the Facility pursuant to **Section 2.08(b)** (other than any prepayment of interest paid in kind), (ii) makes any mandatory prepayment pursuant to **Section 2.08(c)** on account of any event resulting from any action or failure to act by Borrower, General Partner or any Parent, (iii) repays the Loans upon acceleration pursuant to **Section 6.01** on account of any Event of Default resulting from any action or failure to act by Borrower, General Partner or any Parent or (iv) prepays the Loans pursuant to **Section 2.08(d)** and at the time of such prepayment more than \$66,666,667 of aggregate principal amount of Loans have been voluntarily prepaid (other than any prepayment of interest paid in kind), in the aggregate, following the Closing Date pursuant to **Section 2.08(b)**, in each case, Borrower shall pay to Administrative Agent for the ratable account of the Lenders in accordance with their Applicable Percentages, simultaneously with such repayment or prepayment, an early termination fee in an amount equal to the product of (x) the amount of such repayment or prepayment, (y) [\*\*\*\*\*]% ([\*\*\*\*\*] basis points) and (z) a fraction computed by Calculation Agent the numerator of which is the actual number of days from, and including, the repayment or prepayment date to, and including, the third anniversary of the Closing Date and the denominator of which is 360 days.

#### **Section 2.06 Maximum Interest.**

(a) In no event shall the interest charged with respect to any Loan or any other obligations of Borrower hereunder exceed the maximum amount permitted under the Laws of the State of New York or of any other applicable jurisdiction.

\*Certain portions of these exhibits have been redacted and separately filed with the Securities and Exchange Commission pursuant to a request for confidential treatment.

(b) Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable for the account of any Lender hereunder (the “**Stated Rate**”) would exceed the highest rate of interest permitted under any applicable Law to be charged by such Lender (the “**Maximum Lawful Rate**”), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable for the account of such Lender shall be equal to the Maximum Lawful Rate; provided that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, Borrower shall, to the extent permitted by Law, continue to pay interest for the account of such Lender at the Maximum Lawful Rate until such time as the total interest received by such Lender is equal to the total interest that such Lender would have received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable for the account of such Lender shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply.

(c) In no event shall the total interest received by any Lender exceed the amount that such Lender could lawfully have received had the interest been calculated for the full term hereof at the Maximum Lawful Rate.

(d) If any Lender has received interest hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of the Loans or to other amounts (other than interest) payable hereunder, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining shall be paid to Borrower.

**Section 2.07 Interest Rate Determinations.** With respect to any Compounding Period for which the Applicable Floating Rate is determined by reference to LIBOR, promptly following the commencement of such Compounding Period, the Administrative Agent shall give written notice to Borrower of the Applicable Floating Rate.

**Section 2.08 Termination of Commitments; Prepayments of Loans.**

(a) The aggregate Commitments shall be automatically and permanently reduced to zero on (i) the Closing Date upon the borrowing on the Closing Date or (ii) October 15, 2013, if the Closing Date has not occurred prior to such date.

(b) Subject to payment of any Early Termination Fee, any Arrangement Fee payable under **Section 2.05(a)** and any amount required pursuant to **Section 2.13**, Borrower may, upon notice to Administrative Agent, at any time prepay the outstanding principal amounts of the Loans, in whole or in part, together with accrued interest to the date of such prepayment on the principal amount prepaid and any additional amounts required pursuant to **Section 2.13**, upon irrevocable notice thereof; provided that each partial prepayment of the Loans shall be in an aggregate principal amount of not less than \$10,000,000 or a whole multiple of \$1,000,000 in excess thereof. Such notice shall be given to Administrative Agent and each Lender by Borrower not later than 11:00 a.m. on the date two (2) Business Days prior to the effective date of any such prepayment, specifying such election and the effective date thereof. If such notice is given by Borrower, Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender’s Applicable Percentage of such prepayment. Each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of the Facility.

(c) If (i) any Potential Adjustment Event occurs and Calculation Agent determines that no adjustment it could make pursuant to **Section 8.01** would produce a commercially reasonable result, (ii) any Corporate Event occurs, (iii) any Issuer ADTV Event occurs, (iv) any Change of Control occurs or (v) any Share Price Trigger Event occurs and, in each case,

Administrative Agent delivers written notice to Borrower that it is requiring a prepayment in connection therewith pursuant to this **Section 2.08(c)**, Borrower shall, within one Business Day of such notice, (x) prepay to the Lenders in full all Loans then outstanding together with accrued interest to the date of such payment on the principal amount paid and any amount required pursuant to **Section 2.13**, any Arrangement Fee payable under **Section 2.05(a)** and, if applicable, any Early Termination Fee set forth in **Section 2.05(b)** or (y) execute a sale of Pledged Shares, for an aggregate sale price that, when received, shall be immediately applied as set forth in clause (x) and will be sufficient to prepay the Loans in full and pay all other amounts required to be paid in connection therewith. Any sale described in clause (y) above shall be made in the manner set forth in **Section 2.09(b)(i)**.

(d) If, after giving effect to any partial prepayment of the Loans pursuant to this **Section 2.08** or **Section 2.09**, the aggregate outstanding principal amount of the Loans would be less than an amount equal to \$66,666,667, Borrower shall, concurrently with such partial prepayment, prepay to the Lenders in full all Loans then outstanding together with accrued interest to the date of such payment on the principal amount paid, any amount required pursuant to **Section 2.13**, any Arrangement Fee payable under **Section 2.05(a)** and, if applicable, any Early Termination Fee set forth in **Section 2.05(b)**.

(e) Any prepayment pursuant to this **Section 2.08** shall be applied as provided in **Section 2.15**.

#### **Section 2.09 LTV Breach; Withdrawal of Collateral.**

(a) If an LTV Breach occurs on any date, Borrower shall, not later than 5:00 p.m. on the later of (x) the [\*\*\*\*\*] Business Day following the occurrence of the LTV Breach and (y) the [\*\*\*\*\*] Business Day following the date on which the Administrative Agent gives written notice to Borrower of such LTV Breach (such a notice, an “**LTV Breach Notice**”), (i) prepay outstanding Loans, (ii) post Margin Cash Collateral or (iii) execute a sale of Pledged Shares, with settlement of such sale to occur no later than three Business Days following the trade date of such sale, for an aggregate sale price that, when received, shall be immediately applied as set forth in **clause (i)** or **(ii)**, in each case of **clauses (i)** through **(iii)**, in such amount necessary to, after giving effect to the relevant payment, deposit or sale, as applicable, cause the LTV Ratio (with the LTV Ratio determined for such purpose based on an Eligible Equity Value based on the Closing Price at the time of such payment or deposit or the execution of such sale, respectively) to be less than the LTV Reset Ratio (the making of any such payment, deposit or sale, a “**Margin Call Satisfaction**”). Any prepayment pursuant to **clause (i)** above shall be applied as provided in **Section 2.15**. Any sale described in **clause (iii)** above shall be made in the manner set forth in **clause (b)(i)** of this **Section 2.09**. Prior to execution of any such sale, Borrower shall irrevocably elect by written notice to Administrative Agent and Collateral Agent whether the proceeds of such sale shall be applied as set forth in **clause (i)** or **clause (ii)** of the first sentence of this **Section 2.09(a)**.

(b) Borrower may not withdraw any Collateral from the Collateral Account, except (i) Borrower may sell Pledged Shares from the Collateral Account for cash at fair value, on a delivery-versus-payment basis (or other basis reasonably acceptable to Collateral Agent), with the cash proceeds of such sale to be paid directly into the Collateral Account, pursuant to documentation mutually acceptable to Borrower and Collateral Agent, (ii) Borrower may use Collateral consisting of Cash to repay the Loans pursuant to **Section 2.03**, (iii) Borrower may use Collateral consisting of Cash to make payments of any Arrangement Fee pursuant to **Section**

\*Certain portions of these exhibits have been redacted and separately filed with the Securities and Exchange Commission pursuant to a request for confidential treatment.

**2.05(a)** and any Early Termination Fee pursuant to **Section 2.05(b)**, (iv) Borrower may use Collateral consisting of Cash to make any required interest payment pursuant to **Section 2.04** or to make a prepayment pursuant to **Section 2.08** or **paragraph (a)** of this **Section 2.09**, (v) Borrower may withdraw Collateral consisting of Cash pursuant to **clause (c)** below or (vi) with the prior written consent of Administrative Agent. As a condition to any sale of Pledged Shares by Borrower, Borrower shall represent and warrant to Administrative Agent that (x) Borrower is not in possession of, and is not executing such sale on the basis of, any material Non-public Information with respect to Issuer or the Shares or, in the case of a privately negotiated sale, Borrower has disclosed any such information to the purchaser in such sale and (y) such sale complies with the Transfer Restrictions set forth in the Stockholders Agreement and Section 7.4(e) of the Purchase Agreement.

(c) Any dividend or distribution on the Shares, net of any withholding Tax, received by Borrower shall be deposited in the Collateral Account within one Business Day of such receipt, subject to any subsequent release thereof in accordance with this **Section 2.09(c)**. Borrower may request a release of Collateral consisting of Cash from the Liens created under the Collateral Documents subject to the following conditions:

(i) Administrative Agent shall have received a written notice from Borrower requesting a release of such Collateral on the date specified therein (which date shall be no earlier than the Business Day immediately following the first Business Day on which Administrative Agent has received such notice by 10:00 a.m.);

(ii) immediately after giving effect to such release and any other release otherwise requested or effected pursuant to **Section 2.09(b)** or this **Section 2.09(c)**, the LTV Ratio (calculated as if the full amount of interest that will become due and payable on the next succeeding Interest Payment Date, as estimated by the Calculation Agent, assuming no further prepayments of the Loans, were included in the Total Accrued Loan Amount) would be less than the LTV Reset Ratio;

(iii) no Default or Event of Default shall exist or would occur as a result of such release;

(iv) the Net PIK Amount is \$0 as of the date of such notice and will be \$0 as of the date of such release;

(v) on the date of such release the Borrower is not required to make any prepayment or take any other action under **Section 2.08** or this **Section 2.09** (and will not be required to take any such action as a result of the proposed release);

(vi) such released Collateral shall be used to pay Borrower's operating expenses;

(vii) immediately following such release, the amount of Collateral consisting of Cash held in the Collateral Account and subject to a First Priority Lien in favor of Agent shall not be less than the amount of interest payable on the immediately succeeding Interest Payment Date (as estimated by Calculation Agent, assuming Borrower does not elect to pay any such interest in kind and does not make any further prepayments on the Loans); and

(viii) the aggregate amount of Collateral released pursuant to this **Section 2.09(c)** shall not exceed (x) in any 365-day period, \$100,000 or (y) during the term of the Loans, \$400,000.

Any such notice delivered pursuant to the immediately preceding clause (i) shall contain written representations and warranties to the effect of the items set forth in the immediately preceding clauses (ii), (iii), (iv) and (vi). Upon satisfaction of the conditions set forth in the second preceding sentence, the amount of Collateral consisting of Cash requested to be released by Borrower in such written notice shall be released from the Lien created under the Collateral Documents.

#### **Section 2.10 Increased Costs.**

(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;

(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, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or any Loan made hereunder;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loans, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount), then, upon request of such Lender, Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or its Affiliate for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines (in good faith) that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender, the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity), then from time to time Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in **clause (a)** or **(b)** of this Section shall be delivered to Borrower and shall be conclusive absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) 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 any Lender pursuant to this **Section 2.10** for any increased costs or reductions incurred more than three (3) 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; and provided further that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the three (3) month period referred to in the immediately preceding proviso shall be extended to include the period of retroactive effect thereof.

(e) Reserves on LIBOR Based Loans. 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 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 that Borrower shall have received at least 10 days' prior written notice (with a copy to 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.

(f) Survival. All of Borrower's obligations under this **Section 2.10** shall survive termination of the Facility, repayment of all other Obligations hereunder, and resignation of Administrative Agent.

#### **Section 2.11 Taxes.**

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. Any and all payments by or on account of any obligation of Borrower under any Facility 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 Administrative Agent) requires the deduction or withholding of any Tax from any such payment by Administrative Agent or Borrower, then Administrative Agent or Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Law, and to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by Borrower shall be increased as necessary so that after any required withholding or the making of all required deductions (including withholdings or deductions applicable to additional sums payable under this **Section 2.11**) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by Borrower. Without limiting the provisions of **clause (a)** above (but not in duplication thereof), Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Indemnification by Borrower.

(i) Borrower shall, and does hereby indemnify each Recipient, and shall make payment in respect thereof 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 2.11**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and 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 Borrower by a Lender (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender shall be conclusive absent manifest error. Borrower shall, and does hereby, indemnify Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount that a Lender for any reason fails to pay indefeasibly to Administrative Agent as required pursuant to **Section 2.11(c)(ii)** below. Notwithstanding the foregoing, Borrower shall not have any indemnification obligation under this **Section 2.11(c)** to the extent the Recipient has otherwise received payment with respect to such Indemnified Tax pursuant to **Section 2.11(a)** or **Section 2.11(b)**.

(ii) Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, Administrative Agent for (x) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified Administrative Agent for such Indemnified Taxes and without limiting the obligation of Borrower to do so), (y) any Taxes attributable to such Lender's failure to comply with the provisions of **Section 8.06(d)** relating to the maintenance of a Participant Register and (z) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Administrative Agent in connection with any Facility 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. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Facility Document or otherwise payable by Administrative Agent to the Lender from any other source against any amount due to Administrative Agent under this **clause (ii)**.

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority as provided in this **Section 2.11**, Borrower shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(e) 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 Facility Document shall deliver to Borrower and Administrative Agent, at the time or times reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or 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 2.11(e)(ii)(A)**, **2.11(e)(ii)(B)** and **2.11(e)(ii)(D)**) shall not be required if in Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

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

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

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or 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 Facility Document, executed originals of IRS Form W-8BEN 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 Facility Document, IRS Form W-8BEN 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 originals 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 F-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 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 originals of IRS Form W-8BEN; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of **Exhibit F-2** or **Exhibit F-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 F-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 Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Facility Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower and 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 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.

(f) Treatment of Certain Refunds. Unless required by applicable Law, at no time shall Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. 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 Borrower or with respect to which Borrower has paid additional amounts pursuant to this **Section 2.11**, it shall pay to Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by Borrower under this **Section 2.11** 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 Borrower, upon the request of the Recipient, agrees to repay the amount paid over to Borrower (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, in no event will the applicable Recipient be required to pay any amount to Borrower pursuant to this clause 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 indemnification payments or additional amounts giving rise to such refund had never been paid. This clause shall not be construed to require any Recipient to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to Borrower or any other Person.

(g) **Survival.** Each party's obligations under this **Section 2.11** shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all Obligations under any Facility Document.

**Section 2.12 Illegality.** Notwithstanding any other provision of this Agreement, if any Lender shall notify Administrative Agent and Borrower that (a) any Law makes it unlawful, or any central bank or other Governmental Authority asserts that it is unlawful, (i) for any Lender to perform its obligations to make Loans hereunder or (ii) for any Lender or its Affiliate to maintain such Lender's Interest Rate Hedge, or (b) the LIBOR for any Compounding Period with respect to a Loan does not adequately and fairly reflect the cost to such Lender of funding or maintaining such Loan, the obligation of such Lender to make its Applicable Percentage of the Loans shall be terminated and all Loans of such Lender, all interest thereon and all other amounts payable under this Agreement to such Lender shall become due and payable. Any Lender that becomes aware of circumstances that would permit such Lender to notify Administrative Agent of any illegality under this **Section 2.12** shall use its reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its Lending Office if the making of such change would avoid or eliminate such illegality and would not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender.

**Section 2.13 Compensation for Losses.** Borrower shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts and shall be conclusive absent manifest error), for all reasonable loss, cost or expense incurred by it as a result of:

(a) any payment or prepayment of the Loan on a day other than the last day of a Compounding Period for the Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or

(b) any failure by either Borrower to prepay or borrow the Loan on the date or in the amount notified by such Borrower (for a reason other than the failure of such Lender to make a Loan in breach of its obligation hereunder);

excluding any loss of margin over LIBOR and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain the Loans, or from fees payable to terminate the deposits from which such funds were obtained. In addition, upon prepayment (including, for the avoidance of doubt, upon acceleration) of a Loan, (i) if the applicable Interest Rate Hedge Unwind Amount for any Lender is a positive number, Borrower shall promptly pay to Lender an amount equal to such Interest Rate Hedge Unwind Amount or (ii) if the applicable Interest Rate Hedge Unwind Amount for any Lender is a negative number, (x) as long as such amount is determined and notified to Borrower prior to the relevant prepayment date, the amount owed by Borrower in respect of such prepayment shall be reduced by the absolute value of such Interest Rate Hedge Unwind Amount and (y) otherwise, promptly following prepayment of such Loan and the determination of such amount, Lender shall pay to Borrower an amount equal to the absolute value of such Interest Rate Hedge Unwind Amount. Each Lender agrees to share the terms of its Interest Rate Hedge with the Calculation Agent in order to enable the Calculation Agent to determine the applicable Interest Rate Hedge Unwind Amount, and the Calculation Agent agrees to make such determination in connection with any prepayment of the Loans as soon as practicable after receiving notice of such prepayment. All of Borrower's, Lenders' and Calculation Agent's obligations under this **Section 2.13** shall survive termination of the Facility or

repayment of all other Obligations hereunder. For purposes of calculating amounts payable by Borrower to a Lender under the first sentence of this **Section 2.13**, each Lender shall be deemed to have funded the Loans 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 the Loans were in fact so funded.

#### **Section 2.14 Evidence of Debt.**

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) Administrative Agent shall also maintain accounts in which it will record (i) the amount of each Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from Borrower to each Lender hereunder, and (iii) the amount of any sum received by Administrative Agent (or its Affiliate) hereunder from Borrower and each Lender's share thereof.

(c) The entries maintained in the accounts maintained pursuant to **clauses (a) and (b)** above shall be prima facie evidence of the existence and amounts of the obligations therein recorded; provided that the failure of Administrative Agent or any Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of Borrower to repay such obligations in accordance with their terms. Borrower hereby designates Administrative Agent to serve as Borrower's agent solely for purposes of maintaining the account maintained pursuant to clause (b) above, 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".

(d) No promissory note shall be required to evidence the Loans by Lenders to Borrower. Upon the request of a Lender, Borrower shall execute and deliver to such Lender a promissory note, which shall evidence the Loans to Borrower by such Lender in addition to such records.

#### **Section 2.15 Payments and Computations.**

(a) All payments to be made by Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Borrower shall make each payment hereunder not later than 12:00 p.m. on the day when due in Dollars to Administrative Agent (or any Affiliate thereof designated by Administrative Agent) in immediately available funds. Administrative Agent or its Affiliate will promptly distribute to each Lender its Applicable Percentage (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 Administrative Agent or its Affiliate after 12:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) Whenever any payment hereunder would be due on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day, and such extension of time shall not be included in the computation of payment of interest or any fees, as the case may be.

(c) All payments (including prepayments and any other amounts received hereunder but excluding payments and amounts received in connection with the exercise of the Agents' and the Lenders' rights after an Event of Default to the extent set forth in **Section 6.01(a)**) made by Borrower to Administrative Agent under any Facility Document shall be applied to amounts then due and payable in the following order: (i) to any expenses and indemnities payable by Borrower to any Agent under any Facility Document; (ii) ratably to any expenses and indemnities payable by Borrower to any Lender under any Facility Document; (iii) to any accrued and unpaid interest and fees due under this Agreement; (iv) to principal payments in respect of any interest paid in kind; (v) to principal payments (other than interest paid in kind) on the outstanding Loans; and (vi) to the extent of any excess, to the payment of all other Obligations under the Facility Documents.

#### **Section 2.16 Administrative Agent's Clawback.**

(a) Funding by Lenders; Presumption by Administrative Agent. Unless Administrative Agent shall have received notice from a Lender prior to the proposed date of any Loan that such Lender will not make available to Administrative Agent (or its Affiliate) such Lender's Applicable Percentage of such Loan, Administrative Agent may assume that such Lender has made such Applicable Percentage of such Loan available on such date in accordance with **Section 2.02** and may, in reliance upon such assumption, make available to Borrower a corresponding amount. In such event, if a Lender has not in fact made its Applicable Percentage of such Loan available to Administrative Agent (or its Affiliate), then the applicable Lender and Borrower severally agree to pay to Administrative Agent (or its Affiliate) forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to Borrower to but excluding the date of payment to Administrative Agent (or its Affiliate), at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment to be made by Borrower, the Applicable Rate. If Borrower and such Lender shall pay such interest to Administrative Agent (or its Affiliate) for the same or an overlapping period, Administrative Agent (or its Affiliate) shall promptly remit to Borrower the amount of such interest paid by Borrower for such period. If such Lender pays its Applicable Percentage of the applicable Loan to Administrative Agent (or its Affiliate), then the amount so paid shall constitute such Lender's Loan included in such borrowing. Any payment by Borrower shall be without prejudice to any claim Borrower may have against a Lender that shall have failed to make such payment to Administrative Agent (or its Affiliate).

(b) Payments by Borrower; Presumptions by Administrative Agent. Unless Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to Administrative Agent (or its Affiliate) for the account of Lenders hereunder that Borrower will not make such payment, Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to Lenders the amount due. In such event, if Borrower has not in fact made such payment, then each of Lenders severally agrees to repay to Administrative Agent (or its Affiliate) forthwith on demand the amount so distributed to such Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to Administrative Agent (or its Affiliate), at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation.

(c) **Obligations of Lenders Several.** The obligations of Lenders hereunder to make Loans and to make payments pursuant to **Section 8.04(c)** are several and not joint. The failure of any Lender to make any Loan or to make any payment under **Section 8.04(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 8.04(c)**.

**Section 2.17 Sharing of Payments by Lenders.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it, resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans and accrued interest thereon greater than its pro rata share thereof as provided herein, then Lender receiving such greater proportion shall (a) notify Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the 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 Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, 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 shall not be construed to apply to (x) any payment made by or on behalf of Borrower pursuant to and in accordance with the express terms of this Agreement, or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than an assignment to Borrower or any Affiliate thereof (as to which the provisions of this Section shall apply). Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of Borrower in the amount of such participation.

**Section 2.18 Limited Recourse.** All Obligations hereunder and under any other Facility Documents shall be with full recourse to Borrower. Notwithstanding anything to the contrary contained in this Agreement, in any other Facility Documents, or in any other instruments, certificates, documents or agreements executed in connection with the Loans (all of the foregoing, for purposes of this **Section 2.18**, hereinafter referred to, individually and collectively, as the "**Relevant Documents**"), no recourse under or upon any Obligation, representation, warranty, promise or other matter whatsoever shall be had against any Parent or limited partner of Borrower, and each Lender expressly waives and releases, on behalf of itself and its successors and assigns, all right to assert any liability whatsoever under or with respect to the Relevant Documents against, or to satisfy any claim or obligation arising thereunder against, any Parent or limited partner of Borrower or out of any assets of any Parent or limited partner of Borrower.

**Section 2.19 Mitigation Obligations.** If any Lender requests compensation under **Section 2.10(a)** or **(b)** or if Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 2.11**, then such Lender (at the request of Borrower) shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce materially amounts payable pursuant to **Section 2.10(a)**, **2.10(b)** or **2.11**, as the case may be, in the future, (ii) would not subject such Lender to any unreimbursed cost or expense and (iii) would not require such Lender to take any action inconsistent with its internal policies or legal or regulatory restrictions. Borrower shall pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment. A certificate setting forth such costs and expenses submitted by such Lender to the Administrative Agent shall be conclusive absent manifest error.

In addition, if, on account of any Interest Rate Hedge any Lender becomes aware of circumstances that would permit such Lender to notify Administrative Agent of any illegality under **Section 2.12**, and, the relevant circumstances affect all Lenders hereunder (or any non-affected Lenders give their consent) and Borrower so elects, (i) the Lenders shall negotiate in good faith with Borrower for at least three Business Days to amend this Agreement such that all Loans hereunder will bear interest at a floating interest rate, while preserving for the Lenders the fair value of the transactions contemplated hereby, and (ii) the Calculation Agent shall calculate Interest Rate Hedge Unwind Amounts as if the Loans were being prepaid in full and (a) if any such Interest Rate Hedge Unwind Amount is a positive number, Borrower shall promptly pay such amount to the applicable Lender or (b) if any such Interest Rate Hedge Unwind Amount is a negative number, Lender shall promptly pay the absolute value of such amount to Borrower.

**Section 2.20 Payoff Letter.** Upon the payment in full of all Obligations (other than those that survive termination of the Facility Documents), Administrative Agent shall promptly, upon request of Borrower, confirm to Borrower in writing the payment and discharge of such Obligations.

### **ARTICLE III CONDITIONS OF LENDING**

**Section 3.01 Conditions Precedent to Loan.** The obligation of Lenders to make the Loans is subject to satisfaction of the following conditions precedent:

(a) Administrative Agent shall have received each of the following documents, duly executed, each (unless otherwise specified below) dated the Closing Date and in form and substance satisfactory to Administrative Agent:

(i) duly executed counterparts of this Agreement, sufficient in number for distribution to Administrative Agent, each Lender and Borrower;

(ii) duly executed Pledge Agreement and all documents contemplated thereby, including any UCC-1 financing statement(s);

(iii) duly executed Representation Letter from each Parent;

(iv) duly executed Control Agreement and all documents contemplated thereby;

(v) copies of the Organization Documents of Borrower and of General Partner, in each case as certified by a Responsible Officer of General Partner;

(vi) a certificate of General Partner certifying the names and true signatures of the Responsible Officers of General Partner authorized to sign this Agreement, the Pledge Agreement and any other Facility Document to be delivered hereunder or thereunder on behalf of Borrower;

(vii) a certificate evidencing the good standing (or equivalent) of each of Borrower and General Partner in its jurisdiction of formation and/or incorporation and each other jurisdiction where it is qualified to do business dated a date not earlier than (x) ten (10) Business Days prior to the Closing Date (with a bring down on the Closing Date), in the case of the General Partner or (y) two (2) Business Days prior to the Closing Date, in the case of Borrower;



(viii) an opinion of counsel to the Borrower substantially in form of **Exhibit H-1**, and an opinion of the Lenders' Cayman Islands counsel substantially in form of **Exhibit H-2**;

(ix) the results of Tax, judgment and Lien searches on Borrower; and

(x) duly executed Issuer Acknowledgment and all documents contemplated thereby.

(b) The Transaction Documents shall not have been amended or waived in any material respect adverse to the Lenders (or to change the purchase price for the Shares under the Purchase Agreement) without the prior written consent of Administrative Agent, not to be unreasonably withheld or delayed. An amount of cash equal to the aggregate purchase price for the Shares under the Purchase Agreement, net of the sum of (i) an amount equal to the aggregate Commitments for all Lenders (after giving effect to any reduction thereof pursuant to the proviso in the definition of "Commitment") and (ii) an amount equal to the aggregate "Commitments" for all "Lenders" (after giving effect to any reduction thereof pursuant to the proviso in the definition of "Commitment") (each as defined under the Other Loan Agreement), shall have been contributed to Borrower by the holders of Equity Interests therein and deposited *pro rata* into each of the Collateral Account and the "Collateral Account" (as defined under the Other Loan Agreement) according to the Commitments hereunder and the "Commitments" thereunder, and Borrower's purchase of Shares pursuant to the Purchase Agreement shall have been, or substantially simultaneously with the making of Loans pursuant to **Section 2.01** shall be, consummated (including the transfer of a *pro rata* portion (based on the Commitments hereunder and the "Commitments" under the Other Loan Agreement) of such Shares into the Collateral Account as Eligible Pledged Shares).

(c) The Collateral Account shall have been established by Borrower and Administrative Agent shall have received reasonably satisfactory evidence that the Collateral Requirement shall have been satisfied in all respects.

(d) All fees or expenses required to be paid to Administrative Agent or any Lender or counsel thereto on or before the Closing Date shall have been paid or provided for out of cash that does not constitute Collateral or Other Facility Collateral.

(e) Borrower shall have provided any form requested by Administrative Agent necessary to comply with Regulation T, U, or X, or any other provisions of the Regulations of the FRB, including Form U-1.

(f) No Corporate Event shall have occurred on or after the date of this Agreement and on or before the Closing Date.

(g) No Potential Adjustment Event shall have occurred on or after the date of this Agreement and on or before the Closing Date for which the Adjustment Event Effective Time, if any, shall not have occurred on or prior to the Closing Date.

(h) Borrower shall have delivered a Notice of Borrowing signed by Borrower in accordance with the requirements hereof.

(i) Each of the representations and warranties contained in **ARTICLE IV** and each of the representations and warranties contained in paragraphs 1, 2 and 7 of the Representation Letter shall be true and correct in all material respects (unless, in each case, such representation or warranty is qualified as to materiality, in which case such representation or warranty shall be true and correct), and no other breach of any Representation Letter shall have occurred, on and as of the date of such Notice of Borrowing and as of the Closing Date as if made on each such date.

(j) There shall not have been any Law applicable to the transactions contemplated herein, or the financing thereof, promulgated, enacted, entered or enforced by any Governmental Authority, nor shall there be pending any action or proceeding by or before any Governmental Authority involving a substantial likelihood of an order, that would prohibit, restrict, delay or otherwise materially affect the execution, delivery and performance of any of the Facility Documents or the making of the Loans or the making of the "Loans" (as defined in the Other Loan Agreement).

(k) No event shall have occurred, or would result from such Loans or from the application of the proceeds therefrom or entry into and performance of the Transaction Documents, that would constitute a Default or an Event of Default.

(l) Administrative Agent shall have received such other assurances, certificates, consents, approvals, opinions and documents relating to this Agreement and the transactions contemplated hereby as it shall have reasonably requested (including control agreement(s) with financial or securities intermediaries).

(m) There shall have been no action, suit, investigation or proceeding pending or, to the knowledge of Borrower, threatened in any court or before any arbitrator or Governmental Authority against Borrower, General Partner or any Parent that could reasonably be expected to have a Material Adverse Effect (it being understood that the Pending Litigation shall not be deemed to cause the condition set forth in this clause (m) to fail to be satisfied).

(n) Borrower's rights under Article II of the Stockholders Agreement shall have been assigned to Collateral Agent, pursuant to documentation in form and substance satisfactory to Collateral Agent.

(o) Each of the conditions set forth in Section 3.01 of the Other Loan Agreement to the obligation of the "Lenders" to make the "Loans" (each as defined in the Other Loan Agreement) on the Closing Date shall have been satisfied or waived.

The Notice of Borrowing shall be deemed to be a representation and warranty by Borrower that the conditions specified in **Section 3.01** have been satisfied on and as of the Closing Date.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES**

**Section 4.01 Representations and Warranties of Borrower.** Borrower represents and warrants to Administrative Agent and the Lenders that:

(a) Each of General Partner and Borrower (i) is duly incorporated and/or formed, as the case may be, validly existing and in good standing under the Laws of the jurisdiction of its organization, (ii) is duly qualified and in good standing in each other jurisdiction in which the conduct of its business requires it to so qualify or be licensed and where, in each case, failure so

to qualify and be in good standing could reasonably be expected to have a Material Adverse Effect, and (iii) has all requisite company power and authority to own or lease and operate its properties and to carry on its business as now conducted and as proposed to be conducted.

(b) The execution, delivery and performance by Borrower, each Parent and General Partner of the Transaction Documents to which it is a party, the grant of the security interest contemplated hereby with respect to the Collateral and the consummation of the transactions contemplated by the Transaction Documents (including any exercise by Collateral Agent, Agent or any Lender of its rights and remedies with respect to the Collateral) are within its powers, have been duly authorized by all necessary action, and do not and will not (i) contravene its Organization Documents (if applicable), (ii) contravene any contractual restriction binding on it or require any consent under any agreement or instrument to which it or any of its Affiliates is a party or by which any of its properties or assets is bound, (iii) result in or require the creation or imposition of any Liens upon any of its property or assets other than Permitted Liens, (iv) violate any Law (including, but not limited to, the Securities Act and the Exchange Act and the regulations thereunder) or writ, judgment, injunction, determination or award in any material respect or (v) violate any trading policy of the Issuer applicable to it or any Affiliate of it, including, but not limited to, its window period policy.

(c) Except for any filings specifically provided for in the Pledge Agreement or required under the federal securities laws of the United States, no order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption or waiver by, any Governmental Authority or any other third party (except such as have been obtained or made and are in full force and effect), is required to authorize, or is required in connection with, (i) the execution, delivery and performance by Borrower, General Partner or any Parent of any Transaction Document or (ii) the legality, validity, binding effect or enforceability of any Transaction Document.

(d) Each of General Partner and Borrower is in compliance with the requirements of (i) all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties and (ii) each contract or agreement to which it is a party, or to which any of its property (including the Shares) is subject, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect.

(e) This Agreement and the other Facility Documents and the Purchase Agreement and related documents to which Borrower, any Parent or General Partner is party, or to which the Pledged Shares are subject, are and will be legal, valid and binding obligations of Borrower or such Parent or General Partner, as the case may be, enforceable against Borrower or such Parent or General Partner, as the case may be, in accordance with their respective terms in all respects, subject to bankruptcy, insolvency, reorganization, moratorium or other similar Laws of general applicability relating to or affecting creditors' rights and general equity principles.

(f) No Default or Event of Default has occurred.

(g) Neither General Partner nor Borrower has incurred any Debt, other than Debt under the Facility Documents and Debt under the Other Facility Documents.

(h) No Change of Control or Regulatory Event has occurred or is reasonably expected to occur.

(i) There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of Borrower threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against Borrower, General Partner or any Parent or against any of their properties or revenues that (i) are reasonably likely to have a Material Adverse Effect or (ii) (a) purport to affect the legality, validity or enforceability of this Agreement, the Pledge Agreement, any other Facility Document or the Purchase Agreement and related documents (other than, in the case of this clause (ii)(a), the Pending Litigation), or (b) that involve a substantial likelihood of prohibiting, restricting, delaying or otherwise materially affecting the performance of any of the Facility Documents or the Purchase Agreement and related documents or the making of the Loans or the making of the “Loans” (as defined in the Other Loan Agreement).

(j) Each of Borrower, General Partner and each Parent is not, and after giving effect to the transactions contemplated under the Transaction Documents will not be, required to register as an “investment company” as such term is defined in the Investment Company Act.

(k) Borrower is a “United States Person” or a foreign person controlled by or acting on behalf of or in conjunction with United States persons for purposes of Regulation X. The Facility Documents, including the Loans, do not contemplate any actions that would violate Regulation T, U, or X. Borrower has not taken any actions under the Facility Documents that could reasonably be expected to result in a violation of Regulation T, U, or X, and no part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of Regulation T, Regulation U, or Regulation X, as applicable.

(l) Each of General Partner and Borrower owns all of its properties free and clear of Liens, other than, in the case of Borrower, Permitted Liens. Borrower has not made or consented to, and is not aware of, any registrations, filings or recordings in any jurisdiction evidencing a security interest in the Collateral including, but not limited to, the filing of a register of mortgages, charges and other encumbrances or filings of UCC-1 financing statements, other than with respect to Permitted Liens.

(m) All material Tax returns and reports of Borrower required to be filed have been timely filed (taking into account applicable extensions), and all Taxes shown on such Tax returns to be due and payable by Borrower have been paid when due and payable, except for any Tax that is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserves or other appropriate provisions, as shall be required in conformity with GAAP, shall have been made or provided therefor, and (b) in the case of a Tax or claim that has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to subordinate the Lien securing such Tax or claim and Administrative Agent reasonably determines, based on advice of counsel, that the existence of such Lien will not adversely affect the exercise of remedies by Collateral Agent or any Lender in a manner contemplated under the Facility Documents. Borrower has not received a written proposed material Tax assessment, nor does Borrower have knowledge of any material Tax assessment, against Borrower that would, if made, have a Material Adverse Effect. Borrower is not party to any tax sharing agreement. Borrower will hold no assets or conduct any activities other than as authorized in its Organizational Documents.

(n) (i) The present fair value of each of General Partner's and Borrower's assets exceeds the total amount of its respective liabilities (including contingent liabilities), (ii) each of General Partner and Borrower has capital and assets sufficient to carry on its businesses, (iii) neither General Partner nor Borrower is engaged, nor is it about to engage, in a business or a transaction for which its remaining assets are unreasonably small in relation to such business or transaction and (iv) neither General Partner nor Borrower intends to incur or believes that it will incur debts beyond its ability to pay as they become due. Neither General Partner nor Borrower will be rendered insolvent by the execution, delivery and performance of documents relating to this Agreement or by the consummation of the transactions contemplated under this Agreement or the other Transaction Documents.

(o) Each Share to be held in the Collateral Account will qualify as an Eligible Pledged Share.

(p) The Issuer currently is not, and, to the knowledge of Borrower, is not expected to become in any subsequent taxable year, a "United States real property holding corporation" as defined under Section 897 of the Code.

(q) The Loans are made with full recourse to Borrower and constitute direct, general, unconditional and unsubordinated Debt of Borrower. Each Loan contemplated hereunder is entered into by Borrower in good faith and at arm's length and is a *bona fide* loan. Such Loan is not entered into with an expectation that Borrower would default in its obligations thereunder. The Lien created under the Collateral Documents (including the pledge of the Pledged Shares) is a *bona fide* pledge to secure Borrower's obligations under the Facility Documents, which obligations provide for full recourse to Borrower. Such Collateral Documents are not entered into by Borrower with the intent of facilitating a disposition of the Shares subject to the Collateral Documents.

(r) All information and documents provided by or on behalf of Borrower or General Partner to any Agent or Lender in connection with the negotiation, execution and delivery of this Agreement and the other Facility Documents or the transactions contemplated hereby and thereby including, but not limited to, any financial statements of Borrower provided to Administrative Agent was or will be, on or as of the applicable date of provision thereof, complete and correct in all material respects and did not (or will not) contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading in light of the time and circumstances under which such statements were made. The Transaction Documents that have been delivered to Administrative Agent are complete and correct in all material respects and set forth the complete understanding of the parties thereto regarding the transactions contemplated thereby. Each of General Partner and Borrower has disclosed to Administrative Agent all agreements, instruments and corporate or other restrictions to which it, or its property (including the Shares), is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(s) As of the date hereof, Borrower is not in possession of, and is not entering into the Transaction Documents or the transactions contemplated thereby on the basis of, any material adverse Non-public Information in respect of the Issuer or the Shares, and no information provided by or on behalf of Borrower to Administrative Agent or Lender in connection with the Facility constitutes material Non-public Information with respect to the Issuer or the Shares for purposes of United States federal and state securities law.

(t) All licenses, permits, approvals, concessions or other authorizations necessary to the conduct of the business of Borrower or General Partner have been duly obtained and are in full force and effect, except where the failure to obtain and maintain any of the foregoing could not reasonably be expected to result in a Material Adverse Effect. There are no restrictions or requirements that limit Borrower's, General Partner's or any Parent's ability to lawfully conduct its business or perform its obligations under this Agreement or any other Facility Document.

(u) Neither Borrower nor General Partner has any liability, including contingent or potential liability, with respect to any employee benefit plans that it or any entity with which it is treated as a single employer under Sections 414(b), (c), (m) or (o) of the Code maintains or sponsors or to which any of them contribute.

(v) All financial statements concerning Borrower that have been or will hereafter be furnished by Borrower to Administrative Agent pursuant to this Agreement have been or will be prepared in accordance with GAAP consistently applied (except as disclosed therein, to the extent Administrative Agent approves such disclosure) and do or will, in all material respects, present fairly the financial condition of the Persons covered thereby as at the dates thereof and the results of their operations for the periods then ended.

(w) Neither Borrower nor General Partner has any Subsidiaries other than, with respect to General Partner, Borrower.

(x) Neither Borrower nor General Partner is a Benefit Plan.

(y) Neither Borrower, nor, to the knowledge of Borrower, any partner, officer, employee, agent, affiliate or representative thereof (including General Partner and each Parent), is an individual or entity currently the subject to any Sanctions, nor is Borrower located, organized or resident in a Designated Jurisdiction.

(z) Borrower understands that upon the occurrence of an Event of Default and the exercise of remedies pursuant to the Pledge Agreement, (a) the Pledged Shares may be sold in "private placement" transactions without registration under the Securities Act, which may result in substantially discounted realization value with respect to the Pledged Shares compared with the then market price and (b) a bulk sale of the Pledged Shares may occur, which may result in a substantially discounted realization value with respect to the Pledged Shares compared to the then current market price. Borrower acknowledges and agrees that (x) any such private placement, bulk sale or any other method of sale or disposition of Collateral as set forth in the Pledge Agreement shall be a commercially reasonable disposition under the Uniform Commercial Code notwithstanding any loss to it from a lower sale price and (y) neither Collateral Agent nor the Lenders shall have any liability or responsibility for any such loss.

(aa) Borrower has complied with its reporting obligations with respect to the Shares and the Facility Documents under Sections 13 and 16 of the Exchange Act and applicable securities laws of any other jurisdiction, including any required filings with the SEC.

(bb) Borrower has not engaged in or entered into any derivative or any other hedging transaction with respect to the Shares.

(cc) Other than the Transaction Documents delivered to Administrative Agent on or before the Closing Date, neither Borrower nor General Partner is, nor has it been since its formation, a party to, and the Pledged Shares are not subject to, any contract or other agreement or arrangement, except for administrative agreements that comply with **Section 5.02(r)**.

(dd) Borrower does not engage in any business or conduct any activity, nor has it since its formation engaged in any business or conducted any activity, other than the ownership of Shares and the performance of the transactions contemplated by the Transaction Documents (each of which has been delivered to Administrative Agent) in accordance with the terms thereof and performance of ministerial activities and payment of taxes and administrative fees necessary for compliance with the Transaction Documents. General Partner does not engage in any business or conduct any activity, nor has it since its formation engaged in any business or conducted any activity, other than as expressly permitted under its Organization Documents.

(ee) No broker's or finder's fee or commission will be payable with respect to the transactions contemplated by the Transaction Documents, except as payable to Allen & Company, the Agents, the Lenders and their respective Affiliates.

(ff) Borrower, General Partner and each Parent is in compliance with the (i) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) the PATRIOT Act. No part of the proceeds of the Loans will be used, directly or indirectly, 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 the United States Foreign Corrupt Practices Act of 1977, as amended.

(gg) Each of Borrower and General Partner is in compliance with the Required SPV Provisions.

(hh) Borrower has not been subject to any proceeding, claim, notice or complaint relating to Environmental, Health or Safety Liability. There is no past or present fact, status, condition, activity, occurrence, action or failure to act, including the presence or release of any Hazardous Materials (whether or not on the property of Borrower), that forms or reasonably could form the basis for the imposition of any Environmental, Health or Safety Liability on Borrower.

(ii) As of the Closing Date, the Borrower will not be a party to any Restricted Transactions.

## ARTICLE V COVENANTS OF BORROWER

**Section 5.01 Affirmative Covenants.** On and after the Closing Date and so long as any Lender has a commitment to make any Loans or any Obligations have not been indefeasibly paid in full:

(a) Existence. Each of General Partner and Borrower shall preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its incorporation and/or formation, and take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

(b) Reporting Requirements. Borrower shall furnish to Administrative Agent or cause to be furnished to Administrative Agent:

(i) as soon as available, but in any event within 30 days after the end of the fiscal year of Borrower, in form and detail reasonably satisfactory to Administrative Agent, an unaudited trial balance of Borrower, as at the end of such fiscal year, and the related unaudited balance sheet and statement of income for such fiscal year, all in reasonable detail and certified by General Partner as fairly presenting in all material respects the financial condition and results of operations of Borrower, prepared in accordance with GAAP (and including a confirmation of the Available Cash Amount for Borrower and General Partner);

(ii) as soon as available and in any event within 15 days after the end of each fiscal quarter of Borrower, in form and detail satisfactory to Administrative Agent, (i) the most recent account statements of Borrower with respect to each asset then owned by Borrower, (ii) a list of all Debt, liabilities and/or commitments of Borrower, and the Available Cash Amount for Borrower and General Partner, and (iii) a description of the material terms of each item on such list (including the amount of any liability thereunder, whether contingent, direct or otherwise, the due date for each such liability, the total unfunded commitment, if any, and the rate of interest, if any, applicable thereto);

(iii) as soon as possible and in any event within two (2) Business Days after Borrower obtains actual knowledge of the occurrence of (A) any Event of Default or Default, (B) each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of Borrower, (C) any actual or threatened litigation or other event that, if adversely determined to Borrower, could reasonably be likely to result in a Material Adverse Effect, or (D) any Lien (other than Permitted Liens set forth in **clause (i)** of the definition thereof) or claim made or asserted against any Collateral, a statement of General Partner setting forth the details thereof and the action that Borrower has taken and proposes to take with respect thereto; and

(iv) promptly after request therefor, such other business and financial information respecting the condition or operations, financial or otherwise, of Borrower or General Partner as Administrative Agent may from time to time reasonably request.

(c) Use of Proceeds. Borrower shall use the proceeds of the Loans solely (i) for the purpose of acquiring the Pledged Shares and the "Pledged Shares" (as defined in the Other Loan Agreement) pursuant to the Purchase Agreement and (ii) to pay fees and expenses in connection with transactions contemplated by the Transaction Documents.

(d) Payment of Obligations. Each of Borrower and General Partner shall pay and discharge as the same shall become due and payable, all its obligations and liabilities, including all lawful claims that, if unpaid, would become a Lien on its property.

(e) Taxes. Borrower shall pay all material Taxes imposed upon it and any material Taxes payable by it imposed on 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 (a) adequate reserves or other appropriate provisions, as shall be required in conformity with GAAP, shall have been made or provided therefor, and (b) in the case of a Tax or claim that has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to subordinate the Lien securing such Tax or claim and Administrative Agent reasonably determines, based on advice of counsel, that the existence of such Lien will not adversely affect the exercise of remedies by Collateral Agent or any Lender in a manner contemplated under the Facility Documents. Borrower is a foreign partnership for U.S. federal income tax purposes, shall remain so at all times during the term of the loan and shall not consolidate or combine with or otherwise agree to pay or become liable for the taxes of any other person.

(f) Collateral Requirement. Borrower shall comply with the Collateral Requirement in all respects, and shall promptly notify Administrative Agent as soon as it has knowledge or reasonable belief that the value of any Collateral has been or may be materially impaired.

(g) Keeping of Books. Borrower shall keep proper books of record and account as are necessary to prepare financial statements in accordance with GAAP.

(h) Reporting Obligations. Borrower shall comply with its reporting obligations with respect to the Shares and the Facility Documents under Sections 13 and 16 of the Exchange Act and applicable securities laws of any other jurisdiction, including any required filings with the SEC. Borrower agrees to make any such filing (or relevant portion thereof) in connection with the Facility Documents and the transactions contemplated thereunder in the form previously provided to Administrative Agent with an opportunity to comment thereon.

(i) Compliance with Laws. Each of General Partner and Borrower shall comply with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (ii) the failure to comply therewith could not reasonably be expected to result in a Material Adverse Effect.

(j) Special Purpose Entity. Each of Borrower and General Partner shall:

(i) maintain its own separate books and records and bank accounts;

(ii) at all times conduct its business solely in its own name in a manner not misleading to other Persons as to its identity (including through the use of separate stationary, signage and business cards);

(iii) file its own tax returns, if any, as may be required under applicable law, to the extent (1) not part of a consolidated group filing a consolidated return or returns or (2) not treated as a division for tax purposes of another taxpayer, and pay any taxes so required to be paid under applicable law;

(iv) hold all of its assets in its own name and not commingle its assets with assets of any other Persons;

(v) strictly comply with all organizational formalities to maintain its separate existence;

(vi) maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other Person, and not have its assets listed on any financial statement of any other Person; provided that its assets may be included in consolidated financial statements of one of its Affiliates, and provided further that for financial statements covering fiscal quarters ending on and after the first fiscal quarter ending after the Closing Date (1) appropriate disclosure within the consolidated financial statements or footnotes thereto shall be made to indicate its separateness from such Affiliate and to indicate that its assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (2) such assets shall also be listed on its own separate balance sheet;

(vii) pay its own liabilities only out of its own funds;

(viii) maintain an arm's-length relationship with its Affiliates and enter into transactions with Affiliates only on a commercially reasonable basis and on terms similar to those of an arm's-length transaction (it being understood that it may enter into any contract or any other Affiliate transaction expressly permitted under this Agreement);

(ix) correct any known misunderstanding regarding its separate identity and not identify itself as a division of any other Person;

(x) maintain adequate capital in light of its contemplated business purpose, transactions and liabilities; provided that the foregoing shall not require any parent thereof to make any additional capital contributions to it;

(xi) cause its partners, officers, agents and other representatives (including any director and/or officer on behalf of General Partner) to act at all times with respect to it consistently and in furtherance of the foregoing and in its best interests;

(xii) maintain its funds and assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xiii) allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including for services performed by an employee of an Affiliate; and

(xiv) not amend, alter or change the terms of its exempted limited partnership agreement or LLC agreement, as the case may be, in any material respect unless Administrative Agent consents thereto (the foregoing provisions in this clause (j), the "**Required SPV Provisions**").

(k) Further Assurances. Borrower and General Partner each agrees that upon the request of an Agent, it shall execute and/or deliver any additional agreements, documents and instruments, and take such further actions, as may be reasonably requested by such Agent from time to time, including opinions of counsel with respect to the continuing authority of Borrower and General Partner each to perform its obligations under this Agreement (which counsel shall be satisfactory to such Agent in its sole discretion) and such agreements, documents or instruments as may be necessary to grant Collateral Agent a security interest in any property acquired by

Borrower after the Closing Date that is required under the Facility Documents to be subject of the Lien of this Agreement and the other Facility Documents, which agreements, documents or instruments shall be satisfactory to such Agent in its sole discretion.

(l) Investment Company. Neither Borrower nor General Partner shall be required to register as an “investment company” under the Investment Company Act.

(m) Certification of Public Information. Borrower shall not provide any Lender or Agent with any Non-public Information with respect to the Issuer, any of the Issuer’s Subsidiaries or any of their securities. Concurrently with the delivery of any document, notice or other communication regarding the transaction by or on behalf of Borrower in connection with the Facility Documents (each, a “**Communication**”), Borrower shall be deemed to have represented that such document, notice or other communication does not contain any such Non-public Information. If any Communication is required to be delivered pursuant to this Section 5.01 or otherwise and is being distributed through Debt Domain, IntraLinks/IntraAgency, SyndTrak or another relevant website or other information platform, such Communication shall not contain any such Non-public Information. Any communication in written form shall contain the following sentence at the beginning of such Communication.

*[Sender] hereby represents, warrants and agrees that the following Communication contains no Non-public Information with respect to the Issuer, any of the Issuer’s Subsidiaries or any of their securities (each, as defined in the Loan Agreement dated October 11, 2013, among Borrower, JPMorgan Chase Bank, N.A., London Branch, as administrative agent thereunder, and each lender from time to time party thereto, to which this Communication relates).*

(n) Pro Rata Payments. At any time that Borrower, with respect to either Margin Loan Facility, (i) makes any voluntary prepayment, (ii) makes any payment of interest in kind, (iii) sells any Shares constituting Collateral or Other Facility Collateral or (iv) withdraws any Collateral consisting of Cash, Borrower shall take the same action with respect to the other Margin Loan Facility *pro rata* according to the then outstanding “Total Accrued Loan Amount” under, and as defined in, each Margin Loan Facility.

**Section 5.02 Negative Covenants.** So long as any Lender shall have any Commitment hereunder, or any Obligations have not been indefeasibly paid in full:

(a) Additional Debt. Neither Borrower nor General Partner shall, directly or indirectly, create, incur, assume or suffer to exist any Debt, other than Debt created under this Agreement and Debt created under the Other Loan Agreement.

(b) Liens. Neither Borrower nor General Partner shall, directly or indirectly, create, incur, assume or suffer to exist any Lien upon any of its property, revenues or assets (including any Shares), whether now owned or hereafter acquired, except, in the case of Borrower, (i) Liens created under the Facility Documents, and (ii) solely with respect to Other Facility Collateral, Liens created under the Other Facility Documents (such Liens, in the case of **clauses (i) and (ii), “Permitted Liens”**).

(c) Negative Pledge; Restricted Transactions. Borrower shall not (i) sell (except as specifically contemplated by **Section 2.09(b)** hereof or Section 2.09(b) of the Other Loan Agreement), transfer, pledge or encumber, or suffer to exist a Lien (other than Permitted Liens) on any Shares, or (ii) enter into any Restricted Transactions.

(d) Mergers, Etc. Without the prior consent of Administrative Agent, neither Borrower nor General Partner shall, directly or indirectly, merge or consolidate with or into, or convey, transfer, lease or otherwise dispose of, whether in one transaction or in a series of transactions, all or substantially all of its property and assets (whether now owned or hereafter acquired) to any Person.

(e) No New Business. Neither Borrower nor General Partner shall, directly or indirectly, engage in any business other than as expressly permitted under its Organization Documents.

(f) No Amendment of Organization Documents, Etc. Neither Borrower nor General Partner shall, directly or indirectly, consent to any material amendment, supplement or other modification of any of the terms or provisions of its Organization Documents that is adverse to the Lender Parties, in each case without the consent of the Required Lenders.

(g) Distributions, Etc. Neither Borrower nor General Partner shall, directly or indirectly, declare or make any dividend payment or other distribution of assets, property, cash, rights, obligations or securities on account of any Equity Interests in it, or purchase, redeem, retire or otherwise acquire for value any Equity Interests in it, now or hereafter outstanding from any of its assets, property, cash, rights, obligations or securities.

(h) Loans and Investments. Neither Borrower nor General Partner shall, directly or indirectly, lend money or extend credit or make advances to any Person, or purchase or acquire any stock (other than pursuant to the Purchase Agreement), obligations or securities of, or any other interest in, or make any capital contribution to, any other Person.

(i) Transactions with Affiliates. Neither Borrower nor General Partner shall, directly or indirectly, enter into any transaction with or make any payment or transfer to any of its Affiliates, except in the ordinary course of business and upon fair and reasonable terms no less favorable to such Person than would be obtained in a comparable arm's-length transaction with a Person not an Affiliate of it and as permitted by its Organization Documents.

(j) Formation of Subsidiaries. Neither Borrower nor General Partner shall, directly or indirectly, form, create, organize, incorporate or acquire any Subsidiaries other than, in the case of General Partner, Borrower.

(k) Status as a Benefit Plan. Neither Borrower nor General Partner shall, directly or indirectly, be or become a Benefit Plan.

(l) Compliance with Margin Regulations. Borrower shall not, directly or indirectly, take any action that would result in a violation by it of Regulation T, U, or X.

(m) No Short Sales. Neither Borrower nor General Partner shall directly or indirectly engage in any short sales (including through hedging or derivatives transactions) or enter into any Swap Contract with respect to any Share without the prior written consent of Administrative Agent.

(n) Sanctions. The proceeds of any Loan shall not be used, directly or indirectly, and Borrower shall not lend, contribute or otherwise make available such proceeds to any Affiliate, joint venture partner or other individual or entity, to fund any activities of or business with any individual or entity, or in any Designated Jurisdiction that at the time of such funding, is the subject of any Sanctions; or in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction, whether as a Lender or Agent or otherwise) of any Sanctions.

(o) Status of Shares. Borrower shall not transfer any Share to the Collateral Account unless such Share: (i) qualifies as an Eligible Pledged Share and (ii) is transferred to the Collateral Account on or prior to the Closing Date.

(p) Limitation on Activities. From and after the Closing Date, neither Borrower nor General Partner shall, directly or indirectly, (i) engage in any business or conduct any activity other than (A) in the case of Borrower, (w) its ownership of the Pledged Shares and other Collateral (and any dividends or distributions thereon) and the ownership of "Pledged Shares" and other "Collateral" (each as defined under the Other Loan Agreement) (and any dividends or distributions thereon), (x) the performance of the transactions contemplated by the Transaction Documents (which have been delivered to Administrative Agent), in each case, in accordance with the terms thereof, (y) the performance of ministerial activities and payment of taxes and administrative fees necessary for compliance with this Agreement and the Other Loan Agreement and (z) the maintenance of its legal existence, including the ability to incur fees, costs and expenses relating to such maintenance, and (B) in the case of General Partner, as expressly permitted under its Organization Documents, (ii) except as expressly contemplated by **clause (r)** below, enter into any contractual obligation or any transaction or agreement between itself and any Person or (iii) change its capital structure.

(q) Bankruptcy Action. General Partner agrees not to take any Bankruptcy Action with respect to Borrower without each Lender's consent.

(r) Agreements. Neither Borrower nor General Partner shall enter into any contract, guaranty, indemnity or other agreement of any kind, other than (i) the Transaction Documents, (ii) routine administrative agreements entered into in the ordinary course of its business, (iii) in the case of Borrower, insurance contracts purchased under Section 6.7(f) of the Amended and Restated Agreement of Limited Partnership of Borrower and (iv) in the case of Borrower, indemnification agreements entered into pursuant to Section 6.7(b) of the Amended and Restated Agreement of Limited Partnership of Borrower; provided that in the case of clauses (ii), (iii), and (iv) at the time of its entry therein, the Value of cash and cash equivalents then held by it that, in the case of Borrower, do not constitute Collateral or Other Facility Collateral shall equal or exceed the aggregate amount of obligations of Borrower or General Partner, as the case may be, with respect to all such agreements and contracts and any other estimated operating expenses of Borrower or General Partner, as the case may be, that are due and payable, or that will become due on or before the Scheduled Maturity Date (any such excess, the "**Available Cash Amount**").

