

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

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2022

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number 001-40963

Allbirds, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

47-3999983
(I.R.S. Employer
Identification Number)

**730 Montgomery Street
San Francisco, CA 94111
(628) 225-4848**

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

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol</u>	<u>Name of each exchange on which registered</u>
Class A Common Stock, \$0.0001 par value per share	BIRD	The Nasdaq Global Select Market

Securities registered pursuant to section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input checked="" type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input checked="" type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

The aggregate market value of voting stock held by non-affiliates of the Registrant on June 30, 2022 (the last business day of the Registrant's fiscal second quarter), based on the closing price of \$3.93 for shares of the Registrant's Class A common stock as reported by the Nasdaq Global Select Market, was approximately \$409.8 million.

As of February 28, 2023, the number of shares of the registrant's Class A common stock outstanding was 97,151,019 and the number of shares of the registrant's Class B common stock outstanding was 52,810,751.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement relating to the 2023 annual meeting of stockholders are incorporated by reference into Part III of this Annual Report on Form 10-K where indicated. Such definitive proxy statement will be filed with the Securities and Exchange Commission within 120 days after the end of the registrant's fiscal year ended December 31, 2022.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, which statements involve substantial risk and uncertainties. All statements other than statements of historical facts contained in this Annual Report on Form 10-K, including, but not limited to, statements regarding our future results of operations, financial condition, business strategy and plans, efforts related to strategic transformation plan, sustainability-related efforts, market growth and objectives of management for future operations, are forward-looking statements. In some cases, you can identify forward-looking statements because they contain words such as “anticipate,” “believe,” “contemplate,” “continue,” “could,” “estimate,” “expect,” “intend,” “may,” “plan,” “potential,” “predict,” “project,” “should,” “target,” “will,” or “would” or the negative of these words or other similar terms or expressions.

You should not rely on forward-looking statements as predictions of future events. We have based the forward-looking statements contained in this Annual Report on Form 10-K primarily on our current expectations and projections about future events and trends that we believe may affect our business, financial condition, and results of operations. The outcome of the events described in these forward-looking statements is subject to risks and uncertainties, including the factors described in “Part I, Item 1A. Risk Factors” and elsewhere in this Annual Report on Form 10-K. Moreover, we operate in a very competitive and rapidly changing environment. New risks and uncertainties emerge from time to time, and it is not possible for us to predict all risks and uncertainties that could have an impact on the forward-looking statements contained in this Annual Report on Form 10-K. The results, events, and circumstances reflected in the forward-looking statements may not be achieved or occur, and actual results, events, or circumstances could differ materially from those described in the forward-looking statements.

In addition, statements that “we believe” and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based on information available to us as of the date of this Annual Report on Form 10-K. While we believe that such information provides a reasonable basis for these statements, that information may be limited or incomplete. Our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all relevant information. These statements are inherently uncertain, and investors are cautioned not to unduly rely on these statements.

The forward-looking statements contained in this Annual Report on Form 10-K relate only to events as of the date on which the statements are made. We undertake no obligation to update any forward-looking statements made in this Annual Report on Form 10-K or to reflect new information or the occurrence of unanticipated events, except as required by law. We may not actually achieve the plans, intentions, or expectations disclosed in or expressed by, and you should not place undue reliance on, our forward-looking statements. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures, or investments.

Additional Information

Unless the context otherwise requires, all references in this Annual Report on Form 10-K to “we,” “us,” “our,” “our company,” and “Allbirds” refer to Allbirds, Inc. and its subsidiaries. The Allbirds design logo, “Allbirds,” and our other registered or common law trademarks, service marks, or trade names appearing in this Annual Report on Form 10-K are the property of Allbirds, Inc. Other trade names, trademarks, and service marks used in this Annual Report on Form 10-K are the property of their respective owners. Solely for convenience, we have omitted the ® and ™ designations, as applicable, for the trademarks we name in this Annual Report on Form 10-K.

We announce material information to the public through a variety of means, including filings with the Securities and Exchange Commission, press releases, public conference calls, our website (allbirds.com), the investor relations section of our website (ir.allbirds.com), our Instagram account (@allbirds), our Twitter account (@allbirds), our LinkedIn account (linkedin.com/company/allbirds), our Facebook page (@weareallbirds), and our blog on Medium (allbirdsblog.medium.com). We use these channels to communicate with investors and the public about our company, our products, and other matters. Therefore, we encourage investors, the media, and others interested in our company to review the information we make public in these locations, as such information could be deemed to be material information.

RISK FACTORS SUMMARY

Investing in our Class A common stock involves a high degree of risk because our business is subject to numerous risks and uncertainties, as more fully described in "Part I, Item 1A. Risk Factors" of this Annual Report on Form 10-K. Below are some of these risks, any one of which could materially adversely affect our business, financial condition, results of operations, and prospects:

- We may be unable to successfully execute on our strategic plans, simplification initiatives, or our long-term growth strategy, including efforts to maintain or grow our current revenue and profit levels, reduce our costs or accurately forecast demand and supply for our products.
- Our operating results may fluctuate significantly and our past operating results may not be a good indication of future performance.
- Economic uncertainty in our key markets may affect consumer purchases of discretionary items, which has affected and may continue to adversely affect demand for our products.
- We have a significant amount of long-lived assets, which are assessed for impairment whenever events or changes in circumstances indicate that their carrying amount may not be recoverable; additionally, we may never realize the full value of our long-lived assets, causing us to record material impairment charges.
- If we are unable to maintain and enhance the value and reputation of our brand and/or counter any negative publicity, we may be unable to sell our products, which would harm our business and could materially adversely affect our financial condition and results of operations.
- We have incurred significant net losses since inception and anticipate that we will continue to incur losses for the foreseeable future.
- We operate in a highly competitive market and the size and resources of some of our competitors may allow them to compete more effectively than we can, which could result in a loss of our market share and a decrease in our net revenue and profitability.
- Our focus on using sustainable materials and environmentally friendly manufacturing processes and supply chain practices may increase our cost of revenue and hinder our growth.
- If we fail to attract new customers, retain existing customers, or maintain or increase sales to customers, our business, financial condition, results of operations, and growth prospects will be harmed.
- Climate change and increased focus by governments, organizations, customers, and investors on sustainability issues, including those related to climate change and socially responsible activities, may adversely affect our reputation, business, and financial results.
- If we are unable to anticipate product trends and consumer preferences, or we fail in our technical and materials innovation to successfully develop and introduce new high-quality products, we may not be able to maintain or increase our revenue and profits.
- We utilize a range of marketing, advertising, and other initiatives to increase existing customers' spend and to acquire new customers; if the costs of advertising or marketing increase, or if our initiatives fail to achieve their desired impact, we may be unable to grow the business profitably.
- As a company that operates retail stores, we are subject to various risks, including commercial real estate and labor and employment risks; additionally, we may be unable to successfully open new store locations in existing or new geographies in a timely manner, if at all, or successfully implement and expand our retail partnerships, which could harm our results of operations.
- Our business depends on our ability to maintain a strong community of engaged customers and Allgood Collective Ambassadors, including through the use of social media. We may be unable to maintain and enhance our brand if we experience negative publicity related to our marketing efforts or use of social media, we fail to

maintain and grow our community of Allgood Collective Ambassadors, or otherwise fail to meet our customers' expectations.

- Our financial results may be adversely affected if substantial investments in businesses and operations, including in our retail stores, fail to produce expected returns.
- We are subject to risks related to our ESG activities and disclosures, and our reputation and brand could be harmed if we fail to meet our public sustainability targets and goals.
- We are subject to risks related to our commitment to certain ESG criteria, which we call the SPO Framework.
- Our reliance on suppliers and manufacturers to provide materials for and to produce our products could cause problems in our supply chain.
- Our business is subject to the risk of manufacturer concentration.
- Failure of our contractors or our licensees' contractors to comply with our supplier code of conduct, contractual obligations, local laws, and other standards could harm our business.
- The fluctuating cost of raw materials could increase our cost of revenue and cause our results of operations and financial condition to suffer.
- We may fail to protect our intellectual property rights, our trademark and other proprietary rights may conflict with the rights of others, and we may not be able to acquire, use, or maintain our marks and domain names, any of which could harm our brand, business, financial condition, and results of operations.
- If the technology-based systems that give our customers the ability to shop with us online do not function effectively, or we fail to comply with government regulations relating to the internet and eCommerce, our results of operations, as well as our ability to grow our digital business globally, could be materially adversely affected.
- Our international operations expose us to various risks from foreign currency exchange rate fluctuations, tariffs or global trade wars, trade restrictions, and changing tax laws in the United States and elsewhere, among others.
- We are subject to several unique risks as a result of our status as a Delaware public benefit corporation, or PBC, and certified B Corporation, or B Corp, including that our board of directors' duty to balance various interests and our public benefit purpose may result in actions that do not maximize stockholder value.
- The dual class structure of our common stock has the effect of concentrating voting control with our co-founders and co-Chief Executive Officers, Timothy Brown and Joseph Zwillinger, our directors, our principal stockholders, and their respective affiliates, which limits or precludes the ability of our other stockholders to influence corporate matters, including the election of directors and the approval of any change of control transaction.

If we are unable to adequately address these and other risks we face, our business may be harmed.

PART I

Item 1. Business

Overview

Allbirds is a global lifestyle brand that innovates with naturally derived materials to make better footwear and apparel products in a better way, while treading lighter on our planet.

We began our journey in 2015 with three fundamental beliefs about the emerging generation of consumers: first, these consumers recognize that climate change is an existential threat to the human race; second, these consumers connect their purchase decisions with their impact on the planet, demanding more from businesses; and third, these consumers do not want to compromise between looking good, feeling good, and doing good. We became a public benefit corporation, or PBC, under Delaware law and earned our B Corporation, or B Corp, certification in 2016, codifying how we take into account the impact our actions have on all of our stakeholders, including the environment, our flock of employees, communities, consumers, and investors. Our strong brand equity is fueled by our differentiated footwear and apparel products created by sustainability-driven innovation.

Our Products

Allbirds' product development engine consists of a fully-integrated team across strategy, sustainability, design, sourcing, development, and production, both in our U.S. headquarters and within our manufacturing and supply chain innovation partners, combining to deliver Super Natural Comfort with sustainability at the core and distinctly simple design and performance comfort in mind.

We offer many different products across our footwear and apparel categories, including lifestyle and performance products. Each product adheres to our product design principles, creating an evergreen, fad-resistant product that never goes out of style.

Footwear represents the vast majority of our revenue and is the foundation of our brand. We think of each new style launch as a franchise where each new design can be leveraged across new materials innovations, colors, partnerships, and adjacent stylings to create freshness for the brand and our customers. Our core franchises include lifestyle and performance shoes, such as the Dasher and the Runner.

Our unique technical expertise in footwear and materials research and development is a basis for our apparel offerings, such as classic tees and sweats, plus basics including socks and underwear.

Materials and Innovation

We have examined every component that goes into our products to ensure we deliver design, comfort, and performance. Our innovation approach is to leverage materials that are both more sustainable than synthetic alternatives and also have tangible benefits for our customers, such as comfort, temperature regulation, and odor control. Materials research and development is led by our Innovation team, with expertise in biomaterials commercialization and polymer science. Additionally, we collaborate with experts in the fields of biomechanics, polymer development, green chemistry, biotechnology, and sustainable venture investment to extend the innovation ecosystem. We bring these materials to market with our Product Development team to ensure that products meet or exceed our customers' quality and performance standards before they are ready for commercialization. We have developed distinctive "Hero" materials platforms that provide the foundation for our product innovation, which include superfine ZQ certified merino wool, tree fibers, sugarcane, and plant leather.

Marketing Strategy and Brand

Our purpose-driven lifestyle brand inspires consumers to live life in better balance, a goal central to our marketing and which we believe creates deep affinity and loyalty with our growing base of customers, who associate our brand with sustainability and high-quality product experiences. As a vertically integrated company that has a direct relationship with our customers, we couple an organic marketing approach with our vast data ecosystem to construct a well-balanced and diversified marketing funnel with the goal of consistently driving return on advertising spend.

We are focused on increasing brand awareness and consumer touchpoints through the following marketing initiatives:

- Spreading our message through word-of-mouth, thought leadership and PR, partnerships, and community.
- Extending our reach and connecting with our customers through digital and performance marketing, social media, TV and other media, stores as physical brand beacons, and customer experience.

Digitally-Led Vertical Retail

We reach our customers primarily through our digitally-led vertical retail distribution strategy, which combines our digital offerings with our stores so we can make a strong connection with our customers and meet them where they are, delivering value and convenience. Our customers live an active and curious lifestyle, care about health and well-being, prioritize quality over price, frequently purchase products online, live in urban center settings, and appreciate socially conscious brands. In addition to communicating more effectively with our customers, these insights allow us to meet customers' needs through the creation of new products and enhancements to our existing line.

Our digital channel includes our website, which supports seven languages and showcases our product portfolio and our branded content, including information on our natural materials and sustainability. The seamless online experience from search to order to fulfillment creates the convenient shopping experience that our customers desire. Our mobile app allows customers to virtually try on footwear, purchase exclusive product drops, and gain early access to our new product launches, creating further engagement between our brand and our customer.

As of December 31, 2022, our physical retail channel consists of 58 company-operated stores spread across nine countries, with the majority in the United States. Although we continue to view retail stores as brand beacons, increasing brand awareness and site traffic, and enable us to offer cross-platform shopping, we plan to try to optimize our store fleet and focus on ensuring that our retail stores are efficiently driving customer acquisition.

Technology

We leverage modern technology across physical and digital channels, and as a result, we are able to rely on partners such as Shopify to more effectively scale. To create our digital customer experience, we leverage a common core set of application programming interfaces ("APIs") and tools that enable localization and speed-to-market. We have a sophisticated data infrastructure and toolset that allows our global teams to make informed decisions across key aspects of the business. This powers many areas of our business including marketing, customer relationship management, inventory planning and logistics, and back office functions. Additionally, to protect and secure sensitive data such as customer information, we employ multi-factor authentication, a suite of security tools, systems monitoring and alerting, audit logs, and controls across our major systems, corporate devices, and business processes.

Supply Chain and Operations

Our unique combination of sourcing, manufacturing, and distribution capabilities create a foundation from which we can continue to innovate and scale across the globe. Strong relationships with our suppliers ensure our relatively small supply chain can make a difference in the drive toward innovation and lighter impact on the environment. Our distribution network, comprised of nine primary distribution centers across eight countries (the United States, Canada, the United Kingdom, the Netherlands, China, Japan, South Korea, and New Zealand), puts us close to the customer, allowing us to reach over 35 countries in a matter of days with quick, reliable service.

- *Responsible sourcing program and small, tight-knit supply chain.* Our approach to natural materials innovation generates high quality inputs and traceability, helping ensure that our supply chain remains aligned with our brand values. Because of the high standards we promise our consumers, we both partner with certification bodies and do our own work to ensure our suppliers are meeting standards for quality, ethical practices, and environmental sustainability.
- *Manufacturing.* We have carefully selected a tight group of Tier 1 factories as our partners to help us make world-class products, helping to develop the technical expertise needed to work with our sustainable materials via an extensive iteration process. We have established deep long-standing relationships by directly partnering with their development, commercialization, manufacturing, and quality teams from ideation through production, and have embedded our employees within some key factories to oversee the product process. Our relationship-based approach has helped us be nimble and drive flexibility and agility to react to changes in macroeconomic conditions, customer demand, or internal priorities.

We require that all partners sign our Supplier Code of Conduct, or Supplier Code, which requires that suppliers operate in full compliance with the laws, rules and regulations of the countries in which they operate. Our Supplier Code goes further, drawing upon ILO Core Labor Standards, in order to advance social and environmental responsibility. We also expect supplier factories to undertake an onsite social assessment by an independent, third-party social assessment firm. These social assessments ensure suppliers meet our minimum expectations with regards to working conditions as specified in our Supplier Code. In addition to conducting our own audits when necessary, we sometimes accept audits that use third-party, mutually recognized standards to reduce audit fatigue at factories and to help ensure safe, lawful, humane, and ethical manufacturing practices.