(s) Most Favored Nations. Borrower shall not enter into any amendment, modification or supplement to any Other Facility Document unless Borrower shall have (i) delivered written notice of such amendment or supplement, and a final draft of all relevant documentation, to Administrative Agent at least five Business Days prior to entry therein and (ii) offered to execute a substantially identical amendment or supplement to the analogous Facility Document and, if applicable, to pay the same consent fee (as a percentage of "Total Accrued Loan Amount" under, and as defined in, the Facility Documents and the Other Facility Documents) therefor. In addition, Borrower shall not enter into any amendment, modification or supplement to any Other Facility Document that would increase the amount of Debt thereunder or otherwise be adverse to the Lenders, without consent of Administrative Agent.

**ARTICLE VI  
EVENTS OF DEFAULT**

**Section 6.01 Events of Default.** If any of the following events ("*Events of Default*") shall occur:

(a) Borrower shall fail to pay when due (i) any of the outstanding principal of, or accrued interest on, any Loan, (ii) the amounts required to be prepaid or repaid pursuant to **Section 2.08**, if any, or (iii) other amounts or fees owing pursuant to any of the Facility Documents, and, in the case of any amount other than principal, if (A) the failure to pay such amount was solely the result of an operational error, (B) Borrower had funds sufficient to enable it to pay such amount when due and (C) Borrower has provided to Administrative Agent written evidence satisfactory to it of the matters set forth in clauses (A) and (B) above, such failure continues for more than two (2) Business Days; or

(b) Borrower shall fail to provide Administrative Agent with the reports required to be delivered under **Section 5.01(b)** on the date required for such delivery, and such failure shall not be cured within five (5) Business Days; provided that no such cure period shall apply to the extent that (i) three (3) delivery failures have already occurred during the then current calendar quarter or (ii) one (1) delivery failure with respect to the specific report in question has already occurred during the then current calendar quarter; or

(c) Borrower or General Partner shall fail to perform or observe when due any term, covenant, or agreement contained in **Section 2.09**, **Section 5.01(a)**, **Section 5.01(j)**, **Section 5.01(n)**, **Section 5.02** or **Section 6.02** hereof or Section 6 of the Pledge Agreement; or

(d) Borrower or General Partner shall fail to perform or observe when due any term, covenant, or agreement contained in this Agreement or any other Facility Document to which it is a party (not specified in **clause (a)**, **(b)** or **(c)** above or any other clause of this **Section 6.01**) and such default shall not have been remedied or waived within ten (10) days after the earlier of (i) an officer of Borrower becoming aware of such default or (ii) receipt by Borrower of notice from Administrative Agent of such default; or

(e) any representation, warranty, certification or statement of fact made or deemed made by or on behalf of Borrower or General Partner herein, in any other Facility Document, or in any document delivered in connection herewith or therewith, or any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Parent in any Representation Letter, shall be incorrect or misleading in any material respect (unless, in each case, such representation or warranty is qualified as to materiality, in which case such representation or warranty shall be incorrect or misleading) when made or deemed made; or

(f) (i) any provision of any Facility Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder, shall cease to be in full force and effect (for any reason other than the failure of the Collateral Agent to take action within its control); (ii) Borrower, General Partner or any Parent shall contest the validity or enforceability of any provision of any Facility Document in writing; or (iii) Borrower or General Partner shall deny in writing that it has any further liability under any Facility Document or under any other agreement or instrument between Borrower, General Partner or any Parent, on the one hand, and any Lender or Agent (or any Affiliate thereof), on the other hand, or shall purport to revoke, terminate or rescind any provision of any Facility Document; or

(g) (i) Borrower or General Partner (A) shall fail to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Debt (other than Debt hereunder or under the Other Loan Agreement and Debt under Swap Contracts), or (B) shall fail to observe or perform any other agreement or condition relating to any such Debt referred to in **clause (A)** or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Debt or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Debt to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Debt to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there shall occur under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which Borrower or General Partner, as applicable, is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which Borrower or General Partner, as applicable, is an Affected Party (as so defined); or

(h) (i) Borrower or General Partner shall become unable or admit in writing its inability or fail generally to pay its debts as they become due; (ii) any writ or warrant of attachment or similar process shall be issued or levied against all or any material part of the property of Borrower or General Partner and shall not be released, vacated or fully bonded within thirty (30) calendar days after its issue or levy; (iii) Borrower or General Partner shall institute or consent to the institution of any proceeding under any Debtor Relief Law, or make an assignment for the benefit of creditors, or apply for or consent to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; (iv) any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer shall be appointed without the application or consent of Borrower or General Partner and the appointment shall continue undischarged or unstayed for thirty (30) calendar days; (v) any proceeding under any Debtor Relief Law relating to Borrower or General Partner or to all or any material part of its property shall be instituted without the consent of Borrower or General Partner, as the case may be, and shall continue undismissed or unstayed for thirty (30) calendar days, or an order for relief is entered in any such proceeding; or (vi) Borrower or General Partner shall take any action to authorize any of the actions set forth above in this **Section 6.01(h)**; or

(i) there shall be entered against Borrower or General Partner (i) one or more final judgments or orders for the payment of money (whether or not in connection with the Pending Litigation) involving in the aggregate at any time an amount in excess of the Available Cash Amount with respect to Borrower or General Partner, as the case may be, and (A) enforcement proceedings shall be commenced by any creditor upon such judgment or order, or (B) there shall be a period of twenty (20) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; (ii) one or more judgments or orders for the payment of money in connection with the Pending Litigation involving in the aggregate at any time an amount in excess of the Available Cash Amount with respect to Borrower or General Partner, as the case may be, and (A) at any time, such judgment or order is final and not subject to further appeal, (B) Borrower or General Partner, as the case may be, has not (x) fully bonded such judgment or order and (y) filed an appeal thereof, in each case within five (5) Business Days of the entry of such judgment or order, or (C) at any time following the tenth Business Day after the entry of such judgment or order, a stay of enforcement thereof is not in effect or (iii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; or

(j) a Regulatory Event shall occur; or

(k) the Collateral Requirement shall cease to be satisfied or Collateral Agent shall, other than as a result of any failure by Collateral Agent to take any action within its control, cease to have a First Priority perfected Lien in the Collateral; or

(l) Borrower or any of its Affiliates or Issuer or any of its Affiliates or any Parent or General Partner shall enter into any Debt Purchase Transaction; or

(m) the Issuer shall breach, terminate, repudiate or purport to terminate the Issuer Acknowledgment, or any Parent shall breach, terminates repudiate or purport to terminate the Representation Letter to which it is a party; or

(n) General Partner shall cease to be the sole general partner of Borrower; or

(o) any "Event of Default" (as defined in the Other Loan Agreement) shall occur,

then, and in any such event, Administrative Agent shall at the request of, or may with the consent of, the Required Lenders declare the Loans, all accrued interest thereon, all fees and all other accrued amounts payable under this Agreement and the other Facility Documents to be forthwith due and payable, whereupon the Loans, all such interest and fees and all such other amounts hereunder and under the Facility Documents shall become and be forthwith due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by Borrower; provided that upon the occurrence of any event in **Section 6.01(h)**, the Loans, all accrued interest and all accrued other amounts payable, including fees, under this Agreement and under the other Facility Documents shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by Borrower. In addition to the foregoing, upon the occurrence of an Event of Default, Administrative Agent or Collateral Agent may, at its option, instruct the Custodian to transfer the whole or any part of the Collateral into the name of Administrative Agent or Collateral Agent or the name of its nominee, notify the obligors on any Collateral to make payment to Administrative Agent or Collateral Agent or its nominee of any amounts due thereon, take control or grant its nominee the right to take control of any proceeds of the Collateral, liquidate any or all of the Collateral, withdraw and/or sell any or all of the Collateral and apply any such Collateral as well as the proceeds of any such Collateral to all unpaid Obligations in such order as the applicable Agent determines in its sole discretion, and exercise any other rights and remedies under any Facility Document, at law or in equity. If Administrative Agent or Collateral Agent exercises its rights under the immediately preceding sentence, it shall promptly so notify Borrower.

**Section 6.02 Certain Provisions Related to Pledged Shares.** At all times prior to the disposition of any Pledged Shares by a Lender Party pursuant to **Section 6.01** herein, Borrower shall have the right to exercise all voting, consensual and other powers of ownership pertaining to the Pledged Shares for all purposes not inconsistent with the terms of this Agreement, any other Facility Document or any other instrument or agreement referred to herein; provided that Borrower agrees that Borrower will not act in any manner that is inconsistent with the terms of this Agreement, any other Facility Document or any such other instrument or agreement, or take any other action in respect of the Pledged Shares that would reasonably be expected to have a Material Adverse Effect or a material adverse effect on the value of the



Pledged Shares or a Lender Party's interest therein or limit or delay its ability to sell or otherwise realize against the Pledged Shares. For the avoidance of doubt, no Lender Party shall have any voting rights with respect to the Pledged Shares, except to the extent that such Lender Party buys any Pledged Shares in a sale or other disposition made pursuant to **Section 6.01**.

**Section 6.03 Application of Funds.** After the exercise of remedies provided for herein or in any other Facility Document (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by 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 Agents and amounts payable under **Sections 2.10, 2.11 and 2.13**) payable to each Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including fees and time charges for attorneys who may be employees of any Lender) arising under the Facility Documents and amounts payable under **Sections 2.10, 2.11 and 2.13**, 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 interest on the Loans and other Obligations arising under the Facility Documents, ratably among the Lenders in proportion to the respective amounts described in this **clause Third** payable to them;

Fourth, to payment of that portion of the Obligations constituting principal in respect of any interest paid in kind ratably among the Lenders in proportion to the respective amounts described in this **clause Fourth** held by them;

Fifth, to payment of that portion of the Obligations constituting unpaid principal of the Loans (other than principal in respect of any interest paid in kind) ratably among the Lenders in proportion to the respective amounts described in this **clause Fifth** held by them; 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.

## **ARTICLE VII AGENTS**

**Section 7.01 Appointment and Authority.** Each of the Lenders hereby irrevocably appoints JPMorgan Chase Bank, N.A., London Branch to act on its behalf as Administrative Agent hereunder and under the other Facility Documents and authorizes Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Each of the Lenders hereby irrevocably appoints JPMorgan Chase Bank, N.A., London Branch to act on its behalf as Collateral Agent hereunder and under the other Facility Documents and authorizes Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Each of the Lenders hereby irrevocably appoints JPMorgan Chase Bank, N.A., London Branch to act on its behalf as Calculation Agent hereunder and under the other Facility Documents and authorizes Calculation Agent to take such actions on its behalf and to exercise such powers as are delegated to Calculation Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. In

performing its functions and duties hereunder, the Agents shall act solely as an agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Borrower. For the avoidance of doubt, Collateral Agent and Calculation Agent shall comply with any instructions from Administrative Agent. The provisions of this Article are solely for the benefit of the Agents and the Lenders, and Borrower shall not 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 Facility Documents (or any other similar term) with reference to 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.

**Section 7.02 Rights as a Lender.** If the Person serving as an Agent hereunder also acts as a Lender hereunder, it shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as an Agent hereunder in its individual capacity. Each Agent and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with Borrower or any Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders.

**Section 7.03 Exculpatory Provisions.**

(a) The Agents shall not have any duties or obligations except those expressly set forth herein and in the other Facility Documents and their duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, each Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(ii) 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 Facility Documents that such Agent is required to exercise, provided that such Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Facility Document or applicable Law; or

(iii) shall not, except as expressly set forth herein and in the other Facility Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as such Agent or any of its Affiliates in any capacity.

No Agent shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in **Sections 6.01** and **8.01**) or (ii) in the absence of its own gross negligence or willful misconduct. No Agent shall be deemed to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to such Agent by Borrower or a Lender.

No Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Facility 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, conditions, or provisions set forth herein or in any of the other Facility Documents, or as to use of the proceeds of the Loans, or as to the existence or possible existence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Facility Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in **ARTICLE III** or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent.

**Section 7.04 Reliance by the Agents.** Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each 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, which by its terms must be fulfilled to the satisfaction of a Lender, Administrative Agent may presume that such condition is satisfactory to such Lender unless Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Agents may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**Section 7.05 Delegation of Duties.** Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Facility Document by or through any one or more agents, sub-agents, affiliates or employees appointed by such Agent. Each Agent and any such agents, sub-agent, affiliates or employees may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such agents, sub-agents, affiliates or employees and to the Related Parties of each Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facility provided for herein as well as activities as an Agent. Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

**Section 7.06 Resignation of Agent.** Any Agent shall have the right to resign at any time by giving prior written notice of its resignation to the Lenders and Borrower. Upon receipt of any such notice of resignation, Required Lenders shall have the right, in consultation with Borrower, to appoint a successor to such Agent, which shall be a bank with an office in New York, New York, or an Affiliate of any such bank with an office in New York, New York. If no such successor shall have been so appointed by Required Lenders or an appointed successor does not accept such appointment within thirty (30) days after the retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders), then the retiring Agent may on behalf of the Lenders, appoint a successor Agent to replace it meeting the qualifications set forth above, provided that if the retiring Agent shall notify Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Facility Documents (except that if any Collateral is then held by such Agent on behalf of the Lenders under any of the Facility Documents, such Agent shall continue to hold such Collateral until such time as a successor Agent to it is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the retiring Agent shall instead be made by or to each Lender directly, until such time as Required Lenders

appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as the applicable Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Facility Documents (if not already discharged therefrom as provided above in this Section). The fees payable by Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After a retiring Agent's resignation hereunder and under the other Facility Documents, the provisions of this **ARTICLE VII** and **Section 8.04** shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent.

**Section 7.07 Non-Reliance on Agents and Other Lenders.** Each Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, performed its own analysis and made its own decision (credit, legal and otherwise) to enter into this Agreement, any other Facility Document or any related agreement or any document furnished hereunder or thereunder. Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to perform its own analysis and make its own decisions (credit, legal and otherwise) in taking or not taking action under or based upon this Agreement, any other Facility Document or any related agreement or any document furnished hereunder or thereunder.

**Section 7.08 No Other Duties.** Anything herein to the contrary notwithstanding, no Agent hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Facility Documents, except in its capacity, as applicable, as such Agent hereunder or thereunder.

**Section 7.09 Collateral and Guaranty Matters.** Each Lender hereby further authorizes Administrative Agent and Collateral Agent to enter into the Facility Documents as (in the case of Collateral Agent) secured party on behalf of and for the benefit of the Lenders and agrees to be bound by the terms of the Facility Documents. Without limiting the provisions of **Section 7.10**, the Lenders irrevocably authorize Administrative Agent and Collateral Agent to take all such actions as shall be required to release any Lien on any property granted to or held by Administrative Agent or Collateral Agent under any Facility Document (i) upon termination of the aggregate Commitments and payment in full of all Obligations (other than unmatured contingent indemnification obligations), (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Facility Document, (iii) that is expressly permitted to be released pursuant to, and subject to the conditions set forth in, **Section 2.09(b)** and/or **Section 2.09(c)**, as applicable, or (iv) subject to **Section 8.01**, if approved, authorized or ratified in writing by the Required Lenders. Neither Administrative Agent nor Collateral Agent shall be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of Collateral Agent's Lien thereon, or any certificate prepared by Borrower in connection therewith, nor shall Administrative Agent or Collateral Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

**Section 7.10 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 Borrower, Administrative Agent (irrespective of whether the principal of any Loans 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, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid to the Agents or the Lenders under the Facility Documents and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agents and their respective agents and counsel and all other amounts due the Lenders and the Agents under the Facility Documents) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to 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 Administrative Agent under the Facility Documents.

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 owed by Borrower hereunder 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.

## ARTICLE VIII MISCELLANEOUS

**Section 8.01 Amendments, Etc.** No amendment or waiver of any provision of this Agreement or any other Facility Document, and no consent to any departure by Borrower therefrom, shall be effective unless in writing signed by the Required Lenders and Borrower, and acknowledged by Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no such amendment, waiver or consent shall:

(a) waive any condition set forth in **Section 3.01** without the written consent of each Lender as of the Closing Date;

(b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to **Section 6.01**) without the written consent of such Lender;

(c) postpone any date fixed by this Agreement or any other Facility Document for any payment (excluding mandatory prepayment) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Facility Document without the written consent of each Lender adversely and directly affected thereby;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan, or any fees or other amounts payable hereunder or under any other Facility Document without the written consent of each Lender adversely and directly affected thereby; provided that only the consent of Required Lenders shall be necessary to adjust the default rate as set forth in **Section 2.04(b)** or to waive any obligation of Borrower to pay interest at such rate;

(e) change **Section 2.17** or **Section 6.03** in a manner that would alter the pro rata sharing required thereby without the written consent of each Lender;

(f) change any provision of this Section or the definition of “**Required Lenders**” or any other provision hereof specifying the number or percentage of the Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender; or

(g) release a substantial portion of the Collateral without the written consent of each Lender, except to the extent the release of the Collateral is permitted pursuant to **Section 7.09** (in which case such release may be made by Administrative Agent acting alone);

and provided further that no amendment, waiver or consent shall, unless in writing and signed by the applicable Agent in addition to the Lenders required above, affect the rights or duties of such Agent under this Agreement or any other Facility Document.

Notwithstanding anything to the contrary herein, upon the announcement by any Person of any transaction or event or series of transactions or events that, if consummated, would constitute a Potential Adjustment Event, or upon the occurrence of a Potential Adjustment Event, Calculation Agent may (a) make corresponding adjustments to one or more of the material terms of this Agreement as Calculation Agent determines necessary to preserve for the Lenders the fair value of the transactions hereunder and (b) determine the effective time(s) of the adjustment(s) (the “**Adjustment Event Effective Time**”) (taking into account, among other factors, volatility, liquidity and free float of the Shares, the credit profile of Issuer and Transfer Restrictions, in each case, relative to the Pledged Shares prior to giving effect to the relevant event). Any such adjustments pursuant to this paragraph shall be binding on all parties to the Facility Documents and all such parties shall enter into such documentation required or reasonably requested by Administrative Agent to reflect such adjustments. Borrower shall promptly notify Calculation Agent upon becoming aware of the occurrence of any Potential Adjustment Event or Corporate Event, and Calculation Agent shall promptly notify Borrower of any adjustment made pursuant to this paragraph. Upon receipt of written request from the Borrower following any adjustment pursuant to this paragraph or any determination of an Interest Rate Hedge Unwind Amount, the Calculation Agent shall reasonably promptly provide Borrower with a written explanation describing in reasonable detail any calculation, adjustment or determination made by it (including any quotations, market data or information from internal sources used in making such calculations, but without disclosing the Calculation Agent’s proprietary models or confidential information).

#### **Section 8.02 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 telecopier 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 Borrower, to

ASAC II LP  
c/o Northern Trust Private Equity Fund Administration  
Dept 2008  
801 S. Canal

Chicago, IL 60607  
Attention: Matthew Smith, Vice President  
Phone: (312) 557-5687  
Fax: (312) 267-3748  
E-mail: USPEFA\_ASAC@ntrs.com

with a copy to

ASAC II LLC  
c/o Chadwick and Company  
225 Highway 35, Suite 102C  
Red Bank, NJ 07701  
Attention: Robert V. Chadwick  
Phone: (732) 345-8300  
Fax: (732) 345-8332  
E-mail: bob@chadwickcpa.com

(ii) if to Administrative Agent or any other Agent, to

JPMorgan Chase Bank, N.A., London Branch  
Corporate EDG Trading  
383 Madison Avenue  
New York, New York 10179  
Attn: Pierandrea Minafra, Graham Orton  
Telephone No.: +1 (212) 622-7064  
Facsimile No. : +1 (917) 464-6770  
Email: edg\_corporates\_na@jpmorgan.com

with a copy to:

JPMorgan Chase Bank, N.A., London Branch  
Corporate Equity Derivatives  
383 Madison Avenue  
New York, New York 10179  
Attn: Jason Shrednick  
Telephone No.: +1 (212) 622-6392  
Facsimile No.: +1 (917) 464-6770  
Email: Jason.shrednick@jpmorgan.com; and

(iii) if to a Lender, to it at its address (or telecopier number) set forth in **Schedule I** hereto or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

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 telecopier 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 **clause (b)** below, shall be effective as provided in such **clause (b)**.

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to **Section 2.02** if such Lender 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 acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next 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.

(c) Change of Address, Etc. Each of Borrower and each Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to Borrower and Administrative Agent. In addition, each Lender agrees to notify Administrative Agent from time to time to ensure that Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(d) Reliance by Agents and Lenders. The Agents and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of 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. Borrower shall indemnify each Agent, 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 Borrower. All telephonic notices to and other telephonic communications with any Agent may be recorded by such Agent, and each of the parties hereto hereby consents to such recording.

### **Section 8.03 No Waiver; Remedies; Securities Contracts.**

(a) No failure on the part of any Lender or Agent to exercise, and no delay in exercising, any right hereunder or under any other Facility Document shall operate as a waiver thereof nor shall the single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in the Facility Documents are cumulative and not exclusive of any remedies provided by Law. No notice to or



demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of any Agent or any Lender to any other or further action in any circumstances without notice or demand.

(b) Notwithstanding anything to the contrary contained herein or in any other Facility Document, the authority to enforce rights and remedies hereunder and under the other Facility Documents against Borrower shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, Administrative Agent in accordance with **Section 6.01** for the benefit of all Lenders; provided that the foregoing shall not prohibit (a) 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 Facility Documents, (b) any Lender from exercising setoff rights in accordance with **Section 8.13** (subject to the terms of **Section 2.17**), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to Borrower under any Debtor Relief Law.

(c) Borrower and each Lender acknowledge that each of this Agreement and the other Facility Documents is intended to be a “**securities contract**” within the meaning of the Bankruptcy Code of the United States and that each delivery, transfer, payment and grant of a security interest made or required to be made hereunder or thereunder or contemplated hereby or thereby or made, required to be made or contemplated in connection herewith or therewith is intended to be a “**transfer**” and a “**margin payment**” or a “**settlement payment**” within the meaning of Sections 362(b)(6), (7) and/or (27) and Sections 546(e), (f) and/or (j) of the Bankruptcy Code of the United States. The parties further acknowledge that each of this Agreement and the other Facility Documents is intended to be a “**master netting agreement**” within the meaning of the Bankruptcy Code of the United States.

#### **Section 8.04 Costs and Expenses; Indemnification; Damage Waiver.**

(a) Costs and Expenses. Borrower shall pay or reimburse (i) all reasonable and documented out-of-pocket expenses incurred by Administrative Agent, any other Agent, and their Affiliates, and any Lender (including the reasonable and documented fees, charges and disbursements of counsel for any Agent or Lender), in connection with the syndication of the credit facilities provided for herein (including, without limitation, pursuant to credit default swap or other derivative transactions or participations), the preparation, negotiation, execution, delivery and administration of this Agreement and the other Facility 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 and documented out-of-pocket expenses incurred by Administrative Agent, any other Agent, or any Lender (including the reasonable and documented fees, charges and disbursements of any counsel for any Agent and any Lender), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Facility Documents, including its rights under this Section, or (B) in connection with the Loans made hereunder, including all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans, and (iii) any losses (including market losses), costs or expenses incurred in connection with the acquisition, establishment, re-establishment, substitution, maintenance, unwinding or disposition of, or realization or recovery of the proceeds of, any transaction(s), position(s) or asset(s) (or any part thereof) that Administrative Agent, any other Agent, any Lender or any of their Affiliates deems necessary (in its sole discretion) to hedge the market risk of the Collateral entered into or acquired after the occurrence, and during the continuance, of an Event of Default.

(b) Indemnification by Borrower. Borrower shall indemnify each Agent (and any sub-agent thereof), each Lender 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 fees, charges and disbursements of any counsel for any Indemnitee (which, in the case of counsel, shall be limited to the reasonable and documented fees, disbursements and other charges of (i) one primary counsel and one additional local counsel in each applicable jurisdiction for the Administrative Agent, (ii) one additional primary counsel, and one additional counsel in each applicable jurisdiction, for all other Indemnitees (taken as a whole) and (iii) solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to the affected Indemnitees (taken as a whole)), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by Borrower or any Related Party of Borrower arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Facility Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of each Agent (and any sub-agent thereof) and its respective Related Parties only, the administration of this Agreement and the other Facility Documents, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any joint or other instructions requested or required by Borrower and given to Custodian under the Control Agreement, or (iv) any actual 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 Borrower or any other Related Party of Borrower, 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, (y) result from a claim brought by Borrower or any Related Party of Borrower against an Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Facility Document, if Borrower or such Related Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) arise solely from a claim brought by one Indemnitee against another Indemnitee, except for any claims against any Agent in its capacity as such, that does not involve any act or omission of Borrower or any of its Affiliates.

(c) Reimbursement by Lenders. To the extent that Borrower for any reason fails to indefeasibly pay any amount required under **clause (a)** or **(b)** of this Section to be paid by it to any Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to such Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender’s Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against such Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for such Agent (or any such sub-agent) in connection with such capacity. The obligations of Lenders under this **clause (c)** are subject to the provisions of **Section 2.16(c)**.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, Borrower shall not assert, and Borrower hereby waives, 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 Facility Document or any agreement or instrument contemplated hereby,

the transactions contemplated hereby or thereby, any Loan 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 by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Facility Documents or the transactions contemplated hereby or thereby, other than for direct or actual damage resulting from the gross negligence, bad faith or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) **Payments.** All amounts due under this Section shall be payable not later than ten Business Days after demand therefor, except that amounts described in **clause (a)(i)** of this Section that are incurred or accrued on or prior to the Closing Date shall be payable on the Closing Date.

(f) **Survival.** The agreements in this Section shall survive the resignation of the Agents, the replacement of any Lender, the termination of the Facility and the repayment, satisfaction or discharge of all the other Obligations.

**Section 8.05 Payments Set Aside.** To the extent that any payment by or on behalf of Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by 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 Lenders under **clause (b)** of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

**Section 8.06 Assignments and Participations.**

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of 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 **clause (b)** of this Section, (ii) by way of participation in accordance with the provisions of **clause (d)** of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **clause (e)** of this Section (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 and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement. For the avoidance of doubt, nothing in this Agreement shall be construed to prevent any Lender from hedging its exposure to the Facility or the Collateral.

(b) Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the 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.

(1) 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 that equal at least the amount specified in **paragraph (b)(i)(2)** of this Section 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

(2) in any case not described in **clause (b)(i)(1)** of this Section, 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 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 unless each of Administrative Agent and, so long as no Event of Default has occurred and is continuing, 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.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by **clause (b)(i)(2)** of this Section and, in addition:

(1) the consent of Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to an Eligible Assignee; provided that Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to Administrative Agent within five (5) Business Days after having received notice thereof; and

(2) the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that

(x) Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment and (y) for the avoidance of doubt, Borrower shall not be obligated to pay all or any portion of such processing fee.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to Borrower or any of Borrower's Affiliates or to the Issuer or any of the Issuer's Affiliates or Subsidiaries, (B) to 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.

(vi) Purchaser Representations. Any such assignee shall make the Purchaser Representations to each of Collateral Agent, Administrative Agent and each other Lender hereunder.

Subject to acceptance and recording thereof by Administrative Agent pursuant to **clause (b)** of this Section, 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 2.10, 2.11, 2.13, and 8.04**.

(c) Register. Administrative Agent, acting solely for this purpose as an agent of Borrower (and such agency being solely for tax purposes), shall maintain at Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of Lenders, and the Commitments of, 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 entries in the Register shall be conclusive absent manifest error, and Borrower, Administrative Agent and 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 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, Borrower or Administrative Agent, sell participations to any Person (other than a natural Person, Borrower or any of Borrower's Affiliates) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Borrower, Administrative Agent, and Lenders 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 8.04(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 8.01** that affects such Participant. Borrower agrees that each Participant shall be entitled to the benefits of **Sections 2.10, 2.11, and 2.13** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **clause (b)** of this Section (it being understood that the documentation required under **Section 2.11(e)** shall be delivered to 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; provided that such Participant (A) agrees to be subject to the provisions of **Section 2.17** as if it were an assignee under **clause (b)** of this Section and (B) shall not be entitled to receive any greater payment under **Section 2.10 or 2.11**, 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 (x) such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation or (y) the sale of the participation to such Participant is made with Borrower's prior written consent. To the extent permitted by law, each Participant also shall be entitled to the benefits of **Section 8.13** as though it were a Lender; provided that such Participant agrees to be subject to **Section 2.17** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of 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 Facility 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 or its other obligations under any Facility Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. 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, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

Any such participant shall make the Purchaser Representations to each of Collateral Agent, Administrative Agent and each other Lender hereunder.

(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; 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.

#### **Section 8.07 Governing Law; Submission to Jurisdiction.**

(a) Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of New York, without giving effect to its conflict of laws provisions other than Section 5-1401 of the New York General Obligations Law.

(b) Submission to Jurisdiction. Borrower irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the United States District Court of the Southern District of the State of New York, and all appropriate appellate courts or, if jurisdiction in such court is lacking, any New York State court of competent jurisdiction sitting in New York (and all appropriate appellate courts), in any action or proceeding arising out of or relating to this Agreement or any other Facility Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable Law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Facility Document shall affect any right that any Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Facility Document against Borrower or the properties of such party in the courts of any jurisdiction.

(c) Waiver of Venue. Borrower 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 Facility Document in any court referred to in **clause (b)** of this Section. 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.

(d) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in **Section 8.02(a)**. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable Law.

(e) 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 FACILITY 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 FACILITY DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **Section 8.07(e)**.

**Section 8.08 Severability**. In case any provision in this Agreement or any other Facility Document shall be held to be invalid, illegal or unenforceable, such provision shall be severable from the rest of this Agreement or such other Facility Document, as the case may be, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Section 8.09 Counterparts; Integration; Effectiveness; Electronic Execution.**

(a) 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 Facility Documents, and any separate letter agreements with respect to fees payable to Administrative Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in **ARTICLE III**, this Agreement shall become effective when it shall have been executed by Administrative Agent and when 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 telecopier shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) **Electronic Execution of Assignments.** The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**Section 8.10 Survival of Representations.** All representations and warranties made hereunder shall survive the execution and delivery hereof. Such representations and warranties have been or will be relied upon by each Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that any Agent or any Lender may have had notice or knowledge of any Default or Event of Default at the time of any Loan, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

**Section 8.11 Confidentiality.** Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information (as defined below) pursuant to the requirements hereof in accordance with such Agent’s and such Lender’s customary procedures for handling confidential information of such nature, except that Information (together with any Non-public Information received by any Agent or any Lender relating to Borrower, the Issuer or the Shares in breach of **Section 5.01(m)**) may be disclosed (a) to such Agent’s or Lender’s Affiliates and to its and its Affiliates’ respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential pursuant to the terms hereof), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (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 Facility Document or any action or proceeding relating to this Agreement or any other Facility Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as, or more restrictive than, those of this **Section 8.11**, to (i) any permitted assignee of or Participant in, or any prospective permitted assignee of or Participant in, any of its rights or obligations under this Agreement or the Facility Documents or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loans, Borrower and/or its obligations under the Facility Documents, (g) with the consent of Borrower, (h) to any rating agency when required by it, provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any confidential information relating to Borrower, the Loans received by the rating agency from any Agent or any Lender or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this **Section 8.11** or (y) becomes available to any Agent or any Lender on a nonconfidential basis from a source other than Borrower. With respect to any



disclosure under Section 8.11(b) and (c), the applicable Lender Party shall use commercially reasonable efforts to promptly notify Borrower, to the extent legally permissible and practicable under the circumstances, so as to permit Borrower to obtain a protective order as to such disclosure, and such Lender Party will use reasonable efforts to cooperate (to the extent practicable and permitted by its respective then existing policies) with the Borrower for such purpose. Notwithstanding anything herein to the contrary, any party to the Facility Documents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by the Facility Documents and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure.

For purposes of this **Section**, “**Information**” means all information received from Borrower, General Partner or their respective Affiliates relating to Borrower or its business, other than any such information that is available to any Agent or any Lender on a nonconfidential basis prior to disclosure by Borrower, General Partner or their respective Affiliates, provided that, in the case of information received from Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this **Section 8.11** shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

**Section 8.12 No Advisory or Fiduciary Relationship.** 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 Facility Document), Borrower acknowledges and agrees that: (a)(i) the arranging and other services regarding this Agreement provided by Administrative Agent are arm’s-length commercial transactions between the Parents, General Partner, Borrower and its Affiliates, on the one hand, and Administrative Agent and its Affiliates, on the other hand, (ii) Borrower, General Partner and each Parent has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) Borrower, General Partner and each Parent is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Facility Documents; (b)(i) each Agent 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 any Parent, General Partner, Borrower or any of their respective Affiliates, or any other Person and (ii) the Agents have no any obligation to Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Facility Documents; and (c) each Agent and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Parents, General Partner, Borrower and its Affiliates, and Administrative Agent has no obligations to disclose any of such interests to any Parent, General Partner, Borrower or any of its Affiliates. To the fullest extent permitted by law, Borrower hereby waives and releases any claims that it may have against Administrative Agent or its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**Section 8.13 Right of Setoff.** Following the occurrence and during the continuation of an Event of Default, each Lender, Administrative Agent and their respective Affiliates (each, a “**Set-off Party**”) is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to Borrower or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) and any other indebtedness at any time held or owing by a Set-off Party (including, but not limited to, by any of their branches and agencies wherever located) to or for the credit or the account of Borrower or any of its Affiliates against and on account of the obligations and liabilities of

Borrower or such Affiliate to the Set-off Party under this Agreement or under any of the other Facility Documents then due, including, but not limited to, all claims of any nature or description arising out of or connected with this Agreement or any other Facility Document, irrespective of whether or not the relevant Set-off Party shall have made any demand hereunder and although said obligations, liabilities or claims, or any of them, or are owed to a branch or office of such Lender or Administrative Agent different from the branch or office holding such deposit or obligated on such indebtedness. The parties agree that the Collateral Account is a general and not special account. The rights of each Set-off Party under this **Section 8.13** are in addition to other rights and remedies (including other rights of setoff) that such Lender or Administrative Agent, or their respective Affiliates may have. Each Lender agrees to notify Borrower and Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

**Section 8.14 [Reserved].**

**Section 8.15 No Fiduciary Duty.** Each Administrative Agent, each Lender and their Affiliates (collectively, solely for purposes of this Section, the “Lenders”), may have economic interests that conflict with those of Borrower, its stockholders and/or its affiliates. Borrower agrees that nothing in the Facility 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 Borrower, its stockholders or its affiliates, on the other. Borrower acknowledges and agrees that (i) the transactions contemplated by the Facility 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 Borrower, 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 Borrower, 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 Borrower, its stockholders or its Affiliates on other matters) or any other obligation to Borrower except the obligations expressly set forth in the Facility Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of Borrower, its management, stockholders, creditors or any other Person. Without limiting the foregoing, Borrower acknowledges and agrees that any Lender or any Agent or any of their Affiliates may at any time, including, without limitation, following the occurrence and during the continuance of an Event of Default, buy, sell or short-sell Shares or enter into or unwind derivative transactions with respect to the Shares to hedge its exposure to the Facility or otherwise, and any such market activities may affect the market price of the Shares in a manner adverse to Borrower. Borrower 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. Borrower 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 Borrower, in connection with such transaction or the process leading thereto.

**Section 8.16 USA PATRIOT Act Notice.** Each Lender that is subject to the Act (as hereinafter defined) and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender or Administrative Agent, as applicable, to identify Borrower in accordance with the Act. Borrower agrees to promptly, following a request by any Lender or Administrative Agent, provide such Lender or Administrative Agent with all of the information requested by such Person (x) to the extent such Person deems such information reasonably necessary to identify Borrower or General Partner in accordance with the Act or (y) in connection with such Person’s standard “on boarding” process (including without limitation pursuant to the requirements of any “know your customer” or anti money laundering rules and regulations).

**Section 8.17 Entire Agreement.** THIS AGREEMENT AND THE OTHER FACILITY DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

[END OF TEXT]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers or representatives thereunto duly authorized, as of the date first above written.

**BORROWER:**

**ASAC II LP,**  
as Borrower

By: ASAC II LLC, as its general partner

By: /s/ Brian G. Kelly

Name: Brian G. Kelly

Title: Manager

**GENERAL PARTNER:**

**ASAC II LLC,**  
In its own capacity, solely with respect to ARTICLE V

By: /s/ Robert A. Kotick

Name: Robert A. Kotick

Title: Manager

*[Additional signature pages follow]*

*[Signature Page to JPM Loan Agreement]*

**LENDER:**

**JPMORGAN CHASE BANK, N.A., LONDON BRANCH,**  
as Lender

By: /s/ Michael L. Gordon

Name: Michael L. Gordon

Title: Managing Director

*[Additional signature pages follow]*

*[Signature Page to JPM Loan Agreement]*

**AGENTS:**

**JPMORGAN CHASE BANK, N.A., LONDON BRANCH,**  
as Administrative Agent

By: /s/ Michael L. Gordon

Name: Michael L. Gordon

Title: Managing Director

**JPMORGAN CHASE BANK, N.A., LONDON BRANCH,**  
as Collateral Agent and Calculation Agent

By: /s/ Michael L. Gordon

Name: Michael L. Gordon

Title: Managing Director

**LOAN AGREEMENT**

dated as of October 11, 2013

among

**ASAC II LP**  
*as Borrower,*

**ASAC II LLC**

and

**The several Lenders**  
**from time to time party hereto,**

and

**MERRILL LYNCH INTERNATIONAL,**  
*as Administrative Agent,*

and

**MERRILL LYNCH PROFESSIONAL CLEARING CORP.,**  
*as Collateral Agent and Calculation Agent*

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As used in this Exhibit C, “[\*\*\*\*\*]” indicates that material has been omitted herefrom pursuant to a request for confidential treatment. Such material has been filed separately with the Securities and Exchange Commission.

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| <u>Exhibit H-2</u> | - Form of Legal Opinion of Lenders' Cayman Island Counsel |

This **LOAN AGREEMENT** dated as of October 11, 2013, among **ASAC II LP**, a Cayman Islands exempted limited partnership ("**Borrower**"), **ASAC II LLC**, a Delaware limited liability company ("**General Partner**"), **BANK OF AMERICA, N.A., LONDON BRANCH** and each other lender from time to time party hereto (collectively, the "**Lenders**" and individually, a "**Lender**"), **MERRILL LYNCH INTERNATIONAL**, as Administrative Agent, and **MERRILL LYNCH PROFESSIONAL CLEARING CORP.**, as Collateral Agent and Calculation Agent.

Borrower has requested that the Lenders make loans to it in an aggregate initial principal amount not in excess of \$214,386,825.67, and the Lenders are prepared to make such loans upon the terms and subject to the conditions set forth in this Agreement.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## **ARTICLE I DEFINITIONS AND ACCOUNTING TERMS**

**Section 1.01 Certain Defined Terms.** As used in this Agreement, the following terms shall have the following meanings:

"**Act**" has the meaning specified in **Section 8.16**.

"**Adjustment Event Effective Time**" has the meaning specified in **Section 8.01**.

"**Administrative Agent**" means Merrill Lynch International, in its capacity as administrative agent under any of the Facility Documents, or any successor administrative agent.

"**Administrative Agent's Office**" means Administrative Agent's address and, as appropriate, account as set forth in **Section 8.02**, or such other address or account as Administrative Agent may from time to time notify to Borrower and the Lenders.

"**Affiliate**" means, unless otherwise expressly specified, 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" (all within the meaning of Rule 144) the Person specified.

"**Agents**" means, collectively, Administrative Agent, Collateral Agent, and Calculation Agent.

"**Agreement**" means this Loan Agreement.

"**Applicable Exchange**" means initially The NASDAQ Global Select Market, subject to adjustment from time to time pursuant to the proviso set forth in the definition of "Issuer Delisting".

"**Applicable Percentage**" means, with respect to any Lender at any time, the percentage of the Facility represented by (a) on the Closing Date, such Lender's Commitment at such time and (b) thereafter, the principal amount of such Lender's Loans at such time. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on **Schedule I**, or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"**Applicable Floating Rate**" means, for any day, the sum of LIBOR plus the Spread; provided that if Calculation Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining LIBOR for the Compounding Period including such day, "**Applicable Floating Rate**" for such day means Base Rate plus the Spread for such day.

“**Applicable Rate**” means, for any day:

(a) if the Net PIK Amount on such day is \$0, the Fixed Rate, or

(b) if the Net PIK Amount on such day is greater than \$0, the sum of (A) (1) (x) the outstanding principal amount of Loans on such day less such Net PIK Amount *divided by* (y) such outstanding principal amount *multiplied by* (2) the Fixed Rate and (B) (1) (x) such Net PIK Amount *divided by* (y) such outstanding principal amount *multiplied by* (2) the Applicable Floating Rate for such day.

“**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.

“**Arrangement Fee**” has the meaning specified in **Section 2.05(a)**.

“**Assignment and Assumption**” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by **Section 8.06**), and accepted by Administrative Agent, in substantially the form of **Exhibit E** or any other form approved by Administrative Agent.

“**Available Cash Amount**” has the meaning specified in **Section 5.02(r)**.

“**Bankruptcy Action**” means any of the following: (a) to institute any proceedings to adjudicate Borrower as bankrupt or insolvent, (b) to institute or consent to the institution of bankruptcy, reorganization or insolvency proceedings against Borrower or file a bankruptcy petition or any other petition seeking, or consenting to, reorganization or relief with respect to Borrower under any Debtor Relief Law, (c) to file or consent to a petition seeking liquidation, reorganization, dissolution, winding up or similar relief with respect to Borrower, (d) to consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or conservator (or other similar official) of Borrower or any part of its property, (e) to make any assignment for the benefit of Borrower’s creditors, (f) to cause Borrower to admit in writing its inability to pay its debts, or (g) to take any action in furtherance of any of the foregoing.

“**Bankruptcy Code**” means the Federal Bankruptcy Code of 1978, Title 11 of the United States Code, as amended from time to time.

“**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 prime rate and (c) the BBA LIBOR determined, at approximately 11:00 a.m., London time two Business Days prior to such day for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day plus 1.00%. For purposes of this definition, the “**prime rate**” means the rate of interest per annum publicly announced from time to time by Bank of America, N.A. as its prime rate; each change in the prime rate shall be effective from and including the date such change is publicly announced as being effective.

“**Benefit Plan**” means (a) an “employee benefit plan” within the meaning of Section 3(3) of ERISA, (b) a “Plan” within the meaning of Section 4975(e) (1) of the Code, or (c) an entity the underlying assets of which include assets of employee benefit plans or plans as a result of investments by such plans in the entity pursuant to Department of Labor Regulation Section 2510.3-101.

“**Borrower**” has the meaning specified in the preamble hereto.

“**Business Day**” means (a) any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized by law to remain closed and (b) with respect to all notices, determinations, fundings and payments in connection with LIBOR (excluding, for the avoidance of doubt, any notice, determination, funding or payment pursuant to **Section 2.08(d)** or **Section 2.09(a)**), the term “Business Day” shall mean any day that is a Business Day described in **clause (a)** and on which banks are open for dealings in Dollar deposits in the London interbank Eurodollar market.

“**Calculation Agent**” means Merrill Lynch International (or any Affiliate or designee of Administrative Agent). Unless otherwise expressly specified, calculations and determinations hereunder or in connection with the transactions contemplated hereby or as otherwise provided herein shall be made by Calculation Agent in good faith and in its commercially reasonable discretion and shall be conclusive absent manifest error.

“**Cash**” means all cash in Dollars at any time and from time to time deposited in the Collateral Account.

“**cash dividends**” means any cash dividends and distributions paid with respect to the Pledged Shares.

“**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; (b) any change in any Law 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, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “**Change in Law**”, regardless of the date enacted, adopted or issued.

“**Change of Control**” means any event or transaction or a series of related transactions, as a result of which the aggregate percentage of voting Equity Interests (determined by reference to voting power) in General Partner beneficially owned or controlled by Persons other than Parents or Parent Entities exceeds 30%.

“**Closing Date**” means the earliest date on which the conditions precedent set forth in **Section 3.01** shall have been satisfied or waived in accordance with **Section 8.01** of this Agreement and the funding under **Section 2.01** has occurred.

“**Closing Price**” means, as of any date, the closing sale price (or if no closing sale price is reported, the average of the last bid and ask prices or, if more than one in either case, the average of the average last bid and the average last ask prices) per Share on that date as reported in composite transactions for the Applicable Exchange. The “**Closing Price**” prior to 4:00 pm on any date of determination that is an Exchange Business Day or at any time on any date of determination that is not an Exchange Business Day will be the “**Closing Price**” determined on the immediately preceding Exchange Business Day. Notwithstanding the foregoing, if a Market Disruption Event or Issuer Delisting exists on such date of determination, the “**Closing Price**” on such date of determination shall be the price determined by Calculation Agent as the prevailing market price per Share on such date of determination.

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended (unless as specifically provided otherwise).

“**Collateral**” means, collectively, all of the personal property (including the Pledged Shares) in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations.

“**Collateral Account**” means that certain securities account of Borrower established and maintained by Custodian pursuant to the Control Agreement, including any subaccount, substitute, successor or replacement account, for purposes of holding all Cash, Shares and other property required or permitted to be pledged as Collateral hereunder or under the Pledge Agreement.

“**Collateral Agent**” means Merrill Lynch Professional Clearing Corp., in its capacity as collateral agent for the Lenders.

“**Collateral Documents**” means the Pledge Agreement, the Control Agreement and all other instruments, documents and agreements delivered by Borrower pursuant to this Agreement or any of the other Facility Documents in order to grant to Collateral Agent, for the benefit of Administrative Agent and the Lenders, a Lien on any real, personal or mixed property of Borrower as security for the Obligations.

“**Collateral Requirement**” means, at any time, that all steps required under applicable Law or reasonably requested by Administrative Agent or Collateral Agent to ensure that the Collateral Documents create a valid and perfected First Priority Lien on all the Collateral shall have been taken.

“**Commitment**” means, as to each Lender, its obligation to make a Loan to Borrower pursuant to **Section 2.01** in an initial principal amount not to exceed the amount set forth opposite such Lender’s name on **Schedule I** under the caption “Initial Commitment” or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement; provided that the aggregate Commitments shall be permanently reduced *pro rata* for each Lender to be equal to the product of (a) the Maximum Initial LTV Ratio, (b) the Initial Share Price and (c) the number of Shares included in the Eligible Pledged Shares on the Closing Date, if such product is less than \$214,386,825.67.

“**Communication**” has the meaning specified in **Section 5.01(m)**.

“**Compounded Amounts**” means, with respect to any Loan on any date, initially \$0, (a) as increased, on any Compounding Period End Date, by the aggregate amount of (i) interest that accrued, pursuant to clause (x) of the first sentence of Section 2.04(a), on the then-outstanding principal amount of such Loan and (ii) interest that accrued, pursuant to clause (y) of the first sentence of Section 2.04(a), on all Compounded Amounts with respect to such principal amount, in each case, during the Compounding Period that ended on such Compounding Period End Date, and (b) as reduced to \$0 on each Interest Payment Date.

“**Compounding Period**” means each period (a) commencing on, and including, the calendar day immediately following any Compounding Period End Date, or in the case of the initial such period, the Closing Date, and (b) ending on, and including, the next succeeding Compounding Period End Date, or in the case of the final such period, the Maturity Date.

“**Compounding Period End Date**” means each March 19, June 19, September 19 and December 19 that occurs after the Closing Date and prior to the Maturity Date.

**“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.

**“Control”** means, unless otherwise expressly specified, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **“Controlling”** and **“Controlled”** have meanings correlative thereto.

**“Control Agreement”** means the control agreement dated as of the date hereof among Borrower, the Custodian, and Collateral Agent, in the form of **Exhibit D**.

**“Corporate Event”** means (a) an Issuer Delisting, (b) an Issuer Dissolution, (c) an Issuer Insolvency, (d) an Issuer Insolvency Filing, (e) an Issuer Nationalization, (f) an Issuer Trading Suspension or (g) an Issuer Default Event.

**“Custodian”** means Merrill Lynch Professional Clearing Corp. or its designee or nominee, acting in its capacity as custodian, or any other custodian selected by Administrative Agent.

**“Debt”** means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP, (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments; (b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments; (c) net obligations of such Person under any Swap Contract; (d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than sixty (60) days after the date on which such trade account payable was created); (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse; (f) capital leases and Synthetic Lease Obligations; (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and (h) all Guarantees of such Person in respect of any of the foregoing. For all purposes hereof, the Debt of any Person shall include the Debt of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Debt is expressly made non-recourse to such Person.

**“Debt Purchase Transaction”** means, in relation to a Person, a transaction where such Person:

(a) purchases by way of assignment or transfer any Commitment or Loan;

(b) enters into any sub-participation in respect of any Commitment or Loan; or

(c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of any Commitment or Loan.

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

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

“**Designated Jurisdiction**” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“**Dollars**” and “**\$**” mean the lawful money of the United States.

“**Early Termination Fee**” means the early termination fee required under **Section 2.05(b)**.

“**Eligible Assignee**” means (a) a Lender, an Affiliate of any Lender or an Approved Fund that makes the Purchaser Representations, (b) any of Barclays Bank PLC, BNP Paribas, Citibank, N.A., Credit Agricole Corporate & Investment Bank, Credit Suisse AG, Deutsche Bank AG, Goldman Sachs Bank USA, JPMorgan Chase Bank, N.A., Morgan Stanley Bank, N.A., Natixis, Nomura International PLC, Royal Bank of Canada or UBS AG or any Affiliate thereof that makes the Purchaser Representations, or (c) any other Person (other than a natural Person) approved by the Borrower (such approval not to be unreasonably withheld, conditioned or delayed) that makes the Purchaser Representations; provided that no such approval shall be required if an Event of Default has occurred and is continuing; and provided further that (1) if Borrower has not consented to or disapproved of any prospective assignee in writing within five Business Days of any request that Borrower consent to such assignee, Borrower’s consent shall have been deemed to have been received with respect to such assignee and (2) none of (x) any Parent or any Affiliate thereof, (y) Borrower or any owner of Equity Interests therein or any Affiliate thereof or (z) the Issuer or any Affiliate thereof shall be an Eligible Assignee.

“**Eligible Cash Collateral**” means Cash to the extent such Cash is Eligible Collateral.

“**Eligible Collateral**” means Collateral over which Collateral Agent, for the benefit of Administrative Agent and the Lenders, has a valid and perfected First Priority Lien created under the Collateral Documents.

“**Eligible Equity Value**” means, on any date, the amount equal to the product of (a) the number of Shares included in the Eligible Pledged Shares on such date, excluding any Shares that have been sold pursuant to **Section 2.09(a)(iii)** and are being held in the Collateral Account pending settlement of such sale, and (b) the Closing Price as of such date.

“**Eligible Exchange**” means any of any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market, or any successor thereto.

“**Eligible Non-Share Collateral**” means Eligible Cash Collateral and securities (other than Eligible Pledged Shares) acceptable to Administrative Agent in its sole discretion to the extent such securities are Eligible Collateral.

“**Eligible Pledged Shares**” means the Pledged Shares to the extent such Pledged Shares (a) are Eligible Collateral, (b) are (i) registered in the name of The Depository Trust Company’s nominee, (ii) maintained in the form of book entries on the books of The Depository Trust Company and (iii) allowed to be settled through The Depository Trust Company’s regular book-entry settlement services, (c) are not subject to any Transfer Restrictions (other than the Existing Transfer Restrictions), (d) have been duly authorized and validly issued and are fully paid and non-assessable, and (e) are not subject to any



shareholders agreement, investor rights agreements, lock up agreement, or any other similar agreements or any voting or other contractual restrictions except for (x) the Purchase Agreement, (y) the Stockholders Agreement and (z) the Amended and Restated Limited Partnership Agreement of Borrower, in each case of (y) or (z), substantially in the form reviewed by the Administrative Agent and, in each case of (x), (y) or (z), without giving effect to any amendment thereto or waiver thereunder following the date thereof.

“**Environmental, Health or Safety Laws**” means any and all Laws, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution, protection of natural resources or the environment, the generation, use, handling, transportation, storage, treatment, disposal, presence, discharge or release of or exposure to any Hazardous Materials, or human health or safety.

“**Environmental, Health or Safety Liability**” means any liability, contingent or otherwise (including any liability for damages, costs of investigation, remediation, monitoring or other response action, fines, penalties or indemnities), of Borrower directly or indirectly resulting from or based upon (a) violation of any Environmental, Health or Safety Laws, (b) the generation, use, handling, transportation, storage, treatment, disposal, presence, discharge or release of or exposure to any Hazardous Materials, whether actual or threatened or (c) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

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

“**ERISA**” means the Employee Retirement Income Security Act of 1974.

“**Events of Default**” has the meaning specified in **Section 6.01**.

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

“**Exchange Business Day**” means a Scheduled Trading Day on which trading occurs on the Applicable Exchange. If an Issuer Delisting has occurred and is continuing, “Exchange Business Day” means a “Business Day”.

“**Excluded Taxes**” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, or engaging in a trade or business in or through a permanent establishment in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Foreign Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in 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 or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to **Section 2.11**, 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 2.11(e)** and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

**"Existing Transfer Restrictions"** means, with respect to the Pledged Shares, (a) any Transfer Restrictions arising under the federal securities laws of the United States solely as a result of (i) such Collateral constituting "restricted securities" (within the meaning of Rule 144) that have a holding period (calculated in accordance with paragraph (d) of Rule 144) commencing on the Closing Date or (ii) Borrower's status as an Affiliate of the Issuer and (b) the Transfer Restrictions set forth in Sections 3.02 and 3.03 of the Stockholders Agreement and Section 7.4(e) of the Purchase Agreement.

**"Facility"** means, at any time, (a) on or prior to the Closing Date, the aggregate amount of the Commitments at such time and (b) thereafter, the aggregate principal amount of the Loans of all Lenders outstanding at such time.

**"Facility Documents"** means, collectively, this Agreement, each Collateral Document, the Representation Letter, the Issuer Acknowledgment, each document delivered pursuant to the Collateral Requirement and each other agreement or instrument executed or delivered in connection herewith or therewith.

**"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), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code; provided that solely for purposes of **Section 2.11(e)(ii)(D)**, FATCA shall include any amendments made to FATCA after the date hereof (without regard to whether any amended or successor version is substantively comparable or materially more onerous to comply with).

**"Federal Funds Rate"** means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America, N.A., London Branch on such day on such transactions as reasonably determined by Administrative Agent.

**"First Priority"** means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is the only Lien to which such Collateral is subject (subject only to Permitted Liens).

**"Fixed Rate"** means [\*\*\*\*\*].

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

\*Certain portions of these exhibits have been redacted and separately filed with the Securities and Exchange Commission pursuant to a request for confidential treatment.

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

“**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 or similar extensions of credit in the ordinary course of its activities.

“**GAAP**” means 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.

“**General Partner**” has the meaning specified in the preamble hereto.

“**Governmental Authority**” means the government of the United States of America 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).

“**Guarantee**” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Debt or other obligation of the payment or performance of such Debt or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Debt or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt or other obligation of the payment or performance thereof; provided that the term “Guarantee” shall not include any endorsement of an instrument for deposit or collection in the ordinary course of business or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Debt or other obligation of any other Person, whether or not such Debt or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Debt to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “**Guarantee**” as a verb has a corresponding meaning.

“**Hazardous Materials**” means all hazardous or toxic substances, materials, wastes, agents or other pollutants, including petroleum or any fraction thereof, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, explosive or radioactive substance or wastes, infectious or medical substances or wastes and all other substances or wastes of any nature regulated pursuant to any Environmental, Health or Safety Laws.

**“Immediate Family Relative”** means, in respect of any individual, such individual’s issue (including by adoption or remarriage), siblings, parents, first cousins, aunts, uncles, nieces, nephews, grandparents and the respective current or former household partners and current or former spouses of such individual or any of the foregoing.

**“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 Borrower under any Facility Document and (b) to the extent not otherwise described in (a), Other Taxes.

**“Indemnitee”** has the meaning specified in **Section 8.04(b)**.

**“Information”** has the meaning specified in **Section 8.11**.

**“Initial Share Price”** means the Closing Price on the Exchange Business Day immediately prior to the Closing Date.

**“Interest Payment Date”** means (a) each June 20 that occurs after the Closing Date and prior to the Maturity Date and (b) the Maturity Date.

**“Interest Rate Hedge”** means, for any Lender, any interest rate swap(s) entered into for the purpose of hedging the interest rate risk with respect to the Loans held by such Lender (which, for the avoidance of doubt, may include inter-Affiliate transaction(s) entered into on arms-length terms substantially identical to those that would apply to a transaction with a non-Affiliate and shall include any replacement or amendment thereof from time to time).

**“Interest Rate Hedge Unwind Amount”** means, in respect of any prepayment (including, for the avoidance of doubt, upon acceleration) of a Loan and any Interest Rate Hedge, the amount of loss incurred by the fixed rate payer thereunder (in which case, the “Interest Rate Hedge Unwind Amount” will be expressed as a positive number) or the amount of gain realized by the fixed rate payer thereunder (in which case, the “Interest Rate Hedge Unwind Amount” will be expressed as a negative number) in connection with unwinding the Interest Rate Hedge (or the relevant portion thereof) on account of such prepayment, taking into account any related costs or expenses incurred by Lender or its Affiliates, as determined by Calculation Agent. For the avoidance of doubt, any such loss or gain may be determined by reference to internal measures of profit and loss.

**“Investment Company Act”** means the Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder.

**“Issuer”** means Activision Blizzard, Inc., a Delaware corporation.

**“Issuer Acknowledgment”** means an agreement substantially in the form of **Exhibit G** hereto, pursuant to which, among other provisions, the Issuer provides certain acknowledgments and agreements to the Lenders in respect of the Facility Documents and the transactions contemplated thereunder.

**“Issuer ADTV”** means, in respect of any date of determination, the average daily trading volume of the Shares on the Applicable Exchange measured over a 90 Scheduled Trading Day period ending on the immediately preceding Scheduled Trading Day (excluding elements of such average daily trading volume that may be attributed to any block trade that occurs on any such Scheduled Trading Day), as determined by Calculation Agent.

**“Issuer ADTV Event”** means that [\*\*\*\*\*].

\* Certain portions of these exhibits have been redacted and separately filed with the Securities and Exchange Commission pursuant to a request for confidential treatment.

**“Issuer Change of Control”** means an event or series of events by which any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions, of Shares entitling such person or group to exercise 30% or more of the total voting power of all Shares entitled to vote generally in elections of directors, other than an acquisition of such Shares by the Issuer, any of its wholly-owned Subsidiaries or any of its employee benefit plans.

**“Issuer Default Event”** means (i) Issuer (A) shall fail to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Debt (other than Debt under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than \$100 million, or (B) shall fail to observe or perform any other agreement or condition relating to any such Debt referred to in clause (A) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Debt or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Debt to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Debt to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there shall occur under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which Issuer is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which Issuer is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by Issuer under all such Swap Contracts as a result thereof is greater than \$100 million.

**“Issuer Delisting”** means that the Applicable Exchange announces that pursuant to the rules of the Applicable Exchange, the Shares cease (or will cease) to be listed, traded or publicly quoted on the Applicable Exchange, for any reason (other than as a result of an Issuer Merger Event); provided that if the Shares are immediately re-listed, re-traded or re-quoted on any other Eligible Exchange, such cessation shall not constitute an Issuer Delisting and such other Eligible Exchange shall thereafter constitute the “Applicable Exchange.”

**“Issuer Dissolution”** means that (a) the Issuer is liquidated or dissolved, or (b) holders of Shares approve any plan or proposal for the Issuer’s liquidation or dissolution.

**“Issuer Insolvency”** means that by reason of the voluntary or involuntary liquidation, bankruptcy, insolvency, dissolution or winding-up of or any analogous proceeding affecting the Issuer, (a) all the Shares are required to be transferred to a trustee, liquidator or other similar official, or (b) holders of Shares become legally prohibited from transferring them.

**“Issuer Insolvency Filing”** means that (a) the Issuer institutes or has instituted against it by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, or the Issuer consents to, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights with respect to the Issuer or (b) a petition is presented by any such Person for the Issuer’s winding-up or liquidation or the Issuer consents to such a petition; provided that any proceedings instituted, or petitions presented, by creditors and not consented to by the Issuer shall not be deemed Issuer Insolvency Filings.

**“Issuer Merger Event”** means any (a)(i) reclassification or change of the Shares that results in a transfer of or an irrevocable commitment to transfer more than 50% of the outstanding Shares to another Person, (ii) consolidation, amalgamation, merger or binding share exchange of the Issuer or any Subsidiary thereof with or into another Person, or (iii) takeover offer, tender offer, exchange offer, solicitation, proposal or other event by any Person to purchase or otherwise obtain more than 50% of the outstanding Shares that results in a transfer of or an irrevocable commitment to transfer more than 50% of the outstanding Shares (other than Shares owned or controlled by such Person), or (b) the public announcement, including any public announcement as defined in Rule 165(f) of the Securities Act, by any entity at any time, of any intention to engage in a transaction (whether or not subsequently amended) that, if completed, would lead to any event set forth in the immediately preceding **clause (a)**.

**“Issuer Nationalization”** means that (a) all or substantially all of the Shares or the assets of the Issuer are nationalized, expropriated or are otherwise required to be transferred to any governmental agency, authority, entity or instrumentality thereof, or (b) the adoption, promulgation, enactment, order, decree, announcement or such other action or statement as Calculation Agent deems relevant, by or with effect on any governmental agency, authority, entity or instrumentality thereof at any time, of any event or circumstance (whether or not subsequently amended or appealed) that, if completed, would lead to any event set forth in the immediately preceding **clause (a)**.

**“Issuer Tender Offer”** means (a) a takeover offer, tender offer, exchange offer, solicitation, proposal or other event by any entity or person that results in such entity or person purchasing, or otherwise obtaining or having the right to obtain, by conversion or other means, greater than 15% of the outstanding voting shares of the Issuer, as determined by Calculation Agent, based upon the making of filings with governmental or self-regulatory agencies or such other information as Calculation Agent deems relevant, or (b) the public announcement, including any public announcement as defined in Rule 165(f) of the Securities Act, by any entity at any time, of any intention to purchase or otherwise obtain such number of voting shares of the Issuer (whether or not subsequently amended) that, if completed, would lead to any event set forth in the immediately preceding **clause (a)**.

**“Issuer Trading Suspension”** means that the Shares have been suspended from trading on the Applicable Exchange for three consecutive Scheduled Trading Days or the Shares have not traded on the Applicable Exchange for any other reason for three consecutive Scheduled Trading Days; provided that trading in securities of other issuers generally occurs on the Applicable Exchange on such Scheduled Trading Days.

**“Law”** 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.

**“Lender”** has the meaning specified in the preamble hereto.

**“Lender Party”** means any Agent or Lender.

**“Lending Office”** means, with respect to any Lender, the office of such Lender specified as its “Lending Office” opposite its name on **Schedule I** hereto or in the Assignment and Assumption pursuant to which it became a Lender, or such other office of such Lender as such Lender may from time to time specify in writing to Administrative Agent.

“**LIBOR**” means, with respect to each Compounding Period, the London interbank offered rate administered by the British Bankers Association (or any other Person that takes over the administration of such rate) for Dollars for a period equal in length to such Compounding Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen or, in the event such rate does not appear on either of such Reuters pages, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate as shall be selected by Calculation Agent from time to time in its reasonable discretion (“**BBA LIBOR**”) as of 11:00 a.m. London time on the date two (2) Business Days prior to the commencement of such Compounding Period.

“**Lien**” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“**Loan**” has the meaning specified in **Section 2.01**.

“**LTV Breach**” means that the LTV Ratio on any date exceeds the LTV Maximum Ratio.

“**LTV Breach Notice**” has the meaning specified in **Section 2.09(a)**.

“**LTV Maximum Ratio**” means [\*\*\*\*\*].

“**LTV Ratio**” means, on any date of determination, the quotient (expressed as a percentage) of (a) the Total Net Outstandings at such time divided by (b) the sum of (i) the Eligible Equity Value on such date and (ii) the aggregate Value of all Eligible Non-Share Collateral (other than Eligible Cash Collateral) on such date.

“**LTV Reset Ratio**” means [\*\*\*\*\*].

“**Margin Call Satisfaction**” has the meaning specified in **Section 2.09(a)**.

“**Margin Cash Collateral**” means Eligible Cash Collateral deposited into the Collateral Account pursuant to **Section 2.09(a)**.

“**Margin Loan Facilities**” means this Facility and the “Facility” (as defined in the Other Loan Agreement).

“**Market Disruption Event**” means, with respect to the Shares, any of the following events:

(a) the occurrence or existence during the one-half hour period ending on the scheduled close of trading on any Scheduled Trading Day of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the Applicable Exchange or otherwise) in the Shares or in any options contracts or futures contracts relating to the Shares;

\* Certain portions of these exhibits have been redacted and separately filed with the Securities and Exchange Commission pursuant to a request for confidential treatment.

(b) any event that disrupts or impairs the ability of market participants in general to effect transactions in, or obtain market values for, such Shares on the Applicable Exchange on any Scheduled Trading Day as determined by Calculation Agent, or the inability of Calculation Agent for any other reason to determine the Closing Price of the Shares by reference to transactions or bid or ask prices for the Shares on the Applicable Exchange on any Scheduled Trading Day;

(c) the failure of the Applicable Exchange to open for trading during its regular trading session on any Scheduled Trading Day; or

(d) the closure on any Scheduled Trading Day of the Applicable Exchange prior to its scheduled closing time for such day.

**“Material Adverse Effect”** means (a) a material impairment of the ability of Borrower to perform any of its obligations under any of the Facility Documents, (b) a material adverse effect upon the legality, validity, binding effect or enforceability of any provision of this Agreement or any other Facility Document, (c) an imposition of any material liability on Borrower or (d) a material adverse change in, a material adverse effect upon, or a material impairment of, (i) the priority of Collateral Agent’s security interest in the Collateral or (ii) the rights, remedies and benefits available to, or conferred upon, any Lender Party under any Facility Document or any Lender Party’s ability to foreclose on the Shares at the times and in the manner contemplated by the Pledge Agreement (including, but not limited to, trading or other restrictions imposed by the Issuer or changes in applicable Law), in each case with respect to the foregoing **clauses (a) to (d)**, as determined by Administrative Agent in its reasonable discretion.

**“Maturity Date”** means, the earliest of: (a) the Scheduled Maturity Date; (b) the date on which such Facility is terminated pursuant to **Section 2.08**; and (c) the date on which the Lenders’ commitment to make the Loans under such Facility otherwise terminates pursuant to **Section 6.01**.

**“Maximum Initial LTV Ratio”** means 27.5%.

**“Maximum Lawful Rate”** has the meaning specified in **Section 2.06(b)**.

**“Net PIK Amount”** means, initially \$0, (a) as increased, from time to time, by the amount of any interest paid in kind pursuant to the proviso in the first sentence of **Section 2.04(a)**, and (b) as reduced, from time to time, but not below \$0, by the amount of any prepayment of principal pursuant to **Section 2.08(b)**.

**“NOLs Restrictions”** means any condition to or restriction on the ability of the holder of any Share to sell, assign or otherwise transfer such Shares under any trading or transfer restrictions arising under any Organization Documents of the Issuer, security, material contract, rights agreement, poison pill, policy or similar agreement implemented by the Issuer or to which any Share is subject in connection with any Person’s ability to utilize net operating losses, capital losses, tax credit carryforwards and/or similar tax attributes as an offset against taxable income.

**“Non-public Information”** means information that has not been disseminated in a manner making it available to investors generally, within the meaning of Regulation FD.

**“Notice of Borrowing”** has the meaning specified in **Section 2.02(a)**.

**“Obligations”** means all Loans to, and all debts, liabilities, obligations, covenants, indemnifications, and duties of, Borrower arising at any time and from time to time, whether matured or



unmatured, fixed or contingent, liquidated or unliquidated, under any Facility Document, 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 Borrower of any proceeding under any Debtor Relief Laws naming Borrower as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

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

**“Other Connection Taxes”** means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising solely 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 Facility Document, or sold or assigned an interest in any Loan or Facility Document).

**“Other Facility Collateral”** means the “Collateral” (as defined in the Other Loan Agreement). For the avoidance of doubt, **“Other Facility Collateral”** shall not include any Collateral.

**“Other Facility Documents”** means the “Facility Documents” (as defined in the Other Loan Agreement).

**“Other Loan Agreement”** means that certain Loan Agreement, of even date herewith, among Borrower, General Partner, JPMorgan Chase Bank, N.A., London Branch, as administrative agent, JPMorgan Chase Bank, N.A., London Branch, as collateral agent and calculation agent and the several lenders from time to time party thereto, as in effect on the Closing Date.

**“Other Pledge Agreement”** means that certain Pledge and Security Agreement, of even date herewith, between JPMorgan Chase Bank, N.A., London Branch, as collateral agent, and Borrower, as pledgor.

**“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 Facility Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

**“Parent Entity”** means (a) any Affiliates of any Parent (other than Borrower, the Issuer or any of their respective Subsidiaries), (b) any Immediate Family Relatives of any Parent, (c) any trust controlled for the primary benefit of a Parent and/or one or more of such Parent’s Immediate Family Relatives, or his or her successors upon death, (d) any partnership, the partners of which consist of a Parent and/or one or more of such Parent’s Immediate Family Relatives or (e) any family or private (operating or non-

operating) foundation of any Parent; provided that, in each case of **clauses (b)** through **(e)** the relevant Parent shall retain voting control of the Equity Interests in General Partner held by such Person; provided further that, in each case of **clauses (a)** through **(e)**, such Person (x) holds Equity Interests in General Partner and (y) is reasonably acceptable to Administrative Agent and has delivered to each Lender and Administrative Agent any information reasonably requested in connection with such Lender's or Administrative Agent's standard "on boarding" process. For the purposes of this definition, "Affiliate" of a Parent shall mean (i) any Person that, directly or indirectly through one or more intermediaries is controlled by such Parent or (ii) any Person of which such Parent is, directly or indirectly, the beneficial owner of a majority of the voting Equity Interests.

**"Parents"** means (a) Robert A. Kotick and Brian G. Kelly, (b) with respect to any natural person set forth in clause (a), the estate of such person, and (c) any other Person approved by Administrative Agent in writing; provided that such Person holds (A) Equity Interests in General Partner and (B) has executed a Representation Letter.

**"Participant"** has the meaning specified in **Section 8.06(d)**.

**"Participant Register"** has the meaning specified in **Section 8.06(d)**.

**"Pending Litigation"** means each of the cases listed on Schedule II hereto, including any related claim that is transferred for coordinated or consolidated proceedings therewith by order of any court of competent jurisdiction.

**"Permitted Liens"** means Liens permitted under **Section 5.02(b)**.

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

**"Pledge Agreement"** means that certain Pledge and Security Agreement, dated as of the date hereof, executed by Borrower in favor of Collateral Agent for the benefit of Administrative Agent and the Lenders, in the form of **Exhibit B**, as it may be amended from time to time.

**"Pledged Shares"** means, as of the Closing Date, a *pro rata* portion (determined based on the Commitments hereunder and the "Commitments" (as defined in the Other Loan Agreement)) of all Shares purchased by Borrower pursuant to the Purchase Agreement and, after the Closing Date, all other Shares required to be pledged as Collateral hereunder or under the Pledge Agreement and any distribution or dividend in Shares distributed in respect of any Pledged Shares, in each case, to the extent such Shares, distribution or dividend constitutes Collateral under the Collateral Documents.

**"Potential Adjustment Event"** means any of the following:

(a) a subdivision, consolidation or reclassification of Shares, or a free distribution or dividend of any Shares to existing holders by way of bonus, capitalization or similar issue;

(b) a distribution, issue or dividend to existing holders of Shares of (A) Shares, or (B) other share capital or securities granting the right to payment of dividends and/or the proceeds of liquidation of the Issuer equally or proportionately with such payments to holders of Shares, or (C) share capital or other securities of another issuer acquired or owned (directly or indirectly) by the Issuer as a result of a spin-off or other similar transaction, or (D) any other type of securities, rights or warrants or other assets, in any case for payment (cash or other consideration) at less than the prevailing market price as determined by Calculation Agent;

- (c) an extraordinary dividend or distribution paid or made on the Shares, as determined by Calculation Agent;
  - (d) a call by the Issuer in respect of Shares that are not fully paid;
  - (e) a repurchase by the Issuer or any of its Subsidiaries of Shares whether out of profits or capital and whether the consideration for such repurchase is cash, securities or otherwise;
  - (f) in respect of the Issuer, an event that results in any shareholder rights being distributed or becoming separated from Shares or other shares of the capital stock of the Issuer pursuant to a shareholder rights plan or arrangement directed against hostile takeovers that provides upon the occurrence of certain events for a distribution of preferred stock, warrants, debt instruments or stock rights at a price below their market value, as determined by Calculation Agent, provided that any adjustment effected as a result of such an event shall be readjusted upon any redemption of such rights;
  - (g) any other event that may have a diluting or concentrative effect on the theoretical value of the Shares, as determined by the Calculation Agent;
- or
- (h) an Issuer Merger Event, Issuer Tender Offer or Issuer Change of Control;

provided that the repurchase of Shares by Issuer pursuant to the Purchase Agreement shall not constitute any Potential Adjustment Event.

**“Purchase Agreement”** means the Stock Purchase Agreement, dated July 25, 2013, between Issuer, Borrower and Vivendi, S.A.

**“Purchaser Representations”** means the following representations, warranties and agreements made by an assignee or participant, as applicable: (a) a representation and warranty that such assignee or participant is a QIB, a QP and an “accredited investor” as defined in Section 2(a)(15)(ii) of the Securities Act and is entering into such assignment or participation as principal and not for the benefit of any third party, (b) a representation that such assignee or participant is not Borrower or the Issuer or an Affiliate of Borrower or the Issuer, (c) an acknowledgment that such assignee or participant fully understands any restrictions on transfers, sales and other dispositions in the Facility Documents or relating to any Collateral consisting of the Pledged Shares, (d) an acknowledgment that such assignee or participant is able to bear the economic risk of its investment in the participation and is currently able to afford a complete loss of such investment, (e) a covenant that such assignee or participant will only assign its Loan or sell its participation or participations therein pursuant to documentation including such Purchaser Representations, (f) an acknowledgement by such assignee or participant that the Pledged Shares forming part of the Collateral cannot be sold without registration under the Securities Act or under an available exemption from the registration requirements under the Securities Act, including, if available, the exemption provided by Rule 144, (g) an acknowledgment that such assignee or participant is not entering into such assignment or participation on the basis of any material Non-public Information with respect to Borrower, the Issuer, its Subsidiaries or their securities, and that, if applicable, it has implemented reasonable policies and procedures, taking into consideration the nature of its business, to ensure that individuals making investment decisions would not violate the laws prohibiting trading on the basis of material Non-public Information (it being understood that such assignee or participant may have material Non-public Information on the private side of its information wall, sometimes referred to as an “Information Wall,” at the time of such assignment or participation); provided that, for the avoidance of doubt, “material Non-public Information concerning Borrower, the Issuer, its Subsidiaries or their

securities” shall not include any information made available to both the assignee and the assignor or both the participant and the seller of a participation interest, as the case may be, and (h) an acknowledgment that it has made an independent decision to purchase its Loan or participation based on information available to it, which information it has determined adequate for the purpose.

“**QIB**” means a “qualified institutional buyer” as defined in Rule 144A under the Securities Act.

“**QP**” means a “qualified purchaser” within the meaning of Section 2(a)(51) of the Investment Company Act.

“**Recipient**” means (a) Administrative Agent, (b) any Lender and (c) any other Agent, as applicable.

“**Register**” has the meaning specified in **Section 8.06(c)**.

“**Regulation FD**” means Regulation FD as promulgated by the SEC under the Securities Act and Exchange Act as in effect from time to time.

“**Regulation T**” means Regulation T issued by the FRB.

“**Regulation U**” means Regulation U issued by the FRB.

“**Regulation X**” means Regulation X issued by the FRB.

“**Regulatory Event**” means (a) any investigation made by any Governmental Authority for violation or breach of Law by Borrower, or (b) the revocation, suspension or termination of any license, permit or approval held by Borrower that, in each case of (a) and (b) above, could reasonably be expected to have a Material Adverse Effect.

“**Relevant Documents**” has the meaning specified in **Section 2.18**.

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person’s Affiliates.

“**Representation Letter**” means each of those certain Parent Representation Letters, dated as of the date hereof, executed by each Parent in favor of Collateral Agent for the benefit of Administrative Agent and the Lenders, in the form of **Exhibit C**.

“**Required SPV Provisions**” has the meaning specified in **Section 5.01(j)**.

“**Required Lenders**” means, as of any date of determination, Lenders holding more than 50% of the sum of the (a) the aggregate outstanding principal amount of all Loans and (b) the aggregate unused Commitments, if any.

“**Responsible Officer**” of a Person means its chief executive officer, director or its chief financial officer (whether or not the Person performing such duties is so designated) or any authorized designee thereof.

“**Restricted Transaction**” means, with respect to Borrower, (a) any financing or other transaction (other than the transactions contemplated hereby or by other Facility Documents) secured by the Pledged

Shares, (b) any grant, occurrence or existence of any Lien on the Pledged Shares (other than pursuant to the transactions contemplated hereby or by other Facility Documents) and (c) any sale, swap, hedge (including by means of a physical or cash settled derivative referencing Shares or otherwise) or transfer of the Pledged Shares (other than those permitted under the Facility Documents).

“**Rule 144**” means Rule 144 promulgated under the Securities Act.

“**Sanction(s)**” means any international economic sanction administered or enforced by the United States government (including OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“**Scheduled Maturity Date**” means the fourth anniversary of the Closing Date.

“**Scheduled Trading Day**” means a day that is scheduled to be a trading day on the Applicable Exchange. If an Issuer Delisting has occurred and is continuing, “Scheduled Trading Day” means a “Business Day”.

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

“**Securities Act**” means the United States Securities Act of 1933, as amended.

“**Set-off Party**” has the meaning specified in **Section 8.13**.

“**Share Price Threshold Level**” means an amount equal to the lesser of (a) 40.0% of the Closing Price as of July 26, 2013 and (b) \$5.44 (subject to adjustment as provided herein).

“**Share Price Trigger Event**” means that, at any time, the Closing Price is below the Share Price Threshold Level.

“**Shares**” means the common stock, par value \$0.001 per share, of the Issuer.

“**Spread**” means [\*\*\*\*\*].

“**Stated Rate**” has the meaning specified in **Section 2.06(b)**.

“**Stockholders Agreement**” means the Stockholders Agreement, dated as of October 11, 2013, by and among Issuer, Borrower and certain other parties thereto.

“**Subscription Agreements**” means the subscription agreements, each by and between General Partner, as general partner of Borrower, and an investor in Borrower.

“**Subsidiary**” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person.

“**Swap Contract**” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, total return swaps, forward rate transactions, commodity swaps, commodity options, forward

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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, that are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement.

“**Swap Termination Value**” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in **clause (a)**, the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

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

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

“**Total Accrued Loan Amount**” means, at any time, the aggregate outstanding principal amount of all Loans plus all accrued and unpaid interest in respect thereof.

“**Total Net Outstandings**” means, at any time, the amount, if any, by which (a) the Total Accrued Loan Amount at such time exceeds (b) the sum of (i) the aggregate Value of all Eligible Cash Collateral at such time, (ii) following the execution of, and prior to the scheduled settlement date for, any sale of Shares pursuant to **Section 2.09(a)(iii)**, an amount equal to the aggregate sale price thereof and (iii) following the ex-dividend date for any cash dividend on the Shares, as long as the scheduled payment date therefor is within 60 calendar days thereof, and prior to the earlier of the actual payment date and such scheduled payment date, an amount equal to the product of (A) the per Share amount of such dividend less the per Share amount of any Taxes that the Calculation Agent determines are likely to be withheld or deducted therefrom and (B) the number of Eligible Pledged Shares, excluding any Pledged Shares as to which a sale has been executed, as of such ex-dividend date.

“**Transaction Documents**” means, collectively, the Facility Documents, the Other Facility Documents, the Subscription Agreements, the Stockholders Agreement, the Organization Documents of Borrower and General Partner, the Purchase Agreement and any other related documents.

**“Transfer Restrictions”** means, with respect to any property (including, in the case of securities, security entitlements in respect thereof), any condition to or restriction on the ability of the holder thereof (or, if an Event of Default occurs hereunder and Collateral Agent chooses to exercise its remedies under the Collateral Documents, Collateral Agent) to sell, assign or otherwise transfer such property or to enforce the provisions thereof or of any document related thereto whether set forth in the terms of such property itself or in any other document, including without limitation (a) any requirement that any sale, assignment or transfer or enforcement of such property be subject to any volume limitations, limitations to address tax matters, or be consented to or approved by any Person, including the issuer thereof or any other obligor thereon, (b) any limitations on the type or status, financial or otherwise, of any purchaser, pledgee, assignee or transferee of such property, (c) any requirement of the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document of any Person to the issuer of, any other obligor on or any registrar or transfer agent for, such property, prior to the sale, pledge, assignment or other transfer or enforcement of such property, (d) any registration or qualification requirement or prospectus delivery requirement for such property pursuant to any federal, state or foreign securities law (including any such requirement arising under the Securities Act), (e) any NOLs Restriction and (f) any legend or other notification appearing on any certificate representing such property to the effect that any such condition or restriction exists; except that the required delivery of any customary assignment, instruction or entitlement order from Borrower or any pledgor, assignor or transferor of such property, together with any evidence of the corporate or other authority of such Person, shall not constitute such a condition or restriction.

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

**“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 2.11(e)(ii)(B)(3)**.

**“Value”** means, as of any date of determination, (a) with respect to Cash, the amount of such Cash; and (b) with respect to all other Collateral (other than Eligible Pledged Shares), the product of (x) the fair market value of such Collateral as determined by Calculation Agent and (y) a percentage (expressed as a fraction) with respect to such Collateral determined by Calculation Agent (taking into account the particular property constituting Collateral, the resale market for such property, any Transfer Restrictions relating to such property (whether in the hands of Borrower or in the hands of a Lender Party exercising its rights and remedies under the Facility Documents) and such other factors as Calculation Agent deems relevant) for purposes of determining **clause (b)(ii)** of the definition of “LTV Ratio” with respect to such Collateral.

**Section 1.02 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to New York time (daylight or standard, as applicable).

**Section 1.03 Accounting Terms.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP 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 annual financial statements of the applicable Person, except as otherwise specifically prescribed herein. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Facility Document, and Borrower shall so request, the Lenders and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; provided that, until so amended, (a) such ratio or

requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrower shall provide to Administrative Agent financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

#### **Section 1.04 Principles of Construction.**

(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 Facility Document), (ii) except to the extent Administrative Agent’s or Lenders’ consent is required as provided herein, any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Facility Document, shall be construed to refer to such Facility Document in its entirety and not to any particular provision thereof, (iv) all references in a Facility 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 Facility 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 or regulation shall, unless otherwise specified, refer to such law 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 Facility Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Facility Document.

(d) Any reference to a particular section of the Other Loan Agreement shall be deemed to refer to such section of the Other Loan Agreement, as in effect on the date hereof, or, following any amendment or supplement to the Other Loan Agreement, any successor to such section.

## **ARTICLE II AMOUNTS AND TERMS OF THE ADVANCES**

**Section 2.01 The Loans.** Subject to the terms and conditions set forth herein, each Lender severally agrees to make a single loan in Dollars (each such loan, a “*Loan*”) to Borrower on the Closing Date in an amount specified in the Notice of Borrowing (as defined below) not to exceed such Lender’s Commitment. The Loans shall be made available by the Lenders based on their Applicable Percentages in respect of the Facility. Amounts borrowed under this **Section 2.01** and repaid or prepaid may not be reborrowed.



## Section 2.02 Making the Loans.

(a) (i) Each Loan shall be made on notice given no later than 10:00 a.m. on the Closing Date (or such later time as may be agreed by Administrative Agent in its sole discretion) by Borrower to Administrative Agent, who shall give to each applicable Lender prompt notice thereof.

(ii) Such notice (a "**Notice of Borrowing**") shall be irrevocable and shall be in writing in substantially the form of **Exhibit A**, signed by Borrower, specifying therein (x) the requested date of the Loans, (y) the type and amount of such Loans and (z) the account to which such Loans shall be made.

(b) Each Lender shall, before 1:00 p.m. on the Closing Date, make available for the account of its Lending Office to Administrative Agent (to an account designated by Administrative Agent), in immediately available funds, such Lender's Applicable Percentage of such Loans. After Administrative Agent's (or its Affiliate's) receipt of such funds and upon fulfillment of the applicable conditions set forth in **Section 3.01**, Administrative Agent (or its Affiliate) will make such funds as it has received available to Borrower by depositing such funds into the Collateral Account; provided that Administrative Agent (or its Affiliate) may net any Loan due to Borrower against any amount payable hereunder.

**Section 2.03 Repayment of Loans.** Borrower shall repay to the Administrative Agent (or any Affiliate thereof designated by Administrative Agent) for the account of the Lenders on the Maturity Date the aggregate principal amount of all Loans outstanding on such date.

## Section 2.04 Interest.

(a) Ordinary Interest. Borrower shall pay interest (x) on the unpaid principal amount of each Loan, which interest shall accrue on a daily basis, from the date of such Loan until such principal amount shall be paid in full, at a rate *per annum* equal to the Applicable Rate for such day, and (y) on any Compounded Amounts with respect to each Loan, which interest shall accrue on a daily basis at a rate *per annum* equal to the Applicable Floating Rate for such day, with such interest, in the case of clause (x) and (y), being payable annually in arrears on each Interest Payment Date; provided that if, as of the date one Business Day prior to any Interest Payment Date, the aggregate amount of cash dividends per Share paid by the Issuer during the year ending on such date (or with respect to the first Interest Payment Date, such period from the Closing Date to the date one Business Day prior to such Interest Payment Date) is less than \$0.19, Borrower may elect on such date by written notice to Administrative Agent, with respect to all or any portion of the interest that would otherwise be payable in cash on such Interest Payment Date, to instead pay such interest in kind, in which case (i) the amount of such interest or the portion thereof that will be paid in kind, as the case may be, will be added to the outstanding principal amount of the Loans on a ratable basis among the Lenders as of such Interest Payment Date, and (ii) the remainder of such interest (if any) shall continue to be payable in cash on the Interest Payment Date. For the avoidance of doubt, any interest that accrues on Compounded Amounts with respect to any Loan shall, for all purposes hereunder (other than clause (x) of the immediately preceding sentence), be deemed to have accrued on the principal amount of such Loan. The total amount of interest due on each Interest Payment Date shall be computed by

Calculation Agent on the Business Day immediately preceding such Interest Payment Date. Interest shall be computed by Calculation Agent based on a year of 360 days and the actual number of days elapsed in each Compounding Period. Interest (including the default interest set forth below) 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.

(b) Default Interest. Notwithstanding the foregoing, if any amount is not paid when due hereunder, whether at stated maturity, by acceleration or otherwise, such amount that is not paid when due shall thereafter bear interest at a rate per annum equal at all times to two percent (2%) above the Applicable Floating Rate from the date such amount shall be due until such amount shall be paid in full, payable on demand (and in any event in arrears on the date such amount shall be paid in full).

#### **Section 2.05 Fees.**

(a) Arrangement Fee. Subject to the occurrence of the Closing Date, on the first Interest Payment Date (or, if earlier, any date on which the Loans are prepaid in full under **Section 2.08**, **Section 2.09(a)(i)** or **Section 6.01** or otherwise), Borrower shall pay to Bank of America, N.A., London Branch, for its own account and not for the account of the Lenders or Agents, in consideration for its efforts in arranging the Facility, an arrangement fee (the "**Arrangement Fee**") in an amount equal to [\*\*\*\*\*]% ([\*\*\*\*\*] basis points) of the aggregate principal amount of Loans made on the Closing Date. The Arrangement Fee is due and payable in full on the first Interest Payment Date (or such earlier prepayment date, if applicable) and shall be fully earned when paid and be non-refundable for any reason whatsoever.

(b) Early Termination Fee. If, on or before the third anniversary of the Closing Date, Borrower (i) voluntarily prepays any portion of the Facility pursuant to **Section 2.08(b)** (other than any prepayment of interest paid in kind), (ii) makes any mandatory prepayment pursuant to **Section 2.08(c)** on account of any event resulting from any action or failure to act by Borrower, General Partner or any Parent, (iii) repays the Loans upon acceleration pursuant to **Section 6.01** on account of any Event of Default resulting from any action or failure to act by Borrower, General Partner or any Parent or (iv) prepays the Loans pursuant to **Section 2.08(d)** and at the time of such prepayment more than \$33,333,333 of aggregate principal amount of Loans have been voluntarily prepaid (other than any prepayment of interest paid in kind), in the aggregate, following the Closing Date pursuant to **Section 2.08(b)**, in each case, Borrower shall pay to Administrative Agent for the ratable account of the Lenders in accordance with their Applicable Percentages, simultaneously with such repayment or prepayment, an early termination fee in an amount equal to the product of (x) the amount of such repayment or prepayment, (y) [\*\*\*\*\*]% ([\*\*\*\*\*] basis points) and (z) a fraction computed by Calculation Agent the numerator of which is the actual number of days from, and including, the repayment or prepayment date to, and including, the third anniversary of the Closing Date and the denominator of which is 360 days.

#### **Section 2.06 Maximum Interest.**

(a) In no event shall the interest charged with respect to any Loan or any other obligations of Borrower hereunder exceed the maximum amount permitted under the Laws of the State of New York or of any other applicable jurisdiction.

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(b) Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable for the account of any Lender hereunder (the “**Stated Rate**”) would exceed the highest rate of interest permitted under any applicable Law to be charged by such Lender (the “**Maximum Lawful Rate**”), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable for the account of such Lender shall be equal to the Maximum Lawful Rate; provided that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, Borrower shall, to the extent permitted by Law, continue to pay interest for the account of such Lender at the Maximum Lawful Rate until such time as the total interest received by such Lender is equal to the total interest that such Lender would have received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable for the account of such Lender shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply.

(c) In no event shall the total interest received by any Lender exceed the amount that such Lender could lawfully have received had the interest been calculated for the full term hereof at the Maximum Lawful Rate.

(d) If any Lender has received interest hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of the Loans or to other amounts (other than interest) payable hereunder, and if no such principal or other amounts are then outstanding, such excess or part thereof remaining shall be paid to Borrower.

**Section 2.07 Interest Rate Determinations.** With respect to any Compounding Period for which the Applicable Floating Rate is determined by reference to LIBOR, promptly following the commencement of such Compounding Period, the Administrative Agent shall give written notice to Borrower of the Applicable Floating Rate.

**Section 2.08 Termination of Commitments; Prepayments of Loans.**

(a) The aggregate Commitments shall be automatically and permanently reduced to zero on (i) the Closing Date upon the borrowing on the Closing Date or (ii) October 15, 2013, if the Closing Date has not occurred prior to such date.

(b) Subject to payment of any Early Termination Fee, any Arrangement Fee payable under **Section 2.05(a)** and any amount required pursuant to **Section 2.13**, Borrower may, upon notice to Administrative Agent, at any time prepay the outstanding principal amounts of the Loans, in whole or in part, together with accrued interest to the date of such prepayment on the principal amount prepaid and any additional amounts required pursuant to **Section 2.13**, upon irrevocable notice thereof; provided that each partial prepayment of the Loans shall be in an aggregate principal amount of not less than \$10,000,000 or a whole multiple of \$1,000,000 in excess thereof. Such notice shall be given to Administrative Agent and each Lender by Borrower not later than 11:00 a.m. on the date two (2) Business Days prior to the effective date of any such prepayment, specifying such election and the effective date thereof. If such notice is given by Borrower, Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender’s Applicable Percentage of such prepayment. Each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of the Facility.

(c) If (i) any Potential Adjustment Event occurs and Calculation Agent determines that no adjustment it could make pursuant to **Section 8.01** would produce a commercially reasonable result, (ii) any Corporate Event occurs, (iii) any Issuer ADTV Event occurs, (iv) any Change of Control occurs or (v) any Share Price Trigger Event occurs and, in each case,

Administrative Agent delivers written notice to Borrower that it is requiring a prepayment in connection therewith pursuant to this **Section 2.08(c)**, Borrower shall, within one Business Day of such notice, (x) prepay to the Lenders in full all Loans then outstanding together with accrued interest to the date of such payment on the principal amount paid and any amount required pursuant to **Section 2.13**, any Arrangement Fee payable under **Section 2.05(a)** and, if applicable, any Early Termination Fee set forth in **Section 2.05(b)** or (y) execute a sale of Pledged Shares, for an aggregate sale price that, when received, shall be immediately applied as set forth in clause (x) and will be sufficient to prepay the Loans in full and pay all other amounts required to be paid in connection therewith. Any sale described in clause (y) above shall be made in the manner set forth in **Section 2.09(b)(i)**.

(d) If, after giving effect to any partial prepayment of the Loans pursuant to this **Section 2.08** or **Section 2.09**, the aggregate outstanding principal amount of the Loans would be less than an amount equal to \$33,333,333, Borrower shall, concurrently with such partial prepayment, prepay to the Lenders in full all Loans then outstanding together with accrued interest to the date of such payment on the principal amount paid, any amount required pursuant to **Section 2.13**, any Arrangement Fee payable under **Section 2.05(a)** and, if applicable, any Early Termination Fee set forth in **Section 2.05(b)**.

(e) Any prepayment pursuant to this **Section 2.08** shall be applied as provided in **Section 2.15**.

#### **Section 2.09 LTV Breach; Withdrawal of Collateral.**

(a) If an LTV Breach occurs on any date, Borrower shall, not later than 5:00 p.m. on the later of (x) the [\*\*\*\*\*] Business Day following the occurrence of the LTV Breach and (y) the [\*\*\*\*\*] Business Day following the date on which the Administrative Agent gives written notice to Borrower of such LTV Breach (such a notice, an "**LTV Breach Notice**"), (i) prepay outstanding Loans, (ii) post Margin Cash Collateral or (iii) execute a sale of Pledged Shares, with settlement of such sale to occur no later than three Business Days following the trade date of such sale, for an aggregate sale price that, when received, shall be immediately applied as set forth in **clause (i)** or **(ii)**, in each case of **clauses (i)** through **(iii)**, in such amount necessary to, after giving effect to the relevant payment, deposit or sale, as applicable, cause the LTV Ratio (with the LTV Ratio determined for such purpose based on an Eligible Equity Value based on the Closing Price at the time of such payment or deposit or the execution of such sale, respectively) to be less than the LTV Reset Ratio (the making of any such payment, deposit or sale, a "**Margin Call Satisfaction**"). Any prepayment pursuant to **clause (i)** above shall be applied as provided in **Section 2.15**. Any sale described in **clause (iii)** above shall be made in the manner set forth in **clause (b)(i)** of this **Section 2.09**. Prior to execution of any such sale, Borrower shall irrevocably elect by written notice to Administrative Agent and Collateral Agent whether the proceeds of such sale shall be applied as set forth in **clause (i)** or **clause (ii)** of the first sentence of this **Section 2.09(a)**.

(b) Borrower may not withdraw any Collateral from the Collateral Account, except (i) Borrower may sell Pledged Shares from the Collateral Account for cash at fair value, on a delivery-versus-payment basis (or other basis reasonably acceptable to Collateral Agent), with the cash proceeds of such sale to be paid directly into the Collateral Account, pursuant to documentation mutually acceptable to Borrower and Collateral Agent, (ii) Borrower may use Collateral consisting of Cash to repay the Loans pursuant to **Section 2.03**, (iii) Borrower may use Collateral consisting of Cash to make payments of any Arrangement Fee pursuant to **Section**

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**2.05(a)** and any Early Termination Fee pursuant to **Section 2.05(b)**, (iv) Borrower may use Collateral consisting of Cash to make any required interest payment pursuant to **Section 2.04** or to make a prepayment pursuant to **Section 2.08** or **paragraph (a)** of this **Section 2.09**, (v) Borrower may withdraw Collateral consisting of Cash pursuant to **clause (c)** below or (vi) with the prior written consent of Administrative Agent. As a condition to any sale of Pledged Shares by Borrower, Borrower shall represent and warrant to Administrative Agent that (x) Borrower is not in possession of, and is not executing such sale on the basis of, any material Non-public Information with respect to Issuer or the Shares or, in the case of a privately negotiated sale, Borrower has disclosed any such information to the purchaser in such sale and (y) such sale complies with the Transfer Restrictions set forth in the Stockholders Agreement and Section 7.4(e) of the Purchase Agreement.

(c) Any dividend or distribution on the Shares, net of any withholding Tax, received by Borrower shall be deposited in the Collateral Account within one Business Day of such receipt, subject to any subsequent release thereof in accordance with this **Section 2.09(c)**. Borrower may request a release of Collateral consisting of Cash from the Liens created under the Collateral Documents subject to the following conditions:

(i) Administrative Agent shall have received a written notice from Borrower requesting a release of such Collateral on the date specified therein (which date shall be no earlier than the Business Day immediately following the first Business Day on which Administrative Agent has received such notice by 10:00 a.m.);

(ii) immediately after giving effect to such release and any other release otherwise requested or effected pursuant to **Section 2.09(b)** or this **Section 2.09(c)**, the LTV Ratio (calculated as if the full amount of interest that will become due and payable on the next succeeding Interest Payment Date, as estimated by the Calculation Agent, assuming no further prepayments of the Loans, were included in the Total Accrued Loan Amount) would be less than the LTV Reset Ratio;

(iii) no Default or Event of Default shall exist or would occur as a result of such release;

(iv) the Net PIK Amount is \$0 as of the date of such notice and will be \$0 as of the date of such release;

(v) on the date of such release the Borrower is not required to make any prepayment or take any other action under **Section 2.08** or this **Section 2.09** (and will not be required to take any such action as a result of the proposed release);

(vi) such released Collateral shall be used to pay Borrower's operating expenses;

(vii) immediately following such release, the amount of Collateral consisting of Cash held in the Collateral Account and subject to a First Priority Lien in favor of Agent shall not be less than the amount of interest payable on the immediately succeeding Interest Payment Date (as estimated by Calculation Agent, assuming Borrower does not elect to pay any such interest in kind and does not make any further prepayments on the Loans); and

(viii) the aggregate amount of Collateral released pursuant to this **Section 2.09(c)** shall not exceed (x) in any 365-day period, \$100,000 or (y) during the term of the Loans, \$400,000.

Any such notice delivered pursuant to the immediately preceding clause (i) shall contain written representations and warranties to the effect of the items set forth in the immediately preceding clauses (ii), (iii), (iv) and (vi). Upon satisfaction of the conditions set forth in the second preceding sentence, the amount of Collateral consisting of Cash requested to be released by Borrower in such written notice shall be released from the Lien created under the Collateral Documents.

#### **Section 2.10 Increased Costs.**

(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;

(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, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or any Loan made hereunder;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loans, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount), then, upon request of such Lender, Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or its Affiliate for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines (in good faith) that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender, the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity), then from time to time Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in **clause (a)** or **(b)** of this Section shall be delivered to Borrower and shall be conclusive absent manifest error. Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) 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 any Lender pursuant to this **Section 2.10** for any increased costs or reductions incurred more than three (3) 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; and provided further that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the three (3) month period referred to in the immediately preceding proviso shall be extended to include the period of retroactive effect thereof.

(e) Reserves on LIBOR Based Loans. 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 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 that Borrower shall have received at least 10 days' prior written notice (with a copy to 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.

(f) Survival. All of Borrower's obligations under this **Section 2.10** shall survive termination of the Facility, repayment of all other Obligations hereunder, and resignation of Administrative Agent.

#### **Section 2.11 Taxes.**

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. Any and all payments by or on account of any obligation of Borrower under any Facility 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 Administrative Agent) requires the deduction or withholding of any Tax from any such payment by Administrative Agent or Borrower, then Administrative Agent or Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Law, and to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by Borrower shall be increased as necessary so that after any required withholding or the making of all required deductions (including withholdings or deductions applicable to additional sums payable under this **Section 2.11**) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by Borrower. Without limiting the provisions of **clause (a)** above (but not in duplication thereof), Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Indemnification by Borrower.

(i) Borrower shall, and does hereby indemnify each Recipient, and shall make payment in respect thereof 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 2.11**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and 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 Borrower by a Lender (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender shall be conclusive absent manifest error. Borrower shall, and does hereby, indemnify Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount that a Lender for any reason fails to pay indefeasibly to Administrative Agent as required pursuant to **Section 2.11(c)(ii)** below. Notwithstanding the foregoing, Borrower shall not have any indemnification obligation under this **Section 2.11(c)** to the extent the Recipient has otherwise received payment with respect to such Indemnified Tax pursuant to **Section 2.11(a)** or **Section 2.11(b)**.

(ii) Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, Administrative Agent for (x) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified Administrative Agent for such Indemnified Taxes and without limiting the obligation of Borrower to do so), (y) any Taxes attributable to such Lender's failure to comply with the provisions of **Section 8.06(d)** relating to the maintenance of a Participant Register and (z) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Administrative Agent in connection with any Facility 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. Each Lender hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Facility Document or otherwise payable by Administrative Agent to the Lender from any other source against any amount due to Administrative Agent under this **clause (ii)**.

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority as provided in this **Section 2.11**, Borrower shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(e) 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 Facility Document shall deliver to Borrower and Administrative Agent, at the time or times reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or 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 2.11(e)(ii)(A)**, **2.11(e)(ii)(B)** and **2.11(e)(ii)(D)**) shall not be required if in Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

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

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

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or 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 Facility Document, executed originals of IRS Form W-8BEN 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 Facility Document, IRS Form W-8BEN 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 originals 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 F-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 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 originals of IRS Form W-8BEN; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of **Exhibit F-2** or **Exhibit F-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 F-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 Borrower and Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower or Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Facility Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to Borrower and 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 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.

(f) Treatment of Certain Refunds. Unless required by applicable Law, at no time shall Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. 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 Borrower or with respect to which Borrower has paid additional amounts pursuant to this **Section 2.11**, it shall pay to Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by Borrower under this **Section 2.11** 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 Borrower, upon the request of the Recipient, agrees to repay the amount paid over to Borrower (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, in no event will the applicable Recipient be required to pay any amount to Borrower pursuant to this clause 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 indemnification payments or additional amounts giving rise to such refund had never been paid. This clause shall not be construed to require any Recipient to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to Borrower or any other Person.

(g) **Survival.** Each party's obligations under this **Section 2.11** shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all Obligations under any Facility Document.

**Section 2.12 Illegality.** Notwithstanding any other provision of this Agreement, if any Lender shall notify Administrative Agent and Borrower that (a) any Law makes it unlawful, or any central bank or other Governmental Authority asserts that it is unlawful, (i) for any Lender to perform its obligations to make Loans hereunder or (ii) for any Lender or its Affiliate to maintain such Lender's Interest Rate Hedge, or (b) the LIBOR for any Compounding Period with respect to a Loan does not adequately and fairly reflect the cost to such Lender of funding or maintaining such Loan, the obligation of such Lender to make its Applicable Percentage of the Loans shall be terminated and all Loans of such Lender, all interest thereon and all other amounts payable under this Agreement to such Lender shall become due and payable. Any Lender that becomes aware of circumstances that would permit such Lender to notify Administrative Agent of any illegality under this **Section 2.12** shall use its reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its Lending Office if the making of such change would avoid or eliminate such illegality and would not, in the reasonable judgment of such Lender, be otherwise disadvantageous to such Lender.

**Section 2.13 Compensation for Losses.** Borrower shall compensate each Lender, upon written request by such Lender (which request shall set forth the basis for requesting such amounts and shall be conclusive absent manifest error), for all reasonable loss, cost or expense incurred by it as a result of:

(a) any payment or prepayment of the Loan on a day other than the last day of a Compounding Period for the Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or

(b) any failure by either Borrower to prepay or borrow the Loan on the date or in the amount notified by such Borrower (for a reason other than the failure of such Lender to make a Loan in breach of its obligation hereunder);

excluding any loss of margin over LIBOR and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain the Loans, or from fees payable to terminate the deposits from which such funds were obtained. In addition, upon prepayment (including, for the avoidance of doubt, upon acceleration) of a Loan, (i) if the applicable Interest Rate Hedge Unwind Amount for any Lender is a positive number, Borrower shall promptly pay to Lender an amount equal to such Interest Rate Hedge Unwind Amount or (ii) if the applicable Interest Rate Hedge Unwind Amount for any Lender is a negative number, (x) as long as such amount is determined and notified to Borrower prior to the relevant prepayment date, the amount owed by Borrower in respect of such prepayment shall be reduced by the absolute value of such Interest Rate Hedge Unwind Amount and (y) otherwise, promptly following prepayment of such Loan and the determination of such amount, Lender shall pay to Borrower an amount equal to the absolute value of such Interest Rate Hedge Unwind Amount. Each Lender agrees to share the terms of its Interest Rate Hedge with the Calculation Agent in order to enable the Calculation Agent to determine the applicable Interest Rate Hedge Unwind Amount, and the Calculation Agent agrees to make such determination in connection with any prepayment of the Loans as soon as practicable after receiving notice of such prepayment. All of Borrower's, Lenders' and Calculation Agent's obligations under this **Section 2.13** shall survive termination of the Facility or

repayment of all other Obligations hereunder. For purposes of calculating amounts payable by Borrower to a Lender under the first sentence of this **Section 2.13**, each Lender shall be deemed to have funded the Loans 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 the Loans were in fact so funded.

#### **Section 2.14 Evidence of Debt.**

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) Administrative Agent shall also maintain accounts in which it will record (i) the amount of each Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from Borrower to each Lender hereunder, and (iii) the amount of any sum received by Administrative Agent (or its Affiliate) hereunder from Borrower and each Lender's share thereof.

(c) The entries maintained in the accounts maintained pursuant to **clauses (a) and (b)** above shall be prima facie evidence of the existence and amounts of the obligations therein recorded; provided that the failure of Administrative Agent or any Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of Borrower to repay such obligations in accordance with their terms. Borrower hereby designates Administrative Agent to serve as Borrower's agent solely for purposes of maintaining the account maintained pursuant to clause (b) above, 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".

(d) No promissory note shall be required to evidence the Loans by Lenders to Borrower. Upon the request of a Lender, Borrower shall execute and deliver to such Lender a promissory note, which shall evidence the Loans to Borrower by such Lender in addition to such records.

#### **Section 2.15 Payments and Computations.**

(a) All payments to be made by Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Borrower shall make each payment hereunder not later than 12:00 p.m. on the day when due in Dollars to Administrative Agent (or any Affiliate thereof designated by Administrative Agent) in immediately available funds. Administrative Agent or its Affiliate will promptly distribute to each Lender its Applicable Percentage (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 Administrative Agent or its Affiliate after 12:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) Whenever any payment hereunder would be due on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day, and such extension of time shall not be included in the computation of payment of interest or any fees, as the case may be.

(c) All payments (including prepayments and any other amounts received hereunder but excluding payments and amounts received in connection with the exercise of the Agents' and the Lenders' rights after an Event of Default to the extent set forth in **Section 6.01(a)**) made by Borrower to Administrative Agent under any Facility Document shall be applied to amounts then due and payable in the following order: (i) to any expenses and indemnities payable by Borrower to any Agent under any Facility Document; (ii) ratably to any expenses and indemnities payable by Borrower to any Lender under any Facility Document; (iii) to any accrued and unpaid interest and fees due under this Agreement; (iv) to principal payments in respect of any interest paid in kind; (v) to principal payments (other than interest paid in kind) on the outstanding Loans; and (vi) to the extent of any excess, to the payment of all other Obligations under the Facility Documents.

#### **Section 2.16 Administrative Agent's Clawback.**

(a) Funding by Lenders; Presumption by Administrative Agent. Unless Administrative Agent shall have received notice from a Lender prior to the proposed date of any Loan that such Lender will not make available to Administrative Agent (or its Affiliate) such Lender's Applicable Percentage of such Loan, Administrative Agent may assume that such Lender has made such Applicable Percentage of such Loan available on such date in accordance with **Section 2.02** and may, in reliance upon such assumption, make available to Borrower a corresponding amount. In such event, if a Lender has not in fact made its Applicable Percentage of such Loan available to Administrative Agent (or its Affiliate), then the applicable Lender and Borrower severally agree to pay to Administrative Agent (or its Affiliate) forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to Borrower to but excluding the date of payment to Administrative Agent (or its Affiliate), at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment to be made by Borrower, the Applicable Rate. If Borrower and such Lender shall pay such interest to Administrative Agent (or its Affiliate) for the same or an overlapping period, Administrative Agent (or its Affiliate) shall promptly remit to Borrower the amount of such interest paid by Borrower for such period. If such Lender pays its Applicable Percentage of the applicable Loan to Administrative Agent (or its Affiliate), then the amount so paid shall constitute such Lender's Loan included in such borrowing. Any payment by Borrower shall be without prejudice to any claim Borrower may have against a Lender that shall have failed to make such payment to Administrative Agent (or its Affiliate).

(b) Payments by Borrower; Presumptions by Administrative Agent. Unless Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to Administrative Agent (or its Affiliate) for the account of Lenders hereunder that Borrower will not make such payment, Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to Lenders the amount due. In such event, if Borrower has not in fact made such payment, then each of Lenders severally agrees to repay to Administrative Agent (or its Affiliate) forthwith on demand the amount so distributed to such Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to Administrative Agent (or its Affiliate), at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation.

(c) **Obligations of Lenders Several.** The obligations of Lenders hereunder to make Loans and to make payments pursuant to **Section 8.04(c)** are several and not joint. The failure of any Lender to make any Loan or to make any payment under **Section 8.04(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 8.04(c)**.

**Section 2.17 Sharing of Payments by Lenders.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it, resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans and accrued interest thereon greater than its pro rata share thereof as provided herein, then Lender receiving such greater proportion shall (a) notify Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the 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 Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, 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 shall not be construed to apply to (x) any payment made by or on behalf of Borrower pursuant to and in accordance with the express terms of this Agreement, or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than an assignment to Borrower or any Affiliate thereof (as to which the provisions of this Section shall apply). Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of Borrower in the amount of such participation.

**Section 2.18 Limited Recourse.** All Obligations hereunder and under any other Facility Documents shall be with full recourse to Borrower. Notwithstanding anything to the contrary contained in this Agreement, in any other Facility Documents, or in any other instruments, certificates, documents or agreements executed in connection with the Loans (all of the foregoing, for purposes of this **Section 2.18**, hereinafter referred to, individually and collectively, as the "**Relevant Documents**"), no recourse under or upon any Obligation, representation, warranty, promise or other matter whatsoever shall be had against any Parent or limited partner of Borrower, and each Lender expressly waives and releases, on behalf of itself and its successors and assigns, all right to assert any liability whatsoever under or with respect to the Relevant Documents against, or to satisfy any claim or obligation arising thereunder against, any Parent or limited partner of Borrower or out of any assets of any Parent or limited partner of Borrower.

**Section 2.19 Mitigation Obligations.** If any Lender requests compensation under **Section 2.10(a)** or (b) or if Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 2.11**, then such Lender (at the request of Borrower) shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce materially amounts payable pursuant to **Section 2.10(a)**, **2.10(b)** or **2.11**, as the case may be, in the future, (ii) would not subject such Lender to any unreimbursed cost or expense and (iii) would not require such Lender to take any action inconsistent with its internal policies or legal or regulatory restrictions. Borrower shall pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment. A certificate setting forth such costs and expenses submitted by such Lender to the Administrative Agent shall be conclusive absent manifest error.

In addition, if, on account of any Interest Rate Hedge any Lender becomes aware of circumstances that would permit such Lender to notify Administrative Agent of any illegality under **Section 2.12**, and, the relevant circumstances affect all Lenders hereunder (or any non-affected Lenders give their consent) and Borrower so elects, (i) the Lenders shall negotiate in good faith with Borrower for at least three Business Days to amend this Agreement such that all Loans hereunder will bear interest at a floating interest rate, while preserving for the Lenders the fair value of the transactions contemplated hereby, and (ii) the Calculation Agent shall calculate Interest Rate Hedge Unwind Amounts as if the Loans were being prepaid in full and (a) if any such Interest Rate Hedge Unwind Amount is a positive number, Borrower shall promptly pay such amount to the applicable Lender or (b) if any such Interest Rate Hedge Unwind Amount is a negative number, Lender shall promptly pay the absolute value of such amount to Borrower.

**Section 2.20 Payoff Letter.** Upon the payment in full of all Obligations (other than those that survive termination of the Facility Documents), Administrative Agent shall promptly, upon request of Borrower, confirm to Borrower in writing the payment and discharge of such Obligations.

### **ARTICLE III CONDITIONS OF LENDING**

**Section 3.01 Conditions Precedent to Loan.** The obligation of Lenders to make the Loans is subject to satisfaction of the following conditions precedent:

(a) Administrative Agent shall have received each of the following documents, duly executed, each (unless otherwise specified below) dated the Closing Date and in form and substance satisfactory to Administrative Agent:

(i) duly executed counterparts of this Agreement, sufficient in number for distribution to Administrative Agent, each Lender and Borrower;

(ii) duly executed Pledge Agreement and all documents contemplated thereby, including any UCC-1 financing statement(s);

(iii) duly executed Representation Letter from each Parent;

(iv) duly executed Control Agreement and all documents contemplated thereby;

(v) copies of the Organization Documents of Borrower and of General Partner, in each case as certified by a Responsible Officer of General Partner;

(vi) a certificate of General Partner certifying the names and true signatures of the Responsible Officers of General Partner authorized to sign this Agreement, the Pledge Agreement and any other Facility Document to be delivered hereunder or thereunder on behalf of Borrower;

(vii) a certificate evidencing the good standing (or equivalent) of each of Borrower and General Partner in its jurisdiction of formation and/or incorporation and each other jurisdiction where it is qualified to do business dated a date not earlier than (x) ten (10) Business Days prior to the Closing Date (with a bring down on the Closing Date), in the case of the General Partner or (y) two (2) Business Days prior to the Closing Date, in the case of Borrower;

(viii) an opinion of counsel to the Borrower substantially in form of **Exhibit H-1**, and an opinion of the Lenders' Cayman Islands counsel substantially in form of **Exhibit H-2**;

(ix) the results of Tax, judgment and Lien searches on Borrower; and

(x) duly executed Issuer Acknowledgment and all documents contemplated thereby.