As of December 31, 2022, our footwear products are primarily manufactured in Korea and Vietnam across four vendors, with the ability to scale up manufacturing in China as a potential alternative. During 2023, we plan to fully transition to a new footwear manufacturing partner in Vietnam. Our apparel and other non-footwear products are primarily manufactured in Vietnam and Peru, with China, the United States, and Guatemala supporting a smaller subset across six vendors.

- *Logistics and distribution.* We prioritize customer experience with distribution centers in all of our key markets to manage pick, pack, and ship activities, including retail fulfillment and returns management. We rely solely on third-party logistics providers for these distribution centers, as well as last-mile carriers to distribute finished products from our warehouse locations to our stores and individual orders directly to consumers. Our U.S. business is serviced through two locations in Kentucky and California that enable a quick digital click-to-home while minimizing transportation cost and carbon impact. Our entire supply chain has been carbon neutral since 2019.

Competition

The market in which we primarily operate in is highly competitive. Our competitors include athletic and leisure footwear companies, and athletic and leisure apparel companies. While this market is highly fragmented, many of our competitors are larger, with strong worldwide brand recognition, and have substantially greater resources than us. In addition, access to offshore manufacturing and the growth of digital have made it easier for new companies to enter the markets in which we compete, further increasing competition in the footwear and apparel industry.

We believe we are well-positioned to compete in this industry given our unique combination of innovative materials and products, purpose-driven lifestyle brand, deep connection with our community of customers, global vertical retail distribution offering, and infrastructure ready for scale.

Public Benefit Corporation Status

As a demonstration of our long-term commitment to environmental conservation, our board of directors and stockholders elected in February 2016 to amend our certificate of incorporation to become a PBC under Delaware law. Under Delaware law, a PBC is required to identify in its certificate of incorporation the public benefit or benefits it will promote and its directors have a duty to manage the affairs of the corporation in a manner that balances the pecuniary interests of the corporation's stockholders, the best interests of those materially affected by the corporation's conduct, and the specific public benefit or public benefits identified in the corporation's certificate of incorporation. A PBC is also required to assess its benefit performance internally and to disclose to its stockholders at least biennially a report detailing the corporation's success in meeting its public benefit objectives.

As provided in our certificate of incorporation, the public benefit that we promote, and pursuant to which we manage our company, is environmental conservation.

Certified B Corporation

While not required by Delaware law or our PBC status, we have elected to have our social and environmental performance, accountability, and transparency assessed against the proprietary criteria established by B Lab, Inc., or B Lab, an independent non-profit organization. We were first designated as a B Corp in 2016. The term "B Corp" does not refer to a particular form of legal entity, but instead refers to a company that has been certified as meeting the social and environmental performance, accountability, and transparency standards set by B Lab.

In order to be designated as a B Corp, companies are required to undertake a comprehensive and objective assessment of their positive impact on society and the environment. The assessment evaluates how a company's operations and business model impacts its workers, customers, suppliers, community, and the environment using a 200-point scale. While the assessment varies depending on a company's size (number of employees), sector, and location, representative indicators in the assessment include payment above a living wage, employee benefits, stakeholder engagement, supporting underserved suppliers, and environmental benefits from a company's products or services. After completing the assessment, B Lab will evaluate the company's score to determine if it meets the requirements for certification using a process described on B Lab's website. Historically, the median score for companies evaluated by B Lab has been 50.9, compared to our latest recertification score of 89.4 in 2019/2020, which increased from our initial score of 81.9 in 2016 despite the growing size and complexity of our business during those years.

Acceptance as a B Corp and continued certification is at the sole discretion of B Lab. To maintain our certification, we are required to update our assessment and provide documentation supporting our updated score with B Lab every three years. Our initial January 2023 deadline to submit our assessment to maintain our status as a B Corp has been extended to March 2023.

Environmental, Social, and Governance

Environmental

Our intention is to help reverse climate change through better business. We believe that climate change is an existential threat and the number one issue facing humanity and the global economy. Climate change is a complex issue that can be summarized simply: the climate is changing because humans are releasing too many greenhouse gasses into the atmosphere. According to a 2020 McKinsey and Global Fashion Agenda report, the global fashion industry accounted for approximately 4% of global greenhouse gas emissions in 2018, or 2.1 billion tonnes of carbon dioxide equivalent emissions, or CO₂e, and over 70% of those emissions were related to upstream activities like materials production, preparation, and processing. The 2015 Paris Agreement set the goal to limit global warming to well below 2° Celsius, preferably to 1.5° Celsius, compared to pre-industrial levels. Under its current trajectory, the fashion industry is expected to fall short of meeting the 1.5° Celsius target by 50%, according to a 2020 McKinsey and Global Fashion Agenda report. The pace of change must accelerate in order for the industry to be compatible with planetary boundaries, and we believe Allbirds offers a blueprint for how to get there. Our approach to addressing the climate impact of our business is scientific and data driven—we first **measure, then reduce, and finally offset the entirety of our emissions.**

Measure

Allbirds measures CO₂e produced in making our products and running our business—because you can't reduce what you don't measure. The information we gather not only informs product design and development, but enables us to identify hotspots in our value chain with the highest emissions and prioritize efforts in areas we can have the most impact.

We use a Life Cycle Assessment, or LCA, methodology to measure the emissions created across the lifetime of our products, including raw materials production, manufacturing, transportation, product use, and end of life. Our LCA methodology has been built in partnership with external experts, and unless otherwise specified, has been third-party verified to meet ISO 14067 standards, the international standard for quantifying, monitoring, reporting, and validating greenhouse gas emissions.

In 2020, we began labeling each of our products with its carbon footprint. We did this for two reasons: to hold ourselves accountable to reducing our impact over time, and to help our customers develop a sense for the climate impact of the things they buy. According to a survey we conducted of 1,300 U.S. customers in 2020, 92% of our customers trust us to deliver reliable information, tools, and advice around sustainability. We empower people to make better decisions for the planet by providing them with objective and quantitative information about the impact of the product they're buying.

Our goal is to inspire other brands to follow suit, so that one day customers can compare carbon footprints of products just like they compare nutrition labels on food. This would create a productive "race to the top" where brands compete to have the lowest carbon footprint products. In service of this future, we have published our LCA methodology, detailed methodology, and our labeling system for anyone to download and implement in their own business, and have specifically shared these resources with the 15 largest fashion brands to invite them along on our journey. Several large companies have announced commitments to label products with carbon footprints, and we're eager for more organizations to do the same.

Reduce

By using natural, renewable materials in place of petroleum-based synthetics and responsible manufacturing practices, Allbirds produces footwear today with approximately 45% less emissions than our estimated carbon footprint for a standard sneaker. If we assume all 24 billion pairs of shoes produced by the industry in 2019 had a 45% lower carbon footprint relative to our estimate of the carbon footprint of a standard sneaker, the industry would have saved 15698 million tonnes of CO₂e, which is equivalent to taking 33 million cars off the road in the same timeframe. Using our product carbon footprint methodology, our internal estimates are that we reduced the weighted average carbon footprint of our top 10 products in 2022 by approximately 22%, as compared to 2021. In 2021, we teamed up with adidas to create a pair of performance running shoes with a carbon footprint of 2.94kg of CO₂e—about ¼ the carbon footprint of standard sneakers.

We are able to produce lower-impact products because sustainability is a key design principle woven throughout the product development process, not an add-on at the end. At the very beginning of the product creation process, we integrate key sustainability constraints like target carbon footprint and preferred materials composition in addition to standard practices like establishing target profit margins. Our Sustainability Team also ensures that sustainability is considered at every key milestone of creating a product. We believe that great products must be sustainable, which does not require a compromise between looking good, feeling good, and doing good.

To continue to lead the industry, and to build a business that is compatible with less than 1.5° Celsius warming, we have an ambitious plan to dramatically reduce the per unit carbon footprint for each of our products by 50% by the end of 2025 and by 95% by 2030, in each case, relative to a baseline of what our average carbon emissions would be per unit in 2025 without any further action to limit emissions. Our plan to help reverse climate change has three strategic priorities: Regenerative Agriculture, Renewable Materials, and Responsible Energy. These initiatives are underpinned by five foundational areas: Fair Labor, Water, Chemistry, Animal Welfare, and Traceability and Transparency. These priorities have been defined through a materiality process informed by input from various stakeholder groups including employees, investors, customers, and suppliers.

Within our three priorities, we have outlined ten measurable commitments that collectively can yield a 50% reduction in the per unit carbon footprint for each of our products by the end of 2025, relative to what our average carbon emissions would be per unit in 2025 without any further action to limit emissions. Our strategy is aligned to the United Nations'

Sustainable Development Goals, including affordable and clean energy, responsible consumption and production, climate action, and life on land, among others.



We believe that near term goals and progress must be coupled with long term ambition. We have outlined an extension of our 2025 goals to align with the scientific community’s focus on achieving significant climate progress by 2030. To that end we established a target to achieve a 95% reduction in our per unit carbon footprint by 2030, relative to a baseline of what our average carbon emissions would be per unit in 2025 without any further action to limit emissions. This is equivalent to a 44% reduction (or a 42% reduction excluding product use) in our absolute carbon footprint against a 2020 baseline across Scope 1, 2, and 3 emissions, despite ambitious growth goals for units sold. Our target has been externally validated as compliant with all the requirements of the Science Based Targets initiative, or SBTi, including a path to a 1.5° Celsius reduction, and we received formal validation by the SBTi in 2021.

Our sustainability plan is not just better for the planet; it is better for our business. We have conducted a rigorous feasibility assessment for each of our targets, including the investment required. We have targets to reduce raw materials use by 25%, relative to a baseline of what our average materials use would be per unit in 2025 without any further action to limit emissions, and to achieve a steady state of greater than 95% of shipments by ocean freight. We expect that these two targets would both reduce costs and positively impact gross margin such that we can achieve all of our targets at a cost

savings to the business. By proactively creating a climate-resilient business, we believe we are well-positioned to profitably grow and lead a new age of sustainable manufacturing.

Offset

While we've been a carbon neutral business through the use of offsets since 2019, our ultimate goal is to reach net zero carbon emissions across our entire footprint (Scopes 1, 2, and 3) by 2030—meaning on average our products have a carbon footprint of less than one kg of CO₂e, before offsetting the rest. To do that, we are building the cost of carbon emissions into our business by implementing an internal carbon tax across all of our sourcing and business decisions today. Offsets are only a credible tool if you also have a robust plan to reduce emissions. We are taking steps, through regenerative agriculture, materials innovation, and clean energy, to reduce emissions within our direct footprint and within our supply chain. For those emissions that we are not able to abate today, we have invested in high quality carbon offset projects, and have purchased renewable electricity, to neutralize our remaining emissions. Allbirds has been a carbon-neutral business on an annual basis across Scope 1, 2, and 3 emissions since 2019.

We know all carbon offsets are not created equal, so we work with trusted partners to source projects we believe in. All of our offset projects must be certified to an internationally recognized offset standard such as Gold Standard and Verified Carbon Standard, and are screened against criteria like permanence, additionality, leakage, and vintage year. Finally, our calculations and offset purchases are reviewed by Climate Neutral, a non-profit organization of which we are a founding member that helps brands decrease their emissions, in order to achieve Climate Neutral certification.

Social

People (Our Flock)

Our thriving culture and talented employees, also known as our “flock,” have been a critical factor in our success to date and will be critical to our success in the future. Further, as a PBC, employees are an important stakeholder in our business as are the communities that extend beyond our walls.

As of December 31, 2022, we employed over 1,000 'birds, approximately 75% of whom were located in the United States. Approximately 20% of our 'birds work in one of our corporate functions, with the remainder working in our retail stores and customer experience. We also hire seasonal employees in retail and customer experience, primarily during the peak holiday selling season. None of our employees are represented by a labor union with respect to his or her employment. In certain countries in which we operate, we are subject to, and comply with, local labor law requirements, which include works councils and industry-wide collective bargaining agreements. We have not experienced any work stoppages, and we consider our relations with our employees to be good.

- ***Culture and Our Commitment to Diversity, Equity, Inclusion, and Belonging***

We are committed to diversity, equity, inclusion, and belonging and believe our success as a company is dependent upon our ability to integrate tangible, measurable practices to ensure all voices are heard. We have seven employee resource groups, or ERGs, supporting various communities, including Women, LGBTQ+, AAPI, Black, Latinx, parents/caregivers, and international inclusion. These ERGs encourage employees to come together and support our business and each other through programming, education, and community engagement. We track and measure our diversity, equity, inclusion, and belonging progress and representation quarterly. As of December 31, 2022, people of color and women made up 48% and 50%, respectively, of our U.S. workforce.

- ***Global Talent Development and Engagement***

We enable the flock to operate at their highest potential by building critical skills and leadership capabilities across all levels. We train our global retail and customer support teams to deliver incredible customer experiences and drive sales, while maintaining our vision globally and localizing content through collaborative review processes.

As Allbirds scales to a global organization, we have implemented critical organizational structures and managerial capabilities, including building an executive leadership team with deep expertise across retail, consumer, and eCommerce, and intentionally implementing a structure appropriate for our scale. We conduct bi-annual surveys to collect feedback and understand employee sentiment and engagement, and host inclusive leadership training sessions.

- **Our Response to COVID**

Since March 2020, we have been closely monitoring the volatile COVID-19 landscape, with the health and safety of our flock top of mind. We will continue to prioritize the safety of our flock through the pandemic and are closely monitoring the situation in every market which we serve. We will temporarily close stores and restrict operations as necessary, based upon information from local health and government officials.

- **Total Rewards**

Our total rewards strategy is designed to encourage employees to live our values while helping us to achieve company sustainability goals. For example, we provide our full-time employees with 16 hours of paid time off each year specifically for volunteer activities performed during working hours, as well as charitable donation matching up to \$500 per year. Furthermore, our executive compensation for director level and above is explicitly tied to a target reduction in company-wide emissions.

- **Our Customers**

For too long, the footwear and apparel industry has offered customers a false trade-off between sustainable products and great products. We offer great products that are also sustainable, and make it easy for our customers to understand the impact of the products they buy through our carbon footprint labels. In this way, as well as through our generous 30-day return policy, we believe we empower our customers to make purchasing decisions that make sense to them. We designed our vertical retail business strategy in order to provide more value to customers and to make our products more accessible, removing the cost, friction, and barriers of wholesale distribution.

- **Our Community**

A core tenet of our B Corp status is supporting the communities in which we operate. We are always looking for opportunities to uplift local communities where we are uniquely suited to lend a helping hand. To name a few examples:

- **Allgood Collective.** The Allgood Collective is a growing global community of individuals who promote the power of collective action as a force for good and who act as brand ambassadors for us. As of December 31, 2022, we had over 200 ambassadors who were part of our Allgood Collective. We offer our social media platforms to amplify their work and our retail spaces as community hubs.
- **Soles4Souls.** Our generous 30-day return policy means that a lot of gently worn shoes get sent back to us. When shoes are returned to Allbirds, those that can't go back onto the shelf are donated to Soles4Souls. Soles4Souls works with partner organizations in developing countries. Since our first sale in 2016, we have donated more than 270,000 pairs of shoes to Soles4Souls.
- **Pensole.** In 2021, we teamed up with Pensole Academy, a footwear design academy, to launch the Better Responsible Design Program, an eight week online course that challenges aspiring product designers to redefine the category of sustainable footwear. At the end of the course, we selected two students for a fully paid internship at Allbirds.
- **Fam 1st Family Foundation.** Starting in 2021, we partnered with Marshawn Lynch, a Bay Area native and former NFL player, and EARTHseed Farm, a 14-acre solar-powered organic farm in Sonoma County, California, to promote environmental education and expand access to nature for Bay Area youth. As part of this partnership, we donated \$100,000 to the Fam 1st Family Foundation, an Oakland, California-based nonprofit founded by Mr. Lynch. The organization is dedicated to empowering underserved youth and fostering a new generation of innovative thinkers, leaders, and problem solvers.

- **Governance**

In addition to our status as a PBC and certification as a B Corp, we also focus on the following areas of governance:

- **Oversight and Our Board of Directors**

We regularly require that ESG issues are represented at the highest level of decision making (including through a Head of Sustainability). We have a gender-diverse board of directors, with three out of our eight directors identifying as women.

Management reports on ESG issues to our board of directors on a quarterly basis. The sustainability, nomination, and governance committee of our board of directors is responsible for overseeing ESG matters.

Sustainability Advisory Committee

In 2021, we formally established a Sustainability Advisory Committee composed of external and independent third-party ESG experts. The committee is co-chaired by our Head of Sustainability and aims to advise management on ESG strategy and reporting.

Dual Class Common Stock Structure

Since the beginning of our history, our founders have been singularly focused on building a sustainable business that demonstrates profitable growth because it is sustainable. This is also true for the stockholders who have partnered with us since the early stages of our journey. We have prioritized protecting the ability of our founders and our early financial partners to continue driving toward that vision by implementing a dual class common stock structure that is designed to allow for a thoughtful calibration of long-term objectives with short-term demands.

ESG Reporting

In accordance with our PBC status, we report to stockholders, on at least a biennial basis, an assessment of our progress towards our stated public benefit of environmental conservation and general PBC objectives. We have worked with external experts to align our ESG reporting with the Sustainability Accounting Standards Board (“SASB”) and Task Force on Climate-Related Financial Disclosure (“TCFD”) frameworks, which are included below in the sections titled “Sustainability Accounting Standards Board Disclosures” and “The Task Force on Climate-Related Financial Disclosures”.

Topics included in the aforementioned sections reflect a materiality assessment conducted in late 2020. “Materiality” as applied to our ESG disclosures is a broader concept than “materiality” used for purposes of our compliance with SEC disclosure obligations, and includes assessments of impacts on communities, the environment, and stakeholders, such as employees, customers, and suppliers, in addition to impacts on the Company’s business, operations, or financial condition. The discussion of topics in connection with our SASB and TCFD disclosures in this report or in our other ESG disclosures, should not be read as implying that such topics are “material” in the context of the U.S. federal securities laws, Delaware General Corporation Law, or any other regulatory framework, even where we use words such as “material” or “materiality.”

SPO Framework

The SPO framework¹ laid out in our final prospectus filed with the SEC on November 4, 2021 pursuant to Rule 424(b)(4) is a set of ESG criteria that we call the Sustainability Principles and Objectives Framework, or the SPO Framework. The SPO Framework is designed to ensure that Allbirds takes into consideration positive ESG outcomes, as well as the need to mitigate negative ESG factors, and is committed to meeting a high standard of ESG criteria across its business.

We believe that stakeholders will benefit from knowing that we have been assessed by one or more independent third parties as having satisfied objective, clearly defined ESG criteria and that we are committed to meeting high ESG standards across our business. We also believe we are leading by example through our commitment to establishing a rigorous, objective, and clearly defined SPO Framework and holding ourselves accountable to meeting those criteria. Finally, we believe the establishment and public disclosure of our SPO Framework will help investors better understand and assess our commitment to sustainability and positive outcomes for all stakeholders.

¹ The Sustainability Principles and Objectives Framework, or the SPO Framework, is a new and untested framework, which was not developed solely by disinterested third parties but rather was developed with input from Allbirds and other partners. There is no basis for investors to, or track record by which investors can, assess the impact of the SPO Framework on our operations, financial condition, and the market price of our Class A common stock. The SPO Framework was created in conjunction with, and supported by, an Advisory Council coordinated by BSR, a global non-profit business network focused on sustainability, and consisting of two individuals employed by Allbirds, two individuals employed by one of our stockholders, Baillie Gifford, which is a beneficial owner of less than two percent of our outstanding shares of capital stock, and several cross-sector thought-leaders, market participants, and stakeholders from the private and public sectors.

In November 2022, we published an update of our progress against the SPO Framework on our investor relations website.

Sustainalytics ESG Risk Rating

We believe it is important to seek external evaluation of the work we are doing to validate progress and identify areas for improvement. In a world where climate change is an existential threat, supply chains are increasingly complex, and human capital management is more important than ever, it is important for Allbirds to analyze and manage ESG risks to our business. In 2021, we engaged Sustainalytics, a globally recognized independent ESG assessment provider, to perform a broad-based Corporate ESG Assessment of Allbirds covering seven distinct ESG categories, including Human Capital, Supply Chain, Resource Use, Emission & Waste, and Corporate Governance. Sustainalytics assessed us as having an overall indicative Corporate ESG Assessment score of 14.7, which places Allbirds in the “low risk” category as of August 2021. Our indicative score would place us in both the top 10% of Footwear companies assessed by Sustainalytics and in the top 10% of all companies assessed by Sustainalytics.

Sustainability Accounting Standards Disclosures

The mission of the Sustainability Accounting Standards Board, or SASB, is to develop sustainability metrics for public corporations to disclose material, decision-useful information to investors. Our disclosures are designed to provide comparable and consistent data. We have included metrics from the SASB’s Consumer Goods Sector – Apparel, Accessories and Footwear industry standard and Consumer Goods Sector – ECommerce industry standard that are relevant to our business below. Although we include all the disclosures for the SASB Apparel, Accessories, and Footwear industry standard, our primary standard, in the tables below, we do not currently satisfy all of the requirements for that standard. In addition, we have included select disclosures from the SASB eCommerce industry standard in the tables below that we believe are relevant for our business. We will continue to build out our disclosures in alignment with these standards over time.

Environmental		
Description of Disclosure	2022 Response	SASB Standard
Raw Materials Sourcing		
<i>Management Approach</i>		

Environmental		
Description of Disclosure	2022 Response	SASB Standard
<p>(1) List of priority raw materials; for each priority raw material: (2) environmental and/or social factor(s) most likely to threaten sourcing, (3) discussion on business risks and/or opportunities associated with environmental and/or social factors, and (4) management strategy for addressing business risks and opportunities.</p>	<p>In 2022, the top raw materials in our products, by weight, were wool, TENCEL™ Lyocell (tree-based fiber), natural rubber, recycled polyester, and SweetFoam®, our midsole blend that is made with ethylene-vinyl acetate, or EVA, and sugarcane-based Green EVA.</p> <p>Allbirds relies on stringent material certifications to be sure we are buying high quality, natural materials. We work to trace our primary natural materials all the way back to the source, and certifications are an important part of ensuring that responsible practices are in place throughout our supply chain.</p> <p>In 2022, our main raw material certifications were ZQ for Wool and FSC for Tree-based products (TENCEL™ Lyocell, natural rubber, packaging). As we incorporate more natural materials into our products, we will continue to seek out the most stringent certifications available.</p> <p>Our 2025 Flight Plan goals include continuing to replace petroleum-based materials with natural ones such that 75% of our materials are sustainably sourced natural or recycled, reducing the carbon footprint of key raw materials by 25%, and reducing raw material use by 25% across footwear & apparel products.</p> <p>We calculate the carbon footprint of each of our products including emissions from materials, manufacturing, transportation, product use, and end of life using our LCA tool. We have published detailed information about our LCA tool on our website.</p>	<p>CG-AA-440a.3</p>
Third Party Environmental and Social Standards		
<i>Quantitative Metrics</i>		
<p>(1) Amount of priority raw materials purchased, by material, and (2) amount of each priority raw material that is certified to a third-party environmental and/or social standard, by standard.</p>	<p>Wool:</p> <ul style="list-style-type: none"> • Amount purchased (MT): 110 • Certification: ZQ • Amount certified (MT): 110 <p>TENCEL Lyocell:</p> <ul style="list-style-type: none"> • Amount purchased (MT): 138 • Certification: FSC • Amount certified (MT): 138 <p>Natural Rubber:</p> <ul style="list-style-type: none"> • Amount purchased (MT): 77 • Certification: FSC • Amount certified (MT): 77 <p>Green EVA (SVT-2145 & SVT-2180):</p> <ul style="list-style-type: none"> • Amount purchased (MT): 363 • Certification: Bonsucro • Amount certified (MT): 363 	<p>CG-AA-440a.4</p>
Energy Use		
<i>Quantitative Metrics</i>		

Environmental		
Description of Disclosure	2022 Response	SASB Standard
The total amount of energy consumed as an aggregate figure, in gigajoules (GJ)	The total energy consumed in 2022 was 20,115 GJ. ²	CG-EC-130a.1
The percentage of energy consumed that was supplied from grid electricity	Of 20,115 GJ of energy consumed in 2022, 56% was supplied from grid electricity. We do not have onsite generation. ³	
The percentage of energy consumed that is renewable energy	Of 20,115 GJ of energy consumed in 2022, 46% was from renewable sources. ⁴	
Environmental Impacts in the Supply Chain		
<i>Quantitative Metrics</i>		
Percentage of (1) Tier 1 supplier facilities and (2) supplier facilities beyond Tier 1 in compliance with wastewater discharge permits and/or contractual agreement	100% of our Tier 1 supplier facilities are in compliance with wastewater discharge permits and/or contractual agreements. To date, we have focused on increasing the number of our Tier 1 and Tier 2 suppliers to complete the Higg FEM assessment, which includes a module on wastewater discharge. We are currently defining the parameters of our wastewater quality program in alignment with Sustainable Apparel Coalition and Zero Discharge of Hazardous Chemicals guidelines and have set a goal to reach 100% compliance with wastewater discharge requirements from our Tier 1 suppliers and Tier 2 fabric mills and dyehouses by the end of 2025. We prioritize selection of more sustainable alternatives for water proofing and textile dyeing that minimize the impact of wastewater discharge whenever possible.	CG-AA-430a.1
Description of water withdrawal, water risks, and water withdrawn or consumed in locations of high water stress	As part of our 2025 goals, we will need to measure water consumption at Tier 1 and strategic Tier 2 suppliers, audit how our current supply chain impacts water scarce regions, and work with suppliers to identify conservation opportunities and set goals to reduce water consumption.	CG-EC-130a.2
Percentage of (1) Tier 1 supplier facilities and (2) supplier facilities beyond Tier 1 that have completed the Sustainable Apparel Coalition's Higg Facility Environmental Module (Higg FEM) assessment or an equivalent environmental data assessment	In 2022, 95% of our Tier 1 suppliers, by volume, will complete the 2021 Higg FEM. This represents 73% of our Tier 1 suppliers by factory count. We do not yet track the completion of the Higg FEM beyond our Tier 1 suppliers, but our goal is to achieve 100% Higg FEM completion from Tier 1 and strategic Tier 2 suppliers by the end of 2025.	CG-AA-430a.2
Product Packaging & Distribution		
<i>Management Approach</i>		

² Represents total energy consumed in retail stores and offices (which contributes to Scope 1 and 2 emissions); excludes energy consumed in warehouses (which contributes to Scope 3 emissions).

³ Represents total electricity consumed in retail stores and offices (which contributes to Scope 2 emissions); excludes electricity consumed in warehouses (which contributes to Scope 3 emissions). Represents total electricity other than onsite generation, as we do not currently generate electricity onsite.

⁴ Represents total renewable electricity consumed in retail stores and offices; includes, but is not limited to, utility renewable programs and purchased renewable energy credits, or RECs.

Environmental		
Description of Disclosure	2022 Response	SASB Standard
Strategies to reduce the environmental impact of fulfillment and delivery of products, including impacts associated with packaging materials and those associated with product transportation including logistics selection, packaging choices, fuel and vehicle choices, route efficiency, etc.	We strive to minimize packaging and source packaging materials with the lowest environmental impact possible, while meeting functional requirements and delivering a best-in-class customer experience. We prioritize packaging that is made from traceable recycled materials that can be recycled at end of life. Practically, this means using FSC-certified recycled cardboard, printing with soy-based inks, limiting adhesives to enable recycling, and avoiding single-use polybags or bioplastics. During 2022, 100% of our packaging was made from recycled/renewable materials and 100% of our packaging was recyclable, renewable, or compostable, by weight. Moreover, we prioritize ocean transportation whenever possible. In 2022, we achieved 96% ocean shipping for inbound shipments by weight. Our goal is to achieve a steady state of over 95% ocean shipping by the end of 2025.	CG-EC-410a.2
<i>Quantitative Metrics</i>		
The tank-to-wheels greenhouse gas, or GHG, footprint, in metric tons of CO2-e, associated with outbound shipment of products	We are currently in the process of a third-party verification for our 2022 Scope 1, 2, and 3 emissions and we plan to disclose the tank-to-wheels GHG footprint associated with outbound shipment of products emissions once the verification is complete. 2021 scope 3.9 (downstream transportation & distribution) emissions: 4,695 tonnes CO2e	CG-EC-410a.1
Data Center Design/ Selection		
Environmental considerations integrated into siting, design, construction, refurbishment, and operational specifications for data centers	We currently outsource all of our data center needs and have no physical services (including no racks). We primarily rely on SaaS providers, which allow for resiliency if one data center we use has an interruption of service for any reason.	CG-EC-130a.3

Social		
Description of Disclosure	2022 Response	SASB Standard
Raw Materials Sourcing and Third Party Environmental and Social Standards		
<i>The social impacts are addressed in the raw materials sourcing and third party environmental and social standard disclosures discussed above in the environment section of the table.</i>		
Processes to maintain compliance with restricted substances regulations		

Social		
Description of Disclosure	2022 Response	SASB Standard
Processes used to verify that products are in compliance with restricted substances regulations	<p>We launched an updated Restricted Substances List (“RSL”) Program and RSL Brand Manual in 2022, detailing processes used to verify products are in compliance with restricted substances regulations. All suppliers formally acknowledge our RSL and prohibited chemicals list and we test materials/components against the RSL seasonally, according to a risk matrix.</p> <p>Vendors are required to avoid chemicals listed in the AFIRM RSL and our RSL Brand Manual. Each season, our Sustainability team compiles a list of components and materials for all products. Our Sustainability team uses a risk matrix to determine which components and materials are considered to be “High Risk” for RSL testing. Our nominated testing lab tests all components and materials according to the AFIRM RSL Testing Matrix. Testing marked as “Higher Risk” on the AFIRM RSL Testing Matrix is required. Additional testing may be required by us on a case-by-case basis.</p>	CG-AA-250a.1
Processes to assess and manage risks and/or hazards associated with chemicals in products		
Process to manage risks and/or hazards associated with chemicals in products	In addition to the above, we require that our Tier 1 suppliers complete the Higg FEM, which includes a module on chemicals management. Progress on the percentage of suppliers completing the Higg FEM is referenced in CG-AA-430a.2. Additionally, we require that all of our apparel and footwear products undergo GB 18401-2010 testing, covering chemicals, performance, and correct product labeling.	CG-AA-250a.2
Labor Conditions in the Supply Chain		
<i>Management Approach</i>		
Standards to which labor code of conduct compliance is measured	We are committed to ensuring that working conditions in our supply chain are safe, that workers are treated with respect and dignity, and that manufacturing processes are environmentally responsible. We require our suppliers to implement our Supplier Code of Conduct, which includes, but is not limited to, Occupational Health and Safety, Freely Chosen Employment, No Child Labor, Harassment or Abuse, No Discrimination, Freedom of Association, Working Hours, Wages and Benefits, Environmental Practices, and Animal Welfare. Allbirds adheres to recognized standards built from local law and internally accepted norms, including guidance from the International Labor Organization, to help ensure safe, lawful, humane, and ethical manufacturing practices.	CG-AA-430b.1
Publicly available policy ensuring freedom of association and the right to collective bargaining	Our Supplier Code of Conduct stipulates that suppliers shall recognize and respect the right of workers to form and join trade unions and other worker organizations and participate in collective bargaining without fear of harassment, interference, or retaliation. Suppliers shall also develop effective, respectful, and transparent grievance mechanisms to resolve disputes and complaints, and ensure effective communication between employees, employee representatives, and management.	