(b) The Transaction Documents shall not have been amended or waived in any material respect adverse to the Lenders (or to change the purchase price for the Shares under the Purchase Agreement) without the prior written consent of Administrative Agent, not to be unreasonably withheld or delayed. An amount of cash equal to the aggregate purchase price for the Shares under the Purchase Agreement, net of the sum of (i) an amount equal to the aggregate Commitments for all Lenders (after giving effect to any reduction thereof pursuant to the proviso in the definition of "Commitment") and (ii) an amount equal to the aggregate "Commitments" for all "Lenders" (after giving effect to any reduction thereof pursuant to the proviso in the definition of "Commitment") (each as defined under the Other Loan Agreement), shall have been contributed to Borrower by the holders of Equity Interests therein and deposited *pro rata* into each of the Collateral Account and the "Collateral Account" (as defined under the Other Loan Agreement) according to the Commitments hereunder and the "Commitments" thereunder, and Borrower's purchase of Shares pursuant to the Purchase Agreement shall have been, or substantially simultaneously with the making of Loans pursuant to **Section 2.01** shall be, consummated (including the transfer of a *pro rata* portion (based on the Commitments hereunder and the "Commitments" under the Other Loan Agreement) of such Shares into the Collateral Account as Eligible Pledged Shares).

(c) The Collateral Account shall have been established by Borrower and Administrative Agent shall have received reasonably satisfactory evidence that the Collateral Requirement shall have been satisfied in all respects.

(d) All fees or expenses required to be paid to Administrative Agent or any Lender or counsel thereto on or before the Closing Date shall have been paid or provided for out of cash that does not constitute Collateral or Other Facility Collateral.

(e) Borrower shall have provided any form requested by Administrative Agent necessary to comply with Regulation T, U, or X, or any other provisions of the Regulations of the FRB, including Form U-1.

(f) No Corporate Event shall have occurred on or after the date of this Agreement and on or before the Closing Date.

(g) No Potential Adjustment Event shall have occurred on or after the date of this Agreement and on or before the Closing Date for which the Adjustment Event Effective Time, if any, shall not have occurred on or prior to the Closing Date.

(h) Borrower shall have delivered a Notice of Borrowing signed by Borrower in accordance with the requirements hereof.



(i) Each of the representations and warranties contained in **ARTICLE IV** and each of the representations and warranties contained in paragraphs 1, 2 and 7 of the Representation Letter shall be true and correct in all material respects (unless, in each case, such representation or warranty is qualified as to materiality, in which case such representation or warranty shall be true and correct), and no other breach of any Representation Letter shall have occurred, on and as of the date of such Notice of Borrowing and as of the Closing Date as if made on each such date.

(j) There shall not have been any Law applicable to the transactions contemplated herein, or the financing thereof, promulgated, enacted, entered or enforced by any Governmental Authority, nor shall there be pending any action or proceeding by or before any Governmental Authority involving a substantial likelihood of an order, that would prohibit, restrict, delay or otherwise materially affect the execution, delivery and performance of any of the Facility Documents or the making of the Loans or the making of the "Loans" (as defined in the Other Loan Agreement).

(k) No event shall have occurred, or would result from such Loans or from the application of the proceeds therefrom or entry into and performance of the Transaction Documents, that would constitute a Default or an Event of Default.

(l) Administrative Agent shall have received such other assurances, certificates, consents, approvals, opinions and documents relating to this Agreement and the transactions contemplated hereby as it shall have reasonably requested (including control agreement(s) with financial or securities intermediaries).

(m) There shall have been no action, suit, investigation or proceeding pending or, to the knowledge of Borrower, threatened in any court or before any arbitrator or Governmental Authority against Borrower, General Partner or any Parent that could reasonably be expected to have a Material Adverse Effect (it being understood that the Pending Litigation shall not be deemed to cause the condition set forth in this clause (m) to fail to be satisfied).

(n) Borrower's rights under Article II of the Stockholders Agreement shall have been assigned to Collateral Agent, pursuant to documentation in form and substance satisfactory to Collateral Agent.

(o) Each of the conditions set forth in Section 3.01 of the Other Loan Agreement to the obligation of the "Lenders" to make the "Loans" (each as defined in the Other Loan Agreement) on the Closing Date shall have been satisfied or waived.

The Notice of Borrowing shall be deemed to be a representation and warranty by Borrower that the conditions specified in **Section 3.01** have been satisfied on and as of the Closing Date.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES**

**Section 4.01 Representations and Warranties of Borrower.** Borrower represents and warrants to Administrative Agent and the Lenders that:

(a) Each of General Partner and Borrower (i) is duly incorporated and/or formed, as the case may be, validly existing and in good standing under the Laws of the jurisdiction of its organization, (ii) is duly qualified and in good standing in each other jurisdiction in which the conduct of its business requires it to so qualify or be licensed and where, in each case, failure so

to qualify and be in good standing could reasonably be expected to have a Material Adverse Effect, and (iii) has all requisite company power and authority to own or lease and operate its properties and to carry on its business as now conducted and as proposed to be conducted.

(b) The execution, delivery and performance by Borrower, each Parent and General Partner of the Transaction Documents to which it is a party, the grant of the security interest contemplated hereby with respect to the Collateral and the consummation of the transactions contemplated by the Transaction Documents (including any exercise by Collateral Agent, Agent or any Lender of its rights and remedies with respect to the Collateral) are within its powers, have been duly authorized by all necessary action, and do not and will not (i) contravene its Organization Documents (if applicable), (ii) contravene any contractual restriction binding on it or require any consent under any agreement or instrument to which it or any of its Affiliates is a party or by which any of its properties or assets is bound, (iii) result in or require the creation or imposition of any Liens upon any of its property or assets other than Permitted Liens, (iv) violate any Law (including, but not limited to, the Securities Act and the Exchange Act and the regulations thereunder) or writ, judgment, injunction, determination or award in any material respect or (v) violate any trading policy of the Issuer applicable to it or any Affiliate of it, including, but not limited to, its window period policy.

(c) Except for any filings specifically provided for in the Pledge Agreement or required under the federal securities laws of the United States, no order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption or waiver by, any Governmental Authority or any other third party (except such as have been obtained or made and are in full force and effect), is required to authorize, or is required in connection with, (i) the execution, delivery and performance by Borrower, General Partner or any Parent of any Transaction Document or (ii) the legality, validity, binding effect or enforceability of any Transaction Document.

(d) Each of General Partner and Borrower is in compliance with the requirements of (i) all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties and (ii) each contract or agreement to which it is a party, or to which any of its property (including the Shares) is subject, except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect.

(e) This Agreement and the other Facility Documents and the Purchase Agreement and related documents to which Borrower, any Parent or General Partner is party, or to which the Pledged Shares are subject, are and will be legal, valid and binding obligations of Borrower or such Parent or General Partner, as the case may be, enforceable against Borrower or such Parent or General Partner, as the case may be, in accordance with their respective terms in all respects, subject to bankruptcy, insolvency, reorganization, moratorium or other similar Laws of general applicability relating to or affecting creditors' rights and general equity principles.

(f) No Default or Event of Default has occurred.

(g) Neither General Partner nor Borrower has incurred any Debt, other than Debt under the Facility Documents and Debt under the Other Facility Documents.

(h) No Change of Control or Regulatory Event has occurred or is reasonably expected to occur.

(i) There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of Borrower threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against Borrower, General Partner or any Parent or against any of their properties or revenues that (i) are reasonably likely to have a Material Adverse Effect or (ii) (a) purport to affect the legality, validity or enforceability of this Agreement, the Pledge Agreement, any other Facility Document or the Purchase Agreement and related documents (other than, in the case of this clause (ii)(a), the Pending Litigation), or (b) that involve a substantial likelihood of prohibiting, restricting, delaying or otherwise materially affecting the performance of any of the Facility Documents or the Purchase Agreement and related documents or the making of the Loans or the making of the “Loans” (as defined in the Other Loan Agreement).

(j) Each of Borrower, General Partner and each Parent is not, and after giving effect to the transactions contemplated under the Transaction Documents will not be, required to register as an “investment company” as such term is defined in the Investment Company Act.

(k) Borrower is a “United States Person” or a foreign person controlled by or acting on behalf of or in conjunction with United States persons for purposes of Regulation X. The Facility Documents, including the Loans, do not contemplate any actions that would violate Regulation T, U, or X. Borrower has not taken any actions under the Facility Documents that could reasonably be expected to result in a violation of Regulation T, U, or X, and no part of the proceeds of any Loan will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose that entails a violation of Regulation T, Regulation U, or Regulation X, as applicable.

(l) Each of General Partner and Borrower owns all of its properties free and clear of Liens, other than, in the case of Borrower, Permitted Liens. Borrower has not made or consented to, and is not aware of, any registrations, filings or recordings in any jurisdiction evidencing a security interest in the Collateral including, but not limited to, the filing of a register of mortgages, charges and other encumbrances or filings of UCC-1 financing statements, other than with respect to Permitted Liens.

(m) All material Tax returns and reports of Borrower required to be filed have been timely filed (taking into account applicable extensions), and all Taxes shown on such Tax returns to be due and payable by Borrower have been paid when due and payable, except for any Tax that is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserves or other appropriate provisions, as shall be required in conformity with GAAP, shall have been made or provided therefor, and (b) in the case of a Tax or claim that has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to subordinate the Lien securing such Tax or claim and Administrative Agent reasonably determines, based on advice of counsel, that the existence of such Lien will not adversely affect the exercise of remedies by Collateral Agent or any Lender in a manner contemplated under the Facility Documents. Borrower has not received a written proposed material Tax assessment, nor does Borrower have knowledge of any material Tax assessment, against Borrower that would, if made, have a Material Adverse Effect. Borrower is not party to any tax sharing agreement. Borrower will hold no assets or conduct any activities other than as authorized in its Organizational Documents.

(n) (i) The present fair value of each of General Partner's and Borrower's assets exceeds the total amount of its respective liabilities (including contingent liabilities), (ii) each of General Partner and Borrower has capital and assets sufficient to carry on its businesses, (iii) neither General Partner nor Borrower is engaged, nor is it about to engage, in a business or a transaction for which its remaining assets are unreasonably small in relation to such business or transaction and (iv) neither General Partner nor Borrower intends to incur or believes that it will incur debts beyond its ability to pay as they become due. Neither General Partner nor Borrower will be rendered insolvent by the execution, delivery and performance of documents relating to this Agreement or by the consummation of the transactions contemplated under this Agreement or the other Transaction Documents.

(o) Each Share to be held in the Collateral Account will qualify as an Eligible Pledged Share.

(p) The Issuer currently is not, and, to the knowledge of Borrower, is not expected to become in any subsequent taxable year, a "United States real property holding corporation" as defined under Section 897 of the Code.

(q) The Loans are made with full recourse to Borrower and constitute direct, general, unconditional and unsubordinated Debt of Borrower. Each Loan contemplated hereunder is entered into by Borrower in good faith and at arm's length and is a *bona fide* loan. Such Loan is not entered into with an expectation that Borrower would default in its obligations thereunder. The Lien created under the Collateral Documents (including the pledge of the Pledged Shares) is a *bona fide* pledge to secure Borrower's obligations under the Facility Documents, which obligations provide for full recourse to Borrower. Such Collateral Documents are not entered into by Borrower with the intent of facilitating a disposition of the Shares subject to the Collateral Documents.

(r) All information and documents provided by or on behalf of Borrower or General Partner to any Agent or Lender in connection with the negotiation, execution and delivery of this Agreement and the other Facility Documents or the transactions contemplated hereby and thereby including, but not limited to, any financial statements of Borrower provided to Administrative Agent was or will be, on or as of the applicable date of provision thereof, complete and correct in all material respects and did not (or will not) contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading in light of the time and circumstances under which such statements were made. The Transaction Documents that have been delivered to Administrative Agent are complete and correct in all material respects and set forth the complete understanding of the parties thereto regarding the transactions contemplated thereby. Each of General Partner and Borrower has disclosed to Administrative Agent all agreements, instruments and corporate or other restrictions to which it, or its property (including the Shares), is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(s) As of the date hereof, Borrower is not in possession of, and is not entering into the Transaction Documents or the transactions contemplated thereby on the basis of, any material adverse Non-public Information in respect of the Issuer or the Shares, and no information provided by or on behalf of Borrower to Administrative Agent or Lender in connection with the Facility constitutes material Non-public Information with respect to the Issuer or the Shares for purposes of United States federal and state securities law.

(t) All licenses, permits, approvals, concessions or other authorizations necessary to the conduct of the business of Borrower or General Partner have been duly obtained and are in full force and effect, except where the failure to obtain and maintain any of the foregoing could not reasonably be expected to result in a Material Adverse Effect. There are no restrictions or requirements that limit Borrower's, General Partner's or any Parent's ability to lawfully conduct its business or perform its obligations under this Agreement or any other Facility Document.

(u) Neither Borrower nor General Partner has any liability, including contingent or potential liability, with respect to any employee benefit plans that it or any entity with which it is treated as a single employer under Sections 414(b), (c), (m) or (o) of the Code maintains or sponsors or to which any of them contribute.

(v) All financial statements concerning Borrower that have been or will hereafter be furnished by Borrower to Administrative Agent pursuant to this Agreement have been or will be prepared in accordance with GAAP consistently applied (except as disclosed therein, to the extent Administrative Agent approves such disclosure) and do or will, in all material respects, present fairly the financial condition of the Persons covered thereby as at the dates thereof and the results of their operations for the periods then ended.

(w) Neither Borrower nor General Partner has any Subsidiaries other than, with respect to General Partner, Borrower.

(x) Neither Borrower nor General Partner is a Benefit Plan.

(y) Neither Borrower, nor, to the knowledge of Borrower, any partner, officer, employee, agent, affiliate or representative thereof (including General Partner and each Parent), is an individual or entity currently the subject to any Sanctions, nor is Borrower located, organized or resident in a Designated Jurisdiction.

(z) Borrower understands that upon the occurrence of an Event of Default and the exercise of remedies pursuant to the Pledge Agreement, (a) the Pledged Shares may be sold in "private placement" transactions without registration under the Securities Act, which may result in substantially discounted realization value with respect to the Pledged Shares compared with the then market price and (b) a bulk sale of the Pledged Shares may occur, which may result in a substantially discounted realization value with respect to the Pledged Shares compared to the then current market price. Borrower acknowledges and agrees that (x) any such private placement, bulk sale or any other method of sale or disposition of Collateral as set forth in the Pledge Agreement shall be a commercially reasonable disposition under the Uniform Commercial Code notwithstanding any loss to it from a lower sale price and (y) neither Collateral Agent nor the Lenders shall have any liability or responsibility for any such loss.

(aa) Borrower has complied with its reporting obligations with respect to the Shares and the Facility Documents under Sections 13 and 16 of the Exchange Act and applicable securities laws of any other jurisdiction, including any required filings with the SEC.

(bb) Borrower has not engaged in or entered into any derivative or any other hedging transaction with respect to the Shares.

(cc) Other than the Transaction Documents delivered to Administrative Agent on or before the Closing Date, neither Borrower nor General Partner is, nor has it been since its formation, a party to, and the Pledged Shares are not subject to, any contract or other agreement or arrangement, except for administrative agreements that comply with **Section 5.02(r)**.

(dd) Borrower does not engage in any business or conduct any activity, nor has it since its formation engaged in any business or conducted any activity, other than the ownership of Shares and the performance of the transactions contemplated by the Transaction Documents (each of which has been delivered to Administrative Agent) in accordance with the terms thereof and performance of ministerial activities and payment of taxes and administrative fees necessary for compliance with the Transaction Documents. General Partner does not engage in any business or conduct any activity, nor has it since its formation engaged in any business or conducted any activity, other than as expressly permitted under its Organization Documents.

(ee) No broker's or finder's fee or commission will be payable with respect to the transactions contemplated by the Transaction Documents, except as payable to Allen & Company, the Agents, the Lenders and their respective Affiliates.

(ff) Borrower, General Partner and each Parent is in compliance with the (i) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) the PATRIOT Act. No part of the proceeds of the Loans will be used, directly or indirectly, 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 the United States Foreign Corrupt Practices Act of 1977, as amended.

(gg) Each of Borrower and General Partner is in compliance with the Required SPV Provisions.

(hh) Borrower has not been subject to any proceeding, claim, notice or complaint relating to Environmental, Health or Safety Liability. There is no past or present fact, status, condition, activity, occurrence, action or failure to act, including the presence or release of any Hazardous Materials (whether or not on the property of Borrower), that forms or reasonably could form the basis for the imposition of any Environmental, Health or Safety Liability on Borrower.

(ii) As of the Closing Date, the Borrower will not be a party to any Restricted Transactions.

## ARTICLE V COVENANTS OF BORROWER

**Section 5.01 Affirmative Covenants.** On and after the Closing Date and so long as any Lender has a commitment to make any Loans or any Obligations have not been indefeasibly paid in full:

(a) Existence. Each of General Partner and Borrower shall preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its incorporation and/or formation, and take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

(b) Reporting Requirements. Borrower shall furnish to Administrative Agent or cause to be furnished to Administrative Agent:

(i) as soon as available, but in any event within 30 days after the end of the fiscal year of Borrower, in form and detail reasonably satisfactory to Administrative Agent, an unaudited trial balance of Borrower, as at the end of such fiscal year, and the related unaudited balance sheet and statement of income for such fiscal year, all in reasonable detail and certified by General Partner as fairly presenting in all material respects the financial condition and results of operations of Borrower, prepared in accordance with GAAP (and including a confirmation of the Available Cash Amount for Borrower and General Partner);

(ii) as soon as available and in any event within 15 days after the end of each fiscal quarter of Borrower, in form and detail satisfactory to Administrative Agent, (i) the most recent account statements of Borrower with respect to each asset then owned by Borrower, (ii) a list of all Debt, liabilities and/or commitments of Borrower, and the Available Cash Amount for Borrower and General Partner, and (iii) a description of the material terms of each item on such list (including the amount of any liability thereunder, whether contingent, direct or otherwise, the due date for each such liability, the total unfunded commitment, if any, and the rate of interest, if any, applicable thereto);

(iii) as soon as possible and in any event within two (2) Business Days after Borrower obtains actual knowledge of the occurrence of (A) any Event of Default or Default, (B) each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of Borrower, (C) any actual or threatened litigation or other event that, if adversely determined to Borrower, could reasonably be likely to result in a Material Adverse Effect, or (D) any Lien (other than Permitted Liens set forth in **clause (i)** of the definition thereof) or claim made or asserted against any Collateral, a statement of General Partner setting forth the details thereof and the action that Borrower has taken and proposes to take with respect thereto; and

(iv) promptly after request therefor, such other business and financial information respecting the condition or operations, financial or otherwise, of Borrower or General Partner as Administrative Agent may from time to time reasonably request.

(c) Use of Proceeds. Borrower shall use the proceeds of the Loans solely (i) for the purpose of acquiring the Pledged Shares and the "Pledged Shares" (as defined in the Other Loan Agreement) pursuant to the Purchase Agreement and (ii) to pay fees and expenses in connection with transactions contemplated by the Transaction Documents.

(d) Payment of Obligations. Each of Borrower and General Partner shall pay and discharge as the same shall become due and payable, all its obligations and liabilities, including all lawful claims that, if unpaid, would become a Lien on its property.

(e) Taxes. Borrower shall pay all material Taxes imposed upon it and any material Taxes payable by it imposed on 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 (a) adequate reserves or other appropriate provisions, as shall be required in conformity with GAAP, shall have been made or provided therefor, and (b) in the case of a Tax or claim that has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to subordinate the Lien securing such Tax or claim and Administrative Agent reasonably determines, based on advice of counsel, that the existence of such Lien will not adversely affect the exercise of remedies by Collateral Agent or any Lender in a manner contemplated under the Facility Documents. Borrower is a foreign partnership for U.S. federal income tax purposes, shall remain so at all times during the term of the loan and shall not consolidate or combine with or otherwise agree to pay or become liable for the taxes of any other person.

(f) Collateral Requirement. Borrower shall comply with the Collateral Requirement in all respects, and shall promptly notify Administrative Agent as soon as it has knowledge or reasonable belief that the value of any Collateral has been or may be materially impaired.

(g) Keeping of Books. Borrower shall keep proper books of record and account as are necessary to prepare financial statements in accordance with GAAP.

(h) Reporting Obligations. Borrower shall comply with its reporting obligations with respect to the Shares and the Facility Documents under Sections 13 and 16 of the Exchange Act and applicable securities laws of any other jurisdiction, including any required filings with the SEC. Borrower agrees to make any such filing (or relevant portion thereof) in connection with the Facility Documents and the transactions contemplated thereunder in the form previously provided to Administrative Agent with an opportunity to comment thereon.

(i) Compliance with Laws. Each of General Partner and Borrower shall comply with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (ii) the failure to comply therewith could not reasonably be expected to result in a Material Adverse Effect.

(j) Special Purpose Entity. Each of Borrower and General Partner shall:

(i) maintain its own separate books and records and bank accounts;

(ii) at all times conduct its business solely in its own name in a manner not misleading to other Persons as to its identity (including through the use of separate stationary, signage and business cards);

(iii) file its own tax returns, if any, as may be required under applicable law, to the extent (1) not part of a consolidated group filing a consolidated return or returns or (2) not treated as a division for tax purposes of another taxpayer, and pay any taxes so required to be paid under applicable law;

(iv) hold all of its assets in its own name and not commingle its assets with assets of any other Persons;



(v) strictly comply with all organizational formalities to maintain its separate existence;

(vi) maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other Person, and not have its assets listed on any financial statement of any other Person; provided that its assets may be included in consolidated financial statements of one of its Affiliates, and provided further that for financial statements covering fiscal quarters ending on and after the first fiscal quarter ending after the Closing Date (1) appropriate disclosure within the consolidated financial statements or footnotes thereto shall be made to indicate its separateness from such Affiliate and to indicate that its assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (2) such assets shall also be listed on its own separate balance sheet;

(vii) pay its own liabilities only out of its own funds;

(viii) maintain an arm's-length relationship with its Affiliates and enter into transactions with Affiliates only on a commercially reasonable basis and on terms similar to those of an arm's-length transaction (it being understood that it may enter into any contract or any other Affiliate transaction expressly permitted under this Agreement);

(ix) correct any known misunderstanding regarding its separate identity and not identify itself as a division of any other Person;

(x) maintain adequate capital in light of its contemplated business purpose, transactions and liabilities; provided that the foregoing shall not require any parent thereof to make any additional capital contributions to it;

(xi) cause its partners, officers, agents and other representatives (including any director and/or officer on behalf of General Partner) to act at all times with respect to it consistently and in furtherance of the foregoing and in its best interests;

(xii) maintain its funds and assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xiii) allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including for services performed by an employee of an Affiliate; and

(xiv) not amend, alter or change the terms of its exempted limited partnership agreement or LLC agreement, as the case may be, in any material respect unless Administrative Agent consents thereto (the foregoing provisions in this clause (j), the "**Required SPV Provisions**").

(k) Further Assurances. Borrower and General Partner each agrees that upon the request of an Agent, it shall execute and/or deliver any additional agreements, documents and instruments, and take such further actions, as may be reasonably requested by such Agent from time to time, including opinions of counsel with respect to the continuing authority of Borrower and General Partner each to perform its obligations under this Agreement (which counsel shall be satisfactory to such Agent in its sole discretion) and such agreements, documents or instruments as may be necessary to grant Collateral Agent a security interest in any property acquired by

Borrower after the Closing Date that is required under the Facility Documents to be subject of the Lien of this Agreement and the other Facility Documents, which agreements, documents or instruments shall be satisfactory to such Agent in its sole discretion.

(l) Investment Company. Neither Borrower nor General Partner shall be required to register as an “investment company” under the Investment Company Act.

(m) Certification of Public Information. Borrower shall not provide any Lender or Agent with any Non-public Information with respect to the Issuer, any of the Issuer’s Subsidiaries or any of their securities. Concurrently with the delivery of any document, notice or other communication regarding the transaction by or on behalf of Borrower in connection with the Facility Documents (each, a “**Communication**”), Borrower shall be deemed to have represented that such document, notice or other communication does not contain any such Non-public Information. If any Communication is required to be delivered pursuant to this Section 5.01 or otherwise and is being distributed through Debt Domain, IntraLinks/IntraAgency, SyndTrak or another relevant website or other information platform, such Communication shall not contain any such Non-public Information. Any communication in written form shall contain the following sentence at the beginning of such Communication.

*[Sender] hereby represents, warrants and agrees that the following Communication contains no Non-public Information with respect to the Issuer, any of the Issuer’s Subsidiaries or any of their securities (each, as defined in the Loan Agreement dated October 11, 2013, among Borrower, Merrill Lynch International, as administrative agent thereunder, and each lender from time to time party thereto, to which this Communication relates).*

(n) Pro Rata Payments. At any time that Borrower, with respect to either Margin Loan Facility, (i) makes any voluntary prepayment, (ii) makes any payment of interest in kind, (iii) sells any Shares constituting Collateral or Other Facility Collateral or (iv) withdraws any Collateral consisting of Cash, Borrower shall take the same action with respect to the other Margin Loan Facility *pro rata* according to the then outstanding “Total Accrued Loan Amount” under, and as defined in, each Margin Loan Facility.

**Section 5.02 Negative Covenants.** So long as any Lender shall have any Commitment hereunder, or any Obligations have not been indefeasibly paid in full:

(a) Additional Debt. Neither Borrower nor General Partner shall, directly or indirectly, create, incur, assume or suffer to exist any Debt, other than Debt created under this Agreement and Debt created under the Other Loan Agreement.

(b) Liens. Neither Borrower nor General Partner shall, directly or indirectly, create, incur, assume or suffer to exist any Lien upon any of its property, revenues or assets (including any Shares), whether now owned or hereafter acquired, except, in the case of Borrower, (i) Liens created under the Facility Documents and (ii) solely with respect to Other Facility Collateral, Liens created under the Other Facility Documents (such Liens, in the case of **clauses (i) and (ii), “Permitted Liens”**).

(c) Negative Pledge; Restricted Transactions. Borrower shall not (i) sell (except as specifically contemplated by **Section 2.09(b)** hereof or Section 2.09(b) of the Other Loan Agreement), transfer, pledge or encumber, or suffer to exist a Lien (other than Permitted Liens) on any Shares, or (ii) enter into any Restricted Transactions.

(d) Mergers, Etc. Without the prior consent of Administrative Agent, neither Borrower nor General Partner shall, directly or indirectly, merge or consolidate with or into, or convey, transfer, lease or otherwise dispose of, whether in one transaction or in a series of transactions, all or substantially all of its property and assets (whether now owned or hereafter acquired) to any Person.

(e) No New Business. Neither Borrower nor General Partner shall, directly or indirectly, engage in any business other than as expressly permitted under its Organization Documents.

(f) No Amendment of Organization Documents, Etc. Neither Borrower nor General Partner shall, directly or indirectly, consent to any material amendment, supplement or other modification of any of the terms or provisions of its Organization Documents that is adverse to the Lender Parties, in each case without the consent of the Required Lenders.

(g) Distributions, Etc. Neither Borrower nor General Partner shall, directly or indirectly, declare or make any dividend payment or other distribution of assets, property, cash, rights, obligations or securities on account of any Equity Interests in it, or purchase, redeem, retire or otherwise acquire for value any Equity Interests in it, now or hereafter outstanding from any of its assets, property, cash, rights, obligations or securities.

(h) Loans and Investments. Neither Borrower nor General Partner shall, directly or indirectly, lend money or extend credit or make advances to any Person, or purchase or acquire any stock (other than pursuant to the Purchase Agreement), obligations or securities of, or any other interest in, or make any capital contribution to, any other Person.

(i) Transactions with Affiliates. Neither Borrower nor General Partner shall, directly or indirectly, enter into any transaction with or make any payment or transfer to any of its Affiliates, except in the ordinary course of business and upon fair and reasonable terms no less favorable to such Person than would be obtained in a comparable arm's-length transaction with a Person not an Affiliate of it and as permitted by its Organization Documents.

(j) Formation of Subsidiaries. Neither Borrower nor General Partner shall, directly or indirectly, form, create, organize, incorporate or acquire any Subsidiaries other than, in the case of General Partner, Borrower.

(k) Status as a Benefit Plan. Neither Borrower nor General Partner shall, directly or indirectly, be or become a Benefit Plan.

(l) Compliance with Margin Regulations. Borrower shall not, directly or indirectly, take any action that would result in a violation by it of Regulation T, U, or X.

(m) No Short Sales. Neither Borrower nor General Partner shall directly or indirectly engage in any short sales (including through hedging or derivatives transactions) or enter into any Swap Contract with respect to any Share without the prior written consent of Administrative Agent.

(n) Sanctions. The proceeds of any Loan shall not be used, directly or indirectly, and Borrower shall not lend, contribute or otherwise make available such proceeds to any Affiliate, joint venture partner or other individual or entity, to fund any activities of or business with any individual or entity, or in any Designated Jurisdiction that at the time of such funding, is the

subject of any Sanctions; or in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction, whether as a Lender or Agent or otherwise) of any Sanctions.

(o) Status of Shares. Borrower shall not transfer any Share to the Collateral Account unless such Share: (i) qualifies as an Eligible Pledged Share and (ii) is transferred to the Collateral Account on or prior to the Closing Date.

(p) Limitation on Activities. From and after the Closing Date, neither Borrower nor General Partner shall, directly or indirectly, (i) engage in any business or conduct any activity other than (A) in the case of Borrower, (w) its ownership of the Pledged Shares and other Collateral (and any dividends or distributions thereon) and the ownership of "Pledged Shares" and other "Collateral" (each as defined under the Other Loan Agreement) (and any dividends or distributions thereon), (x) the performance of the transactions contemplated by the Transaction Documents (which have been delivered to Administrative Agent), in each case, in accordance with the terms thereof, (y) the performance of ministerial activities and payment of taxes and administrative fees necessary for compliance with this Agreement and the Other Loan Agreement and (z) the maintenance of its legal existence, including the ability to incur fees, costs and expenses relating to such maintenance, and (B) in the case of General Partner, as expressly permitted under its Organization Documents, (ii) except as expressly contemplated by **clause (r)** below, enter into any contractual obligation or any transaction or agreement between itself and any Person or (iii) change its capital structure.

(q) Bankruptcy Action. General Partner agrees not to take any Bankruptcy Action with respect to Borrower without each Lender's consent.

(r) Agreements. Neither Borrower nor General Partner shall enter into any contract, guaranty, indemnity or other agreement of any kind, other than (i) the Transaction Documents, (ii) routine administrative agreements entered into in the ordinary course of its business, (iii) in the case of Borrower, insurance contracts purchased under Section 6.7(f) of the Amended and Restated Agreement of Limited Partnership of Borrower and (iv) in the case of Borrower, indemnification agreements entered into pursuant to Section 6.7(b) of the Amended and Restated Agreement of Limited Partnership of Borrower; provided that in the case of clauses (ii), (iii), and (iv) at the time of its entry therein, the Value of cash and cash equivalents then held by it that, in the case of Borrower, do not constitute Collateral or Other Facility Collateral shall equal or exceed the aggregate amount of obligations of Borrower or General Partner, as the case may be, with respect to all such agreements and contracts and any other estimated operating expenses of Borrower or General Partner, as the case may be, that are due and payable, or that will become due on or before the Scheduled Maturity Date (any such excess, the "**Available Cash Amount**").

(s) Most Favored Nations. Borrower shall not enter into any amendment, modification or supplement to any Other Facility Document unless Borrower shall have (i) delivered written notice of such amendment or supplement, and a final draft of all relevant documentation, to Administrative Agent at least five Business Days prior to entry therein and (ii) offered to execute a substantially identical amendment or supplement to the analogous Facility Document and, if applicable, to pay the same consent fee (as a percentage of "Total Accrued Loan Amount" under, and as defined in, the Facility Documents and the Other Facility Documents) therefor. In addition, Borrower shall not enter into any amendment, modification or supplement to any Other Facility Document that would increase the amount of Debt thereunder or otherwise be adverse to the Lenders, without consent of Administrative Agent.

**ARTICLE VI  
EVENTS OF DEFAULT**

**Section 6.01 Events of Default.** If any of the following events ("*Events of Default*") shall occur:

(a) Borrower shall fail to pay when due (i) any of the outstanding principal of, or accrued interest on, any Loan, (ii) the amounts required to be prepaid or repaid pursuant to **Section 2.08**, if any, or (iii) other amounts or fees owing pursuant to any of the Facility Documents, and, in the case of any amount other than principal, if (A) the failure to pay such amount was solely the result of an operational error, (B) Borrower had funds sufficient to enable it to pay such amount when due and (C) Borrower has provided to Administrative Agent written evidence satisfactory to it of the matters set forth in clauses (A) and (B) above, such failure continues for more than two (2) Business Days; or

(b) Borrower shall fail to provide Administrative Agent with the reports required to be delivered under **Section 5.01(b)** on the date required for such delivery, and such failure shall not be cured within five (5) Business Days; provided that no such cure period shall apply to the extent that (i) three (3) delivery failures have already occurred during the then current calendar quarter or (ii) one (1) delivery failure with respect to the specific report in question has already occurred during the then current calendar quarter; or

(c) Borrower or General Partner shall fail to perform or observe when due any term, covenant, or agreement contained in **Section 2.09**, **Section 5.01(a)**, **Section 5.01(j)**, **Section 5.01(n)**, **Section 5.02** or **Section 6.02** hereof or Section 6 of the Pledge Agreement; or

(d) Borrower or General Partner shall fail to perform or observe when due any term, covenant, or agreement contained in this Agreement or any other Facility Document to which it is a party (not specified in **clause (a)**, **(b)** or **(c)** above or any other clause of this **Section 6.01**) and such default shall not have been remedied or waived within ten (10) days after the earlier of (i) an officer of Borrower becoming aware of such default or (ii) receipt by Borrower of notice from Administrative Agent of such default; or

(e) any representation, warranty, certification or statement of fact made or deemed made by or on behalf of Borrower or General Partner herein, in any other Facility Document, or in any document delivered in connection herewith or therewith, or any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Parent in any Representation Letter, shall be incorrect or misleading in any material respect (unless, in each case, such representation or warranty is qualified as to materiality, in which case such representation or warranty shall be incorrect or misleading) when made or deemed made; or

(f) (i) any provision of any Facility Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder, shall cease to be in full force and effect (for any reason other than the failure of the Collateral Agent to take action within its control); (ii) Borrower, General Partner or any Parent shall contest the validity or enforceability of any provision of any Facility Document in writing; or (iii) Borrower or General Partner shall deny in writing that it has any further liability under any Facility Document or under any other agreement or instrument between Borrower, General Partner or any Parent, on the one hand, and any Lender or Agent (or any Affiliate thereof), on the other hand, or shall purport to revoke, terminate or rescind any provision of any Facility Document; or

(g) (i) Borrower or General Partner (A) shall fail to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Debt (other than Debt hereunder or under the Other Loan Agreement and Debt under Swap Contracts), or (B) shall fail to observe or perform any other agreement or condition relating to any such Debt referred to in **clause (A)** or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Debt or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Debt to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Debt to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there shall occur under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which Borrower or General Partner, as applicable, is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which Borrower or General Partner, as applicable, is an Affected Party (as so defined); or

(h) (i) Borrower or General Partner shall become unable or admit in writing its inability or fail generally to pay its debts as they become due; (ii) any writ or warrant of attachment or similar process shall be issued or levied against all or any material part of the property of Borrower or General Partner and shall not be released, vacated or fully bonded within thirty (30) calendar days after its issue or levy; (iii) Borrower or General Partner shall institute or consent to the institution of any proceeding under any Debtor Relief Law, or make an assignment for the benefit of creditors, or apply for or consent to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; (iv) any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer shall be appointed without the application or consent of Borrower or General Partner and the appointment shall continue undischarged or unstayed for thirty (30) calendar days; (v) any proceeding under any Debtor Relief Law relating to Borrower or General Partner or to all or any material part of its property shall be instituted without the consent of Borrower or General Partner, as the case may be, and shall continue undismissed or unstayed for thirty (30) calendar days, or an order for relief is entered in any such proceeding; or (vi) Borrower or General Partner shall take any action to authorize any of the actions set forth above in this **Section 6.01(h)**; or

(i) there shall be entered against Borrower or General Partner (i) one or more final judgments or orders for the payment of money (whether or not in connection with the Pending Litigation) involving in the aggregate at any time an amount in excess of the Available Cash Amount with respect to Borrower or General Partner, as the case may be, and (A) enforcement proceedings shall be commenced by any creditor upon such judgment or order, or (B) there shall be a period of twenty (20) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; (ii) one or more judgments or orders for the payment of money in connection with the Pending Litigation involving in the aggregate at any time an amount in excess of the Available Cash Amount with respect to Borrower or General Partner, as the case may be, and (A) at any time, such judgment or order is final and not subject to further appeal, (B) Borrower or General Partner, as the case may be, has not (x) fully bonded such judgment or order and (y) filed an appeal thereof, in each case within five (5) Business Days of the entry of such judgment or order, or (C) at any time following the tenth Business Day after the entry of such judgment or order, a stay of enforcement thereof is not in effect or (iii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; or

(j) a Regulatory Event shall occur; or

(k) the Collateral Requirement shall cease to be satisfied or Collateral Agent shall, other than as a result of any failure by Collateral Agent to take any action within its control, cease to have a First Priority perfected Lien in the Collateral; or

(l) Borrower or any of its Affiliates or Issuer or any of its Affiliates or any Parent or General Partner shall enter into any Debt Purchase Transaction; or

(m) the Issuer shall breach, terminate, repudiate or purport to terminate the Issuer Acknowledgment, or any Parent shall breach, terminates repudiate or purport to terminate the Representation Letter to which it is a party; or

(n) General Partner shall cease to be the sole general partner of Borrower; or

(o) any "Event of Default" (as defined in the Other Loan Agreement) shall occur,

then, and in any such event, Administrative Agent shall at the request of, or may with the consent of, the Required Lenders declare the Loans, all accrued interest thereon, all fees and all other accrued amounts payable under this Agreement and the other Facility Documents to be forthwith due and payable, whereupon the Loans, all such interest and fees and all such other amounts hereunder and under the Facility Documents shall become and be forthwith due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by Borrower; provided that upon the occurrence of any event in **Section 6.01(h)**, the Loans, all accrued interest and all accrued other amounts payable, including fees, under this Agreement and under the other Facility Documents shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by Borrower. In addition to the foregoing, upon the occurrence of an Event of Default, Administrative Agent or Collateral Agent may, at its option, instruct the Custodian to transfer the whole or any part of the Collateral into the name of Administrative Agent or Collateral Agent or the name of its nominee, notify the obligors on any Collateral to make payment to Administrative Agent or Collateral Agent or its nominee of any amounts due thereon, take control or grant its nominee the right to take control of any proceeds of the Collateral, liquidate any or all of the Collateral, withdraw and/or sell any or all of the Collateral and apply any such Collateral as well as the proceeds of any such Collateral to all unpaid Obligations in such order as the applicable Agent determines in its sole discretion, and exercise any other rights and remedies under any Facility Document, at law or in equity. If Administrative Agent or Collateral Agent exercises its rights under the immediately preceding sentence, it shall promptly so notify Borrower.

**Section 6.02 Certain Provisions Related to Pledged Shares.** At all times prior to the disposition of any Pledged Shares by a Lender Party pursuant to **Section 6.01** herein, Borrower shall have the right to exercise all voting, consensual and other powers of ownership pertaining to the Pledged Shares for all purposes not inconsistent with the terms of this Agreement, any other Facility Document or any other instrument or agreement referred to herein; provided that Borrower agrees that Borrower will not act in any manner that is inconsistent with the terms of this Agreement, any other Facility Document or any such other instrument or agreement, or take any other action in respect of the Pledged Shares that would reasonably be expected to have a Material Adverse Effect or a material adverse effect on the value of the

Pledged Shares or a Lender Party's interest therein or limit or delay its ability to sell or otherwise realize against the Pledged Shares. For the avoidance of doubt, no Lender Party shall have any voting rights with respect to the Pledged Shares, except to the extent that such Lender Party buys any Pledged Shares in a sale or other disposition made pursuant to **Section 6.01**.

**Section 6.03 Application of Funds.** After the exercise of remedies provided for herein or in any other Facility Document (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by 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 Agents and amounts payable under **Sections 2.10, 2.11 and 2.13**) payable to each Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including fees and time charges for attorneys who may be employees of any Lender) arising under the Facility Documents and amounts payable under **Sections 2.10, 2.11 and 2.13**, 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 interest on the Loans and other Obligations arising under the Facility Documents, ratably among the Lenders in proportion to the respective amounts described in this **clause Third** payable to them;

Fourth, to payment of that portion of the Obligations constituting principal in respect of any interest paid in kind ratably among the Lenders in proportion to the respective amounts described in this **clause Fourth** held by them;

Fifth, to payment of that portion of the Obligations constituting unpaid principal of the Loans (other than principal in respect of any interest paid in kind) ratably among the Lenders in proportion to the respective amounts described in this **clause Fifth** held by them; 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.

## ARTICLE VII AGENTS

**Section 7.01 Appointment and Authority.** Each of the Lenders hereby irrevocably appoints Merrill Lynch International to act on its behalf as Administrative Agent hereunder and under the other Facility Documents and authorizes Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Each of the Lenders hereby irrevocably appoints Merrill Lynch Professional Clearing Corp. to act on its behalf as Collateral Agent hereunder and under the other Facility Documents and authorizes Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Each of the Lenders hereby irrevocably appoints Merrill Lynch Professional Clearing Corp. to act on its behalf as Calculation Agent hereunder and under the other Facility Documents and authorizes Calculation Agent to take such actions on its behalf and to exercise such powers as are delegated to Calculation Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. In performing its functions



and duties hereunder, the Agents shall act solely as an agent of the Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Borrower. For the avoidance of doubt, Collateral Agent and Calculation Agent shall comply with any instructions from Administrative Agent. The provisions of this Article are solely for the benefit of the Agents and the Lenders, and Borrower shall not 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 Facility Documents (or any other similar term) with reference to 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.

**Section 7.02 Rights as a Lender.** If the Person serving as an Agent hereunder also acts as a Lender hereunder, it shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as an Agent hereunder in its individual capacity. Each Agent and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with Borrower or any Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders.

**Section 7.03 Exculpatory Provisions.**

(a) The Agents shall not have any duties or obligations except those expressly set forth herein and in the other Facility Documents and their duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, each Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(ii) 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 Facility Documents that such Agent is required to exercise, provided that such Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Facility Document or applicable Law; or

(iii) shall not, except as expressly set forth herein and in the other Facility Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as such Agent or any of its Affiliates in any capacity.

No Agent shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in **Sections 6.01** and **8.01**) or (ii) in the absence of its own gross negligence or willful misconduct. No Agent shall be deemed to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to such Agent by Borrower or a Lender.

No Agent shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Facility 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, conditions, or provisions set forth herein or in any of the other Facility Documents, or as to use of the proceeds of the Loans, or as to the existence or possible existence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Facility Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in **ARTICLE III** or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent.

**Section 7.04 Reliance by the Agents.** Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Each 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, which by its terms must be fulfilled to the satisfaction of a Lender, Administrative Agent may presume that such condition is satisfactory to such Lender unless Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Agents may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**Section 7.05 Delegation of Duties.** Each Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Facility Document by or through any one or more agents, sub-agents, affiliates or employees appointed by such Agent. Each Agent and any such agents, sub-agent, affiliates or employees may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such agents, sub-agents, affiliates or employees and to the Related Parties of each Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facility provided for herein as well as activities as an Agent. Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

**Section 7.06 Resignation of Agent.** Any Agent shall have the right to resign at any time by giving prior written notice of its resignation to the Lenders and Borrower. Upon receipt of any such notice of resignation, Required Lenders shall have the right, in consultation with Borrower, to appoint a successor to such Agent, which shall be a bank with an office in New York, New York, or an Affiliate of any such bank with an office in New York, New York. If no such successor shall have been so appointed by Required Lenders or an appointed successor does not accept such appointment within thirty (30) days after the retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders), then the retiring Agent may on behalf of the Lenders, appoint a successor Agent to replace it meeting the qualifications set forth above, provided that if the retiring Agent shall notify Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Facility Documents (except that if any Collateral is then held by such Agent on behalf of the Lenders under any of the Facility Documents, such Agent shall continue to hold such Collateral until such time as a successor Agent to it is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the retiring Agent shall instead be made by or to each Lender directly, until such time as Required Lenders

appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as the applicable Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Facility Documents (if not already discharged therefrom as provided above in this Section). The fees payable by Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After a retiring Agent's resignation hereunder and under the other Facility Documents, the provisions of this **ARTICLE VII** and **Section 8.04** shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent.

**Section 7.07 Non-Reliance on Agents and Other Lenders.** Each Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, performed its own analysis and made its own decision (credit, legal and otherwise) to enter into this Agreement, any other Facility Document or any related agreement or any document furnished hereunder or thereunder. Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to perform its own analysis and make its own decisions (credit, legal and otherwise) in taking or not taking action under or based upon this Agreement, any other Facility Document or any related agreement or any document furnished hereunder or thereunder.

**Section 7.08 No Other Duties.** Anything herein to the contrary notwithstanding, no Agent hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Facility Documents, except in its capacity, as applicable, as such Agent hereunder or thereunder.

**Section 7.09 Collateral and Guaranty Matters.** Each Lender hereby further authorizes Administrative Agent and Collateral Agent to enter into the Facility Documents as (in the case of Collateral Agent) secured party on behalf of and for the benefit of the Lenders and agrees to be bound by the terms of the Facility Documents. Without limiting the provisions of **Section 7.10**, the Lenders irrevocably authorize Administrative Agent and Collateral Agent to take all such actions as shall be required to release any Lien on any property granted to or held by Administrative Agent or Collateral Agent under any Facility Document (i) upon termination of the aggregate Commitments and payment in full of all Obligations (other than unmatured contingent indemnification obligations), (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Facility Document, (iii) that is expressly permitted to be released pursuant to, and subject to the conditions set forth in, **Section 2.09(b)** and/or **Section 2.09(c)**, as applicable, or (iv) subject to **Section 8.01**, if approved, authorized or ratified in writing by the Required Lenders. Neither Administrative Agent nor Collateral Agent shall be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of Collateral Agent's Lien thereon, or any certificate prepared by Borrower in connection therewith, nor shall Administrative Agent or Collateral Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

**Section 7.10 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 Borrower, Administrative Agent (irrespective of whether the principal of any Loans 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, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid to the Agents or the Lenders under the Facility Documents and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agents and their respective agents and counsel and all other amounts due the Lenders and the Agents under the Facility Documents) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to 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 Administrative Agent under the Facility Documents.

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 owed by Borrower hereunder 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.

## ARTICLE VIII MISCELLANEOUS

**Section 8.01 Amendments, Etc.** No amendment or waiver of any provision of this Agreement or any other Facility Document, and no consent to any departure by Borrower therefrom, shall be effective unless in writing signed by the Required Lenders and Borrower, and acknowledged by Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no such amendment, waiver or consent shall:

(a) waive any condition set forth in **Section 3.01** without the written consent of each Lender as of the Closing Date;

(b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to **Section 6.01**) without the written consent of such Lender;

(c) postpone any date fixed by this Agreement or any other Facility Document for any payment (excluding mandatory prepayment) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Facility Document without the written consent of each Lender adversely and directly affected thereby;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan, or any fees or other amounts payable hereunder or under any other Facility Document without the written consent of each Lender adversely and directly affected thereby; provided that only the consent of Required Lenders shall be necessary to adjust the default rate as set forth in **Section 2.04(b)** or to waive any obligation of Borrower to pay interest at such rate;

(e) change **Section 2.17** or **Section 6.03** in a manner that would alter the pro rata sharing required thereby without the written consent of each Lender;

(f) change any provision of this Section or the definition of “**Required Lenders**” or any other provision hereof specifying the number or percentage of the Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender; or

(g) release a substantial portion of the Collateral without the written consent of each Lender, except to the extent the release of the Collateral is permitted pursuant to **Section 7.09** (in which case such release may be made by Administrative Agent acting alone);

and provided further that no amendment, waiver or consent shall, unless in writing and signed by the applicable Agent in addition to the Lenders required above, affect the rights or duties of such Agent under this Agreement or any other Facility Document.

Notwithstanding anything to the contrary herein, upon the announcement by any Person of any transaction or event or series of transactions or events that, if consummated, would constitute a Potential Adjustment Event, or upon the occurrence of a Potential Adjustment Event, Calculation Agent may (a) make corresponding adjustments to one or more of the material terms of this Agreement as Calculation Agent determines necessary to preserve for the Lenders the fair value of the transactions hereunder and (b) determine the effective time(s) of the adjustment(s) (the “**Adjustment Event Effective Time**”) (taking into account, among other factors, volatility, liquidity and free float of the Shares, the credit profile of Issuer and Transfer Restrictions, in each case, relative to the Pledged Shares prior to giving effect to the relevant event). Any such adjustments pursuant to this paragraph shall be binding on all parties to the Facility Documents and all such parties shall enter into such documentation required or reasonably requested by Administrative Agent to reflect such adjustments. Borrower shall promptly notify Calculation Agent upon becoming aware of the occurrence of any Potential Adjustment Event or Corporate Event, and Calculation Agent shall promptly notify Borrower of any adjustment made pursuant to this paragraph. Upon receipt of written request from the Borrower following any adjustment pursuant to this paragraph or any determination of an Interest Rate Hedge Unwind Amount, the Calculation Agent shall reasonably promptly provide Borrower with a written explanation describing in reasonable detail any calculation, adjustment or determination made by it (including any quotations, market data or information from internal sources used in making such calculations, but without disclosing the Calculation Agent’s proprietary models or confidential information).

#### **Section 8.02 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 telecopier 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 Borrower, to

ASAC II LP  
c/o Northern Trust Private Equity Fund Administration  
Dept 2008  
801 S. Canal

Chicago, IL 60607  
Attention: Matthew Smith, Vice President  
Phone: (312) 557-5687  
Fax: (312) 267-3748  
E-mail: USPEFA\_ASAC@ntrs.com

with a copy to

ASAC II LLC  
c/o Chadwick and Company  
225 Highway 35, Suite 102C  
Red Bank, NJ 07701  
Attention: Robert V. Chadwick  
Phone: (732) 345-8300  
Fax: (732) 345-8332  
E-mail: bob@chadwickcpa.com

;

(ii) if to Administrative Agent or any other Agent, to

Bank of America Merrill Lynch  
2 King Edward Street  
London EC1A 1HQ  
Attention: Moneeza Khan;  
and

(iii) if to a Lender, to it at its address (or telecopier number) set forth in **Schedule I** hereto or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

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 telecopier 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 **clause (b)** below, shall be effective as provided in such **clause (b)**.

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to **Section 2.02** if such Lender 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 acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next 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.

(c) Change of Address, Etc. Each of Borrower and each Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to Borrower and Administrative Agent. In addition, each Lender agrees to notify Administrative Agent from time to time to ensure that Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(d) Reliance by Agents and Lenders. The Agents and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of 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. Borrower shall indemnify each Agent, 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 Borrower. All telephonic notices to and other telephonic communications with any Agent may be recorded by such Agent, and each of the parties hereto hereby consents to such recording.

### **Section 8.03 No Waiver; Remedies; Securities Contracts.**

(a) No failure on the part of any Lender or Agent to exercise, and no delay in exercising, any right hereunder or under any other Facility Document shall operate as a waiver thereof nor shall the single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in the Facility Documents are cumulative and not exclusive of any remedies provided by Law. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of any Agent or any Lender to any other or further action in any circumstances without notice or demand.

(b) Notwithstanding anything to the contrary contained herein or in any other Facility Document, the authority to enforce rights and remedies hereunder and under the other Facility Documents against Borrower shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, Administrative Agent in accordance with **Section 6.01** for the benefit of all Lenders; provided that the foregoing shall not prohibit (a) 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 Facility Documents, (b) any Lender from exercising setoff rights in accordance with **Section 8.13** (subject to the terms of **Section 2.17**), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to Borrower under any Debtor Relief Law.

(c) Borrower and each Lender acknowledge that each of this Agreement and the other Facility Documents is intended to be a “**securities contract**” within the meaning of the Bankruptcy Code of the United States and that each delivery, transfer, payment and grant of a security interest made or required to be made hereunder or thereunder or contemplated hereby or thereby or made, required to be made or contemplated in connection herewith or therewith is intended to be a “**transfer**” and a “**margin payment**” or a “**settlement payment**” within the meaning of Sections 362(b)(6), (7) and/or (27) and Sections 546(e), (f) and/or (j) of the Bankruptcy Code of the United States. The parties further acknowledge that each of this Agreement and the other Facility Documents is intended to be a “**master netting agreement**” within the meaning of the Bankruptcy Code of the United States.

#### **Section 8.04 Costs and Expenses; Indemnification; Damage Waiver.**

(a) **Costs and Expenses.** Borrower shall pay or reimburse (i) all reasonable and documented out-of-pocket expenses incurred by Administrative Agent, any other Agent, and their Affiliates, and any Lender (including the reasonable and documented fees, charges and disbursements of counsel for any Agent or Lender), in connection with the syndication of the credit facilities provided for herein (including, without limitation, pursuant to credit default swap or other derivative transactions or participations), the preparation, negotiation, execution, delivery and administration of this Agreement and the other Facility 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 and documented out-of-pocket expenses incurred by Administrative Agent, any other Agent, or any Lender (including the reasonable and documented fees, charges and disbursements of any counsel for any Agent and any Lender), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Facility Documents, including its rights under this Section, or (B) in connection with the Loans made hereunder, including all such reasonable and documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans, and (iii) any losses (including market losses), costs or expenses incurred in connection with the acquisition, establishment, re-establishment, substitution, maintenance, unwinding or disposition of, or realization or recovery of the proceeds of, any transaction(s), position(s) or asset(s) (or any part thereof) that Administrative Agent, any other Agent, any Lender or any of their Affiliates deems necessary (in its sole discretion) to hedge the market risk of the Collateral entered into or acquired after the occurrence, and during the continuance, of an Event of Default.

(b) **Indemnification by Borrower.** Borrower shall indemnify each Agent (and any sub-agent thereof), each Lender 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 fees, charges and disbursements of any counsel for any Indemnitee (which, in the case of counsel, shall be limited to the reasonable and documented fees, disbursements and other charges of (i) one primary counsel and one additional local counsel in each applicable jurisdiction for the Administrative Agent, (ii) one additional primary counsel, and one additional counsel in each applicable jurisdiction, for all other Indemnities (taken as a whole) and (iii) solely in the case of a conflict of interest, one additional counsel in each relevant jurisdiction to the affected Indemnities (taken as a whole)), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by Borrower or any Related Party of Borrower arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Facility Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions



contemplated hereby or thereby, or, in the case of each Agent (and any sub-agent thereof) and its respective Related Parties only, the administration of this Agreement and the other Facility Documents, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any joint or other instructions requested or required by Borrower and given to Custodian under the Control Agreement, or (iv) any actual 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 Borrower or any other Related Party of Borrower, 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, (y) result from a claim brought by Borrower or any Related Party of Borrower against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Facility Document, if Borrower or such Related Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) arise solely from a claim brought by one Indemnitee against another Indemnitee, except for any claims against any Agent in its capacity as such, that does not involve any act or omission of Borrower or any of its Affiliates.

(c) Reimbursement by Lenders. To the extent that Borrower for any reason fails to indefeasibly pay any amount required under **clause (a)** or **(b)** of this Section to be paid by it to any Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to such Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against such Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for such Agent (or any such sub-agent) in connection with such capacity. The obligations of Lenders under this **clause (c)** are subject to the provisions of **Section 2.16(c)**.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, Borrower shall not assert, and Borrower hereby waives, 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 Facility Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan 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 by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Facility Documents or the transactions contemplated hereby or thereby, other than for direct or actual damage resulting from the gross negligence, bad faith or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor, except that amounts described in **clause (a)(i)** of this Section that are incurred or accrued on or prior to the Closing Date shall be payable on the Closing Date.

(f) Survival. The agreements in this Section shall survive the resignation of the Agents, the replacement of any Lender, the termination of the Facility and the repayment, satisfaction or discharge of all the other Obligations.

**Section 8.05 Payments Set Aside.** To the extent that any payment by or on behalf of Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by 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 Lenders under **clause (b)** of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

**Section 8.06 Assignments and Participations.**

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of 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 **clause (b)** of this Section, (ii) by way of participation in accordance with the provisions of **clause (d)** of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **clause (e)** of this Section (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 and, to the extent expressly contemplated hereby, the Related Parties of each of the Agents and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement. For the avoidance of doubt, nothing in this Agreement shall be construed to prevent any Lender from hedging its exposure to the Facility or the Collateral.