Social		
Description of Disclosure	2022 Response	SASB Standard
Measures to ensure freedom of association and facilitate collective bargaining (i.e., communication of rights, grievance procedures)	<p>Our initiatives include ensuring workers in our supply chain have channels to voice concerns, suggestions, or advocate for their rights through Worker Voice programs. Our goal is for 100% of our Tier 1 factory workers to have access to Worker Voice programs by the end of 2025.</p> <p>Our grievance procedures for employees in our flock include formalized feedback and complaint mechanisms beyond direct reporting lines (including reporting directly to Employee Experience, Legal or anonymously through a whistleblower hotline) to address concerns and improve our company practices.</p>	

Social		
Description of Disclosure	2022 Response	SASB Standard
<p>Additional context around supply chain auditing, including Audit methodologies and criteria (e.g., management system investigation, worker interviews, management interviews, document review, visual observations), efforts to increase transparency, etc.</p>	<p>We only source from a select number of Tier 1 suppliers that commit to protecting the rights of workers and the environment by signing our Supplier Code of Conduct. We also expect full transparency of our partners' own supply chains and sub-suppliers.</p> <p>Before a factory is approved to produce for Allbirds, it must pass a social and environmental audit as part of its evaluation. To assess factories' compliance with our Responsible Sourcing expectations, we use independent, third-party, expert auditors. These audits, which may or may not be announced, include confidential worker interviews, review of documentation and records, and visual inspection of safety conditions. Audits are conducted against international labor standards and local law. Where there are discrepancies between the two, the more stringent requirement will be applied. Audit cadence is determined based on risk level from identified in previous audits.</p> <p>In the middle of 2021, we updated our audit scoring system so that we could better track factory performance to enable future reporting. Audits are scored and factories are rated as Green (Low Risk), Yellow (Medium Risk), Red (High Risk), or ZT (Zero Tolerance), based on the highest risk level of non-compliance found in the audit. A passing audit is either Green or Yellow. Factories rated as Red or ZT after the initial audit will not be approved.</p> <p>We believe in continuous improvement and will partner with the factory to develop a Corrective Action plan, based on the audit findings. We require our suppliers to follow-up and improve upon any identified deficiencies in a realistic but timely manner, emphasizing root-cause-analysis and effective management to ensure long-term performance and accountability.</p> <p>Whenever Allbirds starts working with a new factory, the factory will undergo the Allbirds Responsible Sourcing Audit. Once a compliance level is established, we will accept mutual recognition programs in order to reduce audit fatigue and collaborate with other brands.</p>	<p>CG-AA-430b.2</p>
<i>Quantitative Metrics</i>		
<p>Percentage of (1) Tier 1 supplier facilities and (2) supplier facilities beyond Tier 1 that have been audited to a labor code of conduct, (3) percentage of total audits conducted by a third-party auditor</p>	<p>As of December 31, 2022, 100% of Tier 1 supplier facilities, by facility count, had social audits completed by a third-party in the previous 12 months. 100% of these audits were conducted by a third-party auditor. We are not yet able to report on labor code of conduct audits for suppliers beyond Tier 1, but plan to expand our audit program to all strategic Tier 2 suppliers by the end of 2025.</p>	<p>CG-AA-430b.1</p>

Social		
Description of Disclosure	2022 Response	SASB Standard
Priority non-conformance rate and associated corrective action rate for suppliers' labor code of conduct audits	In 2022, one out of our eleven Tier 1 factories was rated as 'Red / High Risk' due to the risk level of non-conformance as detailed in the Allbirds Responsible Sourcing Manual. The finding was related to inconsistent records found during an audit. There were zero factories that were 'Zero Tolerance' (the highest severity non-conformance).	CG-AA-430b.2
Supply Chain Labor, Environment, Health & Safety Risks		
<i>Management Approach</i>		
The three labor conditions issues and the three environmental health and safety issues that pose the greatest potential risk in Allbirds' supply chain	Based on the materiality assessment we conducted in late 2020, the following topics were deemed to be ESG priorities to manage across the business, including in our supply chain. <u>Labor Conditions Issues:</u> <ul style="list-style-type: none"> • Human rights • Diversity & social inclusion • Economic inclusion & wage systems <u>Environmental Health and Safety Issues:</u> <ul style="list-style-type: none"> • GHG emissions and energy management • Materials sourcing (includes health and safety aspects as well as environmental factors) • Materials waste 	CG-AA-430b.3
Health and Safety		
<i>Management Approach</i>		
Health and safety policy and management system, and coverage of programs, employee training, data compilation, emergency response, and audits	We have policies and procedures in place to address the health, safety, and wellness of our employees, including applicable occupational health and safety principles. The company has a Retail Health & Safety Task Force comprised of cross functional leaders that meets weekly to discuss and share workplace health and safety matters and developments. Moreover, we conduct quarterly operational audits within retail stores to ensure that working areas are safe. Our Supplier Code of Conduct outlines Allbirds' occupational health and safety requirements for suppliers within our supply chain. Specifically, we require our suppliers to provide their employees with a safe and healthy working environment to prevent accidents and injury to health arising out of, linked with, or occurring in the course of work or because of the operation of the supplier. Suppliers are expected to regularly assess the workplace for hazards and implement appropriate safety systems, controls, and training.	
Employee Recruitment, Retention, Inclusion and Performance		
Inclusion		
<i>Management Approach</i>		

Social		
Description of Disclosure	2022 Response	SASB Standard
Policies and practices to foster an inclusive and diverse culture	<p>Our commitment to building and cultivating a culture that incorporates diversity, equity, inclusion, and belonging has never been stronger. We intentionally seek diversity in race, gender, background, cultures, socioeconomic status, age, and sexual orientation. We track and measure our diversity and representation quarterly.</p> <p>We conduct and have committed to conducting annual reviews of pay equity. Our 2022 pay equity review, which considered job level, performance, and experience across gender globally and ethnicity in the U.S., did not find statistically significant pay differences across gender or ethnicity.</p>	CG-EC-330a.3
<i>Quantitative Metrics</i>		
Gender representation for all employees and racial/ethnic group representation for its U.S. employees by employee category.	<p>Ethnic group representation by employee category as of December 31, 2022 (United States only):</p> <p>Management</p> <ul style="list-style-type: none"> • 59% White • 8% Black or African American • 11% Hispanic or Latino • 16% Asian • 0% Native Hawaiian or Other Pacific Islander (no data) • 6% Two or more races <p>Technical Staff</p> <ul style="list-style-type: none"> • 61% White • 7% Hispanic or Latino • 25% Asian • 7% Two or more races <p>All Other Flock Employees</p> <ul style="list-style-type: none"> • 52% White • 11% Black or African American • 17% Hispanic or Latino • 14% Asian • <1% Native Hawaiian or Other Pacific Islander • 6% Two or more races <p>Gender representation by employee category:</p> <p>Management</p> <ul style="list-style-type: none"> • Female: 43% • Male: 57% <p>Technical Staff</p> <ul style="list-style-type: none"> • Female: 11% • Male: 89% <p>All Other Flock Employees</p> <ul style="list-style-type: none"> • Female: 48% • Male: 52% <p>Employee categorizations are based on SASB and EEO-1 guidance.</p>	CG-EC-330a.3.

Social		
Description of Disclosure	2022 Response	SASB Standard
Employee Engagement		
<i>Management Approach</i>		
Source of the survey, methodology used to calculate the percentage, and a summary of questions or statements included in the survey or study (e.g., those related to goal setting, support to achieve goals, training and development, work processes, and commitment to the organization)	In 2022, we ran our annual engagement survey using an employee engagement and performance management software. The survey covered key indicators of employee engagement such as performance drive, career growth, culture of feedback, work environment/culture health, performance management, leadership, and direct managers. All 30 survey questions were translated into local languages to accurately capture the sentiments of our global team. The overall response was favorable.	CG-EC-330a.1
<i>Quantitative Metrics</i>		
Employee engagement as a percentage	In May 2022, Allbirds conducted an engagement survey of all global employees. Of all employees surveyed across different locations, 76% submitted a response. 75% of respondents reported favorable employee engagement.	CG-EC-330a.1
Turnover		
<i>Quantitative Metrics</i>		
Turnover as a percentage, including voluntary and involuntary departures	Our overall turnover rate in 2022 was 71%. Approximately 93% of turnover in 2022 was voluntary, and 7% was involuntary.	CG-EC-330a.2
Work life balance		
<i>Management Approach</i>		
Options of workplace flexibility and working time reduction to support work life balance	Our Flexible Time Off Policy provides U.S. corporate, full-time employees in our flock with the ability to take as much time off as they need to reach their performance targets and achieve their goals for work-life balance. Outside of the United States, time off policies vary by country and depend on a variety of factors, including market practice and statutory benefits. Globally, our time-off policies are around or above market.	

Social		
Description of Disclosure	2022 Response	SASB Standard
Pay and Benefits		
<i>Management Approach</i>		
Discussion of salaries above minimum wage or a living wage that allows workers and their families to maintain a safe, decent standard of living (minimum resources for physical well-being plus healthcare, utilities, transportation, education and small savings) and extent the company provides relevant healthcare benefits (e.g., financial contributions or company-paid medical facilities/services)	<p>In the United States, our benefits include health and wellness, paid time off, competitive pay, career growth opportunities, paid volunteer time, product discounts, and a culture of recognition. Specific health and safety benefits for U.S. employees include employer-sponsored health insurance, dental insurance, vision care insurance, flexible spending accounts, and commuter benefits. We also offer wellness and technology reimbursements. Outside of the United States, benefits vary by country and depend on a variety of factors, including market practice and statutory benefits.</p> <p>Globally, we offer compensation that is competitive and linked to the skills, knowledge, and experience required in each position. We have also banned the practice of inquiring about salary history in the interview process, in line with local laws.</p> <p>We are committed to establishing and implementing a living wage requirement for all direct employees globally within 24 months of our initial public offering in November 2021 (i.e., by November 2023), using a credible third-party framework.</p>	
Extent the company provides relevant retirement benefits	All permanent employees (including full-time and part-time) in the U.S. are eligible to participate in our 401(k) plan. We provide for employee pre-tax deferral contributions and after-tax Roth contributions and also provide a match on 100% of the first three percent of employee contributions and 50% on the next two percent, to a maximum match of four percent. All U.S. employees are also eligible for financial wellness benefits through Origin where they can speak with certified financial planners about retirement planning. We also provide life insurance to all regular full-time employees in the United States.	
Training & Development		
<i>Management Approach</i>		
Description of training programs to develop staff and enable personal and professional growth	<p>We have the following training and career development initiatives in place:</p> <ul style="list-style-type: none"> • Formal onboarding process for new flock members • Ongoing training on core job responsibilities • Manager training for all people managers • Executive coaching for senior leaders • Internal promotion of eligible employees • Employees in the flock are able to make lateral moves or change career direction or pace when possible 	
<i>Quantitative Metrics</i>		

Social		
Description of Disclosure	2022 Response	SASB Standard
Disclosure of average training time/expenses per employee by employee category	In 2022, the average training time was 19 hours for individual contributors, 30 hours for line managers, 30 hours for directors, and 45 hours of training and coaching for senior leaders.	
Technical Employees who are Visa Holders		
<i>Quantitative Metrics</i>		
Percentage of technical employees that held valid H-1B visas as of the close of the reporting period.	We believe this is immaterial to our business as it reflects less than 5% of our total workforce.	CG-EC-330a.4

Governance		
Description of Disclosure	2022 Response	SASB Standard
Good Governance Practices		
<i>Management Approach</i>		
<p>Overview of our corporate governance policies and procedures, including how we assess and manage ESG risks and opportunities, engage with external stakeholders on ESG topics, and link remuneration with ESG performance.</p>	<p>Public Benefit Corporation Status Because we are a PBC under Delaware law, our board of directors must manage our business and affairs in a manner that balances the pecuniary interest of our stockholders, the best interest of those materially affected by our conduct, and the specific public benefit of environmental conservation that is identified in our certificate of incorporation. As a result, in operating our business we are required to consider environmental conservation and the well-being of our flock and other stakeholders affected by our conduct alongside the financial interests of our stockholders. We are also obligated to report to our stockholders every two years on our progress as a PBC. In 2022, we published our 2021 Flight Status Report on our website, making it available to all stakeholders.</p> <p>Certified B Corp Status In addition to our PBC status, we have also achieved B Corp certification since 2016. Every three years, we must recertify through a process and set of expectations that have become more rigorous over time. According to B Lab, the median score of all businesses that have completed the B Impact Assessment is 50.9; our latest recertification score was 89.4 in 2019, up from our initial (2016) score of 81.9. We will undergo the recertification process in 2023.</p> <p>Executive Compensation Management and employees at or above the Director level are incentivized, in part, through our bonus program, where bonuses are linked to sustainability outcomes, including specific metrics related to carbon reduction targets.</p> <p>Oversight and our Board of Directors We regularly require that ESG issues are represented at the highest level of decision making (including through our Head of Sustainability). Management reports on ESG issues to our board of directors on a quarterly basis. The Sustainability, Nomination, and Governance Committee of our board of directors is responsible for overseeing ESG matters. We have a gender diverse board, with three out of eight of our directors identifying as women.</p> <p>Sustainability Advisory Committee In 2021, we developed an external Sustainability Advisory Committee to provide an additional review of our sustainability strategy, progress, and insights into potential business risks and opportunities.</p>	

Data Privacy		
<i>Management Approach</i>		
User Privacy	<p>Our Privacy Policy is available on our website and governs our treatment of customer data. It outlines the types of personal information we collect, how we use and share the information, users' right to opt-out of certain uses and disclosures of personal information, and the measures we take to protect information security.</p> <p>Multiple points of contact are provided through which customers may initiate inquiries and raise concerns to us regarding our collection, sharing, and use of their personal data.</p> <p>Our privacy policies and practices are designed to align with the laws in the jurisdictions where we operate, including the European Union (e.g., the General Data Protection Regulation) and the United States (e.g., the California Consumer Privacy Act), among others. We continue to monitor emerging regulations in this area and enhance our capabilities for data governance and management as appropriate. Our VP, Legal is responsible for monitoring conformance with our data privacy policy and for reviewing and updating the policy as needed.</p>	CG-EC-220a.2
Data Security		
<i>Management Approach</i>		
Data security risks & data breaches	<p>Data security is built into our company's technology strategy since first launching our e-commerce site. We focus on a 360-degree approach designed to mitigate risks of data loss and protect ourselves against damages to our reputation. We utilize a wide range of tools as part of our cybersecurity program. Some examples include:</p> <ul style="list-style-type: none"> • Least Privilege Principle: We limit access to company resources based on user roles and real-time access needs. • End User training: We require security training for all new employees as well as run frequent phishing simulations and additional training for those at high risk. • Internal Audits: We regularly review all security programs, policies, and audit for any controls that need to be re-evaluated. <p>Our Chief Technology Officer and IT team provide regular presentations to the Audit Committee. No material breaches occurred in 2022.</p>	CG-EC-230a.1

Customer Education		
<i>Management Approach</i>		
Discussion of measures that have been implemented to increase customer awareness on sustainability impacts of products during their life cycle and to help customers reduce the environmental footprint of products	<p>We understand the value customers place on authenticity and transparency, and since our inception, have run extensive campaigns to educate consumers about the sustainability impacts of footwear and apparel in general, and how we are working to address those impacts through our manufacturing processes and our products themselves. We share information on the social and environmental attributes of our products in our stores, in our social media channels, on our website, and in our sustainability reports. Examples of Allbirds marketing campaigns with a sustainability focus include labeling all products with their carbon footprint and freethefootprint.com.</p> <p>In 2020, we began labelling all of our products with their carbon footprint. We did this for two reasons: to hold ourselves accountable to reducing our impact over time and to help our customers make informed purchasing decisions with climate impacts in mind. Providing a product’s planetary cost front and center empowers people to make intentional choices.</p> <p>According to a survey we conducted of 1,300 U.S. customers in 2020, 92% of our customers trust us to deliver reliable information, tools, and advice around sustainability.</p>	CG-EC-230a.2
SASB Activity Metrics		
Number of shipments	Our global e-commerce shipments in 2022 were approximately 3.8 million. ⁵	CG-EC-000.C
Entity-defined measure of user activity	In 2022, we fulfilled approximately 2.7 million orders globally.	CG-EC-000.A
Data processing capacity, percentage outsourced	100% of our data processing is outsourced. ⁶	CG-EC-000.B
Number of (1) Tier 1 suppliers and (2) suppliers beyond Tier 1	<p>1) We had 11 Tier 1 suppliers in 2022.</p> <p>2) We had 320 suppliers beyond Tier 1 in 2022.⁷</p>	CG-AA-000.A

The Task Force on Climate-Related Financial Disclosures

The Financial Stability Board established the Task Force on Climate-Related Financial Disclosures, or TCFD, which is committed to market transparency and stability, to develop recommendations for more effective climate-related disclosures. Allbirds supports the mission of the TCFD to improve and increase reporting of climate-related financial information. We believe our initial TCFD climate-related financial disclosures align with the TCFD recommendations, and we intend to continue to refine our strategy and reporting in this framework going forward. In the table below, we look at existing governance structures and strategy that fit within the TCFD framework, what was done in the year ended December 31, 2022, and indicate our aspirations for the future to make this disclosure more robust. TCFD provides a framework with four thematic areas—Governance, Strategy, Risk Management, and Metrics and Targets—and 11 recommended disclosures. The following table provides information intended to address each recommendation.