(b) Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the 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.

(1) 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 that equal at least the amount specified in **paragraph (b)(i)(2)** of this Section 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

(2) in any case not described in **clause (b)(i)(1)** of this Section, 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 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 unless each of Administrative Agent and, so long as no Event of Default has occurred and is continuing, 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.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by **clause (b)(i)(2)** of this Section and, in addition:

(1) the consent of Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to an Eligible Assignee; provided that Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to Administrative Agent within five (5) Business Days after having received notice thereof; and

(2) the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that (x) Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment and (y) for the avoidance of doubt, Borrower shall not be obligated to pay all or any portion of such processing fee.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to Borrower or any of Borrower’s Affiliates or to the Issuer or any of the Issuer’s Affiliates or Subsidiaries, (B) to 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.

(vi) Purchaser Representations. Any such assignee shall make the Purchaser Representations to each of Collateral Agent, Administrative Agent and each other Lender hereunder.

Subject to acceptance and recording thereof by Administrative Agent pursuant to **clause (b)** of this Section, 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 2.10, 2.11, 2.13, and 8.04**.

(c) **Register**. Administrative Agent, acting solely for this purpose as an agent of Borrower (and such agency being solely for tax purposes), shall maintain at Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of Lenders, and the Commitments of, 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 entries in the Register shall be conclusive absent manifest error, and Borrower, Administrative Agent and 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 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, Borrower or Administrative Agent, sell participations to any Person (other than a natural Person, Borrower or any of Borrower's Affiliates) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Borrower, Administrative Agent, and Lenders 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 8.04(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 8.01** that affects such Participant. Borrower agrees that each Participant shall be entitled to the benefits of **Sections 2.10, 2.11, and 2.13** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section (it being understood that the documentation required under **Section 2.11(e)** shall be delivered to 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; provided that such Participant (A) agrees to be subject to the provisions of **Section 2.17** as if it were an assignee under **clause (b)** of this Section and (B) shall not be entitled to receive any greater payment under **Section 2.10** or **2.11**, 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 (x) such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation or (y) the sale of the participation to such Participant is made with

Borrower's prior written consent. To the extent permitted by law, each Participant also shall be entitled to the benefits of **Section 8.13** as though it were a Lender; provided that such Participant agrees to be subject to **Section 2.17** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of 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 Facility 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 or its other obligations under any Facility Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. 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, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

Any such participant shall make the Purchaser Representations to each of Collateral Agent, Administrative Agent and each other Lender hereunder.

(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; 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.

#### **Section 8.07 Governing Law; Submission to Jurisdiction.**

(a) **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the law of the State of New York, without giving effect to its conflict of laws provisions other than Section 5-1401 of the New York General Obligations Law.

(b) **Submission to Jurisdiction.** Borrower irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the United States District Court of the Southern District of the State of New York, and all appropriate appellate courts or, if jurisdiction in such court is lacking, any New York State court of competent jurisdiction sitting in New York (and all appropriate appellate courts), in any action or proceeding arising out of or relating to this Agreement or any other Facility Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable Law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Facility Document shall affect any right that any Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Facility Document against Borrower or the properties of such party in the courts of any jurisdiction.

(c) Waiver of Venue. Borrower 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 Facility Document in any court referred to in **clause (b)** of this Section. 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.

(d) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in **Section 8.02(a)**. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable Law.

(e) 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 FACILITY 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 FACILITY DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **Section 8.07(e)**.

**Section 8.08 Severability.** In case any provision in this Agreement or any other Facility Document shall be held to be invalid, illegal or unenforceable, such provision shall be severable from the rest of this Agreement or such other Facility Document, as the case may be, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Section 8.09 Counterparts; Integration; Effectiveness; Electronic Execution.**

(a) 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 Facility Documents, and any separate letter agreements with respect to fees payable to Administrative Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in **ARTICLE III**, this Agreement shall become effective when it shall have been executed by Administrative Agent and when 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 telecopier shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) Electronic Execution of Assignments. The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a

paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**Section 8.10 Survival of Representations.** All representations and warranties made hereunder shall survive the execution and delivery hereof. Such representations and warranties have been or will be relied upon by each Agent and each Lender, regardless of any investigation made by any Agent or any Lender or on their behalf and notwithstanding that any Agent or any Lender may have had notice or knowledge of any Default or Event of Default at the time of any Loan, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

**Section 8.11 Confidentiality.** Each of the Agents and the Lenders agrees to maintain the confidentiality of the Information (as defined below) pursuant to the requirements hereof in accordance with such Agent's and such Lender's customary procedures for handling confidential information of such nature, except that Information (together with any Non-public Information received by any Agent or any Lender relating to Borrower, the Issuer or the Shares in breach of **Section 5.01(m)**) may be disclosed (a) to such Agent's or Lender's Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential pursuant to the terms hereof), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (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 Facility Document or any action or proceeding relating to this Agreement or any other Facility Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as, or more restrictive than, those of this **Section 8.11**, to (i) any permitted assignee of or Participant in, or any prospective permitted assignee of or Participant in, any of its rights or obligations under this Agreement or the Facility Documents or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loans, Borrower and/or its obligations under the Facility Documents, (g) with the consent of Borrower, (h) to any rating agency when required by it, provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any confidential information relating to Borrower, the Loans received by the rating agency from any Agent or any Lender or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this **Section 8.11** or (y) becomes available to any Agent or any Lender on a nonconfidential basis from a source other than Borrower. With respect to any disclosure under Section 8.11(b) and (c), the applicable Lender Party shall use commercially reasonable efforts to promptly notify Borrower, to the extent legally permissible and practicable under the circumstances, so as to permit Borrower to obtain a protective order as to such disclosure, and such Lender Party will use reasonable efforts to cooperate (to the extent practicable and permitted by its respective then existing policies) with the Borrower for such purpose. Notwithstanding anything herein to the contrary, any party to the Facility Documents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by the Facility Documents and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure.

For purposes of this **Section**, "**Information**" means all information received from Borrower, General Partner or their respective Affiliates relating to Borrower or its business, other than any such information that is available to any Agent or any Lender on a nonconfidential basis prior to disclosure by Borrower, General Partner or their respective Affiliates, provided that, in the case of information received

from Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this **Section 8.11** shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

**Section 8.12 No Advisory or Fiduciary Relationship.** 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 Facility Document), Borrower acknowledges and agrees that: (a)(i) the arranging and other services regarding this Agreement provided by Administrative Agent are arm's-length commercial transactions between the Parents, General Partner, Borrower and its Affiliates, on the one hand, and Administrative Agent and its Affiliates, on the other hand, (ii) Borrower, General Partner and each Parent has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) Borrower, General Partner and each Parent is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Facility Documents; (b)(i) each Agent 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 any Parent, General Partner, Borrower or any of their respective Affiliates, or any other Person and (ii) the Agents have no any obligation to Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Facility Documents; and (c) each Agent and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Parents, General Partner, Borrower and its Affiliates, and Administrative Agent has no obligations to disclose any of such interests to any Parent, General Partner, Borrower or any of its Affiliates. To the fullest extent permitted by law, Borrower hereby waives and releases any claims that it may have against Administrative Agent or its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**Section 8.13 Right of Setoff.** Following the occurrence and during the continuation of an Event of Default, each Lender, Administrative Agent and their respective Affiliates (each, a "**Set-off Party**") is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to Borrower or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) and any other indebtedness at any time held or owing by a Set-off Party (including, but not limited to, by any of their branches and agencies wherever located) to or for the credit or the account of Borrower or any of its Affiliates against and on account of the obligations and liabilities of Borrower or such Affiliate to the Set-off Party under this Agreement or under any of the other Facility Documents then due, including, but not limited to, all claims of any nature or description arising out of or connected with this Agreement or any other Facility Document, irrespective of whether or not the relevant Set-off Party shall have made any demand hereunder and although said obligations, liabilities or claims, or any of them, or are owed to a branch or office of such Lender or Administrative Agent different from the branch or office holding such deposit or obligated on such indebtedness. The parties agree that the Collateral Account is a general and not special account. The rights of each Set-off Party under this **Section 8.13** are in addition to other rights and remedies (including other rights of setoff) that such Lender or Administrative Agent, or their respective Affiliates may have. Each Lender agrees to notify Borrower and Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

**Section 8.14 [Reserved].**



**Section 8.15 No Fiduciary Duty.** Each Administrative Agent, each Lender and their Affiliates (collectively, solely for purposes of this Section, the “Lenders”), may have economic interests that conflict with those of Borrower, its stockholders and/or its affiliates. Borrower agrees that nothing in the Facility 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 Borrower, its stockholders or its affiliates, on the other. Borrower acknowledges and agrees that (i) the transactions contemplated by the Facility 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 Borrower, 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 Borrower, 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 Borrower, its stockholders or its Affiliates on other matters) or any other obligation to Borrower except the obligations expressly set forth in the Facility Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of Borrower, its management, stockholders, creditors or any other Person. Without limiting the foregoing, Borrower acknowledges and agrees that any Lender or any Agent or any of their Affiliates may at any time, including, without limitation, following the occurrence and during the continuance of an Event of Default, buy, sell or short-sell Shares or enter into or unwind derivative transactions with respect to the Shares to hedge its exposure to the Facility or otherwise, and any such market activities may affect the market price of the Shares in a manner adverse to Borrower. Borrower 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. Borrower 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 Borrower, in connection with such transaction or the process leading thereto.

**Section 8.16 USA PATRIOT Act Notice.** Each Lender that is subject to the Act (as hereinafter defined) and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender or Administrative Agent, as applicable, to identify Borrower in accordance with the Act. Borrower agrees to promptly, following a request by any Lender or Administrative Agent, provide such Lender or Administrative Agent with all of the information requested by such Person (x) to the extent such Person deems such information reasonably necessary to identify Borrower or General Partner in accordance with the Act or (y) in connection with such Person’s standard “on boarding” process (including without limitation pursuant to the requirements of any “know your customer” or anti money laundering rules and regulations).

**Section 8.17 Entire Agreement.** THIS AGREEMENT AND THE OTHER FACILITY DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

[END OF TEXT]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers or representatives thereunto duly authorized, as of the date first above written.

**BORROWER:**

**ASAC II LP,**  
as Borrower

By: ASAC II LLC, as its general partner

By: /s/ Brian G. Kelly

Name: Brian G. Kelly

Title: Manager

**GENERAL PARTNER:**

**ASAC II LLC,**  
In its own capacity, solely with respect to ARTICLE V

By: /s/ Robert A. Kotick

Name: Robert A. Kotick

Title: Manager

*[Additional signature pages follow]*

*[Signature Page to BAML Loan Agreement]*

**LENDER:**

**BANK OF AMERICA, N.A., LONDON BRANCH,**  
as Lender

By: /s/ David Scraven  
Name: David Scraven  
Title: Managing Director

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*[Additional signature pages follow]*

*[Signature Page to BAML Loan Agreement]*

**AGENTS:**

**MERRILL LYNCH INTERNATIONAL,**  
as Administrative Agent

By: /s/ Monuhar Ullah  
Name: Monuhar Ullah  
Title: Managing Director

**MERRILL LYNCH PROFESSIONAL CLEARING  
CORP.,**  
as Collateral Agent and Calculation Agent

By: /s/ Gary E. Yetman  
Name: Gary E. Yetman  
Title: Managing Director

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**STOCKHOLDERS AGREEMENT**

**dated as of October 11, 2013**

**by and among**

**Activision Blizzard, Inc.,**

**ASAC II LP**

**and, for the limited purposes set forth in Section 3.01(c) and Section 3.07,**

**Robert A. Kotick**

**and**

**Brian G. Kelly**

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**STOCKHOLDERS AGREEMENT**, dated as of October 11, 2013 (this "Agreement"), by and among Activision Blizzard, Inc., a Delaware corporation (the "Company"), ASAC II LP, an exempted limited partnership organized under the laws of the Cayman Islands ("Stockholder"), and, for the limited purposes set forth in Section 3.01(c) and Section 3.07, Robert A. Kotick and Brian G. Kelly.

## **RECITALS**

**WHEREAS**, each of Stockholder, Vivendi, S.A. ("Seller"), and the Company are party to that certain Stock Purchase Agreement (the "Purchase Agreement"), dated as of July 25, 2013;

**WHEREAS**, pursuant to the Purchase Agreement, Stockholder has agreed to acquire, as of the date of this Agreement and at the closing of the transactions contemplated by the Purchase Agreement (the "Closing"), 171,968,042 shares of Common Stock from Seller and its controlled affiliates (the "Shares");

**WHEREAS**, the execution and delivery of this Agreement is a condition to the obligations of the parties to consummate the transactions contemplated by the Purchase Agreement; and

**WHEREAS**, each of the parties hereto desires to enter into this Agreement in order to establish certain rights, restrictions and obligations of Stockholder, as well as to set forth certain corporate governance, liquidity and other arrangements relating to the Company and the Shares.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, the parties agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

Section 1.01. Definitions. As used in and for purposes of this Agreement, the following terms have the following meanings:

"Affiliate" of any person means those other persons that, directly or indirectly, control, are controlled by or are under common control with such person; for purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" or "under common control with"), as applied to any person, means the possession, directly or indirectly, of (i) ownership or control of, or power to vote, 25 percent or more of the outstanding shares of any class of voting securities of such person or (ii) control, in any manner, over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of such person; *provided, however*, that, for purposes of this Agreement, Stockholder and its Affiliates shall not be deemed an Affiliate of the Company or any of its Subsidiaries, or vice versa, and none of the Company or its Subsidiaries shall be deemed an Affiliate of Seller, or vice versa, and *provided, further*, that any general partner of Stockholder shall be deemed an Affiliate of Stockholder.



“Agreement” has the meaning set forth in the Preamble.

“Automatic Shelf Registration Statement” means an “automatic shelf registration statement” as defined in Rule 405 promulgated under the Securities Act.

“beneficial owner” and words of similar import have the meaning assigned to such terms in Rule 13d-3 promulgated under the Exchange Act as in effect on the date of this Agreement. The term “beneficially own” has a meaning correlative to the foregoing.

“Board of Directors” means, with respect to any person, the board of directors, board of managers, supervisory board and executive board, managing member(s), managers or such other similar governing body or group, as applicable, established pursuant to the charter, constitution, articles or articles of incorporation and by-laws of a corporation or banking organization, the certificate of partnership and partnership agreement of a general or limited partnership, the certificate of formation and limited liability company agreement of a limited liability company, the trust agreement of a trust or the comparable documents of other entities of such person.

“Business Day” means any day other than a Saturday, Sunday or any other day on which commercial banks in New York, New York are authorized or required by law to close.

“Closing” has the meaning set forth in the Recitals.

“Closing Date” means the date on which the Closing occurs.

“Common Stock” means, collectively, the common stock, par value \$0.000001 per share, of the Company.

“Company” has the meaning set forth in the Preamble.

“Company Board” means the Board of Directors of the Company.

“Davis” means each Investor that is an investment company registered under the Investment Company Act and advised by Davis Selected Advisers, L.P. or any of its Affiliates.

“Delaware Court of Chancery” has the meaning set forth in Section 5.13.

“Demand Notice” has the meaning set forth in Section 2.01(b)(i).

“Demand Registration” has the meaning set forth in Section 2.01(b)(i).

“Distribution Date” means the date on which Stockholder Transfers Shares to the Investors in accordance with Section 3.04.

“Equity Interests” means any type of equity ownership in the Company or Right, including Common Stock or other stock or any similar security, or any interest entitling the holder thereof to participate in distributions, to vote for members of the Company Board, or otherwise granting or affording any other economic, voting or other rights, obligations, benefits or interests in, or attaching to or deriving from, such interests.

“Exchange Act” means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“Fidelity” means each Investor that is an investment company registered under the Investment Company Act and advised by Fidelity Management & Research Co. or any of its Affiliates.

“Freely Tradable” shall mean, with respect to any security, that such security (i) is eligible to be sold by the holder thereof, without the application of any volume or manner of sale restrictions, pursuant to Rule 144, (ii) bears no legends restricting the transfer thereof, and (iii) bears an unrestricted CUSIP number (if held in global form).

“Governmental Entity” means any federal, state, local or foreign government, any transnational governmental organization or any court of competent jurisdiction, arbitral, administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, or any national securities exchange or national quotation system on which securities issued by the Company or any of its Subsidiaries are listed or quoted.

“Holder” means either (a) Stockholder or (b) the Investors to whom Stockholder has Transferred Shares in accordance with Section 3.04, as applicable; it being understood that the Investors shall only have the obligations of Holder under Article II to the extent they participate in any registration and offering thereunder.

“Indemnified Party” has the meaning set forth in Section 2.08(c).

“Indemnified Persons” has the meaning set forth in Section 2.08(a).

“Indemnifying Party” has the meaning set forth in Section 2.08(c).

“Inspectors” has the meaning set forth in Section 2.04(a)(ix).

“Investment Company Act” means the Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder.

“Investment Company Investors” means Davis and Fidelity.

“Investor” means any person who beneficially owns, directly or indirectly, as of the date hereof, or at any time hereafter, a partnership interest in Stockholder (including, for the avoidance of doubt, any general partner of Stockholder), or in any successor to Stockholder.

“Investor Termination Date” has the meaning set forth in Section 2.01(a)(ii).

“Issuer FWP” means an “issuer free writing prospectus” as defined in Rule 433 under the Securities Act.

“Law” means any law (including common law), treaty, statute, ordinance, code, rule, regulation, judgment, decree, order, writ, award, injunction, decree, directive, authorization or determination enacted, entered, promulgated, enforced or issued by any Governmental Entity.

“Lock-Up End Date” means the date that is twelve months following the Closing Date.

“Losses” means any and all losses, claims, damages, liabilities, obligations, costs and expenses (including as a result of any notices, actions, suits, proceedings, claims, demands, assessments, judgments, awards, costs, penalties, taxes and reasonable expenses, including reasonable attorneys’ and other professionals’ fees and disbursements).

“Market Offering Registration Statements” shall mean the First Market Offering Registration Statement and the Second Market Offering Registration Statement, in each case as defined in the Purchase Agreement.

“person” means any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, Governmental Entity or other entity of any kind or nature.

“Piggyback Registration” has the meaning set forth in Section 2.02.

“Prospectus” means the prospectus (including any preliminary prospectus, any final prospectus and any prospectus that discloses information previously omitted from a prospectus filed as part of an effective Registration Statement in reliance upon Rule 430A under the Securities Act) included in a Registration Statement, as amended or supplemented by any prospectus supplement with respect to the terms of the offering of any portion of the Registrable Securities covered by the Registration Statement and by all other amendments and supplements to the prospectus, including all material incorporated by reference in such prospectus and all documents filed after the date of such prospectus by the Company under the Exchange Act and incorporated by reference therein.

“Purchase Agreement” has the meaning set forth in the Recitals.

“Records” has the meaning set forth in Section 2.04(a)(ix).

“Registrable Securities” means all Shares that are beneficially owned by Stockholder at any time or, following a Transfer of the Shares by Stockholder to the Investors in compliance with Section 3.04, any Investor; *provided, however*, that a Share shall cease to be a Registrable Security when (i) it has been effectively registered under the Securities Act and disposed of in accordance with the Registration Statement covering it, (ii) it is sold pursuant to Rule 144, or (iii) it has ceased to be outstanding.

“Registration Rights Termination Date” means the Stockholder Termination Date or the Investor Termination Date, as applicable.

“Registration Statement” means any registration statement filed by the Company with the SEC under the Securities Act pursuant to the provisions of this Agreement, including the Prospectus contained therein, any amendments and supplements to such registration statement, including post-effective amendments, and all exhibits and all material incorporated by reference in such registration statement.

“Reporting Investment Company Investor” means such Investment Company Investor whose aggregate holdings of shares of Common Stock is reported on Form 13F under the Exchange Act.

“Representatives” means, with respect to any person, such person’s, or such person’s Subsidiaries’, directors, officers, employees, accountants, investment bankers, commercial bank lenders, attorneys and other advisors or representatives (including the employees or attorneys of such accountants, investment bankers, commercial bank lenders or attorneys).

“Rights” means, with respect to any person, securities or obligations, directly or indirectly, convertible into or exercisable or exchangeable for, or giving any other person any right, directly or indirectly, to subscribe for or acquire, or any options, puts, calls or commitments relating, directly or indirectly, to, or any stock appreciation right or other instrument the value of which is determined in whole or in part by reference to the market price, book or other value of, shares of capital stock, units or other equity interests of such first person, or which the first person or any of its Subsidiaries is or may become obligated to offer, issue, sell, purchase, return or redeem, or cause to be offered, issued, sold, purchased, returned or redeemed, any equity interests of such person or any of its Subsidiaries, whether pursuant to any security, obligation, right, instrument, agreement, contract, commitment, option, undertaking or other arrangement or understanding (including, for the avoidance of doubt, upon exercise of any options, warrants or convertible loans or securities), whether fixed or contingent and whether or not in writing.

“Rule 144” means Rule 144 promulgated under the Securities Act or any similar rule or regulation hereafter adopted by the SEC having substantially the same effect as such rule.

“Scheduled Black-out Period” means any regularly scheduled blackout period of the Company or any other trading blackout declared by the Company pursuant to its insider trading policies and procedures.

“SEC” means the U.S. Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Seller” has the meaning set forth in the Recitals.

“Shares” has the meaning set forth in the Recitals.

“Standstill Period” means the period commencing on the date of this Agreement and terminating on the six-month anniversary of the date on which the Stockholder Percentage Interest is less than 5.0 percent.

“Stockholder” has the meaning set forth in the Preamble.

“Stockholder Percentage Interest” means, at any time, the aggregate percentage represented by a fraction, the numerator of which is the number of issued and outstanding shares of Common Stock beneficially owned by (x) Stockholder and (y) any other person(s) with whom Stockholder is a member of a “group” (within the meaning of Section 13(d)(3) of the Exchange Act) with respect to the Company or any Equity Interests, and (z) Mr. Kotick and Mr. Kelly at such time, and the denominator of which is the total number of shares of Common Stock issued and outstanding at such time.

“Stockholder Termination Date” has the meaning set forth in Section 2.01(a)(i).

“Suspension Period” has the meaning set forth in Section 2.06(a).

“Subsidiary” means, with respect to a person, an Affiliate directly or indirectly controlled by such person.

“Takedown Offering” means an offering pursuant to an Automatic Shelf Registration Statement.

“Takedown Request” has the meaning set forth in Section 2.01(a)(iii).

“Tencent” means THL A9 Limited.

“Transfer” means, with respect to any security, any direct or indirect sale, assignment, pledge, transfer, hedging, securities lending, voting agreement or other disposition, whether voluntary, by operation of Law or otherwise, of or with respect to such security or any interest or Rights therein, whether in a single transaction or a series of related transactions, or the entry into a definitive agreement with respect to any of the foregoing (for the avoidance of doubt, whether such agreement is to be settled by delivery of shares of Common Stock, in cash or otherwise); *provided* that, in no event, shall “Transfer” include (a) any pledge or grant of security interest in the Shares by Stockholder in connection with any indebtedness of Stockholder to any third party outstanding as of the date hereof (or any refinancing or replacement of, or modifications to, such indebtedness), any sale or other disposition of the Shares to pay amounts (including to meet any margin obligations) under or to voluntarily prepay any such outstanding indebtedness and any sale or other disposition of the Shares upon the exercise of remedies (including foreclosure) by the lenders pursuant to the documents governing such outstanding indebtedness, (b) any direct or indirect sale or other disposition by (i) any of the Investors of or with respect to their interests in Stockholder (including as a result of the exercise by Investors of their rights under the limited partnership agreement to acquire interests in Stockholder proposed to be sold by any other Investor) or (ii) by Stockholder as a result of any Investor’s exercise of its rights under the limited partnership agreement of Stockholder to acquire Shares proposed to be sold by Stockholder to prepay or repay outstanding indebtedness, and (c) hedging transactions or derivative agreements relating to the Shares entered into in connection with ordinary course risk management and which do not have the effect or intention of producing economic benefits and risks to the counterparty to such hedging transaction or derivative agreement corresponding substantially to the ownership of a number of Shares specified or referenced in any contract related to such transaction (regardless of whether obligations under such contract are required or

permitted to be settled through the delivery of cash, Shares or other property, and without regard to any short position under the same or any other hedging transaction or derivative arrangement). The terms “Transferred”, “Transferring”, “Transferor”, “Transferee” and “Transferable” have meanings correlative to the foregoing.

“Unaffiliated Directors” means the members of the Company Board other than (i) Mr. Kotick, (ii) Mr. Kelly, and (iii) any other members of the Company Board who are Affiliates of Stockholder or of any Investor or any other person(s) who are a member of a “group” (within the meaning of Section 13(d)(3) of the Exchange Act) with the Stockholder with respect to the Company or any Equity Interests, and any consent of a majority of the Unaffiliated Directors referred to herein shall refer to an action duly taken by such Unaffiliated Directors by written consent or at a meeting of such Unaffiliated Directors duly called and convened in accordance with applicable law and governance procedures.

“Underwriter” means, with respect to any Underwritten Offering, a securities dealer who purchases any Registrable Securities as a principal in connection with a distribution of such Registrable Securities.

“Underwritten Offering” means a public offering of securities registered under the Securities Act in which an Underwriter participates in the distribution of such securities.

## ARTICLE II

### REGISTRATION RIGHTS

#### Section 2.01. Registration.

(a) (i) Upon written request of Stockholder from time to time, subject to Section 2.01(b)(i), the Company will use its best efforts to either (i) file an Automatic Shelf Registration Statement useable for the resale of Registrable Securities under the Securities Act, (ii) amend an existing Automatic Shelf Registration Statement so that it is useable for such resales, or (iii) file a prospectus supplement that shall be deemed to be part of an existing Automatic Shelf Registration Statement in accordance with Rule 430B under the Securities Act that is useable for such resales, in each case, to the extent necessary to cover resales to pay amounts (including to meet any margin obligations) under or to voluntarily prepay any indebtedness of Stockholder to any third party outstanding as of the date hereof (or any refinancing or replacement of, or modifications to, such indebtedness) and to permit Stockholder to resell to the extent necessary to reduce its beneficial ownership below 25.0 percent of the outstanding Common Stock. Until such time as the earlier of (i) the date the Stockholder Percentage Interest is less than 5.0 percent (the “Stockholder Termination Date”) and (ii) the time when the Company is no longer eligible to maintain an Automatic Shelf Registration Statement, the Company will keep current and effective any such Automatic Shelf Registration Statement and file such supplements or amendments to such Automatic Shelf Registration Statement as may be necessary or appropriate in order to keep such Automatic Shelf Registration Statement continuously effective and useable for the resale of Registrable Securities under the Securities Act.

(ii) On or prior to the date that is three days prior to the Distribution Date, subject to Section 2.01(b)(i), the Company will use its best efforts to either (i) file an Automatic Shelf Registration Statement useable for the resale of Registrable Securities under the Securities Act, (ii) amend an existing Automatic Shelf Registration Statement so that it is useable for such resales, or (iii) file a prospectus supplement that shall be deemed to be part of an existing Automatic Shelf Registration Statement in accordance with Rule 430B under the Securities Act that is useable for such resales, in each case, to cover resales of the Shares to be Transferred by Stockholder to the Investors on the Distribution Date. Until such time as the earlier of (i) the later of the twelve-month anniversary of the date of such Transfer and the date on which such Shares become Freely Tradable or cease to be Registrable Securities (the “Investor Termination Date”) and (ii) the time when the Company is no longer eligible to maintain an Automatic Shelf Registration Statement, the Company will keep current and effective any such Automatic Shelf Registration Statement and file such supplements or amendments to such Automatic Shelf Registration Statement as may be necessary or appropriate in order to keep such Automatic Shelf Registration Statement continuously effective and useable for the resale of Registrable Securities under the Securities Act.

(iii) Upon the written request of Holder from time to time (a “Takedown Request”) prior to the applicable Registration Rights Termination Date (and up to three times prior to the Distribution Date), the Company will cooperate with Holder and any Underwriter in effecting a Takedown Offering pursuant to an Automatic Shelf Registration Statement as promptly as reasonably practicable following receipt of such Takedown Request. Each Takedown Request will specify the number of Registrable Securities proposed by Holder to be included in such Takedown Offering, the intended method of distribution and the estimated gross proceeds of such Takedown Offering, which may not be less than \$250 million. Holder may change the number of Registrable Securities proposed to be offered in any Takedown Offering at any time prior to commencement of such offering so long as such change would not materially and adversely affect the timing or success of the Takedown Offering or reduce the estimated gross proceeds of such Takedown Offering to less than \$250 million and provided that the Company shall be entitled to reasonably delay a Takedown Offering as a result of such change.

(b) (i) If at any time prior to the applicable Registration Rights Termination Date the Company is no longer eligible to use an Automatic Shelf Registration Statement (and up to three times prior to the Distribution Date), within 30 days after Holder’s written request to register the resale of a specified amount of Registrable Securities under the Securities Act in accordance with Section 2.01(a) (a “Demand Notice”), the Company will use its reasonable best efforts to file a Registration Statement, on an appropriate form which the Company is then eligible to use, to register the resale of such Registrable Securities, which Registration Statement will (if specified in Holder’s notice) contemplate the ability of Holder to effect an Underwritten Offering (each such registration, a “Demand Registration”). Each Demand Notice will specify the number of Registrable Securities proposed to be offered for sale, the intended method of distribution thereof and the estimated gross proceeds of such Demand Registration, which may not be less than \$250 million. Holder may change the number of Registrable Securities proposed to be offered pursuant to any Demand Registration at any time prior to commencement of the offering so long as such change would not materially and adversely affect the timing or success of the offering or reduce the estimated gross proceeds of such Demand Registration to less than \$250 million. Subject to Section 2.03, the Company may include in any registration effected pursuant to Section 2.01(a) or Section 2.01(b) any securities for its own account or for the account of holders of Common Stock (other than Holder).

(ii) The Company will use its reasonable best efforts (A) to cause any Registration Statement to be declared effective (unless it becomes effective automatically upon filing) as promptly as reasonably practicable after the filing thereof with the SEC and (B) to keep such Registration Statement current and effective for a period of not less than 30 days, and in any event for so long as necessary for the completion of the resale of Registrable Securities registered thereon. The Company further agrees to supplement or make amendments to each such Registration Statement as may be necessary to keep such Registration Statement effective for the period referred to in clause (B) above, including (w) to respond to the comments of the SEC, if any, (x) as may be required by the registration form utilized by the Company for such Registration Statement or by the instructions to such registration form, (y) as may be required by the Securities Act, or (z) as may be reasonably requested in writing by Holder or any Underwriter and reasonably acceptable to the Company. The Company agrees to furnish to Holder copies of any such supplement or amendment no later than the time it is first being used or filed with the SEC.

(c) In the event an offering of Registrable Securities (including in connection with any Takedown Offering) under this Section 2.01 involves one or more Underwriters, each of Holder and the Company shall choose a joint lead Underwriter reasonably acceptable to the other party, which consent shall not be unreasonably withheld, conditioned or delayed, to administer such offering, and the Company and Holder shall be entitled to select any additional Underwriters; *provided* that such additional Underwriters shall be reasonably acceptable to the other party, which consent shall not be unreasonably withheld, conditioned or delayed. The Company shall reasonably assist such managing Underwriter or Underwriters in their efforts to sell Registrable Securities pursuant to such Registration Statement and, if reasonably requested in connection with any Takedown Offering or Demand Registration that is an Underwritten Offering in which Holder intends to sell Registrable Securities, shall make executives with appropriate seniority and expertise reasonably available for customary “road show” or other presentations during the marketing period for such Registrable Securities, in each case in connection with a maximum of one Underwritten Offering in any 180-day period (which shall not require the consent of a majority of the Unaffiliated Directors) (with an understanding that these shall be scheduled in a collaborative manner so as not to unreasonably interfere with the conduct of the business of the Company). Subject to Section 2.03, if the Company gives Holder notice of a request by the Company or another holder of the Company’s securities to include any Equity Interests in any Underwritten Offering, Holder shall offer to include such Equity Interests in the Underwritten Offering.

(d) Notwithstanding anything to the contrary herein, except as may be consented to by a majority of the Unaffiliated Directors, the Company shall not be obligated to effect more than one Takedown Offering and/or Demand Registration in any 180-day period. Holder will be permitted to rescind a Demand Registration or Takedown Request and such rescinded Demand Registration or Takedown Request will not count against the limit set forth in the preceding sentence; *provided, however*, that Holder shall reimburse the Company for all reasonable, out-of-pocket expenses incurred by the Company in connection with such Demand Registration or Takedown Request; and *provided, further*, that the applicable Registration Statement or supplement thereto has not been filed with the SEC prior to such rescission.



Section 2.02. Piggyback Registration. If the Company proposes to file a registration statement under the Securities Act or consummate a Takedown Offering with respect to an offering of Equity Interests after the Lock-Up End Date and before the Registration Rights Termination Date for (a) the Company's own account (other than a Registration Statement on Form S-4 or S-8 (or any substitute form that may be adopted by the SEC)) or (b) the account of any holder of Equity Interests (other than Holder), other than any Market Offering Registration Statement, then the Company shall give written notice of such proposed filing or Takedown Offering to Holder as soon as practicable (but in no event less than 10 days before the anticipated filing date). Upon a written request, given by Holder to the Company within 4 days after delivery of any such notice by the Company, to include Registrable Securities in such registration or Takedown Offering, as applicable (which request shall specify the number of Registrable Securities proposed to be included in such registration or Takedown Offering, as applicable), the Company shall, subject to Section 2.03, include all such requested Registrable Securities in such registration or Takedown Offering, as applicable, on the same terms and conditions as applicable to the Company's or such holder's shares of Common Stock (or, in the event of an offering of Equity Interests other than Common Stock, on terms as commercially comparable as practicable) (a "Piggyback Registration"); *provided, however*, that if at any time after giving written notice of such proposed filing or Takedown Offering, as applicable, and prior to the effective date of the Registration Statement filed in connection with such registration, or the consummation of such Takedown Offering, as applicable, the Company shall determine for any reason not to proceed with the proposed registration or disposition, as applicable, of the Equity Interests, then the Company may, at its election, give written notice of such determination to Holder and, thereupon, will be relieved of its obligation to register any Registrable Securities in connection with such registration, or dispose of any Registrable Securities in connection with such Takedown Offering, as applicable. Holder shall, subject to Section 2.04(b), enter into an underwriting agreement with the Underwriter or Underwriters selected by the Company with respect to any Common Stock sold by Holder pursuant to this Section 2.02.

Section 2.03. Reduction of Size of Underwritten Offering. Notwithstanding anything to the contrary contained herein, if the lead Underwriter of an Underwritten Offering advises the Company in writing that, in its reasonable opinion, the number of Equity Interests (including any Registrable Securities) that the Company, Holder and any other persons intend to include in any Registration Statement or dispose of pursuant to any Takedown Offering is such that the success of any such offering would be materially and adversely affected, including with respect to the price at which the securities can be sold, then the number of shares of Common Stock or other Equity Interests to be included in the Registration Statement, or disposed of pursuant to such Takedown Offering, as applicable, for the account of the Company, Holder and any other persons will be reduced to the extent necessary to reduce the total number of securities to be included in any such Registration Statement or disposed of pursuant to such Takedown Offering, as applicable, to the number recommended by such lead Underwriter; *provided, however*, that such reduction shall be made in accordance with the following priorities:

(a) priority in the case of a Demand Registration or Takedown Offering pursuant to Section 2.01(a) or Section 2.01(b) will be (i) first, all Registrable Securities requested to be included in the Registration Statement, or disposed of pursuant to the Takedown Offering, as applicable, for the account of Holder pursuant to Section 2.01(a) or Section 2.01(b), (ii) second, any Common Stock or other Equity Interests proposed to be offered by the Company for its own account, and (iii) third, among any other holders of shares of Common Stock or other Equity Interests requested to be registered, or disposed of, as applicable, based on the respective amount of Equity Interests owned by them;

(b) priority in the case of a registration statement or Takedown Offering initiated by the Company for its own account, which gives rise to a Piggyback Registration pursuant to Section 2.02, will be (i) first, Equity Interests proposed to be offered by the Company for its own account and (ii) second, *pro rata* among Holder(s) with respect to any Registrable Securities requested to be included in the Registration Statement, or disposed of pursuant to the Takedown Offering, as applicable, for the account of Holder(s) pursuant to Section 2.02 and any other holders of Equity Interests requested to be registered or disposed of, as applicable, based on the respective amount of Equity Interests owned by them; and

(c) priority in the case of a registration statement or Takedown Offering initiated by the Company for the account of holders of Equity Interests other than Holder pursuant to registration rights afforded to such holders pursuant to a contractual right with the Company, which gives rise to a Piggyback Registration pursuant to Section 2.02, will be (i) first, *pro rata* among the holders of Equity Interests requesting the offering pursuant to such contractual right, based on the respective amount of Equity Interests owned by them, (ii) second, Registrable Securities requested to be included in the Registration Statement, or disposed of, pursuant to the Takedown Offering, for the account of Holder pursuant to its registration rights under Section 2.02, (iii) third, Equity Interests offered by the Company for its own account, and (iv) fourth, *pro rata* among any other holders of Equity Interests requested to be registered, or disposed of, as applicable, based on the respective amount of Equity Interests owned by them.

Section 2.04. Registration Procedures. (a) Subject to the provisions of Section 2.01 or Section 2.02, in connection with the registration of the sale of Registrable Securities pursuant to a Demand Registration, any Takedown Offering or any Piggyback Registration hereunder, the Company will as promptly as reasonably practicable:

(i) furnish to Holder without charge, prior to the filing of a Registration Statement, copies of such Registration Statement as it is proposed to be filed, and thereafter such number of copies of such Registration Statement, each amendment and supplement thereto (in each case including all exhibits thereto, including each preliminary prospectus), copies of any and all transmittal letters or other correspondence with the SEC relating to such Registration Statement and such other documents in such quantities as Holder may reasonably request from time to time in order to facilitate the disposition of such Registrable Securities (including in connection with any Takedown Offering), and give Holder and its Representatives a reasonable opportunity to review and comment on such Registration Statement prior to filing any such documents;

(ii) (A) use its reasonable best efforts to cause the Company's Representatives to supply all information reasonably requested by Holder, any Underwriter, or their Representatives in connection with the Registration Statement or Takedown Offering and (B) provide Holder and its Representatives with the opportunity to reasonably participate in the preparation of such Registration Statement and the related Prospectus;

(iii) use its reasonable best efforts to register or qualify such Registrable Securities under such other securities or "blue sky" laws of such jurisdictions as Holder reasonably requests and do any and all other reasonable acts and things as may be reasonably necessary or advisable to enable Holder to consummate the disposition of such Registrable Securities in such jurisdictions; *provided, however*, that the Company shall in no event be required to (w) qualify generally to do business in any jurisdiction where it is not then so qualified, (x) subject itself to taxation in any jurisdiction where is not otherwise then so subject, (y) take any action that would subject it to service of process in suits other than those arising out of the offer and sale of the securities covered by the Registration Statement or (z) consent to general service of process in any jurisdiction where it is not then so subject;

(iv) notify Holder at any time when to the knowledge of the Company a prospectus relating to Registrable Securities is required to be delivered under the Securities Act and of the happening of any event as a result of which the Prospectus included in a Registration Statement or the Registration Statement or amendment or supplement relating to such Registration Statement or Prospectus contains an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (other than any such statement or omission with respect to information furnished to the Company in writing by, or at the direction of, any Holder or any Indemnified Persons expressly for use in such Registration Statement), and the Company will use its reasonable best efforts to promptly prepare and file with the SEC a supplement or amendment to such Prospectus and Registration Statement (and comply fully with the applicable provisions of Rules 424, 430A and 430B under the Securities Act in a timely manner) so that, as thereafter delivered to the purchasers of the Registrable Securities, such Prospectus and Registration Statement will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (other than any such statement or omission with respect to information furnished to the Company in writing by, or at the direction of, any Holder or any Indemnified Persons expressly for use in such Registration Statement);

(v) advise the Underwriter(s), if any, and Holder promptly and, if requested by such persons, confirm such advice in writing, of the issuance by the SEC of any stop order suspending the effectiveness of the Registration Statement under the Securities Act or of the suspension by any state securities commission of the qualification of the Registrable Securities for offering or sale in any jurisdiction, or the initiation of any proceeding for any of the preceding purposes. If at any time the SEC shall issue any stop order suspending the effectiveness of the Registration Statement, or any state

securities commission or other regulatory authority shall issue an order suspending the qualification or exemption from qualification of the Registrable Securities under state securities or “blue sky” laws, the Company shall use its reasonable best efforts to obtain the withdrawal or lifting of such order as promptly as practicable;

(vi) use its reasonable best efforts to cause such Registrable Securities to be registered with or approved by such other Governmental Entities as may be necessary by virtue of the business and operations of the Company to enable Holder to consummate the disposition of such Registrable Securities (including in connection with any Takedown Offering); *provided, however*, that the Company shall in no event be required to (w) qualify generally to do business in any jurisdiction where it is not then so qualified, (x) subject itself to taxation in any jurisdiction where is not otherwise then so subject, (y) take any action that would subject it to service of process in suits other than those arising out of the offer and sale of the securities covered by the Registration Statement or (z) consent to general service of process in any jurisdiction where it is not then so subject;

(vii) enter into customary agreements and use reasonable best efforts to take such other actions as are reasonably requested by Holder in order to expedite or facilitate the disposition of such Registrable Securities, including, subject to the provisions of Section 2.01(c) with respect to Underwritten Offerings, preparing for and participating in a road show and all such other customary selling efforts as the Underwriters, if any, or Holder, reasonably request in order to expedite or facilitate such disposition;

(viii) if requested by Holder or the Underwriter(s), if any, promptly include in any Registration Statement or Prospectus, pursuant to a prospectus supplement or post-effective amendment if necessary, such information as Holder and such Underwriter(s), if any, may reasonably request to have included therein, including information relating to the “Plan of Distribution” of the Registrable Securities, information with respect to the number of Registrable Securities being sold to such Underwriter(s), the purchase price being paid therefor and any other terms of the offering of the Registrable Securities to be sold in such offering, and make all required filings of such prospectus supplement or post-effective amendment as soon as practicable after the Company is notified of the matters to be included in such prospectus supplement or post-effective amendment;

(ix) except to the extent prohibited by applicable Law and subject to entry into a customary confidentiality agreement or arrangement, make available, after reasonable advance notice, for inspection by Holder, any Underwriter participating in any disposition of such Registrable Securities, and any Representative for Holder and/or such Underwriter (collectively, the “Inspectors”), during normal business hours at the offices where such information is normally kept or in such other manner as Holder may reasonably request, any financial and other records and corporate documents of the Company (collectively, the “Records”) as will be reasonably necessary to enable them to conduct reasonable and customary due diligence with respect to the

Company and the related Registration Statement and Prospectus and request the Representatives of the Company and its Subsidiaries to supply all information reasonably requested by any such Inspector; *provided, however*, that Records and information obtained hereunder will be used by such Inspectors solely to conduct such due diligence and will not be used for any other purpose;

(x) use its reasonable best efforts to obtain and deliver to each Underwriter and Holder a comfort letter from the independent registered public accounting firm for the Company (and additional comfort letters from the independent registered public accounting firm for any company acquired by the Company whose financial statements are included or incorporated by reference in the Registration Statement) in customary form and covering such matters as are customarily covered by comfort letters as such Underwriter and Holder may reasonably request; *provided, however*, that if the Company fails to obtain such comfort letter and the relevant offering is abandoned, then such Demand Registration or Takedown Offering will not count as a Demand Registration or Takedown Offering, as applicable, for purposes of determining when future Demand Registrations or Takedown Offerings may be requested by Holder pursuant to Section 2.01(a)(ii) or Section 2.01(b)(i);

(xi) use its reasonable best efforts to obtain and deliver to each Underwriter and Holder a 10b-5 statement and legal opinion from the Company's counsel in customary form and covering such matters as are customarily covered by 10b-5 statements and legal opinions delivered to Underwriters in Underwritten Offerings as such Underwriter and/or Holder may reasonably request; *provided, however*, that if the Company fails to obtain such 10b-5 statement and legal opinion and the relevant offering is abandoned, then such Demand Registration or Takedown Offering will not count as a Demand Registration or Takedown Offering, as applicable, for purposes of determining when future Demand Registrations or Takedown Offerings may be requested by Holder pursuant to Section 2.01(a)(ii) or Section 2.01(b)(i);

(xii) otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the SEC and make generally available to its security holders, within the required time period, an earnings statement covering a period of 12 months, beginning with the first fiscal quarter after the effective date of the Registration Statement relating to such Registrable Securities (as the term "effective date" is defined in Rule 158(c) under the Securities Act), which earnings statement will satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder or any successor provisions thereto;

(xiii) use reasonable best efforts to provide and cause to be maintained a transfer agent and registrar for all Registrable Securities covered by such Registration Statement not later than the effective date of such Registration Statement;

(xiv) to the extent Registrable Securities are certificated, cooperate with Holder and the lead Underwriter or Underwriters, if any, to facilitate the timely preparation and delivery of certificates representing the Registrable Securities to be sold under the Registration Statement in a form eligible for deposit with The Depository Trust Company not bearing any restrictive legends and not subject to any stop transfer order

with any transfer agent, and cause such Registrable Securities to be issued in such denominations and registered in such names as the lead Underwriter or Underwriters, if any, may request in writing or, if not an Underwritten Offering, in accordance with the instructions of Holder, in each case in connection with the closing of any sale of Registrable Securities;

(xv) not later than the effective date of the applicable Registration Statement, provide a CUSIP number for all Registrable Securities; and

(xvi) use its reasonable best efforts to cause such Registrable Securities to be listed or quoted on the NASDAQ or, if Common Stock is not then listed on the NASDAQ, then on such other securities exchange or national quotation system on which the Common Stock is then listed or quoted.

(b) In connection with the Registration Statement relating to such Registrable Securities covering an Underwritten Offering (including any Takedown Offering), the Company and Holder agree to enter into a written agreement with the Underwriters selected in the manner herein provided in such form and containing such provisions as are customary in the securities business for such an arrangement (it being understood that, unless otherwise required by the Securities Act or any other Law, the Company will not require Holder to make any representation, warranty or agreement in such agreement other than with respect to Holder, authority to enter into the underwriting agreement, the ownership of Shareholder's Registrable Securities being registered and Holder's intended method of disposition, or information furnished by Holder expressly for use in any Registration Statement or Prospectus), and agreements with respect to limitations on Transfer relating to any Equity Interests of the Company or convertible or exchangeable for Equity Interests of the Company (including any sales under Rule 144) and public announcements relating to the foregoing as are then customary in underwriting agreements for registered underwritten offerings; *provided* that such limitations shall not continue beyond the 90<sup>th</sup> day after the closing of the related Underwritten Offering.

Section 2.05. Conditions to Offerings. (a) The obligations of the Company to take the actions contemplated by Section 2.01, Section 2.02 and Section 2.04 with respect to an offering of Registrable Securities (including any Takedown Offering) will be subject to the following conditions:

(i) The Company may require Holder to furnish to the Company such information regarding Holder, the Investors, the Registrable Securities or the distribution of such Registrable Securities as the Company may from time to time reasonably request in writing, in each case to the extent reasonably required by the Securities Act and the rules and regulations promulgated thereunder, or under state securities or "blue sky" laws or by the SEC or its staff (including pursuant to any guidance released by the SEC or its staff); and

(ii) in any Underwritten Offering pursuant to Section 2.01 or Section 2.02, Holder, together with the Company and any other holders of the Company's securities proposing to include securities in any Underwritten Offering, will enter into an underwriting agreement in accordance with Section 2.04(b) with the Underwriter or Underwriters selected for such underwriting, as well as such other documents customary in similar offerings.

(b) Holder agrees that, upon receipt of any notice from the Company of the happening of any event of the kind described in Section 2.04(a)(iv) or Section 2.04(a)(v) or a condition described in Section 2.06, Holder will forthwith discontinue disposition of such Registrable Securities pursuant to the Registration Statement covering the sale of such Registrable Securities or Takedown Offering until Holder's receipt of the copies of the supplemented or amended Prospectus or Registration Statement contemplated by Section 2.04(a)(iv) or notice from the Company of the termination of the stop order or Suspension Period.

Section 2.06. Suspension Period.

(a) Notwithstanding anything to the contrary contained in this Agreement, (i) Holder shall suspend the use of the Prospectus included in any Automatic Shelf Registration Statement or Registration Statement for resales of Registrable Securities pursuant to Section 2.01 and postpone the filing and suspend the use of any Registration Statement pursuant to Section 2.01, in each case during any Scheduled Black-out Period and (ii) the Company shall be entitled, from time to time, by providing prior written notice to Holder, to require Holder to suspend the use of the Prospectus included in any Automatic Shelf Registration Statement for resales of Registrable Securities pursuant to Section 2.01(a) or Section 2.02 or to postpone the filing or suspend the use of any Registration Statement pursuant to Section 2.01(b) or Section 2.02 for a reasonable period of time not to exceed 90 days in succession (or a longer period of time with the prior written consent of Holder, which consent shall not be unreasonably withheld), 180 days in the aggregate in any one-year period or three times in any one-year period (a "*Suspension Period*") if (A) the Company determines in good faith that effecting the registration (or permitting sales under an effective registration) during the period specified in such notice would materially and adversely affect an offering of securities of the Company, (B) the Company is in possession of material non-public information and the Company determines in good faith that the disclosure of such information during the period specified in such notice would be materially detrimental to the Company, or (C) the Company shall determine that it is required to disclose in any such Registration Statement, Prospectus or prospectus supplement a contemplated financing, acquisition, corporate reorganization or other similar transaction or other material event or circumstance affecting the Company or its securities, and the Company determines in good faith that the disclosure of such information during the period specified in such notice would be materially detrimental to the Company or the holders of its Common Stock. In the event of any such suspension pursuant to clause (ii), the Company shall furnish to Holder a written notice setting forth the estimated length of the anticipated delay. The Company will notify Holder promptly upon the termination of the Suspension Period. Upon notice by the Company to Holder of any determination to commence a Suspension Period, Holder shall, except as required by applicable Law, keep the fact of any such Suspension Period strictly confidential, and during any Suspension Period, promptly halt any offer, sale (including sales pursuant to Rule 144), trading or transfer of any Common Stock for the duration of the Suspension Period until the Company has provided notice that the Suspension Period has been terminated. For the avoidance of doubt, nothing contained in this Section 2.06 shall relieve the Company of its obligations under Section 2.01.

(b) After the expiration of any Suspension Period and without any further request from a holder of Equity Interests, the Company shall as promptly as reasonably practicable prepare a Registration Statement or post-effective amendment or supplement to the applicable Registration Statement or Prospectus, or any document incorporated therein by reference, or file any other required document so that, as thereafter delivered to purchasers of the Registrable Securities included therein, the Prospectus will not include a material misstatement or omission or be not effective and useable for resale of Registrable Securities.

Section 2.07. Registration Expenses. All fees and expenses incident to the Company's performance of or compliance with the obligations of this Article II will be borne by the Company; *provided, however*, that Holder will bear and pay any underwriting discounts, fees, commissions and related fees and out of pocket expenses of any Underwriters and such Underwriters' counsel applicable to Registrable Securities offered for its account pursuant to any Registration Statement (including in connection with any Takedown Offering).

Section 2.08. Indemnification; Contribution. (a) In connection with any registration of Registrable Securities or Takedown Offering pursuant to Section 2.01 or Section 2.02, the Company will indemnify, defend and hold harmless Holder, its Affiliates, directors, officers and shareholders and each person who controls Holder within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act (collectively, the "Indemnified Persons") from and against any and all Losses caused by any untrue or alleged untrue statement of material fact contained in any part of any Registration Statement or any Prospectus, including any amendment or supplement thereto, used in connection with the Registrable Securities or any Issuer FWP, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus, in the light of the circumstances under which they were made) not misleading; *provided, however*, that the Company will not be required to indemnify any Indemnified Person for any Losses resulting from any such untrue statement or omission if such untrue statement or omission was made in reliance on and in conformity with information with respect to any Indemnified Person furnished to the Company in writing by, or at the direction of, Holder or any Indemnified Person expressly for use in such Registration Statement, Prospectus or Issuer FWP.

(b) In connection with any Registration Statement, Prospectus or Issuer FWP, each Holder, on a several but not joint and several basis, will indemnify, defend and hold harmless the Company, its directors, its officers and each person, if any, who controls the Company (within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act) from and against any and all Losses caused by any untrue or alleged untrue statement of material fact contained in any part of any Registration Statement or any Prospectus, including any amendment or supplement thereto, used in connection with the Registrable Securities or any Issuer FWP, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus, in the light of the circumstances under which they were made) not misleading, but only with respect to information furnished to the Company in writing by, or at direction of, such Holder or any Indemnified Persons related to such Holder expressly for use in such Registration Statement, Prospectus or Issuer FWP.



(c) In case any claim, action or proceeding (including any governmental investigation) is instituted involving any person in respect of which indemnity may be sought pursuant to Section 2.08(a) or Section 2.08(b), such person (the "Indemnified Party") will promptly notify the person against whom such indemnity may be sought (the "Indemnifying Party") in writing and the Indemnifying Party shall be entitled to participate therein and, to the extent it shall wish, to assume the defense thereof with counsel reasonably satisfactory to the Indemnified Party and will pay the fees and disbursements of such counsel related to such claim, action or proceeding; *provided, however*, that the failure or delay to give such notice shall not relieve the Indemnifying Party of its obligations pursuant to this Agreement except to the extent such Indemnifying Party has been actually prejudiced by such failure or delay. In any such claim, action or proceeding, the Indemnified Party shall have the right, but not the obligation, to participate in any such defense and to retain its own counsel, but the fees and expenses of such counsel will be at the expense of such Indemnified Party unless (i) the Indemnifying Party and the Indemnified Party have mutually agreed to the retention of such counsel, (ii) the Indemnifying Party fails to assume the defense of the claim, action or proceeding within 15 Business Days following receipt of notice from the Indemnified Party, or (iii) the Indemnified Party and the Indemnifying Party are both actual or potential defendants in, or targets of, any such action and the Indemnified Party has been advised by counsel that representation of both parties by the same counsel would be inappropriate due to actual or potential conflicting interests between them. It is understood that the Indemnifying Party will not, in connection with any claim, action or proceeding or related claims, actions or proceedings in the same jurisdiction, be liable for the reasonable fees and expenses of more than one separate firm of attorneys (in addition to any local counsel) at any time for all such Indemnified Parties and that all such reasonable fees and expenses will be reimbursed as they are incurred. In the case of the retention of any such separate firm for the Indemnified Parties, such firm will be designated in writing by the Indemnified Parties. The Indemnifying Party will not be liable for any settlement of any claim, action or proceeding effected without its written consent (which consent shall not be unreasonably withheld, conditioned or delayed), but if such claim, action or proceeding is settled with such consent or if there has been a final judgment for the plaintiff, the Indemnifying Party agrees to indemnify the Indemnified Party from and against any Loss by reason of such settlement or judgment. No Indemnifying Party will, without the prior written consent of the Indemnified Party, settle, compromise or offer to settle or compromise any pending or threatened proceeding in respect of which any Indemnified Party is seeking indemnity hereunder, unless (i) such settlement includes an unconditional release of such Indemnified Party from all liability in connection with such proceeding, (ii) such settlement includes no finding or admission of any violation of Law or any violation of the rights of any person by the Indemnified Party or any of its Affiliates as the result of such action, and (iii) the sole relief (if any) provided in such settlement is monetary damages that are reimbursed in full by the Indemnifying Party. No Indemnified Party will, without the prior written consent of the Indemnifying Party, settle, compromise or offer to settle or compromise any pending or threatened proceeding in respect of which any Indemnified Party is seeking indemnity hereunder.

(d) If the indemnification provided for in this Section 2.08 from the Indemnifying Party is unavailable to an Indemnified Party hereunder or is insufficient in respect of any Losses referred to in this Section 2.08, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party, will contribute to the amount paid or payable by such Indemnified Party as a result of such Losses (i) in such proportion as is appropriate to reflect the

relative fault of the Indemnifying Party and Indemnified Party in connection with the actions that resulted in such Losses, as well as any other relevant equitable considerations, or (ii) if the allocation provided by clause (i) is not permitted by applicable Law, in such proportion as is appropriate to reflect not only the relative fault referred to in clause (i) but also the relative benefit of the Company, on the one hand, and Holder, on the other, in connection with the statements or omissions that resulted in such Losses, as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party will be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, has been taken by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action. The amount paid or payable by a party as a result of the Losses referred to above will be deemed to include, subject to the limitations set forth in Section 2.08(c), any reasonable legal or other out of pocket fees or expenses reasonably incurred by such party in connection with any investigation, claim, action or proceeding.

(e) The parties agree that it would not be just and equitable if contribution pursuant to Section 2.08(d) were determined by *pro rata* allocation or by any other method of allocation that does not take into account the equitable considerations referred to in Section 2.08(d). No person guilty of "fraudulent misrepresentation" (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. Notwithstanding the provisions of this Section 2.08(e), Holder shall not be required to contribute, in the aggregate, any amount in excess of the amount by which the net proceeds received by Holder from the sale of the Registrable Securities exceeds the amount of any damages which Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission.