⁵ We define number of shipments as number of global E-commerce shipments to customers; excludes returns and shipments to retail stores.

⁶ Due to our engagement with cloud computing, data analytics, and digital platforms.

⁷ “Tier 1” refers to the primary production facility to which an Allbirds purchase order is issued.

Description of Disclosure	Notes and Location
Governance: Disclose the organization's governance around climate-related risks and opportunities.	
a. Describe the board's oversight of climate-related risks and opportunities.	<p>Our board of directors considers sustainability risks and opportunities as part of its overall strategic decision-making process through review and approval of our annual operating plan and our sustainability strategy.</p> <p>Our Sustainability, Nomination, and Governance Committee has oversight of ESG topics; both the committee and the full board of directors receive quarterly reports from management on significant sustainability actions, goals, and progress.</p> <p>Annually, the board of directors reviews and approves our Annual Report on Form 10-K, which includes disclosures regarding climate-related risks and opportunities.</p>
b. Describe management's role in assessing and managing climate-related risks and opportunities.	<p>In 2021, we developed an external Sustainability Advisory Committee to provide a review of our sustainability strategy, progress, and insights into potential business risks and opportunities. The Sustainability Advisory Committee is composed of external ESG leaders who bring diverse experience and industry expertise. Management meets with the Sustainability Advisory Committee regularly to update and align on climate-related risks and opportunities.</p> <p>Our sustainability strategy, or the Allbirds Flight Plan, centers on three strategic priorities: Regenerative Agriculture, Renewable Materials, and Responsible Energy, which are underpinned by ten specific, quantitative targets. These climate-related strategic priorities are operationalized through our Sustainability team, which is led by our Head of Sustainability. These strategic priorities have oversight from our Chief Operating Officer who reports directly to our co-CEO.</p> <p>Executive bonuses are linked to sustainability outcomes, including specific metrics related to carbon reduction targets.</p> <p>Our Sustainability team collaborates on an ongoing basis with cross-functional teams to monitor climate-related issues, and promote sustainability initiatives across our value chain, including product development, supply chain sourcing, and broader business operations, and reporting through a consolidated sustainability scorecard that is shared with our board of directors and management on a quarterly basis.</p> <p>At the end of each fiscal year, the Sustainability team also engages with each business area to collect specific data to prepare the greenhouse gas inventory analysis. This process includes cross-functional and leadership reviews, as well as third-party verification of the data.</p>

Description of Disclosure	Notes and Location
<p>Strategy: Disclose the actual and potential impacts of climate-related risks and opportunities the organization has identified over the short, medium, and long term.</p> <p>a. Describe the climate-related risks and opportunities the organization has identified over the short, medium, and long term.</p>	<p>According to the Task Force on Climate-related Financial Disclosures' 2020 Status Report, when companies choose to disclose on TCFD, only 7% globally fully disclose on the strategy pillar. Allbirds decided to pursue an analysis of climate-related risks in our strategy and our approach to risk management.</p> <p>In 2021, management began the process of identifying, assessing, and quantifying Allbirds' climate-related transition and physical risks, as well as corresponding opportunities, through a hot spot analysis. This assessment was supported by Anthesis, a global sustainability consulting leader, to help us better understand our risk exposure, create a roadmap for scenario analysis and resiliency planning, develop strategies for leveraging opportunities, and meet our reporting and disclosure commitments.</p> <p>The first step in our climate-risk and opportunity analysis was to conduct climate risk and opportunity workshops with key business areas, including Sustainability & Innovation, Supply Chain, Product Development, Legal, Finance, Workplace, Marketing, Technology, and Retail. These workshops were intended to 1) identify a preliminary list of potential climate-related business risks and opportunities; 2) understand the potential scale of such risk or opportunity should it occur; and 3) identify substantive social, regional, or financial risk and opportunity thresholds that would designate a risk or opportunity as material to our business.</p> <p>Once we had a preliminary list of risks and opportunities, we identified the anticipated effect (the impact that a risk or opportunity will have on that key business area) and vulnerability (any management plans we have to mitigate against those risks or capitalize on those opportunities) to understand the potential scale. The exercise analyzed both effect and vulnerability of transition and physical risks across the short- (five years), medium- (ten years), and long-term (30 years). At the conclusion of these workshops, we evaluated the effect and vulnerability of each physical and transition risk associated with climate change, which informs the list of risks and opportunities provided below.</p> <p>The following risks have been identified through the workshops with the key business areas but have not been assessed for their materiality to our business. This will be completed through the upcoming scenario analyses.</p> <p><u>RISKS</u></p> <p><u>Transition</u> - the risks associated with the transition to a low-carbon economy over the next decade:</p> <ul style="list-style-type: none"> • Pricing on greenhouse gas, or GHG, emissions • Energy and fuel price increase <p><u>Physical</u> - the chronic and acute risks associated with the physical impacts of a changing climate may affect Allbirds' ability to source natural materials and move them through a global supply chain. These physical climate risks include:</p> <ul style="list-style-type: none"> • Increased frequency and severity of extreme weather events including extreme precipitation and drought • Increased mean temperatures including extreme heat and cooling degree days • Wildfires brought on by droughts and extreme temperature • Rising sea levels • Changes in precipitation patterns

Description of Disclosure	Notes and Location
	<p>OPPORTUNITIES: Efforts to mitigate and adapt to climate change also present opportunities for our business:</p> <ul style="list-style-type: none"> • Energy Sources: Conventional fuel prices are projected to increase. Our goal is to use 100% renewable electricity to manufacture all Allbirds products at owned and operated facilities and finished goods manufacturers by the end of 2025. By procuring renewable energy, Allbirds will help mitigate additional costs to our business, helping preserve our competitive pricing structure. • Products & Services: We believe Allbirds' corporate mission and increasingly sustainable products provide a competitive position within the landscape of shifting consumer preferences for environmentally and socially responsible products. • Resource Efficiency: Partnerships with manufacturing facilities on environmental initiatives may decrease costs. This could improve energy efficiency and indoor air quality, as well as improve employee attraction and retention through a commitment to sustainability and better working conditions. • Resilience: Allbirds has developed tools and strategies to quantify and manage emissions, which will help to respond to climate change.
<p>b. Describe the impact of climate-related risks and opportunities on the organization's businesses, strategy and financial planning.</p>	<p>To support our bold ambition on climate change, our sustainability strategy, or the Allbirds Flight Plan, centers on three strategic priorities: Regenerative Agriculture, Renewable Materials, and Responsible Energy, which are underpinned by ten specific, quantitative targets.</p> <p>With these targets, we set a goal to cut our carbon emissions per unit of product produced in half by the end of 2025, relative to a baseline of what we expect our per-unit carbon emissions would be in 2025 without any further action to limit emissions. We will continue to be a carbon neutral business, as we have been since 2019 through the use of offsets.</p> <p>We believe in the importance of demonstrating near-term progress and laying out a clear path to achieve our goals. We expect that achieving these ten targets as a whole ultimately improves gross margin and business resiliency.</p>
<p>c. Describe the potential impacts of different scenarios, including a 2°C scenario, on the organization's businesses, strategy and financial planning.</p>	<p>In 2021, we conducted a hotspot mapping exercise to prioritize our key climate-related risks and opportunities. Building off this exercise, we plan to conduct scenario analyses of the key transition and physical risks and opportunities. The analysis will quantify the financial implications associated with these climate-related risks and opportunities, enable us to gather the quantitative information necessary to assess our adaptive capacity, and further invest in opportunities to enhance resilience across our value chain.</p>

Description of Disclosure	Notes and Location
Risk Management Disclose how the organization identifies, assesses, and manages climate-related risks.	
<p>a. Describe the organization's processes for identifying and assessing climate-related risks.</p>	<p>Our Sustainability team collaborates on an ongoing basis with cross-functional teams to monitor climate-related issues, and promote sustainability initiatives across our value chain, including product development, supply chain sourcing, and broader business operations, reporting through a consolidated sustainability scorecard that is shared with our board of directors and management quarterly.</p> <p>Additional enterprise risk functions include climate-related risks as part of their analysis, which is presented to the Audit Committee of our board of directors and management annually.</p> <p>Allbirds evaluates climate risks based on their likelihood, significance, and scope of impact across the business. The 2021 climate risk and opportunity identification workshops also established the key business areas' substantive risk thresholds. Revenue, cost, and adjusted EBITDA are metrics used by the key business areas to evaluate climate-related risks.</p> <p>Aggregating these data points allows Allbirds to establish company-wide substantive risk thresholds. These established substantive risk thresholds will serve as a basis for us to identify future climate-related risks posed to our operations. Allbirds will use these established thresholds to evaluate climate risks annually at a minimum, and more often as needed.</p>
<p>b. Describe the organization's processes for managing climate-related risks.</p>	<p>Our Head of Sustainability and other subject-matter experts actively engage with Allbirds' key business areas to manage climate risks and opportunities on an ongoing basis.</p> <p>We categorize risks according to four distinct management methods, based on enterprise risk management methodology: avoid, reduce, share, and accept. For example, we manage risks using the 'reduce' method through our strategic vendor partnerships, based on our partners' willingness to implement and uphold best practices, decreasing the inherent vulnerability associated with vendor-based manufacturing. Once we identify a best practice for mitigating climate risk through vendor management, we proactively update our existing vendor agreements to align with improved internal standards.</p>
<p>c. Describe how processes for identifying, assessing and managing climate-related risks are integrated into the organization's overall risk management.</p>	<p>As part of our standard Enterprise Risk Management, or ERM, process, our cross-functional risk management team evaluates enterprise risks based on their likelihood, significance, and scope of impact across the business, including climate-related risks.</p> <p>The four climate risk management methods outlined above reflect the same methodology used to manage all enterprise-wide risks. Risks are evaluated at least annually and reported to management and the board of directors.</p> <p>Substantive risk findings from our climate risk identification and assessment process and scenario analysis established by the Sustainability team in 2021 are planned to be integrated into our company-wide risk management process.</p>
Metrics & Targets Disclose the metrics and targets used to assess and manage relevant climate-related risks and opportunities.	
<p>a. Disclose the metrics used by the organization to assess climate-related risks and opportunities in line with its strategy and risk management process.</p>	<p>In 2020, we began the annual practice of measuring our carbon footprint across Scope 1, 2, and 3 categories, as defined by the Greenhouse Gas Protocol. This includes calculating the carbon footprints for all products produced in a given year.</p> <p>We have adopted an internal price on carbon to incentivize emissions reductions. We use the proceeds from this internal tax to purchase renewable energy credits and high-quality carbon offsets against our Scope 1, 2, and 3 emissions. As a result, we are Climate Neutral certified. All carbon offset projects are third-party verified to the highest standards, such as Gold Standard, Verified Carbon Standard, or Climate Action Reserve.</p>

Description of Disclosure	Notes and Location
<p>b. Disclose Scope 1, Scope 2 and if appropriate, Scope 3 greenhouse gas emissions and the related risks.</p>	<p>Since 2020, we have focused on calculating and disclosing the carbon footprint of each of our products, working with a LCA tool to estimate the cradle-to-grave carbon footprint of products, identify hotspots, and drive emission reductions. This LCA tool was developed by our Sustainability team in partnership with external LCA experts and has been third-party verified against the requirements of ISO 14067:2018. It enables our teams to make informed decisions in design and development, tracking both product-level and company-wide carbon impact. As a result, in April 2020, we published the carbon footprint for every product in our permanent collection.</p> <p>In 2022, we disclosed the absolute emissions across our direct and indirect operations for 2021, following the Greenhouse Gas Protocol, with additional third-party verification by SCS Global Services. Scope 1 and 2 emissions are driven by retail stores and corporate offices, and the majority of our Scope 3 emissions are from the materials, manufacturing, and transportation associated with our products.</p> <p>2021 Estimates of Allbirds' Market-based Emissions (tonnes CO₂e)</p> <ul style="list-style-type: none"> a. Scope 1: 317 b. Scope 2: 324 c. Scope 3 (excludes Use & End of Life): 49,698 d. Scope 3 (includes Use & End of Life): 56,258 <p>We are currently in the process of a third-party verification for our 2022 Scope 1, 2, and 3 emissions and we plan to disclose our 2022 emissions once the verification is complete.</p>
<p>c. Describe the targets used by the organization to manage climate-related risks and opportunities and performance against targets.</p>	<p>The Allbirds Flight Plan centers on three strategic priorities: Regenerative Agriculture, Renewable Materials, and Responsible Energy, which are underpinned by ten specific, quantitative targets. The Allbirds Flight Plan drives our targets for climate-related risk mitigation.</p> <p>By the end of 2025, we aim to reduce our per-unit emissions by 50% relative to a baseline of what we expect our per-unit carbon emissions would be in 2025 without any further action to limit emissions, driving our average carbon emissions to around 7 kg CO₂e per product. We aim to achieve this by sourcing zero carbon wool, replacing petroleum-based materials with natural ones, and using less and cleaner fuel and electricity. Specifically, our goal is that 75% of our materials will be sustainably sourced natural or recycled materials, and we are committed to reducing raw materials use and the impact of key raw materials by 25% across footwear and apparel products.</p> <p>In addition, our goal is to source 100% renewable electricity for all owned and operated facilities, including offices, retail stores, and distribution centers, as well as finished goods manufacturers, by the end of 2025. We are committed to achieve a steady state of more than 95% ocean shipping, reducing the amount of higher emission modes of transport, like air shipping. We also aim to encourage our customers to machine wash our products on cold and hang-dry Allbirds apparel.</p> <p>By 2030, we aim to reduce our per-unit emissions by 95%, driving our carbon emissions to less than 1 kg CO₂e per product. This ambitious goal is necessary to reduce our absolute carbon emissions in alignment with a science-based 1.5°C reduction pathway.</p> <p>We have set a science-based target to reduce absolute scope 1, 2, and 3 emissions 42% by 2030 from a 2020 baseline. Our target is aligned with all the requirements of The Science Based Targets initiative, or SBTi, including alignment with a 1.5°C reduction pathway, and was approved by SBTi in 2021.</p>

Intellectual Property

We rely on a combination of trademarks, copyrights, trade secrets, design and utility patents, license agreements, confidentiality procedures, non-disclosure agreements, employee non-disclosure and invention assignment agreements, and other legal and contractual rights to establish and protect our proprietary rights.

We have registered domain names for websites that we use in our business, such as allbirds.com and similar variations. Further, we have developed internal practices around ongoing trademark and design patent registration pursuant to which we register brand names and product names, product designs, taglines, and logos to the extent we determine appropriate and cost-effective.

We control access to and use of our proprietary and other confidential information through the use of internal and external controls, including contractual protections with employees, contractors, customers, and partners. It is our practice to enter into confidentiality and invention assignment agreements (or similar agreements) with our employees, consultants, and contractors involved in the development of intellectual property on our behalf. We also enter into confidentiality agreements with other third parties in order to limit access to, and disclosure and use of, our confidential information and proprietary information.

We intend to pursue additional intellectual property protection to the extent we believe it would be beneficial and cost effective. Despite our efforts to protect our intellectual property rights, they may not be respected in the future or may be invalidated, circumvented, or challenged. For additional information, see the section titled “Risk Factors—Risks Related to Intellectual Property, Information Technology, and Data Security and Privacy”

Government Regulations

In the United States and the other jurisdictions in which we operate, we are subject to labor and employment laws, laws governing advertising, privacy and data security, product labeling and compliance, safety regulations, and other laws, including consumer protection regulations that apply to retailers and/or the promotion and sale of merchandise and the operation of our retail stores, manufacturing-related facilities and distribution centers. Our products, which are predominantly manufactured in countries other than the United States and which are sold in over 35 countries across the world, may be subject to tariffs, treaties, and various trade agreements, as well as laws affecting the importation of consumer goods. We monitor changes in these laws and believe we are in material compliance with applicable laws.

Seasonality

Our business is affected by general seasonal trends common to the retail footwear and apparel industry, with sales peaking during the end-of-year holiday period that typically falls within our fourth quarter. In 2022, 2021 and 2020, we generated 28%, 35% and 36%, of our full year net revenue in the fourth quarter, respectively.

Corporate Information

We were incorporated in Delaware in May 2015 as Bozz, Inc. In December 2015, we changed our name to Allbirds, Inc., and we became a Delaware PBC in February 2016. Our principal executive offices are located at 730 Montgomery Street, San Francisco, California 94111. Our telephone number is (628) 225-4848. Our U.S. website address is allbirds.com. Information contained on, or that can be accessed through, our website is not incorporated by reference in this Annual Report on Form 10-K.

Available Information

We file annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to reports filed or furnished pursuant to Sections 13(a) and 15(d) of the Exchange Act. The Securities and Exchange Commission, or SEC, maintains a website at www.sec.gov that contains reports, proxy and information statements, and other information that we file with the SEC electronically. Copies of our reports on Form 10-K, Forms 10-Q, Forms 8-K, and amendments to those reports may also be obtained, free of charge, electronically through our investor relations website located at ir.allbirds.com as soon as reasonably practical after we file such material with, or furnish it to, the SEC.

Item 1A. Risk Factors

A description of the risks and uncertainties associated with our business is set forth below. You should carefully consider the risks and uncertainties described below, together with all of the other information in this Annual Report on Form 10-K, including our consolidated financial statements and related notes included in Part II, Item 8, and the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in Part II, Item 7. The occurrence of any of the events or developments described below could materially and adversely affect our business, financial condition, results of operations, and growth prospects. In such an event, the market price of our Class A common stock could decline, and you may lose all or part of your investment. Additional risks and uncertainties not presently known to us or that we currently believe are not material may also impair our business, financial condition, results of operations, and growth prospects.

Risks Related to Our Business, Brand, Products, and Industry

We may be unable to successfully execute on our strategic transformation plans, simplification initiatives, or our long-term growth strategy, including efforts to maintain or grow our current revenue and profit levels, reduce our costs or accurately forecast demand and supply for our products.

In August 2022, we announced certain simplification initiatives designed to generate cost of revenue savings, streamline workflows, and lower operating costs as a result of external headwinds. These initiatives focus on reducing costs related to our supply chain and selling, general, and administrative expense. Our supply chain initiatives include reducing logistics costs in the United States by transitioning to automated distribution centers and a dedicated returns processor, optimizing inventory to accelerate logistics cost savings, which includes inventory write-downs and write-offs over certain products, and accelerating the scaling of our manufacturing base to reduce product carbon footprint and product costs over time. Our selling, general, and administrative expense initiatives include plans to reduce corporate office space and reduce corporate headcount. In addition, we have slowed the pace of corporate new hires and backfills for departing employees, and in July 2022 we reduced our global corporate workforce by 23 employees, which represented approximately 8% of our global corporate workforce. In addition, in March 2023 we announced a strategic transformation plan to (i) reignite product and brand, (ii) optimize U.S. stores and slow pace of openings, (iii) evaluate transition of international go-to-market strategy and (iv) improve cost savings and capital efficiency.

Successfully executing our long-term growth and profitability strategy and maintaining our revenue and profit levels or growing them in the future will depend on many factors, including our ability to:

- increase brand awareness and drive efficient customer acquisition through brand marketing and leveraging third party stores;
- continue growth within our existing customer base and increase closet share by focusing on our core franchise products;
- optimize our store fleet and execute our vertical distribution strategy of slowing the pace of retail store openings and transitioning our international go-to-market strategy;
- grow our product innovation platform while understanding the market opportunity for new product styles;
- scale our infrastructure for profitable growth;
- materialize our product and brand initiatives in a timely fashion;
- accurately forecast demand for our product and implement a more focused product strategy; and
- continue focusing on using sustainable materials.

We cannot guarantee that we will successfully implement all of these initiatives or that we will achieve or sustain the expected benefits, or that the benefits, even if achieved, will be adequate to meet our medium- or long-term financial and operational expectations. We may also experience additional unexpected costs and negative impacts on our cash flows from operations and liquidity, employee attrition and adverse effects on employee morale, diversion of management attention, adverse effects to our reputation as an employer, which could make it more difficult for us to hire new employees in the future, and potential failure or delays to meet operational and growth targets due to the loss of qualified employees.

If we do not realize the expected benefits of these initiatives or experience additional unexpected costs in connection with these initiatives, our business, financial condition, results of operations, and cash flows could be negatively impacted.

Our operating results may fluctuate significantly and our past operating results may not be a good indication of future performance.

Our results of operations have varied, and could in the future vary, significantly from period to period as a result of various factors, some of which are outside of our control. Comparing our results of operations on a period-to-period basis may not be meaningful, and our past results should not be relied upon as an indication of our future performance.

We were founded in May 2015 and first sold our products in 2016. As a result of our limited operating history as well as our evolving business strategies, including our recent strategic transformation plan, our ability to accurately forecast our future results of operations is limited and subject to a number of uncertainties, including our ability to plan for and model future growth. Our historical revenue growth has been inconsistent, was derived from a more concentrated number of geographies, and should not be considered indicative of our future performance. Further, in future periods, our revenue growth could slow or our revenue could decline for a number of reasons, including changes in our business operations and strategy, a decline in demand for our products, an increase in competition, a decrease in the growth of our overall market, our entry into new geographies where our prior operating history is less relevant or predictive, or our failure, for any reason, to continue to capitalize on growth opportunities. In addition, we regularly release new products and it is difficult to predict the commercial success of newly released products. For example, in 2022 we recognized a non-cash inventory write-down in our consolidated statement of operations and comprehensive loss, primarily related to certain first-generation apparel products which were not purchased in sufficient quantities by our customers. We have also encountered, and will continue to encounter, risks and uncertainties frequently experienced by growing companies in rapidly changing industries, such as the risks and uncertainties described herein. If our assumptions regarding these risks and uncertainties (which we use to plan our business) are incorrect or change due to changes in our market or the geographies where we operate and where we sell our products, or if we do not address these risks successfully, our operating and financial results could differ materially from our expectations, and our business could suffer. The impact of one or more of the foregoing and other factors may cause our results of operations to vary significantly. As such, period-over-period comparisons of our results of operations may not be meaningful and should not be relied upon as an indication of future performance.

Fluctuations in our results of operations may be particularly pronounced in the current economic environment due to the uncertainty caused by consumer spending patterns, inflationary pressures, the COVID-19 pandemic, and overall economic conditions. Fluctuations in our results of operations may cause those results to fall below our financial guidance or other projections, or the expectations of analysts or investors.

Economic uncertainty in our key markets may affect consumer purchases of discretionary items, which has affected and may continue to adversely affect demand for our products.

Our products may be considered discretionary items for consumers. Factors affecting the level of consumer spending for such discretionary items include general economic conditions and other factors such as interest rates, inflation, consumer confidence in future economic conditions, fears of recession and trade wars, the availability and cost of consumer credit, the COVID-19 pandemic or future pandemics or public health crises, international trade relations, political turmoil, lower corporate earnings, reductions in business confidence and activity, levels of unemployment, and tax rates. As global economic conditions continue to be volatile or economic uncertainty remains, and with increasing inflation and interest rates, trends in consumer discretionary spending also remain unpredictable and subject to reductions as a result of significant increases in unemployment, financial market instability, uncertainties about the future, and other factors. Unfavorable economic conditions have led and, in the future, may lead consumers to delay or reduce purchases of our products. Consumer demand for our products may also decline as a result of store closures, an economic downturn, or economic uncertainty in our key markets, particularly in North America, Europe, and Asia. Our sensitivity to economic cycles and any related fluctuation in consumer demand may have a material adverse effect on our business, results of operations, and financial condition.

We have a significant amount of long-lived assets, which are assessed for impairment whenever events or changes in circumstances indicate that their carrying amount may not be recoverable. In addition, we may never realize the full value of our long-lived assets, causing us to record material impairment charges.

Under generally accepted accounting principles in the United States, we assess our long-lived assets, principally property and equipment, operating lease right-of-use assets, and other long-lived assets, including identifiable intangible

assets with definite lives, for impairment whenever events or changes in circumstances indicate the carrying amount of an asset may not be recoverable. For example, in 2022, we determined that triggering events, primarily related to our current period and history of operating cash flow losses required an impairment review of our long-lived assets. This resulted in us recording a non-cash impairment charge of \$3.3 million related to long-lived assets associated with our stores in China.

The footwear and apparel business is extremely capital-intensive. There is uncertainty in the projected undiscounted future cash flows used in our impairment review analysis, which requires the use of estimates and assumptions. Our projections are estimates, which could vary significantly from actual results if future economic conditions, consumer demand and competitive environments differ from our expectations and there can be no assurance that a material impairment charge of long-lived assets will be avoided. Such impairment charges could have a material adverse effect on our business, results of operations and financial condition.

One factor in our success is the strength of our brand; if we are unable to maintain and enhance the value and reputation of our brand and/or counter any negative publicity, we may be unable to sell our products, which would harm our business and could materially adversely affect our financial condition and results of operations.

The Allbirds brand is integral to our business strategy and our ability to attract and engage customers. As a result, our success depends on our ability to maintain and enhance the value and reputation of the Allbirds brand. Maintaining, promoting, and positioning our brand will depend largely on the success of our design and marketing efforts, including advertising and consumer campaigns, as well as our product innovation, product quality, and sustainability initiatives. Our commitment to product innovation, quality, and sustainability and our continuing investment in design (including materials) and marketing efforts may not have the desired impact on our brand image and reputation.

We rely on social media, as one of our marketing strategies, to have a positive impact on both our brand value and reputation. Our brand also depends on our ability to maintain a positive consumer perception of our corporate integrity, culture, mission, vision, and values, including our status as a Delaware public benefit corporation, or PBC, and our commitment to environmental conservation and sustainability. Any actions or any public statements or social media posts about Allbirds or our products by our customers, consumers who have not yet bought our products, our current or former employees, current or former Allgood Collective Ambassadors (which is what we call the community of influencers whom we engage to help promote our brand), celebrities, or other public figures, whether authorized or not, that are contrary to our values may negatively affect consumer perception of our brand. Any incidents involving our company, our suppliers or manufacturers, our Allgood Collective Ambassadors or others, or the products we sell, could erode the trust and confidence of our customers, and damage the strength of our brand, especially if such incidents result in adverse publicity, governmental investigations, product recalls, or litigation.

Our brand and reputation could be adversely affected by any number of factors or events, including if our public image is tarnished by negative publicity due to our actions or those of persons associated with us or formerly associated with us (including employees, Allgood Collective Ambassadors, celebrities, or others who speak publicly or post on social media about our brand or our products, whether authorized or not), if we fail to deliver innovative and high quality products, if we face or mishandle a product recall, or if we are subject to claims of “greenwashing” (e.g., if the carbon footprint of one or more of our products is alleged to be greater than what we claim, or if we fail or are alleged to have failed to achieve our sustainability goals). Our brand and reputation could also be negatively impacted by adverse publicity, whether or not valid, regarding allegations that we, or persons associated with us or formerly associated with us, have violated applicable laws or regulations, including but not limited to those related to product labeling and safety, marketing, employment, discrimination, harassment, whistle-blowing, privacy, corporate citizenship, improper business practices, or cybersecurity. Negative publicity regarding our suppliers or manufacturers could adversely affect our reputation and sales and could force us to identify and engage alternative suppliers or manufacturers. Additionally, while we devote considerable efforts and resources to protecting our intellectual property, if these efforts are not successful, the value of our brand may be harmed. Any harm to our brand and reputation could adversely affect our ability to attract and engage customers and could have a material adverse effect on our business, financial condition, and results of operations.

In addition, the importance of our brand may increase to the extent we experience increased competition, which has required and could continue to require additional expenditures on our brand promotion activities. Maintaining and enhancing our brand image also has required us and may require us to continue to make additional investments in areas such as merchandising, marketing, and online operations. These investments may be substantial and may not ultimately be successful.

We have incurred significant net losses since inception and anticipate that we will continue to incur losses for the foreseeable future.

We incurred net losses of \$101.4 million, \$45.4 million and \$25.9 million in 2022, 2021 and 2020, respectively, and we had an accumulated deficit of \$238.7 million as of December 31, 2022. We expect to continue to incur significant losses in the future. We will need to generate and sustain increased revenue levels in future periods to achieve profitability, and even if we achieve profitability, we may not be able to maintain or increase our level of profitability. Although the strategic transformation plan announced in March 2023 include cost and cash optimization efforts, our operating expenses may increase substantially in the future as we continue to, among other things:

- execute on our long-term growth strategy and strategic plans;
- invest in our relationships with third-parties, including retail partners and distributors;
- update our product and style mix;
- invest in new materials innovation and technology;
- focus on sustainable and environmentally friendly practices in our supply chain (which are often more expensive than traditional alternatives);
- invest in advertising and marketing initiatives to engage existing and new customers, enhance awareness of our brand, and grow market share;
- optimize our number of retail store locations;
- invest in the overall health and well-being of our employees;
- address increased competition;
- recruit and retain talent; and
- incur significant accounting, legal, and other expenses as a public company that we did not incur as a private company.

These expenditures will make it more difficult for us to achieve and maintain profitability. Our efforts to grow our business may be more costly than we expect or may not result in the returns we anticipate, and we may not be able to increase our revenue enough to offset our higher operating expenses. If we are forced to reduce our expenses beyond our expectations under our cost savings initiative, it could negatively impact our growth and growth strategy. As a result, we can provide no assurance as to whether or when we will achieve profitability. If we are not able to achieve and maintain profitability, the value of our company and our Class A common stock could decline significantly.

We operate in a highly competitive market and the size and resources of some of our competitors may allow them to compete more effectively than we can, which could result in a loss of our market share and a decrease in our net revenue and profitability.

The market for footwear and apparel is highly competitive. Our competitors include athletic and leisure footwear companies, as well as athletic and leisure apparel companies. We also compete directly against wholesalers and direct retailers of footwear and apparel, including large, diversified apparel companies with substantial market share and established companies expanding their production and marketing of technical footwear, as well as against retailers specifically focused on footwear. Competition has and may in the future result in pricing pressures, reduced profit margins, lost market share, or a failure to grow or maintain our market share, any of which could substantially harm our business and results of operations. Many of our competitors are large apparel and/or footwear companies with strong worldwide brand recognition, while others are new market participants with low barriers to entry. Because of the fragmented nature of the industry, we also compete with other apparel sellers, including those specializing in athletic footwear and other casual footwear. Many of our competitors have significant competitive advantages, including longer operating histories, larger and broader customer bases, more established relationships with a broader set of suppliers, greater brand recognition, and greater financial, research and development, store development, marketing, distribution, and other resources than we do.