(f) If indemnification is available under this Section 2.08, the Indemnifying Party will indemnify each Indemnified Party pursuant to Section 2.08(a) and 2.08(b) to the fullest extent permissible under applicable Law, without regard to the relative fault of said Indemnifying Party or Indemnified Party or any other equitable consideration provided for in Section 2.08(d) or Section 2.08(e). The obligations of the Company under this Section 2.08 shall be in addition to any liability that the Company may otherwise have to any Indemnified Person.

Section 2.09. Rule 144. For so long as the Company is subject to the requirements of Section 13, 14 or 15(d) of the Exchange Act, the Company agrees that it will file the reports required to be filed by it under the Securities Act and the Exchange Act and take such further action as Holder may reasonably request (including providing Holder with such information as may be required in order to enable Holder to make sales within the limitation of the exemptions provided by Rule 144), all to the extent required from time to time to enable Holder to sell Registrable Securities pursuant to the exemptions provided by Rule 144.

Section 2.10. Transfer of Registration Rights. In furtherance of the registration rights granted under this Article II, Stockholder shall be permitted to, and shall, transfer the rights with respect to the maintenance of an Automatic Shelf Registration Statement and Takedown Requests and/or Demand Registrations by the Investors under this Article II to the Investors in connection with the Transfer of the Shares by Stockholder to the Investors in

accordance with Section 3.04; *provided, however*, that each Investor seeking to sell any Registrable Securities pursuant to this Article II shall be required to fulfill all obligations of Holder pursuant to this Article II and the aggregate obligations of the Company pursuant to this Article II shall not be increased by any such Transfer. The rights granted under this Article II to Stockholder and/or the Investors may not be assigned by Stockholder or any Investor, in whole or in part, except as expressly provided in the immediately preceding sentence and Section 5.11 (for the avoidance of doubt, an Investor may assign its rights (subject to its obligations) hereunder in connection with the sale or other disposition of its interests in Stockholder in accordance with the limited partnership agreement of Stockholder).

### ARTICLE III

#### **STANDSTILL; LOCK-UP; VOTING; CERTAIN OTHER MATTERS**

##### Section 3.01. Standstill.

(a) During the Standstill Period, Stockholder shall not, and shall not permit its controlled Affiliates to, and, except as set forth in Section 3.01(b), shall cause each of the Investors (including for purposes of this Section 3.01 their Affiliates) not to (and Stockholder represents and warrants that the Investors (other than as set forth in Section 3.01(f) with respect to Tencent, and other than the Investment Company Investors as set forth in Section 3.01(b)) have agreed not to), directly or indirectly: (i) acquire, offer or propose to acquire, or agree or seek to acquire, or solicit the acquisition of, by purchase or otherwise, any Equity Interests (or beneficial ownership thereof) or commence any tender or exchange offer for any Equity Interests (or beneficial ownership thereof); *provided, however*, that this clause (i) shall not apply to Equity Interests or rights to acquire Equity Interests issued by the Company to Stockholder, any of its controlled Affiliates or any Investor as a dividend, distribution or otherwise in respect of any Shares; and *provided, further*, that (A) any Investor who is also an officer or director of the Company shall not be in breach of this clause (i) due to the acquisition of any securities of the Company pursuant to (x) the grant or vesting of any equity compensation awards duly authorized by the Company or (y) the exercise of any stock options, restricted stock units, or similar awards relating to any Equity Interests of the Company granted to such Investor by the Company following due authorization by the Company and (B) this clause (i) shall not prohibit an Investor from exercising its rights under the limited partnership agreement of Stockholder to acquire Shares proposed to be sold by Stockholder to prepay or repay outstanding indebtedness or to acquire interests in Stockholder proposed to be sold by any other Investor (subject to Section 3.01(d)) or from acquiring Shares through the *pro rata* distribution of Shares by Stockholder pursuant to Section 3.04; (ii) call or seek to call a meeting of the stockholders of the Company or initiate any stockholder proposal for action by stockholders of the Company or engage in the “solicitation” of “proxies” (as such terms are defined under Regulation 14A under the Exchange Act) or consents to vote any voting securities of the Company, including soliciting consents or taking other action with respect to the calling of a special meeting of the Company’s stockholders (other than with respect to nominees to the Company Board designated by the Company, in each case solely for such nominees whose election to the Company Board has been recommended by the Company Board); (iii) form, join or in any way participate in a “group” (within the meaning of Section 13(d)(3) of the Exchange Act) with respect to the Company or any Equity Interests (other than to the extent that Stockholder and the Investors constitute a

“group” as of the date hereof and other than to the extent Mr. Kotick and Mr. Kelly, by themselves and/or with Stockholder and its general partner, constitute a “group” at any time); (iv) otherwise act, alone or in concert with others, to seek representation on or to control or influence the management, Company Board or policies of the Company or to obtain representation on the Company Board of Directors (other than with respect to the nomination of Mr. Kotick and Mr. Kelly to the Company Board, as determined by the Company Board in the ordinary course); (v) enter into or agree, offer, propose or seek (whether publicly or otherwise) to enter into, or otherwise be involved in or part of, any acquisition transaction, merger or other business combination or similar transaction relating to all or part of the Company or any of its Subsidiaries or any acquisition transaction for all or part of the assets of the Company or any of its Subsidiaries or any of their respective businesses or any recapitalization, restructuring, change in control or similar transaction involving the Company or any of its Subsidiaries; (vi) request that the Company or the Company Board amend, waive or otherwise consent to any action inconsistent with any provision of this Section 3.01(a) (*provided*, this clause (vi) shall not prohibit communications by Stockholder with the Unaffiliated Directors on a confidential basis not involving public disclosure and not requiring any public announcement by the Company); (vii) enter into any discussions, negotiations, arrangements or understandings with any other person with respect to any of the foregoing activities; (viii) advise, assist, encourage, act as a financing source for or otherwise invest in any other person in connection with any of the foregoing; (ix) make any statement publicly disparaging the Company, its business or its management; (x) publicly disclose through its authorized representatives any intention, plan or arrangement inconsistent with any of the foregoing; or (xi) expressly take any initiative with respect to the Company which could require the Company to make a public announcement regarding (A) such initiative or (B) any of the foregoing activities.

(b) The restrictions set forth in Sections 3.01(a) and 3.01(d) shall not apply to the Investment Company Investors and their respective Affiliates; *provided* that such restrictions shall become applicable to any Investment Company Investor and its Affiliates if at any point such Investment Company Investor or any of its Affiliates shall in any way act in coordination with, cooperate with or otherwise form a “group” (within the meaning of Section 13(d)(3) of the Exchange Act) with Stockholder with respect to the Company (for the avoidance of doubt, other than any activities relating solely to the Investment Company Investors’ ownership of interests in Stockholder and their status as an Investor).

(c) Without limiting Stockholder’s obligations under Section 3.01(a), each of Mr. Kotick and Mr. Kelly shall not, at any time, act in coordination with, cooperate with or otherwise form a “group” (within the meaning of Section 13(d)(3) of the Exchange Act) with any Investment Company Investor (or any of its Affiliates or permitted transferees under the limited partnership agreement of Stockholder) with respect to the Company (for the avoidance of doubt, other than any activities relating solely to each such person’s ownership of an interest in Stockholder and their status as an Investor).

(d) Notwithstanding anything to the contrary herein (except as provided in Section 3.01(b)), and in addition to the restrictions set forth in this Section 3.01 and otherwise herein, during the Standstill Period, no Investor shall acquire from Stockholder and/or any other Investor(s), in one or more transactions (including any exercise of any Investor’s rights under the limited partnership agreement of Stockholder to acquire Shares proposed to be sold by

Stockholder to prepay or repay outstanding indebtedness or to acquire interests in Stockholder proposed to be sold by any other Investor, or in any distribution by Stockholder), any direct or indirect beneficial ownership of or Rights with respect to any Equity Interests if such acquisition would cause such Investor and its Affiliates, in the aggregate, to beneficially own, directly or indirectly, including through their *pro rata* interest in the Common Stock owned by Stockholder, greater than 9.9 percent of the outstanding Common Stock. For purposes of this Section 3.01, the “*pro rata* interest in the Common Stock owned by Stockholder” of an Investor, in the aggregate, is equal to the product of (i) the number of shares of Common Stock beneficially owned, directly or indirectly, by Stockholder, multiplied by (ii) the percentage of the outstanding partnership interests of Stockholder beneficially owned, directly or indirectly, by such Investor, in the aggregate.

(e) Nothing in this Agreement (including any definition used in this Agreement) shall be deemed to prohibit, following the Lock-Up End Date, any Investor (including in its capacity as a Holder) from entering into or performing, settling, terminating, cancelling or unwinding any hedging transaction or derivative agreement relating to the Equity Interests that establishes a “short” position with respect to Equity Interests.

(f) Notwithstanding anything in Section 3.01(a) to the contrary, during the Standstill Period, Tencent shall be permitted to acquire shares of Common Stock, subject to the following limitations: (i) under no circumstances may Tencent acquire beneficial ownership of shares of Common Stock that would result in Tencent and its Affiliates, in the aggregate, having beneficial ownership of greater than 9.9 percent of the outstanding Common Stock (including its *pro rata* interest in the Common Stock owned by Stockholder), (ii) subject to the limitation set forth in clause (i), Tencent may acquire beneficial ownership of additional shares of Common Stock of up to the greater of (A) 2.0 percent of the outstanding Common Stock, or (B) if at any time the Stockholder Percentage Interest is less than 24.9 percent, additional shares of Common Stock representing a percentage of the outstanding Common Stock equal to the excess of 24.9 percent over the Stockholder Percentage Interest at such time, and (iii) Tencent will vote, or cause to be voted, any shares of Common Stock which it acquires (or acquires beneficial ownership of) in accordance with the exception set forth in this Section 3.01(f) in accordance with the recommendation, if any, of a majority of the Unaffiliated Directors.

Section 3.02. Lock-Up. Prior to the Lock-Up End Date and thereafter during any Scheduled Black-out Period, Stockholder shall not Transfer or announce any intention to Transfer any Shares without the prior consent of a majority of the Unaffiliated Directors; *provided, however*, that, other than during any Scheduled Black-out Period, nothing herein shall prohibit Stockholder from Transferring Shares (other than any Transfer which would violate Section 3.03 or 3.04 if it occurred following the Lock-Up End Date) to the extent necessary to ensure that Stockholder beneficially owns at all times less than 25.0 percent of the outstanding Common Stock. In addition, the Company shall use its commercially reasonable efforts to provide prior notice of or to effect any repurchases of Common Stock or similar transactions in a manner which would permit Stockholder to avoid becoming the beneficial ownership of more than 25.0 percent of the then outstanding Common Stock as a result of such repurchase, by Transferring Shares or otherwise, taking into account applicable legal and disclosure requirements, and the best interests of the Company and its stockholders.

Section 3.03. Transfer Restrictions. Following the Lock-Up End Date, Stockholder shall not, without the prior consent of a majority of the Unaffiliated Directors, Transfer any Shares:

(i) to, or in a transaction with, any person or “group” (within the meaning of Section 13(d)(3) of the Exchange Act) where any such person or “group” would acquire in such transaction or, to the knowledge of Stockholder after reasonable inquiry, owns or would own, following such transaction, beneficial ownership of an aggregate number of Shares representing 5.0 percent or more of the outstanding shares of the Common Stock; or

(ii) to, or in a transaction with, any person, or “group” (within the meaning of Section 13(d)(3) of the Exchange Act) including, any person that, to the knowledge of Stockholder after reasonable inquiry, competes directly or indirectly with the business of the Company in any material respect;

*provided* that (A) nothing in this Section 3.03 shall prohibit any Transfer of Shares to an Investor, which Transfer, if made by Stockholder, shall be made in accordance with Section 3.04 and not this Section 3.03 and (B) the restrictions in this Section 3.03 shall not apply to any Shares Transferred pursuant to a Registration Statement or a public distribution in compliance with any applicable requirements of U.S. federal or state securities laws (including Rule 144 under the Securities Act); *provided* that Stockholder shall direct the underwriter(s) for any such offering or distribution to place the Shares sold in such offering or distribution so that, to the knowledge of the underwriter(s), in no event shall Shares representing more than 5.0 percent of the total number of issued and outstanding shares of Common Stock, after giving effect to such offering or distribution, be placed with any single person or group of related persons in any such offering or distribution.

Section 3.04. Distributions to Investors. Notwithstanding the restrictions set forth in Section 3.02 and Section 3.03 of this Agreement, Stockholder may not Transfer all or any portion of the Shares to any Investor unless such Investor transferee either (a) agrees in writing to be bound by the restrictions and obligations in Section 3.01(a) (subject to the exception set forth in Section 3.01(b)), Section 3.02 and Section 3.03 applicable to Stockholder under this Agreement with respect to such Shares, or (b) satisfies all three of the following conditions: (i) such Investor received its Shares in a distribution of which the Company received at least 30 days advance notice, (ii) such Investor and its Affiliates do not, in the aggregate, receive Shares in all such distributions from Stockholder representing greater than 8.5 percent of the total number of shares of Common Stock issued and outstanding at the time of any such distribution, and (iii) such Investor agrees in writing that, for a period of one year following the distribution of all Shares held by Stockholder to the Investors, it and its Affiliates will not in any way act in coordination with, cooperate with or otherwise form a “group” (within the meaning of Section 13(d)(3) of the Exchange Act) with Stockholder or any other Investor or any of their respective Affiliates (or, in the case of the Investment Company Investors, with Stockholder), in which case such Investor shall no longer be subject to the provisions of Section 3.01(a), Section 3.02 or Section 3.03; it being understood that, notwithstanding the foregoing, each of Mr. Kotick and Mr. Kelly shall remain subject to the provisions of Section 3.01(a) until the later of the expiration of the Standstill Period and the date on which the aggregate number of shares of Common Stock beneficially owned, in the aggregate, by them and their Affiliates, is less than 5.0 percent of the total number of shares of Common Stock issued and outstanding on such date.

Section 3.05. Transfer Agent. Stockholder and the Company agree that the Company may cause the transfer agent or other registrar to enter stop transfer instructions and implement stop transfer procedures with respect to any Transfer of Shares not in compliance with Section 3.02, Section 3.03 or Section 3.04. Any Transfer or attempted Transfer of Shares in violation of Section 3.02, Section 3.03 or Section 3.04 shall, to the fullest extent permitted by law, be null and void *ab initio*.

Section 3.06. Legends. For so long as any indebtedness of Stockholder remains outstanding, the Company shall use reasonable best efforts to have the Shares (i) registered in the name of The Depository Trust Company's nominee, (ii) maintained in the form of book entries on the books of The Depository Trust Company, and (iii) allowed to be settled through The Depository Trust Company's regular book-entry settlement services. Any certificates for Shares issued to Stockholder shall bear a legend or legends (and appropriate comparable notations or other arrangements will be made with respect to any uncertificated shares) referencing restrictions on transfer of such Shares under the Securities Act and under this Agreement which legend shall state in substance:

"The securities evidenced by this certificate have been issued and sold without registration under the United States Securities Act of 1933, as amended (the "Securities Act"), or the securities laws of any state of the United States (a "State Act") in reliance upon certain exemptions from registration under said acts. The securities evidenced by this certificate cannot be sold, assigned or otherwise transferred unless such sale, assignment or other transfer is (i) made pursuant to an effective registration statement under the Securities Act and in accordance with each applicable State Act or (ii) exempt from, or not subject to, the Securities Act and each applicable State Act. If the proposed sale, assignment or other transfer will be made pursuant to clause (ii) above, the holder must, prior to such sale, assignment or other transfer, furnish to the issuer such customary certifications, legal opinions and other information as the issuer may reasonably require to determine that such sale, assignment or other transfer is being made in accordance with such clause.

The securities evidenced by this certificate are subject to restrictions on transfer set forth in a Stockholders Agreement dated October 11, 2013, among Activision Blizzard, Inc., ASAC II LP and for the limited purposes set forth therein, Robert A. Kotick and Brian G. Kelly (a copy of which is on file with the Secretary of Activision Blizzard, Inc.)."

Notwithstanding the foregoing, (a) if and for so long as (i) Stockholder shall have pledged Shares pursuant to (x) that certain Loan Agreement, dated as of October 11, 2013, by and between Stockholder, acting through its general partner, the several lenders party thereto from time to time, Merrill Lynch International, as administrative agent and the other parties thereto, and related agreements, (y) that certain Loan Agreement, dated as of October 11, 2013, by and between Stockholder, acting through its general partner, the several lenders party thereto from time to time, JPMorgan Chase Bank, N.A., London Branch, as administrative agent and the other parties thereto and related agreements or (z) any replacements or refinancings of, or modifications to, the foregoing having terms customary for margin loans to borrowers similar to the Stockholder, and (ii) the administrative agent under each such agreement has provided the Company with an acknowledgement in the form attached hereto as Annex A, Stockholder shall be entitled to hold such pledged Shares subject to such pledges without such legends (or comparable notations or other arrangements with respect to any uncertificated shares) (it being understood, for the avoidance of doubt, that following the release of such pledges, Stockholder shall no longer be entitled to hold such Shares without such legends and shall cooperate with the Company to make appropriate arrangements to have legends placed on the Shares at such time), and (b) to the extent the Shares bear a legend or legends (or comparable notations or other arrangements with respect to any uncertificated shares), the holder of any certificate(s) for Shares shall be entitled to receive from the Company new certificates for a like number of Shares not bearing such legend (or the elimination or termination of such notations or arrangements) upon the request of such holder at (i) such time as such restrictions are no longer applicable, and (ii) with respect to the restriction on transfer of such shares under the Securities Act, delivery of a customary opinion of counsel to such holder, which opinion is reasonably satisfactory in form and substance to the Company and its counsel, that the restriction referenced in such legend (or such notations or arrangements) is no longer required in order to ensure compliance with the Securities Act.

Section 3.07. Voting. With respect to any matter submitted for a vote of the Company's stockholders at any time when the Stockholder Percentage Interest is in excess of 24.9 percent, Mr. Kotick and Mr. Kelly shall vote any shares of Common Stock over which they have beneficial ownership and the ability to direct voting in excess of such Stockholder Percentage Interest, other than the Shares, on each such matter either (a) in a manner proportionally consistent with the vote of the shares of Common Stock not owned by Stockholder, Mr. Kotick or Mr. Kelly or (b) in accordance with the recommendation, if any, of a majority of the Unaffiliated Directors.

#### **ARTICLE IV**

#### **REPRESENTATIONS AND WARRANTIES**

Section 4.01. Representations and Warranties of the Company. The Company represents and warrants to Stockholder as of the date hereof that:

(a) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of Delaware and has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder.



(b) This Agreement has been duly and validly authorized by the Company and all necessary and appropriate action has been taken by the Company to execute and deliver this Agreement and to perform its obligations hereunder.

(c) This Agreement has been duly executed and delivered by the Company and, assuming due authorization and valid execution and delivery by Stockholder, is a valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

Section 4.02. Representations and Warranties of Stockholder. Stockholder represents and warrants to the Company as of the date hereof that:

(a) Stockholder has been duly formed and is validly existing as an exempted limited partnership under the laws of the Cayman Islands and has all necessary limited partnership power and authority to enter into this Agreement and to carry out its obligations hereunder.

(b) This Agreement has been duly and validly authorized by Stockholder and all necessary and appropriate action has been taken by Stockholder to execute and deliver this Agreement and to perform its obligations hereunder.

(c) This Agreement has been duly executed and delivered by Stockholder and, assuming due authorization and valid execution and delivery by the Company, is a valid and binding obligation of Stockholder enforceable against Stockholder in accordance with its terms.

(d) Except as set forth on Annex B to this Agreement, none of Stockholder or any Investor (other than the Reporting Investment Company Investors) has beneficial ownership of any shares of Common Stock. Annex B to this Agreement sets forth the number of shares of Common Stock which will be beneficially owned by Stockholder and each Investor (other than the Reporting Investment Company Investors) immediately following the consummation of the transactions contemplated by this Agreement.

## ARTICLE V

### GENERAL PROVISIONS

Section 5.01. Adjustments. References to numbers of shares contained herein will be adjusted to account for any reclassification, exchange, substitution, combination, stock split or reverse stock split of Equity Interests.

Section 5.02. Notices. All notices or other communications hereunder to a party shall be deemed to have been duly given and made if in writing and (a) if served by personal delivery, on the day of such delivery, (b) if delivered by registered or certified mail (return receipt requested), or by a national courier service, on the day of delivery, or (c) if sent by facsimile, upon transmission of such facsimile (*provided* that the facsimile is confirmed by

printed report), or (d) if sent by email, upon transmission of such email (*provided* that the email is promptly confirmed with the recipient by telephone), to the person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such person:

(a) if to the Company, to:

Activision Blizzard, Inc.  
3100 Ocean Park Boulevard  
Santa Monica, California 90405  
Attention: Chief Legal Officer  
Facsimile: (310) 255-2152  
Email: chris.walther@activision.com

with copies (which shall not constitute notice to the Company) to:

Wachtell, Lipton, Rosen & Katz  
51 West 52<sup>nd</sup> Street  
New York, New York 10019  
Attention: Adam O. Emmerich  
DongJu Song  
Telephone: (212) 403-1000  
Facsimile: (212) 403-2000  
Email: AOEmmerich@wlrk.com  
DSong@wlrk.com

and

Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, New York 10036-6522  
Attention: Peter A. Atkins  
Neil P. Stronski  
Facsimile: (212) 735-2000  
Email: peter.atkins@skadden.com  
neil.stronski@skadden.com

(b) if to Stockholder, to:

ASAC II LP  
c/o Chadwick and Company  
225 Highway 35, Suite 102C  
Red Bank, New Jersey 07701  
Fax: (732) 345-8332  
Email: bob@chadwickcpa.com

with a copy (which shall not constitute notice to Stockholder) to:

Sullivan & Cromwell LLP  
1888 Century Park East  
Los Angeles, California 90067  
Attention: Alison S. Ressler  
Telephone: 310-712-6600  
Facsimile: 310-712-8800  
Email: resslera@sullcrom.com

Section 5.03. Expenses. Except as otherwise provided in this Agreement, all costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense.

Section 5.04. Amendments; Waivers. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by the Company (following approval by a majority of the Unaffiliated Directors) and Stockholder or, in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by any party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

Section 5.05. Interpretation. In this Agreement, except as context may otherwise require, references:

(a) to the Preamble, Recitals or Sections are to the Preamble to, or a Recital or Section of, this Agreement;

(b) to any agreement (including this Agreement), contract, statute or regulation are to the agreement, contract, statute or regulation as amended, modified, supplemented, restated or replaced from time to time (in the case of an agreement or contract, to the extent permitted by the terms thereof); and to any section of any statute or regulation include any successor to the section;

(c) to any Governmental Entity includes any successor to that Governmental Entity;

(d) to a person are also to its permitted successors and assigns;

(e) to the words "hereby," "herein," "hereof," "hereunder," and similar terms are to be deemed to refer to this Agreement as a whole and not to any specific Section;

(f) to the words "include," "includes," or "including," are to be deemed followed by the words "without limitation;"

(g) to any singular term in this Agreement are to be deemed to include the plural, and any plural term the singular;

(h) to all pronouns and variations of pronouns are to be deemed to refer to the feminine, masculine or neuter, singular or plural, as the identity of the person referred to may require;

(i) to the table of contents and article and section headings are for reference purposes only and do not limit or otherwise affect any of the substance of this Agreement; and

Section 5.06. Construction. This Agreement is the product of negotiation by the parties, having the assistance of counsel and other advisers. The parties intend that this Agreement not be construed more strictly with regard to one party than with regard to the other.

Section 5.07. Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provisions of this Agreement, or the application thereof to any person or entity or any circumstance, is found by a court or other Governmental Entity of competent jurisdiction to be invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other persons, entities or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability, of such provision or the application thereof, in any other jurisdiction.

Section 5.08. Counterparts. This Agreement may be executed in two or more counterparts which may be delivered by means of facsimile or email, each of which shall be deemed to constitute an original, but all of which together shall be deemed to constitute one and the same instrument.

Section 5.09. Entire Understanding; No Third-Party Beneficiaries. This Agreement represents the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes any and all other oral or written agreements heretofore made with respect to the subject matter hereof. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties and their respective permitted successors and assigns, including, for the avoidance of doubt, the Investors, any rights or remedies under or by reason of this Agreement. Only the parties that are signatories to this Agreement (and their permitted successors and assigns) shall have any obligation or liability under, in connection with, arising out of, resulting from or in any way related to this Agreement or any other matter contemplated hereby or the process leading up to the execution and delivery of this Agreement and the transactions contemplated hereby, subject to delivery of this Agreement and such transactions and other provisions of this Agreement.

Section 5.10. Governing Law. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State Delaware applicable to contracts made and to be performed entirely within such state, without regard to the conflicts of law principles thereof to the extent that such principles would apply the law of another jurisdiction.

Section 5.11. Assignment. Subject to Section 2.10 and the last sentence of this Section 5.11, neither this Agreement nor any of the rights, interests or obligations under this Agreement will be assigned, in whole or in part, by any of the parties without the prior written consent of the other parties hereto. Subject to Section 2.10 and the last sentence of this Section 5.11, any purported assignment without such prior written consent will be void. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns. Notwithstanding anything to the contrary herein, Stockholder may assign and/or pledge its rights (subject to its obligations and applicable limitations) under Article II of this Agreement in connection its indebtedness outstanding as of the date hereof (or any refinancing or replacement of, or modifications to, such indebtedness).

Section 5.12. WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT: (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; (B) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (C) EACH PARTY MAKES THIS WAIVER VOLUNTARILY; AND (D) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 5.12.

Section 5.13. Venue for Resolution of Disputes. Each party hereto agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement and the transactions contained hereby, whether in tort or contract or at law or in equity, exclusively, in the Court of Chancery in the State of Delaware (the "Delaware Court of Chancery") and any state appellate court therefrom within the State of Delaware (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any federal court sitting within the State of Delaware), and (a) irrevocably submits to the exclusive jurisdiction of such courts, (b) waives any objection to laying venue in any such action or proceeding in such courts, (c) waives any objection that such courts are an inconvenient forum or do not have jurisdiction over any party hereto, and (d) agrees that service of process upon such party in any such action or proceeding shall be effective if Notice is given in accordance with Section 5.02 of this Agreement. Each party hereto further hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in such courts, and hereby irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum or that such party is not subject to personal jurisdiction in such court.

Section 5.14. Specific Performance. Each party agrees that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by it in accordance with their specific terms or were otherwise breached or threatened to be breached. It is accordingly agreed that, except as expressly set forth in this Agreement to the contrary, each party shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the Delaware Court of Chancery (or, if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, any federal court sitting within the State of Delaware), without bond or other security being required, this being in addition to any other right, remedy or cause of action to which any party is entitled under any theory of recovery whatsoever (including, at law or in equity, in tort or any other claims).

Section 5.15. Termination. Except as otherwise provided in this Agreement, this Agreement shall terminate upon the first date on which Stockholder and each Investor to whom Shares are transferred in accordance with Section 3.04 ceases to hold any Shares; *provided, however*, that (a) the indemnity and contribution provisions contained in Section 2.08, and the representations and warranties of the Company and Stockholder referred to in Section 4.01 and Section 4.02, shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Indemnified Person or by or on behalf of the Company, and (iii) the consummation of the sale or successive resales of the Registrable Securities; (b) the provisions of Article II shall terminate on the applicable Registration Rights Termination Date; (c) the provisions of Section 3.01(a) shall automatically terminate at the expiration of the Standstill Period; (d) the provisions of Section 3.02 shall automatically terminate at the Lock-Up End Date; and (e) the provisions of this Article V shall survive any termination of this Agreement or any provision thereof. Notwithstanding anything to the contrary contained herein, this Agreement shall terminate with respect to Stockholder upon the Transfer of all Shares to Investors in accordance with Section 3.04. Nothing in this Agreement shall be deemed to release any party from any liability for any willful and material breach of this Agreement occurring prior to any termination hereof or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement.

[Next page is a signature page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ACTIVISION BLIZZARD, INC.

By: /s/ Dennis Durkin

Name: Dennis Durkin

Title: Chief Financial Officer

ASAC II L.P.

By: /s/ Brian G. Kelly

Name: Brian G. Kelly

Title: Manager



ROBERT A. KOTICK (for the limited purposes set forth in  
Section 3.01(c) and 3.07)

/s/ Robert A. Kotick

BRIAN G. KELLY (for the limited purposes set forth in  
Section 3.01(c) and 3.07)

/s/ Brian G. Kelly

---

**AMENDED AND RESTATED**  
**AGREEMENT OF LIMITED PARTNERSHIP**  
**OF**  
**ASAC II LP**  
**October 11, 2013**

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AMENDED AND RESTATED  
AGREEMENT OF LIMITED PARTNERSHIP  
OF  
ASAC II LP

This AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP, dated October 11, 2013, is made by and among ASAC II LLC, a Delaware limited liability company registered as a foreign company in the Cayman Islands, in its capacity as general partner, and the Persons who have executed this Agreement on the date hereof or become a party to this Agreement in accordance with the terms hereof.

WHEREAS, ASAC II LP, an exempted limited partnership (as it may from time to time be constituted and any successor thereto, "ASAC" or the "Partnership"), was registered with the Registrar of Exempted Limited Partnerships in the Cayman Islands on July 25, 2013 following the execution of an Initial Exempted Limited Partnership Agreement, dated July 25, 2013 (the "Original Agreement"), between ASAC II LLC and Robert A. Kotick (the "Original Limited Partner") and the filing of a section 9 statement pursuant to the ELP Law;

WHEREAS, the parties hereto desire to continue the Partnership as an exempted limited partnership in accordance with the ELP Law and to amend and restate the terms and provisions of the Original Agreement; and

WHEREAS, the parties signing this Agreement as Limited Partners desire to be admitted to the Partnership as Limited Partners and, upon the admission of any additional Limited Partner to this Agreement, the Original Limited Partner shall withdraw from the Partnership.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree to amend and restate the Original Agreement in its entirety as follows:

**ARTICLE 1**

**DEFINITIONS**

1.1. Definitions. The defined terms used in this Agreement shall have the meanings specified below:

"Additional Rights" has the meaning set forth in Section 14.3(b).

"Administrative Expenses" shall mean all costs and expenses of administering the affairs of the Partnership, determined, for this purpose, on a cash basis, including (a) taxes, fees and other governmental charges or filing fees, (b) litigation costs, indemnification obligations and insurance costs, (c) administrative fees and expenses associated with the preparation and distribution of notices and reports to the Partners, (d) fees and costs for outside services, audits, custodians, third-party administrators, outside counsel and accountants, (e) costs incurred in connection with meetings of the Partners and (f) costs and expenses incurred in connection with



the servicing of any Term Loan and any sale of the Shares; *provided* that in no event shall Administrative Expenses include any salary, bonus or other payments to the Principals or their respective Affiliates (other than reimbursement of out of pocket costs and expenses incurred directly by the Principals or their respective Affiliates on behalf of the Partnership).

“Affiliate” shall mean, when used with reference to a specified Person at a specified time, (a) any Person that, at such specified time, directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the specified Person or (b) any Person which, at such specified time, directly or indirectly, is the beneficial owner of a majority of the voting ownership interests of the specified Person. Notwithstanding the foregoing, (x) the Corporation and its subsidiaries shall not be considered Affiliates of ASAC or the General Partner or any Affiliate thereof and (y) ASAC shall not be considered an Affiliate of the General Partner or any Affiliate thereof; *provided* that this sentence shall not apply for purposes of Section 3.4.

“Agreement” shall mean this Amended and Restated Agreement of Limited Partnership, as it may be amended and/or restated from time to time.

“ASAC” has the meaning set forth in the recitals to this Agreement.

“ASAC Expenses” shall mean the sum of (a) all Organizational Expenses and (b) all Administrative Expenses.

“ASAC Information” has the meaning set forth in Section 8.1(a).

“Authorized Representative” has the meaning set forth in Section 8.1(a).

“Available Cash” shall mean cash of ASAC which the General Partner reasonably determines is available for distribution (including any cash reserves previously set aside from such cash which are thereafter deemed available for distribution by the General Partner). Available Cash shall not include any amounts reasonably determined by the General Partner to be necessary for (a) the payment of (or reimbursement for), or the establishment of reserves for, the current or potential liabilities, expenses or other obligations of ASAC (including ASAC Expenses and the Term Loans) and (b) the maintenance of adequate working capital for the continued existence and administration of the affairs of ASAC and for the ownership and disposition of the Shares, including to pay ASAC Expenses.

“Available Shares” shall mean Shares which the General Partner reasonably determines are available for distribution (including any Shares previously set aside which are thereafter deemed available for distribution by the General Partner and, for purposes of calculating the number of Shares distributable to the Partners in accordance with Section 5.2(a), any Shares by which the number of Available Shares is deemed to be increased pursuant to Section 5.2(b)). Available Shares shall not include any Shares reasonably determined by the General Partner to be necessary to sell for (a) the payment of (or reimbursement for), or the establishment of reserves for, the current or potential liabilities, expenses or other obligations of ASAC (including ASAC Expenses and the Term Loans) and (b) the maintenance of adequate working capital for the continued existence and administration of the affairs of ASAC and for the ownership and disposition of the Shares, including to pay ASAC Expenses.

“Bankruptcy Action” means any of the following: (a) to institute any proceedings to adjudicate the Partnership as bankrupt or insolvent, (b) to institute or consent to the institution of bankruptcy, reorganization or insolvency proceedings against the Partnership or file a bankruptcy petition or any other petition seeking, or consenting to, reorganization or relief with respect to the Partnership under any Debtor Relief Law, (c) to file or consent to a petition seeking liquidation, reorganization, dissolution, winding up or similar relief with respect to the Partnership, (d) to consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator or conservator (or other similar official) of the Partnership or any part of its property, (e) to make any assignment for the benefit of the Partner’s creditors, (f) to cause the Partnership to admit in writing its inability to pay its debts, or (g) to take any action in furtherance of any of the foregoing.

“Beneficial Owner” has the meaning set forth in Schedule D.

“Business Day” shall mean any day other than a Saturday, a Sunday, or any other day on which banking institutions in the City of New York, State of New York, United States of America or Hong Kong are authorized or required by law, regulation or executive order to remain closed.

“Capital Account” has the meaning set forth in Section 4.6.

“Capital Contributions” shall mean, with respect to each Partner, the total amount of cash contributed by such Partner to ASAC pursuant to the terms of the applicable Subscription Agreement and this Agreement. Notwithstanding the foregoing, none of the following shall be considered a Capital Contribution: (x) amounts returned by a Partner pursuant to Section 5.2(c); or (y) any amount paid by a Partner pursuant to Section 5.2(b), Section 5.5, Section 7.5, Section 7.6 or Section 12.5.

“Carrying Value” shall mean, with respect to any Partnership asset, the asset’s adjusted basis for U.S. federal income tax purposes; *provided* that, except as otherwise provided herein, the Carrying Values of all Partnership assets shall be adjusted to equal their respective fair market values, in accordance with the rules set forth in Regulations § 1.704–1(b)(2)(iv)(f), as of: (a) the date of the distribution of more than a *de minimis* amount of money or other Partnership asset to a Partner; *provided* that adjustments pursuant to this clause shall be made only if the General Partner reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Partners; or (b) the date of the liquidation of ASAC within the meaning of Regulations § 1.704–1(b)(2)(ii)(g). The Carrying Value of any Partnership asset distributed to any Partner shall be adjusted immediately prior to such distribution to equal its fair market value as determined in accordance with the valuation methodology set forth in Section 5.3. For the avoidance of doubt, all adjustments made to the Carrying Value of any Partnership asset shall, for purposes of maintaining the Partners’ Capital Accounts, be taken into account as an item of income, gain, loss, deduction or credit and allocated among the Partners’ Capital Accounts in accordance with Section 5.1.

“Claims” has the meaning set forth in Section 6.7(b).

“Class A Common Interests” has the meaning set forth in Section 4.3.

“Class B Common Interests” has the meaning set forth in Section 4.3.

“Class C Common Interests” has the meaning set forth in Section 4.3.

“Class D Common Interests” has the meaning set forth in Section 4.3.

“Common Interests” has the meaning set forth in Section 4.3.

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

“Competitor” shall mean any of the Persons listed on Schedule A hereto, and any of such Person’s subsidiaries or successors; *provided* that no such Person shall be a Competitor if the Corporation owns, directly or indirectly, more than 25% of the equity interests of such Person.

“Consent” shall mean either the written consent of a Person, or the affirmative vote of such Person at a meeting duly called and held pursuant to this Agreement, as the case may be, to do the act or thing for which the Consent is solicited, or the act of granting such Consent, as the context may require. Reference to the Consent of a stated percentage of the Percentage Interests of the Limited Partners means the Consent of a number of the Limited Partners whose combined Percentage Interests represent at least such stated percentage of the total Percentage Interests of the Limited Partners in respect of the Preferred Interests.

“Corporation” shall mean Activision Blizzard, Inc., a Delaware corporation, as such corporation may from time to time be constituted and any successor thereto.

“Covered Persons” has the meaning set forth in Section 6.7(i).

“Damages” has the meaning set forth in Section 6.7(b).

“Davis LP” shall mean each Limited Partner that is an investment company registered under the Investment Company Act and that is advised by Davis Selected Advisers, L.P. or any of its Affiliates.

“Debtor Relief Laws” shall mean the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Disability” shall mean, with respect to either Principal, that the Principal has been unable, by reason of physical or mental disability, for 270 successive days or for shorter periods aggregating 270 days or more in any twelve month period, to act as a manager of the General Partner, and will be unable to resume acting as such within a reasonable period of time by reason of such disability.

“Distribution Date” has the meaning in Section 5.4(a).

“ELP Law” shall mean the Exempted Limited Partnership Law (2012 Revision) of the Cayman Islands, as amended or revised from time to time.

“ERISA” shall mean the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time.

“Excess Shares” has the meaning set forth in Section 3.6(b).

“Exchange Act” shall mean the U.S. Securities Exchange Act of 1934, as amended from time to time, and all rules and regulations thereunder.

“Fidelity LP” shall mean each Limited Partner that is an investment company registered under the Investment Company Act and that is advised by Fidelity Management & Research Co. or any of its Affiliates.

“First Offer Notice” has the meaning set forth in Section 5.5(a).

“First Offer Shares” has the meaning set forth in Section 5.5(a).

“First Return Threshold” shall mean (a) the receipt of distributions by the Partners in respect of their Preferred Interests and Common Interests that yield an internal rate of return of 12% on the Partners’ aggregate Capital Contributions for their Preferred Interests, accruing from and including the SPA Closing Date to but not including the date the last of such distributions is made pursuant to this Agreement, and (b) after the distributions under clause (a) have been made, the return to each Partner of its Capital Contribution for its Class A Common Interests.

“Fiscal Year” shall mean the taxable year of ASAC which, except in the case of a short taxable year, shall be the calendar year.

“Freely Saleable” shall mean, with respect to any Share, a Share (a) that is eligible to be sold by the holder thereof without any volume or manner of sale restrictions under the Securities Act pursuant to Rule 144, (b) which bears no legends restricting the transfer thereof and (c) bears an unrestricted CUSIP number (if held in global form).

“General Partner” shall mean ASAC II LLC, a Delaware limited liability company, or any other Person who becomes a successor general partner pursuant to the terms hereof.

“GP Termination Event” shall mean the occurrence of any of the following: (a) the death or Disability of Robert A. Kotick; (b) the resignation of Robert A. Kotick from (i) employment by the Corporation and (ii) the board of directors of the Corporation; (c) the termination or removal (including by failure to be elected) of Robert A. Kotick’s employment by the Corporation and his service as a director of the Corporation; (d) the active participation, directly or indirectly, of either of the Principals in the conduct, direction, operation, strategies or management of the business of (i) a Competitor or (ii) any other Person formed by a Principal to engage in the business of publishing, distributing, programming, designing or marketing video games or entertainment software for personal computers that competes with the business of the Corporation in any material respect (whether in the capacity of an employee, officer, director,

manager, owner, consultant or otherwise); (e) the Transfer by the General Partner of any portion of its Interest to any Person other than a Permitted Transferee (such Permitted Transferee to include any Permitted Transferee of a Principal) in accordance with Section 6.3(a); or (f) the material breach by the General Partner of its obligations under this Agreement, as determined by arbitration pursuant to Section 14.11, following written notice of such breach provided by a majority of the Limited Partners and the General Partner's failure to cure such breach, if capable of being cured, within 15 calendar days after its receipt of such written notice.

"gross negligence" has the meaning ascribed thereto by, and such term shall be construed in accordance with, the laws of the State of Delaware, United States of America.

"Immediate Family Relative" shall mean an individual's issue (including by adoption or remarriage), siblings, parents, first cousins, aunts, uncles, nieces, nephews, grandparents and the respective current or former household partners and current or former spouses of such individual or any of the foregoing.

"Indemnified Parties" shall mean, collectively, all of the following Persons: ASAC, the General Partner, any other authorized agent of ASAC, their respective Affiliates, and the officers, directors, employees, controlling Persons, agents, representatives, shareholders, members, managers or partners of any of them, and any heirs, legal representatives, successors, and assigns of any of the foregoing.

"Interest" shall mean the ownership interest of a Partner in ASAC at any particular time (comprised of its Preferred Interests and Common Interests), including the right of such Partner to any and all benefits to which such Partner may be entitled as provided in this Agreement and in the ELP Law, together with the obligations of such Partner to comply with all the terms and provisions of this Agreement and of the ELP Law.

"Investment Company Act" shall mean the U.S. Investment Company Act of 1940, as amended from time to time, and all rules and regulations thereunder.

"Investment Company LP" shall mean each Fidelity LP and Davis LP.

"JAMS" has the meaning set forth in Section 14.11.

"Limited Partners" shall mean any Partner other than the General Partner.

"Notice of Dissolution" has the meaning set forth in Section 10.2(d).

"Offer Notice" has the meaning set forth in Section 9.4(a).

"Offer Price" has the meaning set forth in Section 9.4(a).

"Organizational Expenses" shall mean all out-of-pocket costs and expenses incurred by ASAC, the General Partner or any Affiliate thereof in connection with the organization and formation of ASAC and the preparation and execution of this Agreement (including legal, accounting and financial advisory fees and expenses and filing fees); it being understood that such costs and expenses are set forth on Schedule B hereto to the extent

previously incurred or reasonably expected to be incurred on or following the date hereof; *provided* that in no event shall Organizational Expenses include any salary, bonus or other payments to the Principals or their respective Affiliates (other than reimbursement of out of pocket costs and expenses incurred directly by the Principals or their respective Affiliates on behalf of the Partnership).

“Original Agreement” has the meaning set forth in the recitals to this Agreement.

“Original Limited Partner” has the meaning set forth in the recitals to this Agreement.

“Outstanding Common Stock” shall mean, at any given time, issued and outstanding shares of common stock of the Corporation, which shall not include any shares of common stock of the Corporation that are issuable upon the exercise or conversion of any options, warrants, convertible securities or other rights (contingent or otherwise) or are subject to forfeiture for failure to exercise, convert or otherwise.

“Ownership Restriction” has the meaning set forth in Section 3.5.

“Partner” shall mean any Person who is admitted as a partner of ASAC.

“Partnership” has the meaning set forth in the recitals to this Agreement.

“Percentage Interest” shall mean the initial Percentage Interest of each Partner set forth on the Schedule (which, with respect to each Partner, shall be the fraction, expressed as a percentage, equal to the amount of the total Capital Contributions of such Partner divided by the total Capital Contributions of all Partners), as it may be adjusted from time to time to reflect any transfer or partial transfer of an Interest to the extent permitted by and pursuant to the terms of Article 9. When used with reference to the Preferred Interests or any class of Common Interests, “Percentage Interest” shall mean the initial Percentage Interest of each Partner in respect of the Preferred Interests or such class of Common Interests, as the case may be, set forth on the Schedule (which, with respect to each Partner, shall be the fraction, expressed as a percentage, equal to the amount of the total Capital Contributions of such Partner made to purchase such Interests divided by the total Capital Contributions of all Partners made to purchase such Interests).

“Permitted Transferee” shall mean, with respect to a Person, (a) any Affiliate of such Person, and (b) in the case of a Person that is an individual, (i) an Immediate Family Relative, (ii) a trust controlled for the primary benefit of such Person and/or one or more of such Person’s Immediate Family Relatives, or his or her successors upon death, (iii) a partnership, the partners of which consist of such Person and/or one or more of such Person’s Immediate Family Relatives, or (iv) a family or private (operating or non-operating) foundation of such Person; *provided* that, in the case of clauses (i) – (iv), the transferor (or, if the transferor is a Principal, either of the Principals) shall retain voting control of the Transferred Interests.

“Person” shall mean any individual, partnership, corporation, limited liability company, trust, unincorporated organization, government (or any agency or political subdivision thereof) or any other entity.

“Preferred Return Threshold” shall mean, with respect to any Partner, (a) the receipt of distributions by such Partner in respect of its Preferred Interests that yields an internal rate of return of 7.0% on such Partner’s Capital Contribution for its Preferred Interests, accruing from and including the SPA Closing Date to but not including the date the last of such distributions is made pursuant to this Agreement, and (b) after the distributions under clause (a) have been made, the return to such Partner of its Capital Contribution for its Preferred Interests.

“Preferred Interests” has the meaning set forth in Section 4.3.

“Prime Rate” shall mean the rate of interest publicly announced from time to time by JPMorgan Chase & Co., New York, New York, or its successor as its “prime rate.”

“Principals” has the meaning set forth in Section 6.6.

“Proceeding” has the meaning set forth in Section 6.7(b).

“Purchase Notice” has the meaning set forth in Section 5.5(a).

“Purchase Price” has the meaning set forth in Section 5.5(a).

“Register” has the meaning set forth in Section 4.2(a).

“Regulations” shall mean the regulations of the U.S. Treasury Department promulgated under the Code.

“Related Party Transaction” has the meaning set forth in Section 3.6(a).

“Say-on-Pay Vote” has the meaning set forth in Section 3.6(c).

“Schedule” has the meaning set forth in Section 2.4.

“Second Return Threshold” shall mean (a) the receipt of distributions by the Partners in respect of their Preferred Interests and Common Interests (excluding the return of each Partner’s Capital Contribution for its Class A Common Interests) that yield an internal rate of return of 18.0% on the Partners’ aggregate Capital Contributions for their Preferred Interests, accruing from and including the SPA Closing Date to but not including the date the last of such distributions is made pursuant to this Agreement, and (b) after the distributions under clause (a) have been made, the return to each Partner of its Capital Contribution for its Class B Common Interests.

“Securities Act” shall mean the U.S. Securities Act of 1933, as amended from time to time, and all rules and regulations thereunder.

“Shares” shall mean the shares of common stock of the Corporation held by ASAC and any other property (other than cash) received by it as a dividend or distribution on or in exchange for the Shares.

“SPA Closing Date” shall mean the Closing Date, as defined in the Stock Purchase Agreement, dated as of July 25, 2013, among the Corporation, ASAC and Vivendi, S.A., a société anonyme organized under the laws of France.

“Special Purpose Provisions” has the meaning set forth in Section 13.1.

“Stockholders Agreement” shall mean the Stockholders Agreement, dated as of the SPA Closing Date, between the Partnership, the Principals and the Corporation, setting forth certain governance arrangements and granting certain registration rights to the Partnership and to the Partners upon receipt of Shares from the Partnership.

“Subscription Agreements” shall mean the Subscription Agreements by and between ASAC and each Limited Partner.

“Substitute Partner” shall mean any Person admitted to ASAC as a Limited Partner pursuant to Section 9.3.

“Term Loans” shall mean the term loans made pursuant to the two loan agreements, in each case, dated as of the SPA Closing Date, among ASAC and the lenders party thereto, as they may be amended, restated, amended and restated, refinanced, replaced, renewed, substituted or otherwise modified from time to time in accordance with Section 3.2(b).

“Termination Event” has the meaning set forth in Section 10.1.

“Third Return Threshold” shall mean (a) the receipt of distributions by the Partners in respect of their Preferred Interests and Common Interests (excluding the return of each Partner’s Capital Contributions for its Class A Common Interests and Class B Common Interests) that yield an internal rate of return of 22.0% on the Partners’ aggregate Capital Contributions for their Preferred Interests, accruing from and including the SPA Closing Date to but not including the date the last of such distributions is made pursuant to this Agreement, and (b) after the distributions under clause (a) have been made, the return to each Partner of its Capital Contribution for its Class C Common Interests.

“TMP” has the meaning set forth in Section 12.2(a).

“Transfer” shall mean any sale, assignment, transfer or other disposition, or pledge, hypothecation or other encumbrance, of an Interest, whether directly or indirectly (by merger or sale of equity or assets in any direct or indirect holding company), and irrespective of whether any of the foregoing are effected voluntarily, involuntarily, by operation of law, pursuant to judicial process or otherwise, or whether inter vivos or upon death.

“Transfer Interests” has the meaning set forth in Section 9.4(a).

“Transfer Notice” has the meaning set forth in Section 9.4(a).

“Withholding Tax Amounts” has the meaning set forth in Section 5.2(b).

“Withholding Shares” has the meaning set forth in Section 5.2(b)(ii).



1.2. Rules of Construction. All other defined terms used in this Agreement shall have the respective meanings assigned to them in the Sections in which they appear. For all purposes of this Agreement, except as expressly provided or unless the context otherwise requires, the words “including,” “includes,” “include,” and other words of similar import shall be deemed to be followed by the phrase “without limitation.” Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and *vice versa*, unless otherwise specified herein. The word “will” shall be construed to have the same meaning and effect as the word “shall.” The rule known as the *eiusdem generis* rule shall not apply and, accordingly, general words introduced by the word “other” shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things. Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or therein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) except as otherwise provided herein, all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to action undertaken or to be undertaken by the Partnership shall be construed as referring to the General Partner on behalf of the Partnership, and (f) any reference to any law or regulation herein shall refer to such law or regulation as amended, modified or supplemented from time to time and any successor statutory provisions. For all purposes of this Agreement, a “creditor of ASAC” shall include any Person extending credit to ASAC and any Person who is entitled to the benefit of a guaranty, indemnity or other assurance of payment from ASAC. It is intended that the terms of this Agreement be construed in accordance with their fair meanings and not against any particular Person. All section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any section.

1.3. Discretion of the Partners. Except as expressly provided, in any case where the General Partner is authorized or required to take an action or give an approval, make a decision or determination in its discretion or its judgment or no standard is specified, it may do so in its sole discretion or sole judgment. Wherever in this Agreement a Limited Partner is empowered to provide a consent, vote or approval, such Limited Partner is entitled to consider, favor and further only such interests and factors as it desires, including its own interests, and has no duty or obligation to consider, favor or further any interest of ASAC, as a whole, or any other Limited Partner.

## ARTICLE 2

### FORMATION OF ASAC

#### 2.1. Formation and Continuation.

(a) ASAC has been formed as an exempted limited partnership under the laws of the Cayman Islands. The General Partner shall, and shall be authorized to, take all necessary action required by law to maintain ASAC as an exempted limited partnership under the ELP Law and in all other jurisdictions in which ASAC may elect to carry out its activities.

(b) The General Partner hereby admits as Limited Partners the other parties to this Agreement on the date hereof. The parties hereto agree to continue the Partnership pursuant to the ELP Law and on the terms of this Agreement. The rights and obligations of the parties hereto shall be governed by the provisions of this Agreement and the ELP Law.

(c) Upon the admission of the Limited Partners pursuant to Section 2.1(b), the Original Limited Partner shall (i) receive a return of his original capital contribution, if any, (ii) withdraw as the Original Limited Partner of ASAC and (iii) have no further right, interest or obligation of any kind whatsoever as a partner in ASAC by reason of having been the Original Limited Partner.

#### 2.2. Name, Address and Registered Office.

(a) The name of the Partnership is ASAC II LP, which name may be changed by the General Partner in its discretion. The mailing address of the Partnership is c/o Northern Trust Private Equity Administration, Department 2008, 801 South Canal, Chicago, IL 60607, or such other address as may hereafter be determined by the General Partner. The General Partner shall promptly notify the Limited Partners of any change in name or address of the Partnership.

(b) The registered office of the Partnership shall be at the offices of Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1 1104, Cayman Islands, or at such other place as the General Partner may determine.

2.3. Term of the Partnership. The Partnership shall continue in full force and effect from the date it was registered as an exempted limited partnership under section 9 of the ELP Law through the date of commencement of winding up of the Partnership as provided in Article 10. Upon the completion of winding up of the Partnership, a Notice of Dissolution shall be filed in accordance with the ELP Law and the Partnership shall dissolve.

2.4. Schedule. The General Partner shall cause to be maintained at the address of the Partnership a schedule which shall include the name, address, Capital Contributions (including Capital Contributions for Preferred Interests and each class of Common Interests) and Percentage Interest (including Percentage Interest of the Preferred Interests and each class of Common Interests) of each Partner and such other information as the General Partner may deem necessary or desirable (the "Schedule"). The Schedule may be maintained by the General Partner in an electronic format. The Schedule will not be a part of this Agreement, but changes to the Schedule shall be made only in accordance with the terms and conditions of this

Agreement. The General Partner shall from time to time update the Schedule as necessary to accurately reflect the information therein. Any reference herein to the Schedule shall be deemed a reference to the Schedule as in effect from time to time. No action or Consent of any Limited Partner shall be required to amend or update the Schedule to reflect actions or changes authorized in accordance with the terms and conditions of this Agreement.

### ARTICLE 3

#### PURPOSES AND ACTIVITIES

3.1. Purposes. ASAC is being formed to acquire, hold and dispose of the Shares. ASAC shall, subject to Section 3.4, have the power to exercise any and all authority, rights, remedies and powers relating thereto or in connection therewith and engage in any lawful act or activity for which exempted limited partnerships may be formed under the ELP Law relating to, or in furtherance of, the purposes described in the first sentence of this Section 3.1, including any of the activities set forth in Section 3.2 and the creation of the Interests as contemplated by and in accordance with this Agreement.

3.2. Authorized Activities. In furtherance of the purposes set forth in the first sentence of Section 3.1, but subject in all cases to the other provisions of this Agreement (including Section 3.4) and applicable law, ASAC is and shall be permitted, empowered and authorized to engage in, take and carry out any and all of the following activities as the General Partner shall determine in its discretion:

(a) to acquire, hold and pledge, and, solely for purposes of paying (or reimbursing) the liabilities, expenses or other obligations of ASAC (including ASAC Expenses and the Term Loans) or distributing the Shares to the Partners pursuant to this Agreement, to sell, transfer or otherwise dispose of the Shares, including the timing, manner and terms of any such transactions (subject to Sections 3.3, 5.3 and 5.4), and the terms and conditions of the Term Loans and related facility documents;

(b) to incur, and perform its obligations under, the Term Loans and related facility documents, issue evidences or give guaranties or indemnities in respect thereof, pay interest thereon in kind and/or in cash, and secure the same by pledge or other lien on the assets of ASAC, and repay or prepay in whole or in part, refinance, replace, reduce, or modify the Term Loans in furtherance of any or all of the purposes of ASAC; *provided, however*, that ASAC may not (i) extend the stated maturity of the Term Loans or increase the principal amount of the Term Loans (whether through refinancing of the Term Loans or otherwise) other than through the operation of any pay in kind interest feature or (ii) incur additional indebtedness of any kind for borrowed money or guaranty any obligation of another Person;

(c) to enter into, perform and carry out any and all contracts, guaranties, indemnities or other agreements of any kind, including contracts with any Person affiliated with the General Partner (subject to Section 3.3), necessary to, in connection with, convenient to, or incidental to the accomplishment of the purposes of ASAC;

(d) to bring, sue, prosecute, defend, settle or compromise actions at law or in equity related to the purposes and activities of ASAC;

(e) to open, maintain and close bank accounts and/or accounts with brokers and draw checks and other orders for the payment of money, and to invest such funds as are temporarily not otherwise required for the purposes of ASAC in temporary investments, including money market funds and certificates of deposit, but not including making loans;

(f) to incur and pay fees, costs and expenses of any type or nature necessary, convenient or incidental to the accomplishment of the purposes of ASAC, including ASAC Expenses;

(g) to register or qualify ASAC under any applicable laws, or to obtain exemptions under such laws, if such registration, qualification, or exemption is deemed necessary or desirable by the General Partner;

(h) (i) to execute and deliver any documents in connection with the issuance and sale of the Interests and (ii) to purchase, redeem, cancel or otherwise retire or dispose of the Interest of any Partner pursuant to the provisions of this Agreement;

(i) to have and exercise all of the powers, rights, remedies and authority conferred upon, granted to, or vested in, ASAC as a shareholder of the Corporation, including the exercise of registration rights and voting rights (subject to Section 3.6);

(j) to engage the services of various persons, entities and professionals, including legal counsel, accountants, third-party administrators and financial, investment and other advisors, for the purposes of representing and providing services to ASAC in connection with the organization and administration of the affairs of ASAC, the acquisition and disposition of the Shares or otherwise; and

(k) to purchase and sell derivatives for the purpose of managing, hedging or minimizing the risk to ASAC associated with movements in interest rates; *provided, however*, that, other than for the purposes described in this Section 3.2(k), ASAC shall not utilize derivatives for the purpose of speculating or trading in the foregoing;

(l) to engage in any kind of lawful activity and perform and carry out contracts of any kind as the General Partner deems necessary or advisable in connection with the accomplishment of the purposes of ASAC, and have and exercise all of the powers and rights conferred upon exempted limited partnerships formed pursuant to the ELP Law in connection with the accomplishment of the purposes of ASAC.