We rely on technical and materials innovation to offer high-quality products.

Technical and materials innovation and quality control in the design and manufacturing process of our footwear and apparel is essential to the commercial success of our products. Research and development play a key role in technical innovation. We rely upon specialists in the fields of materials sciences, sustainability, and related fields. While we strive to produce products that are comfortable and environmentally sustainable, if we fail to introduce technical and materials innovation in our products, then consumer demand for our products could decline and we may be unable to meet our sustainability goals, which could harm our brand and reputation, and if we experience problems with the quality of our products, we may incur substantial expense to remedy the problems.

Our focus on using sustainable materials and environmentally friendly manufacturing processes and supply chain practices may increase our cost of revenue and hinder our growth.

We are dedicated to prioritizing sustainable materials, an environmentally friendly supply chain, and manufacturing processes that collectively limit our carbon footprint. As our business expands, it may be increasingly challenging to cost-effectively secure enough sustainably sourced materials to support our growth and achieve our sustainability goals while also achieving and maintaining profitability. In addition, our ability to expand into new product categories depends in part on our ability to identify new sustainable materials that are suitable for our products. Our inability to source materials that meet our sustainability requirements in sufficient volumes could result in slower growth, increased costs, and/or lower net profits. Additionally, as our business expands, we may not be able to identify suppliers and manufacturers with business practices that reflect our commitment to sustainability, which may harm our ability to expand our supply chain to meet the expected growth of our business. If any of these factors prevent us from meeting our sustainability goals or increase the carbon footprint of any our products, then it could have an adverse effect on our brand, reputation, results of operations, and financial condition.

If we fail to attract new customers, retain existing customers, or maintain or increase sales to customers, our business, financial condition, results of operations, and growth prospects will be harmed.

Our success depends in large part upon widespread adoption of our products by our customers. In order to attract new customers and continue to expand our customer base, we must appeal to and attract customers who identify with our sustainable footwear and apparel products. If the number of people who are willing to purchase our products does not continue to increase, if we fail to deliver a high quality shopping experience, if our retail partnerships are not successful, if we make products that our customers do not buy in sufficient quantities, or if our current or potential future customers are not convinced that our products are superior to alternatives, then our ability to retain existing customers, acquire new customers, and grow our business may be harmed. For example, since the launch of our first generation of apparel products, our customers have not purchased certain of these products in sufficient quantities, and, in the second quarter of 2022, we determined that we needed to adjust our overall apparel strategy and discontinue the product line. As a result, in 2022, we recognized a non-cash inventory write-down in our consolidated statement of operations and comprehensive loss, primarily related to these certain first-generation apparel products.

We have made significant investments in enhancing our brand and attracting new customers, and we expect to continue to make significant investments to promote our products, including in connection with our strategic transformation plan for our focused product strategy. Such campaigns can be expensive and may not result in new customers or increased sales of our products. Further, as our brand becomes more widely known, we may not attract new customers or increase our net revenue at the same rates as we have in the past. If we are unable to acquire new customers who purchase products in numbers sufficient to grow our business, we may not be able to generate the scale necessary to drive beneficial network effects with our suppliers, our net revenue may decrease, and our business, financial condition, and results of operations may be materially adversely affected.

In addition, our future success depends in part on our ability to increase sales to our existing customers over time, as a significant portion of our net revenue is generated from sales to existing customers, particularly those existing customers who are highly engaged and make frequent and/or large purchases of the products we offer. If existing customers no longer find our products appealing or are not satisfied with our customer service, or if we are unable to timely update our products to meet current trends and customer demands, our existing customers may not make purchases, or if they do, they may make fewer or smaller purchases in the future.

If we are unable to continue to attract new customers or our existing customers decrease their spending on the products we offer or fail to make repeat purchases of our products, our business, financial condition, results of operations, and growth prospects will be harmed.

Climate change and increased focus by governments, organizations, customers, and investors on sustainability issues, including those related to climate change and socially responsible activities, may adversely affect our reputation, business, and financial results.

Climate change is occurring around the world and may impact our business in numerous ways. Such change could lead to an increase in prices of raw materials, commodities, and/or packaging, as well as reduced availability of key manufacturing components. Increased frequency of extreme weather, such as storms, hurricanes, and floods, could cause increased disruption to the production and distribution of our products and have an adverse impact on consumer demand and spending.

Investor advocacy groups, certain institutional investors, investment funds, other market participants, stockholders, and stakeholders have focused increasingly on the environmental, social, and governance, or ESG, and related sustainability practices of companies. These parties have placed increased importance on the implications of the social cost of their investments. In addition to our status as a PBC and certified B Corporation, or B Corp, we are focused on being an ESG leader in our industry. If our ESG practices do not meet investor or other stakeholder expectations and standards (which are continually evolving and may emphasize different priorities than the ones we choose to focus on), or if our ESG practices do not live up to our own values or ESG- and sustainability-related goals, then our brand, reputation, and employee retention may be negatively impacted. It is possible that stakeholders may not be satisfied with our ESG practices or the speed of their adoption. We could also incur additional costs and require additional resources to monitor, report, and comply with various ESG practices and regulations and to achieve our sustainability goals. Also, our failure, or perceived failure, to manage reputational threats and meet expectations with respect to socially responsible activities and sustainability commitments could negatively impact our brand credibility, employee retention, and the willingness of our customers and suppliers to do business with us.

If we are unable to anticipate product trends and consumer preferences and successfully develop and introduce new products, we may not be able to maintain or increase our revenue and profits.

Our success depends on our ability to identify, originate, and define product trends within the footwear and apparel industry, as well as to anticipate, gauge, and react to changing consumer preferences in a timely manner. However, lead times for many of our products may make it more difficult for us to respond rapidly to new or changing product trends or consumer preferences. For example, our lead times may be longer due to our preference for ocean shipping and other more sustainable supply chain practices to reduce carbon emissions, which may take longer and be more expensive than less sustainable alternatives. If we are unable to introduce new products in a timely manner, or our new products are not accepted by our customers, our competitors may introduce similar products in a more timely fashion, which could hurt our goal to be viewed as a leader in comfortable and sustainable footwear and apparel. All of our products are subject to changing consumer preferences regarding footwear and apparel, generally, and sustainable footwear and apparel, specifically, that cannot be predicted with certainty. Our new products may not receive consumer acceptance as consumer preferences could shift rapidly to different types of styles and our future success depends in part on our ability to anticipate and respond to these changes. For example, during the COVID-19 pandemic, there was a shift of consumer preferences to more casual and informal apparel and footwear as greater numbers of consumers have shifted to working remotely from home. In addition, our experience in anticipating consumer preferences in one category, such as footwear, may not help us predict or anticipate consumer preferences in other new categories, such as apparel. For example, we did not successfully anticipate customer demand and preferences in designing and launching certain of our first-generation apparel products. As a result, demand for such products failed to meet our expectations and, in the second quarter of 2022, we determined that we needed to adjust our overall apparel strategy and discontinue the product line. During 2022, we recognized a non-cash inventory write-down in our consolidated statements of operations and comprehensive loss, primarily related to these certain first-generation apparel products. If we fail to anticipate accurately and respond to trends and shifts in consumer preferences, we could experience lower sales, excess inventories, or lower profit margins, any of which could have an adverse effect on our results of operations and financial condition.

We utilize a range of marketing, advertising, and other initiatives to increase existing customers' spend and to acquire new customers; if the costs of advertising or marketing increase, or if our initiatives fail to achieve their desired impact, we may be unable to grow the business profitably.

We create differentiated brand marketing content and utilize performance marketing to drive customers from awareness to consideration to conversion, and promoting awareness of our brand and products is important to our ability to grow our business, drive customer engagement, and attract new customers. Our marketing strategy includes brand marketing campaigns across platforms, including email, digital, display, site, direct-mail, streaming audio, television, social media, and our Allgood Collective, as well as performance marketing efforts, including retargeting, paid search and product listing advertisements, paid social media advertisements, search engine optimization, personalized emails, and mobile push notifications through our app. In addition, our marketing strategy is global in scale, reaching consumers in the over 35 countries where we sell our products.

We seek to engage with our customers and build awareness of our brands through sponsoring unique events and experiences. If our marketing efforts and messaging are not appropriately tailored to and accepted by our target customers, we may fail to attract customers, and our brand and reputation may be harmed. In addition, our marketing initiatives may become increasingly expensive as competition increases, and generating a meaningful return on those initiatives may be difficult. We also expect to make increased investments into brand marketing as part of our strategic transformation plan to have a more focused product strategy. Our future growth and profitability and the success of our brand will depend in part upon the effectiveness and efficiency of these marketing efforts.

We receive a significant amount of visits to our digital platform via social media or other channels used by our existing and prospective customers. As eCommerce and social media continue to rapidly evolve, we must continue to establish relationships with these channels and may be unable to develop or maintain these relationships on acceptable economic and other terms. In addition, we currently receive a significant number of visits to our website and mobile app via search engine results. Search engines frequently change the algorithms that determine the ranking and display of results of a user's search, which could reduce the number of visits to our website, in turn reducing new customer acquisition and adversely affecting our results of operations. If we are unable to cost-effectively drive traffic to our digital platform, our ability to acquire new customers and our financial condition would suffer. Email marketing efforts are also important to our marketing efforts. If we are unable to successfully deliver emails to our customers or if customers do not engage with our emails, whether out of choice, because those emails are marked as low priority or spam, or for other reasons, our business could be adversely affected. Our marketing initiatives have become increasingly expensive and may continue to increase in cost, and generating a meaningful return on those initiatives may be difficult or unpredictable. Even if we successfully increase net revenue as a result of our marketing efforts, it may not offset the additional marketing expenses we incur.

If our marketing efforts are not successful in promoting awareness of our products, driving customer engagement, or attracting new customers, or if we are not able to cost-effectively manage our marketing expenses, our results of operations could be adversely affected.

Failure to accurately forecast consumer demand could lead to excess inventories or inventory shortages, which could result in decreased operating margins, reduced cash flows, and harm to our business.

To meet anticipated demand for our products, we must forecast inventory needs and place orders with our manufacturers based on our estimates of future demand for particular products. Our ability to accurately forecast demand for our products could be affected by many factors, including an increase or decrease in customer demand for our products or for products of our competitors, changing consumer preferences, changing product trends, our failure to accurately forecast consumer acceptance of new products, product introductions by competitors, unanticipated changes in general market conditions, store closures (including, for example, due to the COVID-19 pandemic), declines in overall consumer spending, and weakening of economic conditions or consumer confidence in future economic conditions. If we fail to accurately forecast consumer demand, we may experience excess inventory levels or a shortage of products available for sale in our stores or for delivery to customers.

Inventory levels in excess of customer demand may result in inventory write-offs, donations by us of our unsold products, inventory write-downs, and/or the sale of excess inventory at discounted prices, any of which could cause our gross margin to suffer, impair the strength and exclusivity of our brand, and have an adverse effect on our results of operations, financial condition, and cash flows. For example, we have in the past donated excess unsold products to third parties and sold certain of our products at discounted prices through various channels including third-party discounters and our outlet store in Northern California. Additionally, in 2022, we recognized non-cash inventory write-downs, primarily related to the discontinuation of certain first-generation apparel products.

Conversely, if we underestimate customer demand for our products and fail to place sufficient orders with our manufacturers in advance, then our manufacturers may not be able to deliver products to meet our requirements and we

may experience inventory shortages. Inventory shortages in our stores or third-party distribution centers could result in delayed shipments to customers, lost sales, a negative customer experience, lower brand loyalty, and damage to our reputation and customer relationships, any of which could have an adverse effect on our results of operations, financial condition, and cash flows.

As a company that operates retail stores, we are subject to various risks, including commercial real estate and labor and employment risks.

As of December 31, 2022, we operated 58 retail store locations across nine countries. We lease our stores under operating leases. We expect to continue to evaluate the total number of stores we operate over the next few years, domestically and internationally.

As we open new retail stores, our ability to effectively obtain real estate to open new retail stores, both domestically and internationally, depends on the availability of real estate that meets our criteria for traffic, square footage, co-tenancies, lease economics, demographics, and other factors. We also must be able to effectively renew our existing real estate leases. In addition, from time to time, we seek to downsize, consolidate, reposition, or close some of our retail stores, which may require modification of various contracts, including an existing lease. We generally cannot cancel these leases at our option. For example, due to the COVID-19 pandemic, across all of 2020, our stores were closed for approximately 20% of the total number of days we expected to operate. During this period, our stores were not generating any revenue, but we were generally required to continue paying rent. Similarly, if an existing or new store is not profitable, and we decide to close it, we may nonetheless be committed to perform our obligations under the applicable lease including, among other things, paying the base rent for the balance of the lease term. Similarly, we may be committed to perform our obligations under the applicable leases even if current locations of our stores become unattractive as demographic patterns change. Failure to secure adequate new locations or successfully modify leases for existing locations, or failure to effectively manage the profitability of our existing fleet of retail stores, could have an adverse effect on our results of operations and financial condition.

Additionally, the economic environment may make it difficult to determine the fair market rent of real estate properties domestically and internationally. This could impact the quality of our decisions to exercise lease options at previously negotiated rents and to renew expiring leases at negotiated rents. Any adverse effect on the quality of these decisions could impact our ability to retain real estate locations adequate to meet our targets or efficiently manage the profitability of our existing fleet of stores, which could have an adverse effect on our results of operations and financial condition.

As of December 31, 2022, we had approximately 760 employees in our retail store operations. As a result, we are subject to costs and risks related to compliance with labor and employment laws and regulations, which could cause our business, financial condition, results of operations, or cash flows to suffer. From time to time, we may downsize, consolidate, reposition, or close some of our retail store locations, which may result in additional employee-related costs.

We have significant exposure to changes in domestic and foreign laws governing our relationships with our workforce, including wage and hour laws and regulations, fair labor standards, minimum wage requirements, overtime pay, unemployment tax rates, workers' compensation rates, pension contributions, citizenship requirements, and payroll taxes, which could have a direct impact on our operating costs. These laws change frequently, exist at multiple levels with respect to a single physical location (e.g., federal, state, and local) and may be difficult to interpret and apply.

A significant increase in minimum wage or overtime rates in countries where we have employees could have a significant impact on our operating costs and may require that we take steps to mitigate such increases, all of which may cause us to incur additional costs. There is also a risk of potential claims related to discrimination and harassment, health and safety, wage and hour laws, criminal activity, personal injury, and other claims. In addition, if a large portion of our workforce were to become members of labor organizations or parties to collective bargaining agreements, we could be vulnerable to a strike, work stoppage, or other labor action, which could have an adverse effect on our business. Our business operations and financial performance could be adversely affected by changes in our relationship with our workforce or changes to U.S. or foreign labor and employment laws and regulations.

We may be unable to successfully open new store locations in existing or new geographies in a timely manner, if at all, which could harm our results of operations.

Our growth will largely depend on our ability to successfully open and operate new stores, which depends on many factors, including, among others, our ability to:

- identify suitable store locations, the availability of which is outside of our control and may require expensive and long-term lease obligations;
- gain brand recognition and acceptance, particularly in geographies or regions that are new to us;
- negotiate acceptable lease terms;
- hire, train, and retain store personnel and field management who possess the required customer service and other skills and who share our commitment to sustainability;
- invest sufficient capital in store build-out and opening;
- immerse new store personnel and field management into our corporate culture and shared values;
- source sufficient inventory levels; and
- successfully integrate new stores into our existing operations and information technology systems.

We may be unsuccessful in identifying new markets where our sustainable footwear and apparel products and brand image will be accepted. In addition, we may not be able to open or profitably operate new stores in existing, adjacent, or new locations due to market saturation and/or other macro conditions (e.g., the impact of the COVID-19 pandemic).