3.3. Prohibited Activities. Notwithstanding any other provision of this Agreement, ASAC shall not be empowered or authorized, and the General Partner shall not cause or permit ASAC to take any of the following actions:

(a) to conduct any activities other than those authorized pursuant to Sections 3.1 and 3.2;

(b) to create or issue any additional Interests of any class or any other securities or rights (including any interests, securities, shares, share equivalents or rights convertible or exchangeable into Interests of any class);

(c) except as contemplated by the terms of this Agreement or with the Consent of holders of a majority of the Percentage Interests of the Limited Partners, (i) to enter into an agreement or transaction with the Corporation, the General Partner or any of the Principals or any of their respective Affiliates, (ii) to acquire any assets from or sell any assets to the Corporation, the General Partner or any of the Principals or any of their respective Affiliates or (iii) to engage the Corporation, the General Partner or any of the Principals or any of their respective Affiliates to provide goods or services for any compensation; or

(d) to Transfer or approve or consent to any Transfer of Interests by any Partner, redeem or sell the Interests of any Partner in accordance with Section 9.6, approve or consent to any withdrawal of any Partner, or approve, consent to or take any other action under or in connection with this Agreement, in each case, that would result in more than one (i) individual Limited Partner, together with its Affiliates and Permitted Transferees, or (ii) group of Limited Partners under common investment management, in each case, directly or indirectly, in the aggregate, owning or controlling 25% or more of the issued and outstanding Interests, unless each Investment Company LP waives in writing the application of this clause (d) (which waiver may be withheld for any reason or no reason, in its sole and absolute discretion).

#### 3.4. Limitations on the Partnership's Activities; Separateness.

(a) Notwithstanding any other provision of this Agreement and any other provision of law that otherwise so empowers the Partnership, the General Partner or any other Person, as long as any obligations under either Term Loan or any related facility document are outstanding, unless otherwise consented to by the administrative agent under such Term Loan, the General Partner shall cause the Partnership to (and since its formation, the Partnership has complied with the following):

(i) maintain its own separate books and records and bank accounts;

(ii) at all times conduct its business solely in its own name in a manner not misleading to other Persons as to its identity (including through the use of separate stationary, signage and business cards);

(iii) file its own tax returns, if any, as may be required under applicable law, to the extent (1) not part of a consolidated group filing a consolidated return or returns or (2) not treated as a division for tax purposes of another taxpayer, and pay any taxes so required to be paid under applicable law;

(iv) hold all of its assets in the name of the General Partner on behalf of the Partnership and not commingle its assets with assets of any other Persons;

(v) strictly comply with all organizational formalities to maintain its separate existence;

(vi) maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other Person, and not have its assets listed on any financial statement of any other Person; *provided* that its assets may be included in consolidated financial statements of one of its Affiliates, and *provided, further*, that for financial statements covering fiscal quarters ending on and after the first fiscal quarter ending after the date hereof (1) appropriate disclosure within the consolidated financial statements or footnotes thereto shall be made to indicate its separateness from such Affiliate and to indicate that its assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (2) such assets shall also be listed on its own separate balance sheet);

(vii) pay its own liabilities only out of its own funds;

(viii) maintain an arm's-length relationship with its Affiliates and enter into transactions with Affiliates only on a commercially reasonable basis and on terms similar to those of an arm's-length transaction; it being understood that the relationship and economic terms between the Partnership and the General Partner expressly provided in this Agreement (as of the date hereof) are deemed to be arms'-length and commercially reasonable hereunder;

(ix) correct any known misunderstanding regarding its separate identity and not identify itself as a division of any other Person;

(x) maintain adequate capital in light of its contemplated business purpose, transactions and liabilities; *provided* that the foregoing shall not require any partner thereof to make any additional capital contributions to it;

(xi) use reasonable best efforts to cause its partners, officers, agents and other representatives (including any member and/or manager on behalf of General Partner) to act at all times with respect to it consistently and in furtherance of the foregoing and in its best interests; it being understood that the Principals serve as officers and/or directors of the Corporation and owe fiduciary duties to the Corporation;

(xii) maintain its funds and assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xiii) allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including for services performed by an employee of an Affiliate;

(xv) at all times have a general partner, the organizational documents for which include provisions substantially similar to the Special Purpose Provisions (other than this clause (xv)), with any deviations therefrom approved by the administrative agent under each Term Loan.

(b) Notwithstanding any other provision of this Agreement and any provision of law that otherwise so empowers the Partnership, the Partners or any other Person, so long as any obligations under either Term Loan or any related facility documents are outstanding, neither the General Partner nor any other Person shall be authorized or empowered on behalf of the Partnership to, nor shall they permit the Partnership to, and the Partnership shall not, without the prior written consent of the administrative agent under such Term Loan:

- (i) take any Bankruptcy Action, to the fullest extent permitted by applicable law, or engage in any consolidation or merger of the Partnership;
- (ii) incur any indebtedness, other than the Term Loans;
- (iii) pledge its assets for the benefit of any Person, other than the lenders and agents under the Term Loans;
- (iv) acquire any assets, other than (a) cash equivalents purchased with any cash that is not held as collateral for the Term Loans and (b) the collateral for the Term Loans;
- (v) make any loans or advances to any other Person (other than advances contemplated by Section 5.2(b) or Section 6.7(c)); or
- (vi) enter into any contract, guaranty, indemnity or other agreement of any kind, other than (A) the Term Loans and related facility documents, (B) this Agreement and the Stockholders Agreement, (C) separate indemnification agreements entered into in accordance with Section 6.7(b), (D) routine administrative agreements entered into in the ordinary course of the administration of the affairs of the Partnership, and (E) insurance contracts purchased under Section 6.7(f); *provided* that, in the case of clauses (D) and (E), the Partnership shall not enter into any such agreement or contract unless, at the time of its entry therein, the aggregate amount of obligations of the Partnership, with respect to all such agreements and contracts, that are due and payable, or that will become due during the scheduled term of the Term Loans, do not exceed the amount of cash and cash equivalents then held by the Partnership that do not constitute collateral for the Term Loans.

3.5. Ownership Restriction. Notwithstanding any other provision of this Agreement, ASAC's direct and indirect ownership of Shares in the aggregate shall at all times be less than 25% of the Outstanding Common Stock (the "Ownership Restriction") and the General Partner shall not, and shall cause ASAC not to, take or approve (by vote, written consent or otherwise) any action or transaction which would reasonably be likely to result in ASAC exceeding the Ownership Restriction. In the event that ASAC, the General Partner and/or any of the Principals become aware of any pending action or transaction that would reasonably be likely to result in ASAC exceeding the Ownership Restriction, prior to such action or transaction taking place or being effective, the General Partner shall, and shall cause ASAC to, use its best efforts to take such actions as are necessary to ensure that the Ownership Restriction is not exceeded at any time.

### 3.6. Related Party Transactions.

(a) In the event that any transaction involving the Corporation or the shareholders thereof, on the one hand, and a Principal or an Affiliate of a Principal, on the other hand, is submitted to a vote of the stockholders of the Corporation, or otherwise requires an action to be taken by the stockholders of the Corporation (a "Related Party Transaction"), the General Partner shall vote in person or by proxy, or cause to be voted (including by written consent, if applicable), all of the Shares, or shall take such other actions with respect to the Shares (including tendering Shares in a tender offer and exercising any appraisal rights), in accordance with the written instructions of the Partners given in respect of their respective pro rata interests in the Shares (calculated in accordance with their Percentage Interests in respect of the Preferred Interests).

(b) Promptly upon receiving notice of a vote or other action required in connection with a Related Party Transaction, but in any event within five Business Days after receipt of such notice, the General Partner shall (i) solicit the required instructions of each Limited Partner with respect to such Partner's pro rata interest in the Shares and (ii) in connection with such solicitation, provide to the Limited Partners all non-confidential information with respect to such Related Party Transaction within the knowledge of the General Partner or the Principals which should reasonably be brought to the attention of the Limited Partners or which the Limited Partners reasonably request. Upon receipt of such solicitation and information, each Limited Partner shall have the right provide the General Partner with its instructions as to how to vote or the other action to be taken with respect to its pro rata interest in the Shares by notice in writing to the General Partner; *provided, however*, that, so long as it is a Limited Partner, each Investment Company LP hereby irrevocably waives any right to vote, or cause to be voted, or to instruct the General Partner as to how to vote the portion of such Investment Company LP's pro rata interest in the Shares that exceeds at the relevant time 4.99% of total issued and outstanding shares of common stock of the Corporation (the "Excess Shares") and to the extent of such excess; *provided, further*, that such waiver shall not affect (A) the right of such Investment Company LP to instruct the General Partner to take other actions with respect to the Excess Shares (including to tender the Excess Shares in a tender offer and to exercise any appraisal rights) or (B) any shares of common stock of the Corporation held by such Investment Company LP directly or through any other Person (other than the Partnership). Such notice must be delivered in accordance with Section 14.9 and shall become irrevocable on the second Business Day prior to the date on which the stockholder vote or other action in respect of the relevant Related Party Transaction is taken. If any Limited Partner fails to provide such notice by the second Business Day prior to such date, the General Partner shall be entitled to vote or take such other action with respect to such Partner's pro rata interest in the Shares in proportion to the instructions of the Limited Partners who provided the General Partner with their instructions, except that the General Partner shall not have the right to vote the Excess Shares in any manner and shall abstain from voting the Excess Shares in connection with any Related Party Transaction.

(c) The provisions of this Section 3.6 relating to any vote required in connection with a Related Party Transaction shall apply mutatis mutandis to any non-binding resolution approving the compensation of the Corporation's executive officers named in the Corporation's proxy statement for any annual meeting of stockholders of the Corporation (each,



a “Say-on-Pay Vote”), unless the General Partner shall vote in person or by proxy, or cause to be voted, all of the Shares in accordance with the recommendation of the independent Compensation Committee of the Corporation with respect to such Say-on-Pay Vote.

(d) Notwithstanding the provisions of Section 6.6, at the reasonable request of a Limited Partner, the General Partner shall, in accordance with the written request of such Limited Partner, cause a number of Shares equal to such Limited Partner’s pro rata interest in the Shares held by ASAC (calculated in accordance with their Percentage Interests in respect of the Preferred Interests) to participate in any action, suit or proceeding brought by a party who is not a Limited Partner against the Corporation and its directors and executive officers and relating to a Related Party Transaction.

3.7. Title to ASAC Property. All property owned by ASAC, whether real or personal, tangible or intangible, shall be deemed to be owned by the General Partner on trust for ASAC, and no Partner, individually, shall have any ownership of such property.

3.8. Tax Matters. The General Partner has caused ASAC to elect to be classified as a partnership for U.S. federal tax purposes, effective as of the date of its formation, and ASAC shall not revoke such election or take any other action that would cause ASAC to be classified as other than a partnership.

3.9. Waiver of Voting Rights. Notwithstanding any other provision of this Agreement, each Investment Company LP whose Percentage Interests in respect of the Interests exceed 4.99% of the total Percentage Interests of all Partners in respect of the Interests at the relevant time hereby irrevocably waives any right to vote, or cause to be voted (including by a Consent), (i) to remove the General Partner and to appoint a new general partner of the Partnership pursuant to Section 6.4 and (ii) to commence the winding up of the Partnership upon the occurrence of a GP Termination Event pursuant to Section 10.1(c), in each case, with respect to the portion of such Investment Company LP’s Percentage Interests in respect of the Interests in excess of 4.99% of the total Percentage Interests of all Partners in respect of the Interests.

## ARTICLE 4

### THE PARTNERSHIP INTERESTS AND CAPITAL

4.1. General Partner. The General Partner is ASAC II LLC, a Delaware limited liability company. The mailing address of the General Partner is c/o Northern Trust Private Equity Administration, Department 2008, 801 South Canal, Chicago, IL 60607. The General Partner shall notify the Limited Partners of any change to its mailing address. The Capital Contributions (including Capital Contributions for Preferred Interests and each class of Common Interests) and Percentage Interest (including Percentage Interest of the Preferred Interests and each class of Common Interests) of the General Partner are set forth on the Schedule.

#### 4.2. Limited Partners.

(a) The name, address, Capital Contributions (including Capital Contributions for Preferred Interests and each class of Common Interests) and Percentage Interest (including Percentage Interest of the Preferred Interests and each class of Common Interests) of each Limited Partner are set forth on the Schedule. The Schedule shall promptly be amended by the General Partner to reflect the addition, substitution or withdrawal of any Partner or the increase or decrease of any Partner's Capital Contributions (including Capital Contributions for Preferred Interests and each class of Common Interests) or Percentage Interest (including Percentage Interest of the Preferred Interests and each class of Common Interests). In addition, the names of the Partners, the dates and the amounts of their respective Capital Contributions and the dates and amounts of distributions representing returns of Capital Contributions shall be set forth in the Register of the Interests maintained in accordance with the provisions of the ELP Law (the "Register"). The Register shall be filed with the records of ASAC and shall be amended from time to time by or on behalf of the General Partner to reflect new Limited Partners or changes in Limited Partners and/or their Capital Contributions and any other matters required to be documented therein pursuant to section 11(1) of the ELP Law.

(b) After the date hereof, a Person may be admitted as a Limited Partner only in connection with the Transfer of an Interest in accordance with the terms hereof, and the General Partner shall not otherwise have the right to admit any additional Limited Partners to ASAC.

4.3. Interests. The Interests of the Partners shall consist of preferred interests ("Preferred Interests") and common interests ("Common Interests"), with such rights and obligations as are set out in this Agreement. Further, there shall be multiple classes of Common Interests, which shall consist of (a) Class A Common Interests; (b) Class B Common Interests; (c) Class C Common Interests; and (d) Class D Common Interests (the "Class A Common Interests," the "Class B Common Interests," the "Class C Common Interests" and the "Class D Common Interests," respectively), with such rights and obligations as are set out in this Agreement. After the date hereof, the General Partner shall not have the right to create or issue any additional Interests of any class.

4.4. Capital Contributions. On the date hereof, pursuant to the applicable Subscription Agreement and this Agreement, each Partner has made Capital Contributions to ASAC to purchase Preferred Interests and Common Interests of each class in the percentages set forth on the Schedule. Unless the Partners unanimously Consent thereto, no Partner shall be permitted or required to make any additional Capital Contributions.

4.5. Interest. The Partners shall not receive interest on their Capital Contributions or Capital Accounts.

4.6. Capital Account. ASAC shall maintain on its books and records an account (a "Capital Account") established for each Partner (and any other Person who acquires an Interest), which shall initially be zero and which shall be adjusted as set forth in this Section 4.6:

(a) To each Partner's Capital Account there shall be credited (i) the Capital Contributions of such Partner, (ii) any income or gain allocated to such Partner under Article 5 and (iii) the amount of any ASAC liabilities assumed by the Partner or secured by distributed assets that such Partner assumes or takes subject to; and

(b) To each Partner's Capital Account there shall be debited (i) the amount of cash distributed to such Partner, (ii) the fair market value of any ASAC asset distributed to such Partner as determined in accordance with the valuation methodology set forth in Section 5.3, net of any liabilities assumed or to which the asset is subject, and (iii) any deduction or loss allocated to such Partner under Article 5.

In the event that a Partner's Interest or portion thereof is transferred within the meaning of Regulations § 1.704-1(b)(2)(iv)(f), the transferee shall succeed to the Capital Account of the transferor to the extent that it relates to the Interest or portion thereof so transferred.

4.7. Withdrawal or Return of Capital Contributions. Except as otherwise provided in this Agreement or required by law, (a) no Partner shall have the right to withdraw or reduce its Capital Contributions, or to demand and receive property other than property distributed by ASAC in accordance with the terms hereof in return for its Capital Contributions, (b) ASAC shall not return any Capital Contributions to any Partner (whether through distributions, redemption of Interests or otherwise) except (i) on a pro rata basis with all other Partners holding Preferred Interests or the applicable class of Common Interests, as the case may be, and in accordance with the order of priority set forth in Section 5.2 or (ii) as otherwise expressly contemplated by the terms of this Agreement (including Section 9.6), and (c) any return of Capital Contributions to the Partners shall be solely from ASAC assets, and no Partner shall be personally liable for any such return.

4.8. Restoration of Negative Capital Accounts. Neither the General Partner nor any Limited Partner shall be obligated to restore any deficit balance in its Capital Account or shall be personally liable for the return of the Capital Contributions of any Partner, or any portion thereof, including upon and after dissolution of the Partnership, it being expressly understood that (a) any such return shall be made solely from ASAC assets and (b) a deficit in a Partner's Capital Account shall not constitute an ASAC asset.

## ARTICLE 5

### ALLOCATIONS AND DISTRIBUTIONS TO PARTNERS

#### 5.1. Allocations.

(a) Except as otherwise provided in this Agreement, income, gains, deductions, losses and credits of ASAC shall be allocated among the Partners in a manner such that the Capital Account of each Partner, immediately after making such allocation, and after taking into account actual distributions previously made is, as nearly as possible, equal (proportionately) to the distribution that would be made pursuant to Article 10 if ASAC had commenced winding up, its assets were sold for cash equal to their Carrying Value, all ASAC liabilities were satisfied in cash according to their terms (limited with respect to each non-recourse liability to the Carrying Value of the assets securing such liability), and the net assets of ASAC were distributed in accordance with Article 10 to the Partners immediately after making such allocation.

(b) The net items of income, gain, loss, deduction and credits recognized by ASAC for U.S. federal, state and local income tax purposes, shall be allocated among the Partners in the same manner as the corresponding items were allocated for Capital Account purposes. If the Carrying Value of any ASAC asset is adjusted pursuant to the definition of "Carrying Value" (or otherwise differs from such asset's adjusted tax basis), subsequent allocations of net items of income, gain, loss, deduction and credit with respect to such ASAC asset shall take account of any variation between the adjusted basis of such ASAC asset for U.S. federal income tax purposes and its Carrying Value in a manner consistent with Section 704(c) of the Code and the applicable Regulations as reasonably determined by the General Partner in accordance with the "traditional method" described in Regulation § 1.704-3(b).

(c) The provisions of this Agreement relating to allocations and the maintenance of Capital Accounts are intended to comply with Section 704 of the Code and the Regulations promulgated thereunder, shall be considered to include a "Qualified Income Offset" and "Minimum Gain Chargeback," as defined in such Regulations, and shall be interpreted and applied in a manner consistent with the foregoing. Recognizing the complexity of these provisions, the General Partner is authorized to use its reasonable discretion to modify these allocations (including by making allocations of gross items of income, gain, loss or deduction rather than allocations of net items) to ensure that they are consistent with the Partners' economic interests in ASAC.

## 5.2. Distributions.

(a) The amount and timing of distributions from ASAC to the Partners shall be at the reasonable discretion of the General Partner and, notwithstanding anything to the contrary herein, shall be subject to any restrictions under the terms of the Term Loans and the restrictions under Sections 5.3 and 5.4. Subject to Sections 5.2(b), 10.2 and 12.5, Available Shares or Available Cash distributable to the Partners as of any date of distribution shall be distributed to the Partners in the following amounts and order of priority:

(i) First, until the Preferred Return Threshold has been met, to the Partners pro rata in accordance with their respective Percentage Interests in respect of the Preferred Interests;

(ii) Second, until the First Return Threshold has been met, to the Partners pro rata in accordance with their respective Percentage Interests in respect of the Class A Common Interests;

(iii) Third, until the Second Return Threshold has been met, to the Partners pro rata in accordance with their respective Percentage Interests in respect of the Class B Common Interests;

(iv) Fourth, until the Third Return Threshold has been met, to the Partners pro rata in accordance with their respective Percentage Interests in respect of the Class C Common Interests; and

(v) Thereafter, to the Partners pro rata in accordance with their respective Percentage Interests in respect of the Class D Common Interests.

Attached hereto as Schedule C is an illustrative calculation of the distributions resulting from the foregoing provisions, assuming that the Term Loans are repaid and Shares distributed to the Partners on the fourth anniversary of the SPA Closing Date, based on the assumptions set forth therein. Subject to the terms and conditions of this Agreement, the Partners acknowledge and agree that the principles and methodologies used in preparing such illustrative calculation shall be used in any future calculations required to be made in respect of distributions of Available Cash or Available Shares to the Partners.

(b) With respect to any amounts of any tax required to be withheld by ASAC (or an applicable withholding agent) under the Code or the Regulations or the tax laws of any jurisdiction ("Withholding Tax Amounts"):

(i) The General Partner (or such withholding agent) may withhold from any amounts or Shares distributable to any Partner any Withholding Tax Amounts or a portion of such Shares reasonably determined by the General Partner (or such withholding agent) to be necessary to sell to pay such amounts. Such amounts or Shares so withheld shall be treated as distributed to such Partner and such amounts or the proceeds from the sale of such Shares paid by such Partner to the relevant tax authority. The General Partner shall notify such Partner of any such withholding and shall cause ASAC (or such withholding agent) to make any required payments to the relevant tax authority in respect of any withheld amounts, and shall provide a receipt from the relevant tax authority or, if no such receipt is available, such other documentation as is reasonably acceptable to such Partner, evidencing such payment.

(ii) If ASAC (or such withholding agent) is required to withhold taxes with respect to any amounts or Shares that are not currently distributed to a Partner, to the extent that ASAC has Available Cash sufficient to cover the Withholding Tax Amounts, the General Partner shall cause ASAC (or such withholding agent) to timely remit such amounts to the relevant tax authorities, and shall provide a receipt from the relevant tax authority or, if no such receipt is available, such other documentation as is reasonably acceptable to such Partner, evidencing such payment; *provided, however*, that, if the General Partner reasonably determines that additional cash is necessary or desirable for (A) the payment of (or reimbursement for), or the establishment of reserves for, the current or potential liabilities, expenses or other obligations of ASAC (including ASAC Expenses and the Term Loans) or (B) the maintenance of adequate working capital for the continued existence and administration of the affairs of ASAC and for ownership and disposition of the Shares, including to pay ASAC Expenses, then such Partner shall pay to ASAC any and all such Available Cash previously advanced in respect of Withholding Tax Amounts and/or any additional Withholding Tax Amounts currently required to be withheld (or such lesser amounts requested by the General Partner), within 10 Business Days after receipt of written request therefor from ASAC; *provided, further*, that, if such Partner shall not have paid such Withholding Tax Amounts within such 10 Business Day period, ASAC shall be entitled to pursue and enforce all rights and remedies it may have against such Partner, including instituting a lawsuit to collect such Withholding Tax Amounts and any and all damages, costs and expenses incurred by ASAC that are, in the reasonable judgment of the General Partner, attributable to the failure of such Partner to comply with the provisions of this Section 5.2(b) and/or selling such number of Shares

reasonably determined by the General Partner to be necessary to pay such Withholding Tax Amounts or reimburse it for such damages, costs and expenses. If, prior to the Distribution Date, such Partner pays to ASAC all such Withholding Tax Amounts, and reimburses it for all such damages, costs and expenses, if any, the payment of such amounts shall not be considered a Capital Contribution and subsequent distributions to such Partner shall, to the extent consistent with applicable tax law, be made without further withholding for taxes. If, as of the day immediately preceding the Distribution Date, all or any portion of the Withholding Tax Amounts (including, for the avoidance of doubt, any amount of Available Cash used by ASAC to cover any Withholding Tax Amounts attributable to such Partner), damages, costs and expenses has not been paid by such Partner to ASAC, the number of Available Shares shall be deemed to be increased by a number of Shares equal to (x) such unpaid amount, divided by (y) the average closing price of the shares of common stock of the Corporation calculated in accordance with Section 5.3 (the "Withholding Shares"), and the General Partner shall be entitled to deduct from the Shares otherwise distributable to such Partner the Withholding Shares; it being understood that such Withholding Shares shall be deducted, first, from the Shares otherwise distributable to such Partner in respect of its Preferred Interest and, second, from the Shares otherwise distributable to such Partner in respect of its Common Interests consistent with the order of priority set forth in Section 5.2(a).

(c) If any Partner shall have received distributions at any time in excess of the amounts or Shares to which such Partner was entitled under this Section 5.2 at such time, then, prior to the completion of the winding up of ASAC, such Partner shall return such excess amounts or Shares (or the proceeds from the sale thereof) to ASAC and such returned amounts or Shares (or proceeds) shall not be considered Capital Contributions and shall be treated as never having been distributed to such Partner.

5.3. Form of Distributions; Valuation of Shares. Except as described in Section 5.4(b), ASAC shall not sell any Shares to make any distribution to the Partners, and any such distribution shall therefore be made in Shares. All Available Shares shall be allocated among the Partners in accordance with Section 5.2 based on the average closing price of the shares of common stock of the Corporation over the 15 trading days immediately preceding the Distribution Date. Any distributed property (other than Shares) will be valued for distribution purposes at its fair market value as determined by the General Partner using such reasonable valuation methodology as it may adopt. All Available Cash shall be allocated among the Partners in accordance with Section 5.2 in U.S. dollars.

5.4. Amount and Timing of Distributions.

(a) ASAC shall not distribute any Shares to the Partners except in connection with the winding up of the affairs of the Partnership in accordance with Article 10. One distribution of all Available Shares shall be made in connection with such winding up of the affairs of the Partnership on a date which is specified in a written notice given by the General Partner to each Limited Partner and the Corporation at least 30 calendar days prior thereto, which date shall not fall within any period commencing on the 10<sup>th</sup> calendar date prior to a regularly scheduled blackout period of the Corporation and ending on the last day of such blackout period (the "Distribution Date"); it being understood that (i) once such notice is given, the General

Partner shall cause all actions contemplated by Section 10.2 to occur prior to the Distribution Date and (ii) the distribution of all Available Shares shall occur on the Distribution Date under all circumstances unless the Consent of holders of two-thirds of the Percentage Interests of the Limited Partners voting on such matter elect to cause such distribution not to occur on the Distribution Date, which vote shall occur at least two days prior to the Distribution Date; *provided, however*, that, solely in the event that an unscheduled blackout period of the Corporation occurs or is continuing following the giving of the notice of the Distribution Date, the distribution of all Available Shares shall occur on the later of (A) the first Business Day after the last day of any such blackout period and (B) the Distribution Date as notified to each Limited Partner and the Corporation.

(b) Notwithstanding anything to the contrary in this Agreement, (i) each allocation of Available Shares to be distributed to a Partner shall be rounded down to the nearest whole Share and (ii) no fractional Shares shall be distributed to any Partner. If, following such allocation, any Partner would be entitled to receive a fractional Share but for this Section 5.4(b), such Partner shall be entitled to receive a cash payment in lieu thereof, which payment shall be calculated by the General Partner and shall represent such Partner's proportionate interest in the net proceeds from the sale by the General Partner on behalf of the Partners of the aggregate fractional Shares that such Partners would otherwise be entitled to receive. Any such sale shall be made by the General Partner and the net proceeds distributed to the Partners within a reasonable time after the Distribution Date. The General Partner shall specially allocate any tax gain or loss arising as a result of the sales described in this Section 5.4(b) to the Partners on whose behalf such Shares were sold.

(c) Pursuant to the Stockholders Agreement, the Partners shall be entitled to require the Corporation to maintain a shelf registration statement for resale by the Partners of the Shares distributed to them by ASAC until such time as all Shares distributed to them by ASAC are Freely Saleable by the Partners and, in any event, until the twelve-month anniversary of the Distribution Date. Subject to the restrictions in the Stockholders Agreement and pursuant to Section 2.10 thereof, ASAC shall transfer the rights with respect to the maintenance of an Automatic Shelf Registration Statement (as defined in the Stockholders Agreement) and Takedown Requests (as defined in the Stockholders Agreement) and/or Demand Registrations (as defined in the Stockholders Agreement) by the Limited Partners in connection with the distribution of the Shares by ASAC to the Limited Partners; *provided* that each Limited Partner seeking to sell any Registrable Securities (as defined in the Stockholders Agreement) pursuant to the Stockholders Agreement shall fulfill all obligations of Holder (as defined in the Stockholders Agreement) pursuant to the Stockholders Agreement.

(d) If the Term Loans are repaid in full prior to their stated maturity, all remaining Available Cash shall be distributed to the Partners in accordance with Section 5.2 within 10 Business Days after receipt thereof by ASAC.

#### 5.5. Right of First Offer on Certain Sales of Shares.

(a) If ASAC proposes to sell any Shares to prepay or repay either Term Loan in full or in part, the General Partner shall give the Limited Partners not less than seven calendar days' written notice of such sale (a "First Offer Notice"), stating the number of Shares proposed

to be sold (the “First Offer Shares”). Each Limited Partner shall deliver a written notice to the General Partner within five calendar days after the receipt of such First Offer Notice (a “Purchase Notice”), stating whether it elects to purchase all or a portion of the First Offer Shares, the number of First Offer Shares such Limited Partner elects to purchase (subject to the limitations on ownership set forth in Section 5.5(c)) and the purchase price per Share at which it would be willing to purchase such First Offer Shares (the “Purchase Price”).

(b) If a Limited Partner does not deliver a Purchase Notice in accordance with Section 5.5(a), then such Limited Partner shall be deemed to have elected not to exercise its right of first offer with respect to the First Offer Shares. To the extent that the General Partner elects to accept any offer set forth in a Purchase Notice, it shall give each of the other Limited Partners that delivered Purchase Notices at least two calendar days’ written notice, stating the applicable Purchase Price, and each such Limited Partner shall have the right to participate in such sale by delivering written notice to the General Partner within such two calendar day period, stating the number of First Offer Shares it elects to purchase at the applicable Purchase Price. To the extent that the General Partner receives elections to purchase more than the number of First Offer Shares proposed to be sold in such sale, such Shares shall be allocated to the participating Limited Partners in accordance with their respective Percentage Interests in respect of the Preferred Interests (subject to the maximum number of First Offer Shares each such Limited Partner elected to purchase in its Purchase Notice and the limitations on ownership set forth in Section 5.5(c)). The General Partner shall give each participating Limited Partner at least two Business Days’ written notice of the closing date of such purchase and sale and the number of First Offer Shares allocated to such Limited Partner (if less than the number of First Offer Shares such Limited Partner elected to purchase). The payment by a participating Partner to ASAC of the aggregate Purchase Price in respect of its First Offers Shares shall not be considered a Capital Contribution.

(c) Each Limited Partner agrees that it shall not be entitled to exercise its rights of first offer hereunder to the extent that (i) such Limited Partner and its Affiliates and their respective Permitted Transferees, in the aggregate, own or control, or will, after giving effect to the closing of any purchase and sale pursuant to this Section 5.5, own or control, directly or indirectly (including their respective pro rata interests in the Shares), greater than 9.9% of the outstanding shares of common stock of the Corporation; *provided, however*, that clause (i) shall not apply to any of the Investment Company LPs or (ii) after giving effect to the closing of any purchase and sale pursuant to this Section 5.5, more than one (x) individual Limited Partner, together with its Affiliates and Permitted Transferees, or (y) group of Limited Partners under common investment management, in each case, directly or indirectly would, in the aggregate, own or control 25% or more of the issued and outstanding Interests, unless each Investment Company LP waives in writing the application of this clause (ii) (which waiver may be withheld for any reason or no reason, in its sole and absolute discretion).

(d) If the Limited Partners that delivered Purchase Notices in accordance with Section 5.5(a) do not elect to purchase all of the First Offer Shares, then ASAC may, within 30 calendar days from the last date for delivery of a Purchase Notice, sell any remaining portion of the First Offer Shares to any Person or Persons at a price per First Offer Share equal to or greater than the highest Purchase Price set forth in any Purchase Notice. If more than 30 days elapse from the last date for delivery of a Purchase Notice without consummation of such sale by



ASAC, the provisions of this Section 5.5 shall again apply to any future sales that otherwise come within its terms. Notwithstanding the foregoing, the provisions of this Section 5.5 shall not apply to sales of Shares (i) for the purpose of making interest payments, paying expenses or meeting margin calls under the Term Loans or (ii) if the General Partner reasonably determines that compliance with this Section would result in ASAC's failure to comply with the terms and conditions of the Term Loans.

## ARTICLE 6

### RIGHTS AND OBLIGATIONS OF THE GENERAL PARTNER

#### 6.1. Management.

(a) ASAC shall be managed by the General Partner, which shall, subject to Section 3.4, have the full, exclusive and complete right, power, authority and discretion, acting alone, to administer the affairs of ASAC, to take any and all actions (including executing and delivering on behalf of ASAC, and causing ASAC to perform its obligations under, any and all agreements, instruments, certificates or other documents) and to do any and all things necessary, desirable, convenient or incidental to carry out the authorized activities and purposes of ASAC as described in Sections 3.1 and 3.2, including those necessary to make, affirmatively or negatively, all decisions affecting ASAC and to take and cause ASAC to take those actions specified in Sections 3.1 and 3.2, and shall have and may exercise all of the powers and rights conferred upon a general partner of an exempted limited partnership formed pursuant to the ELP Law. Except as otherwise expressly provided in this Agreement, notwithstanding any provision of the ELP Law or other applicable law, rule or regulation, the General Partner shall have the right, power, authority and discretion, acting alone, to take any or all of the foregoing rights, powers, authority and discretion in carrying out activities and administering affairs in the name, or on behalf, of ASAC without any further act, vote or approval of any Person. Notwithstanding any provision of the ELP Law, only the General Partner shall have the authority to bind ASAC. Except as otherwise expressly provided in this Agreement, only the General Partner may take action on behalf of ASAC, and the General Partner may take any action on behalf of ASAC (including sales of any or all of the stock of the Corporation from time to time as permitted by this Agreement), without the act, vote or approval of any Person, and, subject to Article 10, the timing of such actions and the terms of any such transaction shall be in the General Partner's sole discretion. In administering the affairs of ASAC, the General Partner acknowledges and agrees that (i) it is under a statutory obligation under the laws of the Cayman Islands to act in good faith in the best interests of the Partnership as a whole, and (ii) in interpreting the authorized activities set forth in Sections 3.1 and 3.2 and conducting the affairs of ASAC, the parties hereto intend that ASAC shall not be engaged in a U.S. trade or business for purposes of Section 864(b) of the Code. The General Partner shall not be entitled to any fee or compensation in connection with the management of the affairs of ASAC.

(b) Any action of ASAC may be authorized by a written consent setting forth the action so authorized; *provided* that such consent is signed (by either manual or facsimile signature) by the General Partner. Notwithstanding any provision of the ELP Law or other applicable law, rule or regulation, the General Partner may execute and deliver any contract, certificate, agreement, instrument or other document on behalf of ASAC not inconsistent with

the provisions of this Agreement without any further act, vote or approval of any Person or the execution by the General Partner of a written consent authorizing such execution and delivery. The taking of any action or the execution and delivery of any contract, certificate, agreement, instrument or other document by the General Partner on behalf of ASAC shall be conclusive proof that such action or the execution and delivery of such contract, certificate, agreement, instrument or other document were authorized by ASAC and the General Partner and each such document shall, for all purposes, be duly authorized, executed and delivered by ASAC upon execution and delivery by the General Partner. Copies of all written consents shall be filed in ASAC's records.

6.2. Authority.

(a) The actions of the General Partner taken in accordance with the powers set forth in this Agreement shall bind ASAC. Any third party dealing with the General Partner shall be entitled to conclusively presume and rely upon (without making inquiry of any kind) any contracts, certificates, agreements, instruments or other documents executed and any other actions taken by the General Partner as being properly authorized by ASAC.

(b) Subject to, and except as otherwise provided in Sections 3.3(c) and 3.6, the General Partner may contract or otherwise deal with any Person for the administration of the affairs of ASAC, which Person may, under the supervision of the General Partner, perform any acts or services for ASAC as the General Partner may approve.

6.3. Withdrawal or Transfer of the General Partner's Interest.

(a) Except as otherwise provided in this Section 6.3, the General Partner may not withdraw from ASAC or take any action to dissolve the General Partner. No part of the General Partner's Interest may be Transferred (including, for the avoidance of doubt, any Transfer by the General Partner or the Principals of any ownership interests in the General Partner to a Person other than a Principal), without the prior Consent of holders of two-thirds of the Percentage Interests of the Limited Partners; *provided, however*, that any part of the General Partner's Interest may be Transferred to a Permitted Transferee of the General Partner (including, in the case of a Transfer of ownership interests in the General Partner, to a Permitted Transferee of a Principal); *provided, further*, that, if any obligations are outstanding under either Term Loan, no such Transfer that would result in a "Change of Control" (as defined in the loan agreement relating to such Term Loan) shall occur without the consent of the administrative agent under such Term Loan. The General Partner or a Principal, as the case may be, shall cause the Interests to be Transferred back to the General Partner or such Principal, as applicable, promptly in the event that either (i) the transferee ceases to be a Permitted Transferee or (ii) in the case of a Principal, such Principal ceases to retain voting control with respect to such Transferred Interests. In the event that the General Partner intends to Transfer any part of its Interest in accordance with this Section 6.3(a), (i) such Transfer shall be consummated substantially in accordance with the provisions of Section 9.4 *mutatis mutandis*, (ii) such transferee shall agree to be bound by the terms and provisions of this Agreement, the applicable Subscription Agreement and any other agreements referred to herein or therein to which the General Partner is a party, to the extent related to such Transferred Interests, by executing a deed of accession and otherwise complying with the transfer requirements under such agreements, and

(iii) such transferee shall be admitted as a Substitute Partner in respect of such Transferred Interest upon delivery of a section 10 statement pursuant to the ELP Law noting the transfer with the Registrar of Exempted Limited Partnerships.

(b) The bankruptcy of the General Partner shall not cause the General Partner to cease to be a Partner (or the General Partner) of ASAC and, upon the occurrence of such an event, the affairs of ASAC shall continue without commencement of winding up of ASAC.

6.4. Replacement of the General Partner. Upon the occurrence of a GP Termination Event, the holders of a majority of the Percentage Interests of the Limited Partners that vote upon such matter shall have the right to replace the General Partner and appoint another Person to serve as the general partner with responsibility for administering the affairs of the Partnership; *provided* that, if any obligations are outstanding under either Term Loan, no such replacement shall occur without the consent of the administrative agent under such Term Loan, which consent may not be unreasonably withheld. The General Partner shall cease to be the general partner of the Partnership upon the admission of such Person as a successor general partner and the delivery of a section 10 statement pursuant to the ELP Law noting such admission with the Registrar of Exempted Limited Partnerships and, unless the provisions of Section 10.1(c) are applicable, the Partnership shall continue without dissolution. Notwithstanding anything in this Agreement to the contrary, the General Partner shall retain its Interests and all economic rights therein, and shall not be required to Transfer its Interests or any economic rights therein to any successor general partner or any other Person in connection with any such replacement.

6.5. Expenses. ASAC shall bear all ASAC Expenses; it being understood that, in no event, shall Administrative Expenses exceed \$250,000 in any Fiscal Year without the Consent of holders of a majority of the Percentage Interests of the Limited Partners; *provided, however*, that the General Partner may exclude from its calculation of Administrative Expenses for such purpose (a) litigation costs, indemnification obligations and insurance costs, (b) fees and costs of audits, third-party administrators, outside counsel and accountants (for the avoidance of doubt, any such third-party administrator shall not be an Affiliate of ASAC or the General Partner and shall provide fund administration services in the ordinary course of its business).

6.6. Other Activities. The Partners and their Affiliates may engage in or possess an interest in other ventures of every nature and description for their own account, independently or with others, whether or not such other enterprises shall be in competition with any activities of ASAC or the Corporation, and neither ASAC nor the other Partners shall have any right by virtue of this Agreement in and to such independent ventures or to the income or profits derived therefrom. Notwithstanding anything in this Agreement to the contrary, an Investment Company LP and any of its Affiliates may purchase, dispose, hold, possess, vote or take any other action in respect of any shares of common stock of the Corporation directly or through any other Person (other than ASAC) and neither such Investment Company LP or any of its Affiliates, on the one hand, and ASAC, the General Partner or the Principals or any of their respective Affiliates, on the other hand, shall be deemed acting together as a group or in furtherance of a common objective in connection with any acquisition, possession, disposal or vote of such shares of common stock of the Corporation within the meaning of Section 13(d)(3) of the Exchange Act. Each of the Limited Partners (a) acknowledges that the General Partner is

controlled by Robert A. Kotick and Brian G. Kelly (the “Principals”) who serve as officers and/or directors of the Corporation and owe fiduciary duties to the Corporation, (b) agrees that, to the fullest extent permitted by applicable law, (i) nothing in this Agreement requires the General Partner or any of its members or managers to take any action or omit to take any action that could be inconsistent with the fiduciary duties either of the Principals has in his capacity as a director, member of a committee of the board of directors and/or officer of the Corporation and (ii) the General Partner and each of its members and managers shall have no liability to ASAC or the Partners for any action or inaction in connection with their fiduciary duties to the Corporation or in compliance with applicable securities laws or restrictions on the disposition of the Shares arising by virtue of the fact that Affiliates of the General Partners are employees and/or directors of the Corporation; and (c) covenants not to make any claim of any type (including through a derivative action) against ASAC, the General Partner or any of its members or managers on account of any action or inaction by such Persons in connection with such fiduciary duties to the Corporation or compliance with such securities laws. For the avoidance of doubt, any breach by a Limited Partner of this Section 6.6 shall be subject to indemnification under Section 7.5. The provisions of this Section 6.6 shall survive the dissolution of the Partnership.

6.7. Indemnification.

(a) Notwithstanding anything in this Agreement to the contrary, none of the Indemnified Parties will, to the fullest extent permitted by applicable law, have any liability, responsibility or accountability in damages or otherwise to ASAC, any Partner or any Affiliate of any Partner, for (i) any act or omission performed or omitted by any Indemnified Party (including any acts or omissions of or by another Indemnified Party) in connection with the conduct of the affairs of the Partnership in accordance with this Agreement or otherwise in connection with this Agreement or the matters contemplated herein, except, with respect to any Indemnified Party, for any act or omission constituting gross negligence, fraud, willful misconduct, bad faith, material violation of applicable law or material breach of this Agreement on such Indemnified Party’s part; or (ii) any act or omission performed or omitted by brokers or other agents of the General Partner or any Affiliate thereof (or their respective employees) selected by the General Partner with reasonable care, in the absence of gross negligence, fraud, willful misconduct, bad faith, material violation of applicable law or material breach of this Agreement on the part of the General Partner or its Affiliate, as the case may be.

(b) ASAC shall and hereby does, to the fullest extent permitted by applicable law, indemnify and hold harmless each Indemnified Party from and against any and all claims, demands, liabilities (including tax other than tax on the overall net income to which such Indemnified Party is beneficially entitled), reasonable costs and expenses, damages, losses, suits, proceedings and actions, whether judicial, administrative, investigative or otherwise, of whatever nature, known or unknown, liquidated or unliquidated (“Claims”), that may accrue to or be incurred by such Indemnified Party, or in which such Indemnified Party may become involved, as a party or otherwise, or with which such Indemnified Party may be threatened, in each case, on behalf of ASAC, or in furtherance of the objectives of ASAC, or relating to or arising out of or in connection with ASAC, the Shares or this Agreement, including amounts paid in satisfaction of judgments, in compromise or as fines or penalties, and reasonable counsel fees and expenses incurred in connection with the preparation for or defense or disposition of any investigation, action, suit, arbitration or other proceeding (a “Proceeding”), whether civil or

criminal (all of such Claims, amounts and expenses referred to in this Section 6.7(b) are referred to collectively as “**Damages**”), except (i) for investment expenses, capital losses and tax obligations incurred by any of the Indemnified Parties in the ordinary course of business or as a result of such Indemnified Party’s ownership of an Interest in ASAC and (ii) to the extent that it shall have been finally determined by arbitration pursuant to Section 14.11 that such Damages arose from such Indemnified Party’s own fraud, gross negligence, willful misconduct, bad faith, material violation of applicable law or material breach of this Agreement; *provided, however*, that ASAC’s obligations hereunder shall not apply with respect to disputes between or among the Indemnified Parties. The termination of any Proceeding by settlement shall not, of itself, create a presumption that any Damages relating to such settlement or otherwise relating to such Proceeding arose from the fraud, gross negligence, willful misconduct or bad faith of any Indemnified Party, or a material violation of applicable law or material breach of this Agreement by any Indemnified Party. Notwithstanding anything herein or in any document governing the formation, management or operation of ASAC or any separate indemnification agreement to which ASAC is a party to the contrary, as long as any obligations are outstanding under either Term Loan or any related facility documents, (A) no indemnity payment or expense reimbursement shall be payable hereunder or under any such separate indemnification agreement (x) from funds of ASAC that constitute collateral for either Term Loan or (y) at any time that ASAC’s obligations under either Term Loan are then due and unpaid, (B) to the fullest extent permitted by law, no claim against ASAC for indemnity payment or expense reimbursement hereunder or under any such separate indemnification agreement shall be allowed to the extent that such claim would cause ASAC to be insolvent or unable to pay its debts as they become due, (C) any indemnification and expense reimbursement obligation hereunder or under any such separate indemnification agreement shall be fully subordinated to ASAC’s obligations under the Term Loans and related facility documents (it being understood that, as long as ASAC is not subject to bankruptcy proceedings, such subordination will not prohibit payment by ASAC in respect of such obligations in compliance with the conditions set forth in clauses (A) and (B) above) and (D) ASAC shall not be permitted to (x) enter into any separate indemnification agreement under Section 6.7(i) unless such agreement provides for the limitations, restrictions and subordination set forth in clauses (A) through (C) above, or (y) purchase insurance under Section 6.7(f) except in compliance with Section 3.4(b).

(c) Reasonable expenses incurred by an Indemnified Party in defense or settlement of any Claim that may be subject to a right of indemnification hereunder (other than in defense of a derivative action brought by holders of at least a majority of the Percentage Interests of the Limited Partners) may be advanced by ASAC to such Indemnified Party prior to the final disposition thereof upon receipt of an undertaking by or on behalf of such Indemnified Party to repay such amount if it shall be finally determined by arbitration pursuant to Section 14.11 that the Indemnified Party was not entitled to be indemnified hereunder. Subject to the last sentence of Section 6.7(b) and 6.7(g), as long as no obligations are then outstanding under the Term Loans and any related facility documents, all judgments against ASAC and any Indemnified Party, in respect of which the Indemnified Party is entitled to indemnification under Section 6.7(b), shall be satisfied from ASAC assets before such Indemnified Party is responsible therefor. For the avoidance of doubt, the satisfaction of any indemnification obligation pursuant to Section 6.7(b) shall be from and limited to ASAC’s assets, no Partner shall have any obligation to make Capital Contributions or to return any distributions made to such Partner by ASAC to fund its share of any indemnification obligations under Section 6.7(b), and no Partner shall have any personal liability on account thereof.

(d) Promptly after receipt by an Indemnified Party of notice of commencement of any Proceeding, such Indemnified Party shall, if a claim for indemnification in respect thereof is to be made against ASAC, give written notice to ASAC of the commencement of such Proceeding; *provided* that the failure of any Indemnified Party to give such notice as provided herein shall not relieve ASAC of its obligations under this Section 6.7 except to the extent that ASAC is actually prejudiced by such failure to give such notice. If any such Proceeding is brought against an Indemnified Party (other than a derivative suit in right of ASAC), ASAC will be entitled to participate in and to assume the defense thereof to the extent that ASAC may wish, with counsel reasonably satisfactory to such Indemnified Party. After notice from ASAC to such Person of ASAC's election to assume the defense of such Proceeding, ASAC will not be liable for expenses subsequently incurred by such Indemnified Party in connection with the defense thereof. ASAC will not consent to entry of any judgment or enter into any settlement of such Proceeding that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such Proceeding and the related Claim.

(e) An Indemnified Party shall incur no liability to ASAC or any Partner in acting or refraining from acting in good faith upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order or other document reasonably believed by such Indemnified Party to be genuine and to have been signed or presented by the proper party or parties and addressed to, or permitted to be relied upon by, such Indemnified Party, and may rely in good faith on, and shall be protected in acting or refraining from acting upon, a certificate signed by an executive officer of any Person in order to ascertain any fact with respect to such Person or within such Person's knowledge. An Indemnified Party may consult with legal counsel, accountants, investment bankers and other consultants and advisers selected by it, and any act or omission suffered or taken by an Indemnified Party on behalf of ASAC in good faith and in reliance upon and in accordance with the advice of such Persons shall be deemed to be reasonable and proper, and the Indemnified Parties shall be fully protected in so acting or omitting; *provided, however*, that (i) such Persons were selected and retained with reasonable care and (ii) such Persons were relied upon only with respect to matters reasonably believed by the applicable Indemnified Party in good faith to be within the scope of their expertise.

(f) The General Partner shall cause ASAC, at ASAC's expense (to the extent reasonable), to purchase insurance to insure the General Partner and the other Indemnified Parties against liability hereunder, including for a breach or an alleged breach of their responsibilities hereunder.

(g) Any Person entitled to indemnification from ASAC under Section 6.7(b) shall first seek recovery under any other indemnity or any insurance policies by which such Person is indemnified or covered, as the case may be, but only to the extent that the indemnitor with respect to such indemnity or the insurer with respect to such insurance policy provides (or acknowledges its obligation to provide) such indemnity or coverage on a timely basis, as the case may be. Each Indemnified Party shall take all commercially reasonable steps to mitigate any of

its Damages after becoming aware of any event that reasonably would be expected to, or does, give rise to any Damages. The calculation of Damages shall be net of any tax benefit to the Indemnified Party reasonably expected to arise as a consequence thereof.

(h) The reimbursement and indemnity obligations of ASAC under Section 6.7(b) shall (i) be in addition to any liability which ASAC may otherwise have, (ii) not be deemed to be exclusive of any other rights to which any Indemnified Party may be entitled to under any agreement, as a matter of law or otherwise, both as to action in an Indemnified Party's official capacity and to action in another capacity, (iii) continue as to an Indemnified Party who shall have ceased to have an official capacity for acts or omissions during such official capacity and regardless of any subsequent amendment to this Agreement (and no amendment to this Agreement shall reduce or restrict the extent to which these indemnification provisions apply to actions taken or omissions made prior to such amendment) and (iv) be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of ASAC, the General Partner and any such other Indemnified Party.

(i) The General Partner may make, execute, record and file all instruments and other documents (including one or more deeds poll in favor of the Persons to whom the benefit of the exculpation and indemnification provisions of this Agreement are intended (the "Covered Persons") and/or one or more separate indemnification agreements between or among the General Partner, ASAC and individual Covered Persons) that the General Partner deems necessary or appropriate in order to extend the benefit of the exculpation and indemnification provisions of this Agreement to the Covered Persons; *provided* that such other instruments and documents authorized hereunder shall be on the same terms as provided for in this Agreement except as may otherwise be required by applicable law.

## ARTICLE 7

### RIGHTS AND OBLIGATIONS OF THE LIMITED PARTNERS

7.1. No Right of Management or Authority to Act. No Limited Partner shall participate in the management or control of ASAC, administer affairs for or in the name of ASAC, sign any agreement or other document for or in the name of ASAC or have any power to bind ASAC. Notwithstanding any provision of the ELP Law, only the General Partner shall have the authority to bind ASAC. No Limited Partner shall have any power or authority with respect to ASAC, except as provided in the ELP Law and insofar as the Consent of the Limited Partners shall be expressly required by this Agreement.

7.2. Limitation on Liability of Partners.

(a) No Partner shall be obligated to make loans to ASAC and no Partner (or former Partner) shall have any personal liability for the debts or obligations of ASAC or shall be obligated to repay to ASAC, any other Partner or any creditor of ASAC all or any fraction of any amounts distributed to such Partner, except as may be required under the ELP Law or as otherwise provided herein. No Partner shall be responsible for the debts or losses of any other Partner.

(b) In accordance with section 14 of the ELP Law, a partner of a limited partnership may, under certain circumstances, be required to return to the limited partnership for the benefit of limited partnership creditors amounts previously distributed to it as a return of capital. It is the intent of the Partners that a distribution to any Partner be deemed a compromise and not a return or withdrawal of capital, even if such distribution represents, for U.S. federal income tax purposes or otherwise (in full or in part), a distribution of capital, and no Partner shall be obligated to pay any such amount to or for the account of ASAC or any creditor of ASAC, except as provided in this Section 7.2. However, if any arbitrator or court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, any Partner is obligated to make any such payment, such obligation shall be the obligation of such Partner and not of any other Partner.

### 7.3. Power of Attorney.

(a) Each Limited Partner hereby makes, constitutes and appoints the General Partner as its agent and true and lawful attorney-in-fact with full power and authority in its name, place and stead to make, complete, execute, sign, acknowledge, deliver, file and record at the appropriate public offices such ministerial documents (and as a deed if so required) as may be necessary or appropriate to carry out the provisions of this Agreement, including the following with respect to ASAC, to the extent carried out in accordance with this Agreement:

(i) all certificates, instruments, documents, other agreements and amendments thereto which are necessary (x) to form, continue or otherwise qualify ASAC as a limited partnership in each jurisdiction in which ASAC carries out or may carry out activities (and each Limited Partner specifically authorizes the General Partner to execute, sign, acknowledge, deliver, file and record any documents as required by the ELP Law in connection with such formation, continuation or qualification of ASAC), (y) in connection with any tax, securities law or other filings of ASAC, or (z) to obtain benefits to which a Partner is otherwise entitled under an applicable tax treaty or the tax laws of any jurisdiction, including the authority to furnish to the relevant tax authorities the information provided by a Partner to ASAC relating to a Partner's tax residence, address, taxpayer identification number and any other information required by such tax authorities in connection with the foregoing;

(ii) all documents, agreements, certificates or other instruments which the General Partner deems necessary to effect the admission or substitution of a Limited Partner pursuant to the terms hereof, the sale, redemption, termination or Transfer of the Interest of a Limited Partner (or a portion thereof) pursuant to the terms hereof, or the liquidation and winding up of ASAC in accordance with the provisions hereof; and

(iii) all instruments and other documents (including one or more deed polls in favor of the Indemnified Parties and/or separate indemnification agreements between or among the General Partner, ASAC, each Limited Partner (as applicable) and individual Indemnified Parties) which are necessary to extend the benefit of the indemnification and exculpation provisions of this Agreement to the Indemnified Parties in the absence of third-party beneficiary rights under Cayman Islands law; *provided, however*, that such other instruments and documents shall be on the same terms as provided for in this Agreement except as may otherwise be required by applicable law.



(b) The foregoing power of attorney is hereby declared to be irrevocable and granted to secure a proprietary interest of the General Partner and obligations owed to the General Partner, and it shall survive the bankruptcy, death, dissolution, legal disability or cessation to exist of a Limited Partner to the fullest extent permitted by law and shall extend to its heirs, executors, personal representatives, successors and assigns, and shall survive the Transfer or assignment of all or any part of the Interest of such Limited Partner; *provided, however*, that, if a Limited Partner Transfers all of its Interest, the foregoing power of attorney of a transferor Limited Partner shall survive such Transfer only until such time as the transferee shall have been admitted to ASAC as a Substitute Partner and all required documents and instruments shall have been duly executed, filed and recorded to effect such substitution.

(c) The power of attorney granted to the General Partner shall not apply to consents or other votes or elections of the Partners provided for in this Agreement.

(d) Each Partner further agrees to execute promptly any and all documents or instruments referred to in this Section 7.3 if the power of attorney granted hereunder is rendered ineffective by the provisions of the ELP Law or any other applicable law or if the General Partner in its reasonable discretion so requests execution by such Partner and the same shall not be inconsistent with the provisions hereof.

(e) For the avoidance of doubt, the General Partner may exercise the power of attorney granted hereunder on behalf of all of the Limited Partners by executing any instrument with a single signature of the General Partner as attorney in fact for all of the Limited Partners.

7.4. Waiver of Action for Partition. Each of the parties hereto irrevocably waives during the term of the Partnership any right that it may have to maintain any action for partition with respect to any assets of the Partnership.

7.5. Indemnification for Breach by Limited Partner. In the event that ASAC or an Indemnified Party becomes involved in any capacity in any action, proceeding or investigation brought by or against any Person (including a Limited Partner) arising out of or based upon a breach of any representation or warranty or a breach or failure by a Limited Partner to comply with any covenant or agreement made by such Limited Partner herein or in its Subscription Agreement, such Limited Partner shall reimburse periodically the Indemnified Parties for their reasonable out-of-pocket legal and other fees and expenses (including the reasonable cost of any investigation and preparation) incurred in connection therewith, except to the extent that any such legal and other fees and expenses resulted from fraud, gross negligence, willful misconduct, bad faith, material violation of applicable law or material breach of this Agreement on such Indemnified Party's part. Such Limited Partner shall also indemnify the Indemnified Parties against any losses, claims, damages or liabilities to which any of them may become subject as a result of such breach, net of any tax benefit reasonably expected to arise as a consequence thereof, except to the extent that any such losses, claims, damages or liabilities resulted from fraud, gross negligence, willful misconduct, bad faith, material violation of applicable law or material breach of this Agreement on such Indemnified Party's part. If for any

reason (other than the fraud, gross negligence, willful misconduct, bad faith, material violation of applicable law or material breach of this Agreement on such Indemnified Party's part) the foregoing indemnification is unavailable to any Indemnified Party, or is insufficient to hold it harmless, then such Limited Partner shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect not only the relative benefits received by such Limited Partner, on the one hand, and the Indemnified Party, on the other hand, but also the relative fault of such Limited Partner and the Indemnified Party, as well as any relevant equitable considerations. A Limited Partner's reimbursement, indemnity and contribution obligations under this Section 7.5 shall be in addition to any liability that such Limited Partner may otherwise have, and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of the Indemnified Parties. The rights of indemnification described in this Section 7.5 shall survive the dissolution of the Partnership. In addition to any other remedies the Persons indemnified under this Section 7.5 may have, any amount payable by a Limited Partner hereby may be offset against amounts payable by ASAC to such Limited Partner.

7.6. Indemnity as to Tax Withholding. Each Limited Partner agrees that it shall indemnify and hold harmless ASAC and the Indemnified Parties from and against any tax, interest, additions to tax, penalties, and attorneys' and accountants' fees and disbursements, together with interest on the foregoing amounts at the rate equal to the lesser of (a) the maximum rate per annum permitted by applicable law and (b) 2% over the Prime Rate per annum, computed from the date of payment by ASAC through the date of reimbursement to ASAC or the General Partner, as applicable, arising from the General Partner's or ASAC's failure to withhold and pay over to the U.S. Internal Revenue Service (or any other governmental or regulatory authority in any jurisdiction) any amounts computed, as required by applicable law, with respect to the income or gains allocated to or amounts distributed to such Limited Partner with respect to its Interest during the period from its acquisition thereof until the dissolution of the Partnership, or, if earlier, the transfer or redemption of such Interest in accordance with this Agreement, in each case to the extent that the failure to withhold or pay over such amounts was the consequence of an action or failure to act by such Limited Partner. The rights of indemnification described in this Section 7.6 shall survive the dissolution of the Partnership. In addition to any other remedies the Persons indemnified under this Section 7.6 may have, any amount payable by such Limited Partner hereby may be offset against amounts payable by ASAC to such Limited Partner.

7.7. Stockholders Agreement Obligations. Each of the Limited Partners (other than the Investment Company LPs) hereby agrees to comply with the obligations of an "Investor" under Section 3.01(a) of the Stockholders Agreement, and to cause compliance by its Affiliates, as and to the full extent that such Limited Partner would be so required if such Limited Partner were a party and signatory to the Stockholders Agreement. The General Partner agrees not to amend, modify or otherwise enter into any agreement providing for any change to the provisions of Article III of the Stockholders Agreement that are materially adverse to any Limited Partner without the agreement of such Limited Partner.

7.8. Investment Company LP Obligation. None of the Investment Company LPs shall agree, commit or consent to act together with ASAC as a group or in furtherance of a common objective in connection with any acquisition, possession, disposal or vote of any shares of common stock of the Corporation within the meaning of Section 13(d)(3) of the Exchange Act.

## ARTICLE 8

### CONFIDENTIALITY

#### 8.1. Confidentiality.

(a) Each Limited Partner shall keep confidential and not disclose any information (including the terms of this Agreement or any other agreement) with respect to the General Partner, any Affiliate thereof, ASAC, the Corporation, the Shares, or any other Partner (including the identity thereof) to the extent such information is requested or provided in connection with a Limited Partner's participation in ASAC (collectively "ASAC Information"), without the prior written consent of the General Partner (other than to such Limited Partner's directors, officers, employees, controlling Persons, auditors, counsel, other professional advisors and consultants, in each case, who need to know such information for the purpose of the Limited Partner's participation in ASAC (each such Person being hereinafter referred to as an "Authorized Representative"); *provided* that such disclosure shall be made in confidence and shall be kept in confidence and, in each case, each Limited Partner shall remain fully responsible and liable for any breach of this Section 8.1(a) by any of its Authorized Representatives); *provided* that a Limited Partner may disclose any such ASAC Information (i) that has become generally available to the public other than as a result of the breach of this Section 8.1(a) by such Limited Partner, any Authorized Representative of such Limited Partner or any agent or Affiliate of any of them, (ii) to the extent required to be included in any report, statement, testimony or other document required or requested to be submitted to any municipal, state, provincial or national regulatory body, (iii) in response to any summons or subpoena in connection with any litigation, (iv) to the extent necessary in order to comply with any law, order, regulation, ruling or listing standard or requirement applicable to such Limited Partner, (v) to the extent required to be disclosed in connection with an audit by any taxing authority and (vi) to such Limited Partner's current or prospective members or partners in connection with monitoring or marketing activities, solely to the extent such disclosure is made in the ordinary course of business of such Limited Partner and in a manner consistent with past practice (in which case, such Limited Partner's current or prospective members or partners shall be deemed Authorized Representatives for purposes of this Section 8.1(a)). To the extent that a Limited Partner seeks to disclose any ASAC Information consisting of the identity or Percentage Interest of any Partner (other than that of such Limited Partner) pursuant to clause (ii), (iii), (iv) or (v) above, such Limited Partner shall, to the extent practicable under the circumstances and permitted by applicable law, (x) use reasonable efforts to affirmatively seek to prevent or withhold the disclosure of any ASAC Information on the basis of any and all applicable exemptions under applicable law or regulation, (y) provide the General Partner with prompt notice prior to the time of any such disclosure so that the General Partner may seek an appropriate protective order or other appropriate relief to prevent or withhold any such disclosure and (z) reasonably cooperate with the General Partner's efforts to prevent any such disclosure, in a manner that would be consistent with the provisions of applicable law or regulation. In the absence of a protective order or such other appropriate relief, then such Limited Partner will be permitted to disclose that portion (and only that portion) of such ASAC Information that such Limited Partner, based on

such advice of counsel, is legally compelled to disclose. Each Limited Partner acknowledges and agrees that all ASAC Information that does not satisfy clause (i) above is strictly confidential and proprietary and shall not be used by such Limited Partner, any of its Authorized Representatives or any Affiliate of any of them for any purpose other than in respect of or relating to such Limited Partner's participation in ASAC.

(b) Each Limited Partner (i) acknowledges that the General Partner on behalf of ASAC may release confidential information about such Limited Partner and, if applicable, any of its Beneficial Owners, to any governmental or similar regulatory authority or any other Person if the General Partner, in its discretion, determines that such release is necessary, advisable or in the best interests of ASAC, including in light of applicable laws or regulations concerning money laundering, anti-terrorist and similar activities, securities or banking laws or regulations, competition laws or regulations or tax laws or regulations or in connection with the Term Loans or other obligations of ASAC, the Corporation, the General Partner or any Affiliate, subsidiary or investment vehicle of any of them, and (ii) agrees to provide ASAC and/or the General Partner with any additional information with respect to itself and its Beneficial Owners that the General Partner reasonably deems necessary to ensure compliance with any laws or regulations applicable to ASAC, including all information with respect to itself and its Beneficial Owners that the General Partner reasonably deems necessary in order for ASAC to effect (x) filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 in connection with ASAC's acquisition of the Shares and (y) ASAC's required filings (and amendments to such filings) under Sections 13(d) and 16(b) of the Exchange Act. Except as contemplated in the immediately preceding sentence, the General Partner shall treat the ASAC Information as confidential and subject to the same restrictions as are imposed on the Limited Partners.

(c) Notwithstanding anything in the foregoing Section 8.1 or anything else contained in this Agreement to the contrary, except as reasonably necessary to comply with applicable securities laws, each of the parties hereto (and its employees, representatives or other agents) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the offering and ownership of the Interests (including the tax treatment and tax structure of any ASAC transactions) and all materials of any kind (including opinions and other tax analyses) that are provided to such party with respect to such tax treatment and tax structure.

## ARTICLE 9

### TRANSFER OF INTERESTS OF LIMITED PARTNERS

9.1. Transfers. A Limited Partner may not Transfer its Interest in ASAC or any part thereof except as permitted in this Article 9, and any such Transfer in violation of this Article 9 shall be null and void as against ASAC, except as otherwise provided by law, and in any such case, unless and until a Limited Partner's assignee is admitted as a Substitute Partner pursuant to Section 9.3, the Limited Partner shall remain obligated to pay amounts and to return distributed proceeds as provided herein. If a Limited Partner causes or suffers the Transfer of all or a portion of its Interest in violation of this Agreement and such Transfer is not capable of being voided as provided in this Section 9.1, such Limited Partner's Interest will be subject to redemption or sale pursuant to Section 9.6.

## 9.2. Transfer by Limited Partners.

(a) Subject to compliance with Section 9.4, a Limited Partner may Transfer its Interest, in whole or in part, only if all of the following conditions are satisfied:

(i) the transferor and proposed transferee file a notice of Transfer with the General Partner which is signed by the transferor Limited Partner and which contains the information reasonably required by the General Partner, including (x) the name, address and taxpayer identification number of the proposed transferee, (y) the circumstances under which the proposed Transfer is to be made, including that the proposed Transfer is not being made on an established securities market as defined in Regulations § 1.7704-1(b) and that the Transfer would not be considered made on a secondary market (or the substantial equivalent thereof) as defined in Regulations § 1.7704-1(c) if ASAC were involved in such market within the meaning of Regulations § 1.7704-1(d), and (z) the Interest to be Transferred;

(ii) the fully executed written instrument of assignment, reasonably satisfactory in form and substance to the General Partner, and such other documentation (including any deed of adherence) as the General Partner or legal counsel to ASAC may deem advisable and shall reasonably request, are delivered to the General Partner;

(iii) any reasonable costs of Transfer incurred by ASAC and/or the General Partner in connection with the Transfer are paid by the transferor Limited Partner to ASAC or the General Partner, as applicable;

(iv) the Interest being transferred represents the transferor's entire Interest or, if less than the Transferor's entire Interest, such portion thereof as the General Partner may determine in its reasonable discretion; and

(v) the General Partner consents to the Transfer, which consent may not be unreasonably withheld, and which consent may be conditioned upon, among other things, delivery of an opinion of counsel, satisfactory to the General Partner, as to among other things, that (A) the Transfer does not violate the Securities Act or applicable state securities laws, (B) the Transfer will not cause ASAC to become subject to the registration or reporting requirements under the Investment Company Act, (C) the Transfer will not result in the assets of ASAC being treated as the assets of any employee benefit plan for purposes of ERISA, the Code or any similar laws as determined by the General Partner in its sole discretion, and (D) notwithstanding such Transfer, ASAC shall continue to be treated as a partnership under the Code; and

(vi) (A) the transferee is not (x) a Competitor (it being understood that a Limited Partner shall be deemed not to be a Competitor for this purpose) or (y) a Person engaged in the business of publishing, distributing, programming, designing or marketing video games or entertainment software for personal computers that competes with the Corporation in any material respect, (B) the transferee and its Affiliates and Permitted Transferees, in the aggregate, do not own or control, and will not, after giving effect to the Transfer, own or control, directly or indirectly (including through ASAC), greater

than 9.9% of the outstanding shares of common stock of the Corporation and (C) after giving effect to the Transfer, no more than one (x) individual Limited Partner, together with its Affiliates and Permitted Transferees, or (y) group of Limited Partners under common investment management, in each case, directly or indirectly would, in the aggregate, own or control 25% or more of the issued and outstanding Interests, unless each Investment Company LP waives in writing the application of this clause (C) (which waiver may be withheld for any reason or no reason, in its sole and absolute discretion).

Notwithstanding anything in this Section 9.2(a) to the contrary, a Limited Partner admitted to ASAC on the date hereof and any Permitted Transferee thereof that becomes a Substitute Limited Partner in accordance with the terms hereof may Transfer its Interest, in whole or in part, subject to its satisfaction of the other conditions in clauses (i) through (v) and clause (vi)(C) above, including any requested opinion but without the General Partner's consent, to a Permitted Transferee; *provided that*, in the General Partner's reasonable determination, (w) the Transfer will not create a repayment obligation for ASAC in respect of the Term Loans; (x) the Permitted Transferee is an "accredited investor" (as defined in Regulation D promulgated under the Securities Act); (y) the transferee is a "qualified purchaser" (as defined in Section 2(a)(51) of the Investment Company Act); and (z) the Transfer will not subject, or be reasonably likely to subject, ASAC or the General Partner to liability under any applicable law. In the event any transferee ceases to be a Permitted Transferee of a Partner, the applicable Partner shall cause the Interests to be Transferred back to such Partner promptly upon the transferee so ceasing to be a Permitted Transferee.

(b) Upon satisfaction of the conditions set forth in Section 9.2(a), any such Transfer shall be recognized by ASAC as being effective on the first day of the calendar month following either receipt by ASAC of such notice of the proposed Transfer or the satisfaction of said conditions, whichever occurs later.

(c) If a transferee of a Limited Partner does not become a Substitute Partner pursuant to Section 9.3, the transferee shall become a mere assignee and shall not have any non-economic rights of a Partner of ASAC, including the right to require any information on account of ASAC's affairs, to inspect ASAC's books or to vote on ASAC matters, and the transferor Limited Partner shall remain obligated to pay amounts and to return distributed proceeds as required herein until its assignee is admitted as a Substitute Partner pursuant to Section 9.3.

(d) ASAC and the General Partner shall be entitled to treat the record owner (on the books of ASAC) of any Interest as the absolute owner thereof in all respects, and shall incur no liability for distributions of cash or other property made in good faith to such owner until such time as a written instrument of assignment of such Interest has been received and accepted by the General Partner and recorded on the books of ASAC.

9.3. Substitute Partner. A transferee of the whole or any portion of an Interest in ASAC pursuant to Section 9.2 (including the conditions set forth in Section 9.2(a)) shall have the right to become a Substitute Partner in place of its transferor only if all of the following conditions are satisfied:

(i) the fully executed written instrument of assignment, reasonably satisfactory in form and substance to the General Partner, has been filed with ASAC and such instrument expressly provides that the transferee is entitled to be such a Substitute Partner;

(ii) the transferee executes, adopts and acknowledges this Agreement, the applicable Subscription Agreement and any other agreements referred to herein or therein to which the transferring Limited Partner is a party, to the extent related to such Transferred Interests, without condition or modification in such manner as the General Partner in its discretion determines to be appropriate, including pursuant to a deed of accession and otherwise complying with the transfer requirements under such agreements;

(iii) any reasonable costs of Transfer incurred by ASAC and/or the General Partner are paid to ASAC or the General Partner, as applicable; and

(iv) except with respect to a Transfer by a Limited Partner to a Permitted Transferee in accordance with Section 9.2(a), the General Partner shall have consented in writing to the substitution, which consent may not be unreasonably withheld, and which consent may be conditioned upon, among other things, delivery of an opinion of counsel, satisfactory to the General Partner, as to among other things the matters referred to in the opinion described in Section 9.2(a)(v).

#### 9.4. Rights of First Offer on Transfers of Interests.

(a) If any Partner proposes to Transfer any Interests (other than to a Permitted Transferee), the transferring Partner shall give the other Partners not less than seven calendar days' written notice of such sale (a "Transfer Notice"), stating the number of Interests proposed to be Transferred (the "Transfer Interests"); *provided*, that with respect to the General Partner, the Consent of the Limited Partners contemplated by Section 6.3(a) shall have been obtained prior to any such Transfer Notice being provided. Each Partner shall deliver a written notice to the transferring Partner within five calendar days after the receipt of such Transfer Notice (a "Offer Notice"), stating whether it elects to purchase all or a portion of the Transfer Interests, the number of Transfer Interests such Partner elects to purchase (subject to the limitations on ownership set forth in Section 9.4(c)) and the purchase price at which it would be willing to purchase such Transfer Interests (the "Offer Price").

(b) If a Partner does not deliver an Offer Notice in accordance with Section 9.4(a), then such Partner shall be deemed to have elected not to exercise its right of first offer with respect to the Transfer Interests. To the extent that the transferring Partner elects to accept any offer set forth in an Offer Notice, it shall give each of the other Partners that delivered Offer Notices at least two calendar days' written notice, stating the applicable Offer Price, and each such Partner shall have the right to participate in such sale by delivering written notice to the transferring Partner within such two calendar day period, stating the number of Transfer Interests it elects to purchase at the applicable Offer Price. To the extent that the transferring Partner receives elections to purchase more than the number of Transfer Interests proposed to be sold in such sale, such Shares shall be allocated to the participating Partners in accordance with

their respective Percentage Interests in respect of the Preferred Interests (subject to the maximum number of Transfer Interests each such Partner elected to purchase in its Offer Notice and the limitations on ownership set forth in Section 9.4(c)). The transferring Partner shall give each participating Partner at least two Business Days' written notice of the closing date of such purchase and sale and the number of Transfer Interests allocated to such Partner (if less than the number of Transfer Interests such Partner elected to purchase).

(c) Each Partner agrees that it shall not be entitled to exercise its rights of first offer hereunder to the extent that, (i) after giving effect to the closing of any purchase and sale pursuant to this Section 9.4, such Partner and its Affiliates and their respective Permitted Transferees would, in the aggregate, own or control, directly or indirectly (including their respective pro rata interest in the Shares), greater than 9.9% of the outstanding shares of common stock of the Corporation; *provided, however*, that this clause (i) shall not apply to any of the Investment Company LPs or (ii) after giving effect to the closing of any purchase and sale pursuant to this Section 9.4, more than one (A) individual Limited Partner, together with its Affiliates and Permitted Transferees, or (B) group of Limited Partners under common investment management, in each case, directly or indirectly would, in the aggregate, own or control 25% or more of the issued and outstanding Interests, unless each Investment Company LP waives in writing the application of this clause (ii) (which waiver may be withheld for any reason or no reason, in its sole and absolute discretion).

(d) If the Partners that delivered Offer Notices in accordance with Section 5.5(a) do not elect to purchase all of the Transfer Interests, then the transferring Partner may, within 90 calendar days from the last date for delivery of an Offer Notice, sell any remaining portion of the Transfer Interests to any Person or Persons at a price per Transfer Share equal to or greater than the highest Offer Price set forth in any Offer Notice. If more than 90 days elapse from the last date for delivery of an Offer Notice without consummation of such sale by the transferring Partner, the provisions of this Section 9.4 shall again apply to any future Transfers that otherwise come within its terms.

#### 9.5. Involuntary Withdrawal by Partners.

(a) Upon the bankruptcy, dissolution or other cessation of existence of a Limited Partner which is a trust, corporation, partnership or other entity, the authorized representative of such entity shall have all the rights of a Limited Partner for the purpose of effecting the orderly winding up and disposition of the business of such entity and such power as such entity possessed to designate a successor as a transferee of its Interest and to join with such transferee in making application to substitute such transferee as a Substitute Partner.

(b) The bankruptcy, dissolution, disability or legal incapacity of a Partner shall not trigger the commencement of winding up of the Partnership.

9.6. Termination of an Interest. Subject to Section 3.3(d), the General Partner shall be entitled to cause ASAC to redeem or sell the Interest of any Limited Partner upon at least five calendar days' prior written notice if (a) there is a material breach of such Limited Partner's representations, warranties or covenants herein or in such Limited Partner's Subscription Agreement and, following written notice of such breach provided by the General



Partner, such breach, if capable of being cured, is not cured within 15 calendar days after such Limited Partner's receipt of such written notice, or (b) such Limited Partner causes or suffers a Transfer of all or a portion of its Interest in violation of this Agreement and such Transfer is not capable of being voided as provided in Section 9.1. If any Partner's Interest is redeemed or sold pursuant to this Section 9.6, such Partner shall be paid on the earlier to occur of (i) 120 calendar days after the date of the notice of termination if the Interest is redeemed, or (ii) on the closing date if the Interest is sold, the fair market value of such Limited Partner's Interest, as determined by the General Partner. Any Person purchasing a Limited Partner's Interest pursuant to this Section 9.6 shall become a Substitute Partner in accordance with and subject to Section 9.3. Upon redemption of any Limited Partner's Interest pursuant to this Section 9.6, such Limited Partner and the Percentage Interest and Capital Contributions of such Limited Partner shall not be included in determining the Partners, or the Percentage Interests or Capital Contributions of the Partners, for any purpose hereunder.

## ARTICLE 10

### TERMINATION; LIQUIDATION

10.1. Termination. The Partnership shall terminate and the winding up of the Partnership's affairs shall commence upon the first to occur of any one of the following (each, a "Termination Event"):

(a) an election to terminate the Partnership is made by the General Partner in its discretion;

(b) the fourth anniversary of the SPA Closing Date;

(c) an election to terminate the Partnership is made by the holders of a majority of the Percentage Interests of the Limited Partners that vote upon such matter, upon the occurrence of a GP Termination Event; and

(d) except as otherwise provided herein, any other event causing commencement of winding up or dissolution of the Partnership under the ELP Law;

*provided* that, in each case, the Partnership shall not be dissolved prior to payment of all obligations under the Term Loans and related facility documents.

10.2. Liquidation.

(a) Upon the commencement of the winding up of the Partnership's affairs pursuant to Section 10.1, the General Partner shall be the liquidator and shall wind up the affairs of the Partnership pursuant to this Agreement as expeditiously as circumstances allow and proceed within a reasonable period of time to sell or otherwise liquidate the Shares or the relevant portion thereof necessary to pay or make due provision by the setting up of reserves for the Term Loans and the other liabilities of the Partnership and the expenses of liquidation and winding up, and, thereafter, to distribute the remaining Shares to the Partners in accordance with the provisions for the making of distributions set forth in this Article 10. The General Partner shall not be liable to any Partner or the Partnership for any loss attributable to any act or

omission of the General Partner taken in connection with the winding up of the Partnership and the distribution of ASAC assets, in the absence of actual fraud, willful misconduct, gross negligence or bad faith of the General Partner. The General Partner may consult with counsel and accountants with respect to winding up the Partnership and distributing its assets and shall be justified in acting or omitting to act in accordance with the advice or opinion of such counsel or accountants; *provided* that the General Partner shall have used reasonable care in selecting such counsel or accountants. If the General Partner is unable to carry out its obligations as liquidator under this Section 10.2, or in the event of a GP Termination Event, a liquidator shall be appointed by the holders of a majority of the Percentage Interests of the Limited Partners and such liquidator shall have the right, power and authority of the General Partner under this Article 10 to wind up the affairs of the Partnership.

(b) No Partner shall be liable for the return of the Capital Contributions of other Partners; *provided* that this provision shall not relieve any Partner of any other duty or liability it may have under this Agreement.

(c) Upon the winding up of the Partnership pursuant to Section 10.1, all amounts and Shares, or the proceeds therefrom, shall be distributed or used as follows and in the following order of priority:

(i) for the payment of the Term Loans and other liabilities of the Partnership and the expenses of liquidation and winding up in such manner and order provided by law and otherwise as the General Partner determines;

(ii) to (x) the setting up of any reserves and/or (y) the establishment of a liquidating trust for the benefit of the Partners, in either case, which the General Partner may deem reasonably necessary for any contingent, conditional or unforeseen liabilities or obligations of the Partnership; and

(iii) to the Partners in accordance with Section 5.2(a), subject to the restrictions in Sections 5.3 and 5.4.

(d) When the General Partner has complied with the foregoing liquidation plan, the General Partner shall execute and cause to be filed with the Registrar of Exempted Limited Partnerships in the Cayman Islands a notice pursuant to section 15 of the ELP Law (a "Notice of Dissolution"), at which time the Partnership shall be dissolved. For the avoidance of doubt, notwithstanding the occurrence of a Termination Event, the Partnership shall not dissolve until (i) the affairs of the Partnership have been wound up in accordance with the ELP Law and this Agreement, (ii) the assets of the Partnership have been distributed as provided in this Section 10.2, and (iii) a Notice of Dissolution has been filed with the Registrar of Exempted Limited Partnerships in the Cayman Islands. The provisions of this Agreement shall remain in full force and effect during the period of winding up until, subject to any provisions of this Agreement that are expressly stated to survive dissolution, a Notice of Dissolution has been filed, as provided in the immediately preceding sentence (or until the Partnership is otherwise dissolved in accordance with the ELP Law).

## ARTICLE 11

### REPRESENTATIONS AND WARRANTIES OF THE PARTNERS

#### 11.1. Representations and Warranties of the Limited Partners.

(a) Each Limited Partner acknowledges that ASAC and the General Partner are relying upon the exemption from registration provided by Section 4(2) of the Securities Act and/or Regulation D promulgated thereunder, and upon the truth and accuracy of the following representations by each of the Limited Partners. Each of the Limited Partners hereby represents and warrants, as to itself only as of the date hereof or as of the date that it becomes a Limited Partner hereunder, that (i) its Interest in ASAC is being acquired for its own account, for investment and not with a view to the distribution or sale thereof; (ii) it is an "accredited investor" (as defined in Regulation D promulgated under the Securities Act) and has not been formed and is not being operated for the purpose of making an investment in ASAC; (iii) it is a "qualified purchaser" (as defined in Section 2(a)(51) of the Investment Company Act); (iv) it meets any additional or different suitability standards imposed by the state or other jurisdiction of its residence and/or organization; (v) it has been given the opportunity to ask the General Partner questions relating to ASAC and the Corporation and has had access to such financial and other information concerning ASAC and the Corporation as it has considered necessary to make a decision to invest in ASAC and has availed itself of that opportunity to the full extent desired; (vi) it is able (x) to bear the economic risk of its investment in ASAC, (y) to retain its Interest for the full term of ASAC and (z) to afford a full loss of its Capital Contributions and all other amounts which it is required to contribute hereunder; (vii) to its knowledge, there is no default, or circumstance which with the passage of time and/or notice would constitute a default under this Agreement, which would constitute a defense to, or right of offset against such Limited Partner's obligation to fund its Capital Contributions and, to its knowledge, as of such date, there is no defense to, or right of offset against, its obligation to fund its Capital Contributions; (viii) it understands that its Interest is subject to the restrictions on transferability contained herein including a requirement for the written consent of the General Partner to any such transfer and compliance with the Securities Act and applicable securities laws of any state or other jurisdiction; (ix) it is empowered and authorized to become a Partner in, and authorized to make capital contributions to, ASAC in the manner contemplated herein and it has obtained all authorizations, consents, approvals and clearances of all courts, governmental agencies and authorities and any other Person, if any, required on its part to permit it to enter into this Agreement and to consummate the transactions contemplated herein; (x) this Agreement has been duly executed and delivered by or on behalf of such Limited Partner and is its legal, valid and binding obligation, and is enforceable against such Limited Partner in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws affecting creditors' rights generally from time to time in effect and to general principles of equity; (xi) the execution and delivery by such Limited Partner of this Agreement do not, and the performance by such Limited Partner of its obligations under this Agreement will not, (A) conflict with or result in any breach of any provision of the organizational documents of such Limited Partner, (B) violate, conflict with, require consent pursuant to, result in a breach of, constitute a default (with or without due notice or lapse of time or both) under, or give rise to a right of, or result in, the termination, cancellation, modification, acceleration or the loss of a benefit under any of the terms, conditions or

provisions of any contract or agreement to which such Limited Partner is a party or otherwise bound or to which any of its properties or assets is subject or (C) violate any judgment, order or decree of any governmental agency or authority having jurisdiction over such Limited Partner or any law applicable to such Limited Partner or any of its properties or assets, except, in the case of clauses (B) and (C) above, for any violation, conflict, consent, breach, default, termination, cancellation, modification, acceleration, loss or creation that would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of such Limited Partner to perform its obligations under this Agreement or to consummate the transactions contemplated hereby; (xii) no portion of its Capital Contributions consists, or will consist, of assets of an employee benefit plan as defined in Section 3(3) of ERISA, whether or not such plan is subject to Title I of ERISA, or a plan subject to Section 4975 of the Code, determined after giving effect to applicable regulations, rulings and exemptions thereunder; and (xiii) if it is a partnership, a Subchapter S corporation, a grantor trust, or a "flow-through entity" (as that term is defined in Regulations § 1.7704-1(h)(3)) either (A) less than substantially all of the value of each beneficial owner's interest in such Limited Partner will be attributable to such Limited Partner's ownership of its Interest or (B) such Limited Partner does not have, in purchasing an Interest pursuant to this Agreement, a principal purpose of permitting ASAC to satisfy the 100-partner limitation in Regulations § 1.7704-1(h)(1)(ii). In addition, each Limited Partner makes, as to itself only as of the date hereof or as of the date that it becomes a Limited Partner hereunder, each of the representations, warranties and agreements set forth on Schedule D hereto.

(b) Each Limited Partner acknowledges and agrees that (i) the General Partner shall have the powers set forth in Sections 3.1 and 3.2, (ii) the Principals are Affiliates of the General Partner and are officers and/or directors of the Corporation and, in such capacities, owe fiduciary duties to the Corporation, (iii) the Shares are restricted securities and may not be disposed of except in compliance with applicable securities laws and restrictions arising by virtue of the fact that Affiliates of the General Partners are officers and/or directors of the Corporation, and (iv) ASAC will not be permitted to purchase or sell the Shares (or enter into derivative transactions in respect thereof) at any time an officer or director of the Corporation is restricted from purchasing or selling shares of common stock of the Corporation (whether by operation of law or pursuant to policies of the Corporation).

11.2. Representations and Warranties of the General Partner. The General Partner represents, warrants and covenants to each Limited Partner that as of the date hereof:

(a) ASAC is a duly formed and validly existing exempted limited partnership under the laws of the Cayman Islands with full power and authority to conduct its affairs as contemplated in this Agreement.

(b) The General Partner is a duly formed and validly existing limited liability company under the laws of the State of Delaware, with full power and authority to perform its obligations hereunder. The General Partner (i) has all necessary power and authority to own, lease and operate its properties and assets and to carry on its business as currently conducted and (ii) is duly qualified to do business as a foreign entity and is in good standing in each jurisdiction where the character of the property owned, leased or operated by it or the nature of its activities makes such qualification necessary, except where the failure to be so qualified has

not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of the General Partner to perform its obligations under this Agreement or to consummate the transactions contemplated hereby.

(c) (i) Assuming the accuracy of the representations made by each Limited Partner pursuant to Section 11.1, all action required to be taken by the General Partner and ASAC, as a condition to the issuance and sale of the Interests being purchased by the Limited Partners, has been taken; (ii) the Interest of each Limited Partner represents a duly and validly issued partnership interest in ASAC; and (iii) each Limited Partner is entitled to all the benefits of a Limited Partner in respect of the Interests it holds under this Agreement and the ELP Law.

(d) This Agreement has been duly authorized, executed and delivered by the General Partner and, upon due authorization, execution and delivery by each Limited Partner, will constitute the valid and legally binding agreement of the General Partner enforceable in accordance with its terms against the General Partner, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

(e) The execution and delivery by the General Partner of this Agreement does not, and the performance by the General Partner of its obligations under this Agreement will not, require any consent, approval, order, license, authorization, registration, declaration or permit of, or filing with or notification to, any governmental agency or authority, except (i) any filings required to be made or clearances required to be obtained under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, (ii) such filings and notifications as may be required under applicable U.S. federal and state or foreign securities Laws, and (iii) such other consents, licenses, authorizations, approvals, orders, registrations, declarations, permits, filings or notifications which, if not obtained or made, would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of the General Partner to perform its obligations under this Agreement or to consummate the transactions contemplated hereby.

(f) The execution and delivery by the General Partner of this Agreement do not, and the performance by the General Partner of its obligations under this Agreement will not, (i) conflict with or result in any breach of any provision of the certificate of formation or limited liability company agreement, (ii) violate, conflict with, require consent pursuant to, result in a breach of, constitute a default (with or without due notice or lapse of time or both) under, or give rise to a right of, or result in, the termination, cancellation, modification, acceleration or the loss of a benefit under any of the terms, conditions or provisions of any contract or agreement to which the General Partner is a party or otherwise bound or to which any of its properties or assets is subject or (iii) violate any judgment, order or decree of any governmental agency or authority having jurisdiction over the General Partner or law applicable to the General Partner or any of its properties or assets, except, in the case of clauses (ii) and (iii) above, for any violation, conflict, consent, breach, default, termination, cancellation, modification, acceleration, loss or creation that would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of the General Partner to perform its obligations under this Agreement or to consummate the transactions contemplated hereby.

(g) Assuming the accuracy of the representations made by each Limited Partner pursuant to Section 11.1, the Partnership is not required to register as an investment company under the Investment Company Act.

(h) Assuming the accuracy of the representations made by each Limited Partner pursuant to Section 11.1, the offer and sale of the Interests do not require registration of the Interests under the Securities Act.

(i) Except for the Transaction Documents (as defined in the applicable Subscription Agreement) or as otherwise disclosed to each Limited Partner, there are no agreements, side letters, understandings or arrangements between ASAC, on the one hand, and any of the General Partner or an Affiliate thereof, the Corporation or the Stockholder (as defined in the applicable Subscription Agreement), on the other hand.

## ARTICLE 12

### RECORDS AND REPORTS

#### 12.1. Books and Records.

(a) The General Partner shall maintain at the address of ASAC (i) full and accurate books of the Partnership (which at all times shall remain the property of ASAC), in the name of ASAC and separate and apart from the books of the General Partner and its Affiliates, showing all receipts and expenditures, assets and liabilities, profits and losses, and (ii) all other books, records and information required by the ELP Law or necessary for recording ASAC's affairs. ASAC's books and records shall be maintained in accordance with United States generally accepted accounting principles. The books of account and records of ASAC shall be audited as of the end of each Fiscal Year by a nationally recognized independent certified public accounting firm selected by the General Partner, in its discretion.

(b) Each Limited Partner shall, upon not less than 10 Business Days' prior written notice to the General Partner, be afforded full and complete access to all records and books of account of ASAC during reasonable business hours and, at such hours, shall have the right of inspection and copying of such records and books of account, at its expense. Each Limited Partner shall have the right to audit such records and books of account by an accountant of its choice at its expense. The General Partner shall reasonably cooperate with any Limited Partner or its agents in connection with any review or audit of ASAC or its records and books. The General Partner shall retain all records and books relating to ASAC for a period of at least five years after the dissolution of the Partnership and shall thereafter destroy such records and books as the General Partner shall determine, in its discretion.

#### 12.2. Tax Matters Partner.

(a) The General Partner shall be designated the tax matters partner of ASAC ("TMP") within the meaning of Section 6231(a)(7) of the Code. Each Limited Partner that is not a "notice partner" within the meaning of Section 6231(a)(8) of the Code agrees that, to the extent permitted by law, (i) any action taken by the TMP in connection with any administrative or judicial proceeding in relation to taxes with respect to the income of ASAC will be binding upon

such Limited Partner, (ii) such Limited Partner will not act independently in connection with any administrative or judicial proceeding in relation to taxes with respect to the income of ASAC and shall execute any necessary documents (such as a power of attorney) to permit the TMP to fully control such proceeding, (iii) such Limited Partner will not treat any ASAC item of income, gain, loss, deduction or credit on any tax return in a manner that is inconsistent with the treatment of such ASAC item on a tax return filed by ASAC or in any documentation provided to the Limited Partners, and (iv) for the avoidance of doubt, such Limited Partner will not otherwise knowingly take a tax position inconsistent with that of ASAC with respect to ASAC's income, gain, loss or deduction, tax status, transactions or activities. Upon the request of any Limited Partner, the General Partner shall take such actions as are necessary to cause such Limited Partner to be a "notice partner" as defined above.

(b) Subject to Section 6.7(b), ASAC shall indemnify and reimburse the TMP for (i) all expenses, including legal and accounting fees, claims, liabilities, losses and damages incurred in connection with any administrative or judicial proceeding with respect to the tax liability of the Partners or in connection with any audit of ASAC's income tax returns, except to the extent such expenses, fees, claims, liabilities, losses and damages are attributable to the gross negligence or willful misconduct of the TMP and (ii) any taxes imposed on ASAC or the General Partner in respect of ASAC's activities (other than income taxes payable in respect of income or gain properly allocated to the General Partner). The payment of all such expenses to which the indemnification applies shall be made before any distributions pursuant to Section 5.2. Neither the General Partner, nor any of its Affiliates, nor any other Partner shall have any obligation to provide funds for such purpose. The taking of any action and the incurring of any expense by the TMP in connection with any such proceeding, except to the extent required by law, is a matter in the reasonable discretion of the TMP and the provisions on limitations of liability of the General Partner and indemnification set forth in Section 6.7 of this Agreement shall be fully applicable to the TMP in its capacity as such.

### 12.3. Reports to Partners.

(a) The General Partner shall cause to be prepared and furnished to each Partner, at ASAC's expense, with respect to each Fiscal Year of ASAC:

(i) an audited balance sheet, income statement and statement of cash flows prepared in accordance with United States generally accepted accounting principles;

(ii) a statement of such Partner's Capital Account;

(iii) an illustrative calculation of the distributions resulting from the provisions of Section 5.2 had the Distribution Date been the final day of the applicable Fiscal Year, substantially in the form attached hereto as Schedule C; and

(iv) the information reasonably necessary for the preparation by such Partner of its U.S. federal, state and other income tax returns.

The General Partner shall use reasonable efforts to cause the foregoing to be furnished to the Partners within 90 calendar days after the close of each Fiscal Year of ASAC.

(b) The General Partner shall cause to be prepared and furnished to each Partner, at ASAC's expense, with respect to each fiscal quarter (other than ASAC's last fiscal quarter) of each Fiscal Year of ASAC:

(i) an unaudited balance sheet, income statement and statement of cash flows for such quarter and year to date prepared in accordance with United States generally accepted accounting principles;

(ii) an illustrative calculation of the distributions resulting from the provisions of Section 5.2 had the Distribution Date been the final day of the applicable fiscal quarter, substantially in the form attached hereto as Schedule C; and

(iii) a statement of such Partner's Capital Account.

The General Partner shall use reasonable efforts to cause the foregoing to be furnished to the Partners within 60 calendar days after the close of each fiscal quarter of ASAC.

(c) The General Partner (i) may provide, at ASAC's expense, such other reports or information as any Partner may reasonably request and the General Partner may agree to provide and (ii) shall provide, at the reasonable request of any Partner, any available information relating to the establishment of reserves by ASAC (whether in respect of liabilities of ASAC or otherwise). The General Partner may, from time to time, modify or supplement, at ASAC's expense, the reporting described in this Section 12.3 to reflect the current reporting practices of entities comparable to ASAC or upon the advice or recommendation of ASAC's auditors.

12.4. Safekeeping of Funds. The General Partner shall have fiduciary responsibility for the safekeeping of all funds of ASAC and the General Partner shall not employ such funds in any manner except for the benefit of ASAC. All funds of ASAC not otherwise invested shall be deposited in one or more accounts maintained in such banking institution as the General Partner shall determine in the name of ASAC and not in the name of the General Partner. ASAC's funds shall not be commingled with funds of any other Person nor shall such funds be employed by the General Partner as compensating balances other than in respect of ASAC's borrowings.

12.5. Obligation to Provide Documentation; Indemnification for Certain Withholding and Other Taxes and Other Amounts. Each Partner agrees (a) to assist ASAC and the Corporation in determining the extent of, and in fulfilling, its withholding, reporting or other tax obligations and (b) to furnish ASAC with any representations, forms or information as shall reasonably be requested by ASAC, including where such request is made due to changes in law made after the date hereof and including forms or information with respect to a Partner's direct or indirect beneficial owners, (i) to assist ASAC and/or the Corporation in determining the extent of, and in fulfilling, its withholding, reporting or other tax obligations, (ii) as will permit payments or allocations of income made to or by ASAC and/or the Corporation to be made without withholding or at a reduced rate of withholding, (iii) in order to reduce the amount of taxes borne by ASAC and/or the Corporation or (iv) that the General Partner otherwise reasonably deems necessary to ensure compliance with any laws or regulations applicable to



ASAC and its acquisition, holding and disposition of the Shares (including the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the Exchange Act). Each Limited Partner (x) represents and warrants that any such information and forms furnished by such Limited Partner (except with respect to any such information that was provided to such Limited Partner, or that is based upon incorrect information that was provided to such Limited Partner, by the General Partner) are and at all times shall be true, correct and complete in all material respects, (y) agrees to promptly update any such information or forms if at any time such Limited Partner becomes aware that such previously provided information or forms are no longer true, correct and complete in all material respects, upon the expiration, invalidity or obsolescence of any such provided forms or representations, or upon the reasonable request of the General Partner, and (z) agrees to indemnify ASAC, the Corporation, and each of the Partners on an after-tax basis from any and all damages, costs and expenses (including taxes, interest and penalties) that are, in the reasonable judgment of the General Partner, (A) attributable to the failure of such Limited Partner to comply with the provisions of this Section 12.5, (B) attributable to the incompleteness, inaccuracy, obsolescence, expiration, or invalidity of any documentation delivered by such Limited Partner pursuant to this Section 12.5 or otherwise in connection with such Limited Partner's admission to ASAC, or delivered on behalf of a Limited Partner pursuant to Section 7.3(a)(i) if based on information provided by such Limited Partner, or (C) on account of such Limited Partner's connection (whether past or present) with the jurisdiction imposing or assessing such tax, interest or penalties (other than any such connection arising solely by virtue of such Limited Partner's investment in ASAC) or otherwise attributable to such Limited Partner. The General Partner may, in its discretion, collect all or any part of any such indemnification (i) by withholding from any amounts otherwise distributable to such Limited Partner, (ii) by requiring such Limited Partner to pay any such remaining amount, in cash, to the indemnified person (any such payment made by such Limited Partner to ASAC shall not be treated as a Capital Contribution), and/or (iii) by treating any such amounts as actually distributed to such Limited Partner; and any item of expense or loss (or any item of income) recognized by ASAC in respect of any such indemnified expense or any such indemnification payment shall be specially allocated to such Limited Partner. In the event of any claimed over-withholding of any taxes by ASAC or the Corporation, a Partner shall be limited to an action against tax authorities in the applicable jurisdiction. A Partner's obligations under this Section 12.5 shall survive the dissolution of the Partnership, and for purposes of this Section 12.5, the Partnership shall be treated as continuing in existence. ASAC may pursue and enforce all rights and remedies it may have against each Partner under this Section 12.5, including instituting a lawsuit to collect such contribution with interest calculated at a rate equal to the lesser of (i) 2% over the Prime Rate per annum and (ii) the highest rate per annum permitted by law.

### **ARTICLE 13**

#### **AMENDMENTS**

13.1. Amendments. Except as otherwise provided in this Article 13, the terms and provisions of this Agreement may be modified or amended at any time and from time to time by the General Partner with the Consent of holders of a majority of the Percentage Interests of the Limited Partners; *provided however*, that (a) amendments that do not increase the authority of the General Partner or adversely affect the rights or interests of the Limited Partners may be

adopted solely by the General Partner (i) to effect changes of a ministerial nature (including, for the avoidance of doubt, to cure any ambiguity or correct or supplement any provision hereof that may be incomplete or inconsistent with any other provision hereof), (ii) to delete or add any provision of this Agreement required to be so deleted or added by a state securities commission or similar agency, which addition or deletion is deemed by such commission or agency to be for the benefit or protection of the Partners, (iii) as may be necessary to comply with any anti-money laundering or anti-terrorist laws, rules, regulations, directives or special measures, or other applicable law, (iv) to implement the provisions of Section 12.5, (v) to admit or substitute the General Partner in accordance with the terms of this Agreement and (vi) to admit one or more Substitute Partners, or withdraw one or more Partners, in accordance with the terms of this Agreement, (b) any provision requiring a specified Consent may only be amended with the same Consent, and (c) no amendment (other than any amendment described in clause (a)(iii) or (a)(iv) of this Section 13.1) shall, without the Consent of the affected Partner, (x) materially and adversely discriminate against one Limited Partner *vis-a-vis* the other Limited Partners or (y) increase the liability of a Partner or a Partner's indemnification obligations hereunder; and (d) a modification or amendment relating only to the Preferred Interests or a particular class of Common Interests may be effected by the General Partner with the Consent of only the holders of a majority of the Percentage Interests of the Limited Partners in respect of the Preferred Interests or such class of Common Interests, as applicable. Amendments made to this Agreement in accordance with its terms may be evidenced by an agreement in writing signed by the Persons whose Consent is required for such amendment, which agreement shall be binding on all Partners. Notwithstanding any other provision of this Agreement and any provision of law that otherwise so empowers the Partnership, the Partners or any other Person, so long as any obligations under either Term Loan or any related facility documents are outstanding, neither the General Partner nor any other Person shall be authorized or empowered on behalf of the Partnership to, nor shall they permit the Partnership to, and the Partnership shall not, without the prior written consent of the administrative agent under such Term Loan, change, amend, delete or modify any provisions within (A) Section 3.4, (B) the last sentence of Section 6.7(b), (C) this sentence, (D) the last sentence of Section 14.7 or (E) any reference in any other provision to the foregoing or the Term Loans (collectively, the "Special Purpose Provisions").

13.2. Exceptions. Notwithstanding the provisions of Section 13.1, the Consent of all the Partners shall be required to adopt an amendment if such amendment would:

- (a) amend Section 13.1 or this Section 13.2;
- (b) directly or indirectly affect or jeopardize the status of ASAC as a partnership for U.S. federal income tax purposes;
- (c) amend Section 6.7 in a manner adverse to any Limited Partner that is not an Affiliate of the General Partner; or
- (d) amend Articles 3, Article 5 or Section 10.1, or any of the defined terms contained therein.

### 13.3. Meetings and Voting.

(a) Meetings of the Partners may be called by the General Partner for any purpose permitted by this Agreement. The General Partner shall give all Partners notice of the purpose of each proposed meeting and any votes to be conducted at such meeting not less than seven calendar days before the meeting. Meetings shall be held at a time and place reasonably selected by the General Partner. Partners may participate in meetings by conference call; *provided* that all parties can hear and speak with each other.

(b) The General Partner shall, where feasible, solicit required Consents of the Partners under this Agreement in writing or, if written Consent is not feasible, at a meeting held pursuant to Section 13.3(a). If Consents are solicited in writing, the Partners shall return such Consents to the General Partner within seven calendar days after receipt. With respect to any such Consent, the General Partner may, without holding a meeting as described in Section 13.3(a), obtain the Consent of the Partners holding the Percentage Interests required for such Consent, and, upon obtaining such Consent and delivering notice thereof to the Partners, all other Partners shall be bound thereby.

(c) The General Partner shall furnish each Limited Partner with a copy of each amendment to this Agreement promptly after its adoption.

## ARTICLE 14

### GENERAL PROVISIONS

14.1. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the Cayman Islands and shall be construed to the maximum extent possible to comply with all of the terms and conditions of the ELP Law; *provided* that, in the event of any conflict between any provisions of this Agreement and any non-mandatory provision of the ELP Law, the provisions of this Agreement shall control and take precedence.

14.2. Binding Agreement; Severability. This Agreement and all terms, provisions and conditions hereof shall be binding upon the parties hereto, and shall inure to the benefit of the parties hereto and, except as otherwise provided herein, to their respective heirs, executors, personal representatives, successors and lawful assigns. Each provision of this Agreement shall be considered separate and if, for any reason, any provision or provisions not essential to the effectuation of the basic purposes of this Agreement is or are determined to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not impair the operation of or affect those provisions of this Agreement which are otherwise valid. To the extent legally permissible, the parties shall substitute for the invalid, illegal or unenforceable provision a provision with a substantially similar economic effect and intent.

### 14.3. Entire Agreement.

(a) Except as provided in Section 14.3(b), this Agreement, including any Schedules, contains the entire understanding among the parties hereto and supersedes all prior written or oral agreements, arrangements, communications and understandings among them respecting the within subject matter, unless otherwise provided herein or in the applicable

Subscription Agreement. Each Limited Partner acknowledges that it has not been induced to enter into this Agreement by any representation, warranty, assurance, commitment, statement or undertaking not expressly incorporated into this Agreement.

(b) Neither ASAC, nor the General Partner or any of its Affiliates, has entered into or will enter into any agreement with a Limited Partner if such agreement has or would have the effect of establishing rights or otherwise benefiting such Limited Partner (in its capacity as a Limited Partner) in any manner that is more favorable in any material respect to such Limited Partner than the rights and benefits established by this Agreement (the “Additional Rights”) unless, in any such case, the other Limited Partners have been given notice thereof and have been offered in writing the opportunity to elect, within 10 calendar days of receipt of such notice, to receive such Additional Rights to the extent that such Additional Rights may reasonably be applied to such Limited Partner; *provided* that such Limited Partner agrees to assume the same obligations, if any, assumed by the first-mentioned Limited Partner in connection with its receipt of such Additional Rights. Any agreement entered into by ASAC, or the General Partner or any of its Affiliates, with a Limited Partner in accordance with this Section 14.3(b) shall supplement the terms of this Agreement and shall not require the Consent of any other Partner pursuant to Section 13.1. As of the date hereof, neither the General Partner nor any of its Affiliates has any knowledge of any agreement between the Corporation and any Partner in connection with the acquisition of the Shares or such Partner’s purchase of Preferred Interests and Common Interests.

14.4. Record of Partners. The General Partner shall maintain a record at the address of the Partnership showing the names and addresses of all of the Partners. All Partners and their duly authorized representatives shall have the right to inspect such record.

14.5. No Bill for Company Accounting. Subject to mandatory provisions of law applicable to a Partner and to circumstances involving a breach of this Agreement, each of the Partners covenants that it will not (except with the Consent of the General Partner) file a bill for company accounting.

14.6. Counterparts; Facsimile Signatures. This Agreement may be executed in several counterparts, and all so executed shall constitute one Agreement, binding on all of the parties hereto, notwithstanding that all the parties are not signatories to the original or the same counterpart. This Agreement may be executed by facsimile or pdf signatures.

14.7. Third Party Rights. Except for the Special Purpose Provisions, this Agreement is intended to be solely for the benefit of the parties hereto and, except as expressly provided to the contrary in this Agreement (including the rights of Indemnified Parties hereunder), is not intended to confer any benefits upon, or create any rights in favor of, any Person other than the parties hereto. The provisions of this Agreement are not intended for the benefit of any creditor or other Person (other than a Partner in such Partner’s capacity as such) to whom any debts, liabilities or obligations are owed by (or who otherwise has any claim against) ASAC or any of the Partners. The obligations of the Partners to make capital contributions pursuant to the applicable Subscription Agreement and this Agreement are for the exclusive benefit of ASAC and no creditor is intended as a third party beneficiary of this Agreement, nor shall any creditor have any rights hereunder, including the right to enforce any capital contribution obligation of the Partners. Notwithstanding the foregoing or any other provision herein to the contrary, the lenders and agents under the Term Loans are intended third party beneficiaries of the Special Purpose Provisions.

14.8. Services to ASAC and the General Partner.

(a) The parties hereto hereby acknowledge and recognize that ASAC has retained, and may in the future retain, the services of various persons, entities and professionals, including legal counsel, accountants, and financial, investment and other advisors, for the purposes of representing and providing services to ASAC in connection with the organization and administration of the affairs of ASAC, the acquisition and disposition of Shares or otherwise. The parties hereby acknowledge that such persons, entities and professionals may have in the past represented and performed and currently and in the future may represent or perform services for the General Partner or its Affiliates. Accordingly, each party hereto consents to the representation or provision of services by such persons, entities and professionals to ASAC and waives any right to claim a conflict of interest solely on the grounds of such relationship. Nothing contained herein shall relieve the General Partner of any duty or liability it would otherwise have to ASAC.

(b) Sullivan & Cromwell LLP, Maples and Calder and any other counsel retained by the General Partner or Affiliate thereof in connection with the organization and administration of the affairs of ASAC serve as counsel to the General Partner and its Affiliates, and do not serve as counsel to any Limited Partner in connection with ASAC. Each Limited Partner acknowledges and confirms that no attorney-client relationship with Sullivan & Cromwell LLP, Maples and Calder or any such other counsel will be deemed to arise in the course of the administration of the affairs of ASAC by any means (absent a specific written undertaking of representation by such firm). In the event that a Limited Partner has an existing attorney-client relationship with Sullivan & Cromwell LLP, Maples and Calder or any other counsel retained by the General Partner or an Affiliate thereof in connection with the organization or administration of the affairs of ASAC, such Limited Partner hereby waives, to the extent permitted by law, all conflicts with respect thereto and further waives, to the extent permitted by law, all conflicts with respect to all current and future engagements. Each Limited Partner absolutely and unconditionally consents and agrees, to the extent permitted by law, that Sullivan & Cromwell LLP, Maples and Calder and any such other counsel may represent the General Partner and its Affiliates in the event of litigation or arbitration between any such Person, on the one hand, and any Limited Partner, on the other hand, and in any such action such Limited Partner will not seek the removal of Sullivan & Cromwell LLP, Maples and Calder or such other counsel as counsel for any actual or purported conflict of interest or attorney-client relationship existing or allegedly existing between Sullivan & Cromwell LLP, Maples and Calder or such other counsel and ASAC, as a whole, or such Limited Partner.

14.9. Notices. Any notice, request for consent or report required to be provided hereunder to a Partner shall be addressed to such Partner at the address set forth on the Schedule or such other address as such Partner shall have specified in writing to ASAC, and any notice required to be provided hereunder to ASAC shall be addressed to ASAC at its mailing address set forth in Section 2.2(a) or such other mailing address as determined by the General Partner upon notice to the Limited Partners. Any such notice, request for consent or report shall be in writing and shall be sent (a) by certified mail, return receipt requested, (b) by a recognized

overnight courier service providing confirmation of delivery, (c) by facsimile transmission (with confirmation of receipt), or (d) by electronic mail. All notices, requests for consents and reports sent by electronic mail shall be deemed to have been received on the date sent if sent on a Business Day prior to 5 p.m. in the location where the recipient customarily works (unless the sender receives a reply electronic mail indicating that the sent electronic mail was undeliverable, exceeded the memory or other limitations of the recipient's inbox or otherwise could not be delivered to the recipient, in which event the electronic mail shall not be deemed to have been received, and the sender will be required to resend the notice, request for consents or report by one of the other means of communication identified in clauses (a) – (c) above) and all other notices, requests for consents and reports shall be deemed to have been received on the date of delivery as established by the return receipt, courier service confirmation (or the date on which the return receipt, or courier service confirms that acceptance of delivery was refused by the addressee) or facsimile confirmation received by the sender. Sections 8 and 19(3) of the Electronic Transactions Law (2003 Revision) shall not apply to this Agreement. Notwithstanding the foregoing, ASAC shall be entitled to provide the reports required under Section 12.3 by causing such reports to be posted to an online portal available to all Limited Partners.

14.10. Waiver and Remedies. The failure to exercise or delay in exercising a right or remedy provided under this Agreement or by law or in equity does not constitute a waiver of such right or remedy or a waiver of any other rights or remedies. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation. Any waiver of the terms of this Agreement shall be effective only if in writing and signed by the person against whom such waiver is to operate. The rights and remedies provided by this Agreement are cumulative and (unless otherwise provided in this Agreement) are not exclusive of any rights or remedies at law or in equity.

14.11. Arbitration. Any controversy, claim or other dispute arising out of or relating to this Agreement shall be determined by binding arbitration administered by Judicial Arbitration and Mediation Services, Inc. ("JAMS") in accordance with JAMS' Streamlined Arbitration Rules, before one arbitrator, who shall be selected jointly by the parties involved in such controversy, claim or other dispute or, if such parties cannot agree on the selection of the arbitrator, shall be selected by JAMS (*provided* that any arbitrator selected by JAMS shall not, without the consent of the parties involved in the controversy, claim or dispute, be affiliated with such parties or their counsel). Any arbitration shall be held in the City of Los Angeles, State of California, United States of America. Judgment may be entered on the arbitrator's award in any court having jurisdiction. In addition to any other proper relief, the arbitrator shall be empowered to enter an equitable decree mandating specific enforcement of the terms of this Agreement. Unless and until the arbitrator shall have awarded the prevailing party costs and attorneys' fees pursuant to the immediately following sentence, the parties to the arbitration proceeding shall equally bear any arbitration fees and administrative costs associated with the arbitration. The prevailing party (as determined by JAMS) shall be entitled to recover reasonable costs and expenses (including expert witness fees, attorneys' fees and costs of discovery) incurred during the course of arbitration. The arbitration, including any discovery permitted or information exchanged during the course of the arbitration, shall be confidential.

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as a deed, as of the date first above written.

EXECUTED AND DELIVERED AS A DEED

GENERAL PARTNER:

ASAC II LLC

By: /s/ Brian G. Kelly

Name: Brian G. Kelly

Title: Manager

**EXHIBIT F**

Pursuant to Rule 13d-1(k) of Regulation 13D-G of the General Rules and Regulations of the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, the undersigned agrees that the statement to which this Exhibit is attached is filed on behalf of each of them in the capacities set forth below.

Dated: October 21, 2013

**ASAC II LP**  
By: ASAC II LLC  
Its: General Partner

By: /s/ Brian G. Kelly  
Name: Brian G. Kelly  
Title: Manager

**ASAC II LLC**

By: /s/ Brian G. Kelly  
Name: Brian G. Kelly  
Title: Manager

**Robert A. Kotick**

/s/ Robert A. Kotick

**Brian G. Kelly**

/s/ Brian G. Kelly