Our growth strategy involves expansion of our retail partnerships, which presents risks and challenges to our business.

In 2022, we began entering into broad-based partnerships with third-party retailers, and we have limited operating experience executing this channel distribution strategy at scale. In addition, one of the initiatives under our strategic transformation plan is to reduce the pace of new retail store openings and leverage our third-party partnerships to increase brand awareness and reach new customers. This strategy has required, and will continue to require, investment in cross-functional operations and management focus, along with investment in logistics, channel management, supporting technologies, and headcount.

If our retail partners do not satisfy their obligations to us, if we are unable to meet our retail partners' expectations and demands, or if we decide to enter into additional partnerships and are unable to identify suitable retail partners or reach agreements with them, we may fail to meet our business objectives with respect to our partnership strategy. In addition, the terms of any additional retail partnerships that we establish may not be favorable to us. Our inability to successfully implement retail partnerships may lead consumers to negatively perceive our brand and adversely affect our business, financial condition, and results of operations. Also, in most cases, our agreements with such third-party retailers allow for significant variability in the amount of product purchased from us, and there are risks that eventual order volumes may be lower than initially projected. There can be no assurance that we will be able to continue our relationships with our retail partners on the same or more favorable terms in future periods or that these relationships will continue beyond the terms of our existing contracts with our retail partners.

Further, our retail partners may reduce their number of stores or operations or consolidate, undergo restructurings or reorganizations, realign their affiliations, or promote products of our competitors over ours or liquidate. These events may result in a decrease in the number of stores or e-commerce platforms that carry our products or cause us to lose customers, decreasing our revenues and earnings growth.

Our business depends on our ability to maintain a strong community of engaged customers and Allgood Collective Ambassadors, including through the use of social media. We may be unable to maintain and enhance our brand if we experience negative publicity related to our marketing efforts or use of social media, we fail to maintain and grow our network of Allgood Collective Ambassadors, or otherwise fail to meet our customers' expectations.

As of December 31, 2022, we partnered with over 200 Ambassadors who were members of our Allgood Collective, which is intended to help raise awareness of our brand and engage with our community. Our ability to maintain relationships with our existing Allgood Collective Ambassadors and to identify new Ambassadors is critical to expanding and maintaining our customer base. As our market becomes increasingly competitive or as we expand internationally, recruiting, and maintaining new Ambassadors to join our Allgood Collective may become increasingly difficult. If we are

not able to develop and maintain strong relationships with our Ambassador network, our ability to promote and maintain awareness of our brand may be adversely affected. Further, if we incur excessive expenses in this effort, our business, financial condition, and results of operations may be adversely affected.

We and our Allgood Collective Ambassadors use third-party social media platforms to raise awareness of our brand and engage with our community. As existing social media platforms evolve and new platforms develop, we and our Allgood Collective Ambassadors must continue to maintain a presence on these platforms and establish a presence on emerging popular social media platforms. If we are unable to cost-effectively use social media platforms as marketing tools, our ability to acquire new customers and our financial condition may suffer. Furthermore, as laws and regulations governing the use of these platforms evolve, any failure by us, our Allgood Collective Ambassadors, or third parties acting at our direction to abide by applicable laws and regulations in the use of these platforms could subject us to regulatory investigations, class action lawsuits, liability, fines, or other penalties and adversely affect our business, financial condition, and results of operations. In addition, an increase in the use of social media for product promotion and marketing may cause an increase in the burden on us to monitor compliance of such content and increase the risk that such content could contain problematic product or marketing claims in violation of applicable regulations.

Allgood Collective Ambassadors may engage in behavior or use their online presence or personal image in a manner that reflects poorly on our brand or is in violation of applicable regulations or platform terms of service, and that may be attributed to us. Negative commentary regarding us, our products, or Allgood Collective Ambassadors and other third parties who are affiliated with us, whether accurate or not, may be posted on social media platforms at any time and may adversely affect our reputation, brand, and business. The harm may be immediate, without affording us an opportunity for redress or correction, and could have an adverse effect on our business, financial condition, and results of operations.

In addition, customer complaints or negative publicity related to our website, mobile app, products, product delivery times, customer data handling, marketing efforts, security practices, or customer support, especially on blogs and social media websites, could diminish customer loyalty and community engagement and harm our brand and business.

If we grow at a rapid pace, we may be unable to effectively manage our growth and the increased complexity of our business and, as a result, our brand, business, and financial performance may suffer.

We have expanded our operations rapidly since our inception in 2015, and our net revenue has increased from \$126.0 million in 2018 to \$297.8 million in 2022. If our operations grow at a rapid pace, we may experience difficulties in obtaining sufficient raw materials and manufacturing capacity to produce our products, as well as delays in production and shipments, as our products are subject to risks associated with overseas sourcing and manufacturing. We could be required to continue to expand our sales and marketing, product development, and distribution functions, invest in opening and operating a greater number of retail stores in our existing jurisdictions and/or in new jurisdictions, upgrade our management information systems and other processes and technology, and obtain more space for our expanding workforce. This expansion could increase the strain on our resources, expose us to legal and compliance risk across new jurisdictions, and cause us to experience operating difficulties, including difficulties in hiring, training, and managing an increasing number of employees, especially to the extent the growth in our “flock” exposes us to a greater number of jurisdictions’ employment, health, and safety and other regulatory and compliance requirements. Any of these or other difficulties in effectively managing our growth and the increased complexity of our business could result in the erosion of our brand image which could have a material adverse effect on our financial condition.

Our financial results may be adversely affected if substantial investments in businesses and operations, including in our retail stores, fail to produce expected returns.

From time to time, we may invest in technology, business infrastructure, new businesses, product offering, and manufacturing innovation and expansion of existing businesses, such as our recent expansion of sales outside of the United States, which require substantial cash investments and management attention. We expect to continue to evaluate the number and geographic reach of our retail stores in the short- and mid-term and invest in a strategic manner, including in connection with our strategic transformation plan to slow the pace of store openings in the U.S. and transition our international go-to-market strategy. We believe cost-effective investments are essential to business growth and profitability; however, significant investments are subject to typical risks and uncertainties inherent in developing a new business or expanding an existing business. The failure of any significant investment to provide expected returns or profitability could have a material adverse effect on our financial results and divert management attention from more profitable business operations.

We are subject to risks related to our ESG activities and disclosures, and our reputation and brand could be harmed if we fail to meet our public sustainability targets and goals.

In 2020, we began making our carbon footprint calculations available for our products. In 2021, we announced a highly ambitious sustainability strategy in service of our aim to help to reverse climate change through better business. Our sustainability strategy has three strategic priorities: (1) Regenerative Agriculture, (2) Renewable Materials, and (3) Responsible Energy. These priorities are underpinned by 10 targets, which we intend to achieve by the end of 2025, or the 2025 Targets. In addition, we have announced a goal to reduce our per-unit carbon emissions to less than 1 kg of carbon dioxide equivalent emissions by 2030, or the 2030 Goal. We are aligning our ESG disclosures with the Sustainability Accounting Standards Board and Task Force on Climate-Related Financial Disclosure frameworks, and we anticipate continuing to make ESG disclosures and expanding the number of disclosures we make over time.

While our sustainability strategy and practices and the level of transparency with which we are approaching them are foundational to our business, they expose us to several risks, including:

- that we may fail or be unable to fully achieve one or more of the 2025 Targets or the 2030 Goal due to a range of factors within or beyond our control (including a failure for governments and other third parties to make the investments that are required to make infrastructure improvements, such as greater availability of cleaner energy grids), or that we may adjust or modify our stated goals in light of new information, adjusted projections, or a change in business strategy, any of which could negatively impact our brand, reputation, and business;
- that achieving the 2025 Targets and/or 2030 Goal may require us to expend significant resources, which could divert the attention of our senior management and key personnel, delay the time by which we can achieve profitability, harm us competitively, or otherwise limit our ability to make investments in our growth;
- that our disclosures related to ESG may result in heightened scrutiny from stakeholders or other third parties of our ESG performance, activities, and decisions;
- that a failure to or perception of a failure to disclose metrics and set goals that are rigorous enough or in an acceptable format, a failure to appropriately manage selection of goals, a failure to or perception of a failure to make appropriate disclosures, stakeholder perception of a failure to prioritize the “correct” ESG goals, or an unfavorable ESG-related rating by a third party could negatively impact our brand, reputation, and business;
- that certain metrics we utilize receive limited or no assurance from and/or verification by third parties, may involve a less rigorous review process than assurance sought in connection with more traditional audits, such a review process may not identify errors and may not protect us from potential liability under the securities laws, and, if we were to seek more extensive assurance or attestation with respect to such ESG metrics, we may be unable to obtain such assurance or attestation or may face increased costs related to obtaining and/or maintaining such assurance or attestation;
- that the third-party data used in our carbon footprint calculations are determined to be wrong or become unavailable to us for whatever reason, which would require us to find a new source of quality third-party data or develop our own, either of which could require significant resources, a temporary suspension of sharing a carbon footprint for each product, or an adjustment to carbon footprint numbers because of variations in the underlying data, and if our stakeholders react unfavorably to any such situation or we fail to adequately manage any transition, it could negatively impact our brand, reputation, and business;
- that the ESG or sustainability standards, norms, or metrics, which are constantly evolving, change in a manner that impacts us negatively or requires us to change the content or manner of our disclosures, and our stakeholders or third parties view such change(s) negatively, we are unable to adequately explain such changes, or we are required to expend significant resources to update our disclosures, any of which could negatively impact our brand, reputation, and business; and
- that our brand, reputation, and business could be negatively impacted if any of our disclosures, including our carbon footprint numbers, reporting to third-party ESG standards, or reporting against our 2025 Targets, 2030 Goal, or other goals, are inaccurate, perceived to be inaccurate, or alleged to be inaccurate.

We are subject to risks related to our commitment to certain ESG criteria, which we call the Sustainability Principles and Objectives Framework, or the SPO Framework.

The SPO Framework, which consists of ESG criteria that we have satisfied or that we intend to satisfy, was originally described more fully in the section titled “The Sustainability Principles and Objectives Framework” in our final prospectus filed with the SEC on November 4, 2021 pursuant to Rule 424(b)(4). This is a new and untested framework, which was not developed solely by disinterested third parties but was developed with input from Allbirds and other partners. There is no basis for investors to, or track record by which investors can, assess the impact of the SPO Framework on our operations, financial condition, and the market price of our Class A common stock. Our adherence to the SPO Framework may result in additional costs to us in operating our business, including, for example, costs of the third-party ESG assessment, costs related to meeting the carbon emissions reduction target, etc. We may not meet all of the SPO Framework (or any part thereof) in the future. Further, any or all elements of the SPO Framework may be considered insufficient and/or unsatisfactory and/or the credibility of the SPO Framework may be disregarded entirely. Because we committed publicly to the SPO Framework, if we fail to make meaningful progress on ESG practices and matters or to continue to report transparently across ESG practices and matters relating to the SPO Framework, our reputation could be harmed. We could also damage our reputation and the value of our brand if we fail to act responsibly in the areas in which we report or fail to demonstrate that our commitment to ESG principles enhances our overall financial performance. Any harm to our reputation resulting from our failure or perceived failure to meet the SPO Framework could also impact employee engagement and retention, the willingness of our supplier or manufacturers to do business with us, or investors’ willingness to purchase or hold shares of our common stock, any of which could have a material and adverse effect on our business, results of operations, and financial condition.

Our future success is substantially dependent on the continued service of our co-founders and co-Chief Executive Officers, as well as other senior management, and our ability to attract and retain talent.

We depend on the continued services and performance of our senior management and other key personnel, including Timothy Brown and Joseph Zwillinger, our co-founders and Co-Chief Executive Officers. Mr. Brown’s and Mr. Zwillinger’s employment with us is at-will, which means that they may resign or could be terminated for any reason at any time. Should either of them stop working for us for any reason, it is unlikely that the other co-founder would be able to fulfill the responsibilities of the departing co-founder, nor is it likely that we would be able to immediately find a suitable replacement. Our other senior management and key employees are also employed on an at-will basis. We currently do not have “key person” insurance on any of our employees. The loss of key personnel, including members of management, supply chain, innovation and sustainability, product development, marketing, and sales personnel, could disrupt our operations and seriously harm our business.

To successfully grow and operate our business and execute our strategic plans, we must attract and retain highly qualified personnel. Competition for executives and highly skilled personnel is often intense, especially in Northern California, where our headquarters is located. As we become a more mature company, we may find our recruiting efforts more challenging. Many of the companies with which we compete for experienced personnel have greater resources than we have. The incentives to attract, retain, and motivate employees provided by our equity awards or by future arrangements, such as through cash bonuses, may not be as effective as our past incentive or as the current incentives offered by our competitors. We may not be successful in attracting, integrating, or retaining qualified personnel to fulfill our current or future needs. We may experience difficulty in hiring and retaining highly skilled employees with appropriate qualifications. Our recruiting efforts may also be limited or delayed by laws and regulations, such as restrictive immigration laws, and restrictions on travel or availability of visas. For example, as we expand into new geographies, including hiring of remote employees, we must navigate the recruiting and employment-related aspects of local rules and requirements in each such jurisdiction as part of our hiring plans. Similarly, our rate of employee attrition could be impacted by the pace and recovery of businesses and the job market as the COVID-19 pandemic subsides, the general health of the economy, the rate of unemployment, the perceived or actual mobility of our highly skilled employees who may be recruited away by our competitors, or our existing employees’ preferences with respect to remote or “hybrid” working arrangements based on their experiences during the COVID-19 pandemic, which preferences may diverge from the nature and conditions of the roles we believe are most appropriate for our business once the COVID-19 pandemic subsides. If our employee attrition is higher than expected, we may find it difficult to fill our hiring needs without substantial expense. Failure to manage our employee base and hiring needs effectively, including successfully recruiting and integrating our new hires, or to retain and motivate our current personnel may adversely affect our business, financial condition, and results of operations.

If we cannot maintain our culture and values as we grow, our business could be harmed.

We believe that a critical component of our success has been our corporate culture and values. We have invested substantial time and resources in building our culture, which is rooted in innovation, teamwork, and achieving profit with purpose. Relatedly, we believe that our status as a PBC, our commitment to environmental conservation and sustainability, and our certified B Corp status, all of which are foundational aspects of our culture and values, distinguish us from our competitors and promote a relationship among our customers, partners, and employees founded on trust.

However, as we continue to grow, including geographically expanding our presence outside of our headquarters in San Francisco, California, and developing the infrastructure associated with being a public company, we face a number of challenges that may affect our ability to sustain our corporate culture and shared values, including:

- a need to identify, attract, reward, and retain people in key leadership positions in our organization who share and further our culture, values, mission, and public benefit objective;
- the increasing size and geographic diversity of our workforce, which may limit our ability to promote a uniform and consistent culture and set of shared values across all of our offices and employees globally;
- the wider array of alternative working arrangements we now permit or may in the future permit, including part-time or flexible roles, fully remote roles, or “hybrid” roles (where a mix of in-person and remote work is permitted);
- the costs of our employee health and well-being initiatives and other ESG investments, which are required to maintain our corporate culture and live up to our values, but which may be more expensive than those of our competitors;
- the loss of our certified B Corp status;
- competitive pressures that may divert us from our mission, vision, and values, and may cause us to take actions that are contrary to, or that our workforce views as contrary to, our culture or values;
- our rapidly evolving industry; and
- the increasing need to develop expertise in new areas of business that affect us.

Any failure to preserve our corporate culture (or localize it authentically) or any failure to live up to our values as a company, particularly those related to environmental conservation and sustainability, could negatively affect our brand and reputation, harm our business, and limit our future success, including our ability to retain and recruit personnel and to effectively focus on and pursue our corporate objectives.

Merchandise returns could harm our business.

We allow customers to return products under a return policy that we believe is more generous than the industry standard. For example, for footwear, we generally accept merchandise returns for full refund or exchange if returned within 30 days of the original purchase date. Our revenue is reported net of returns, discounts, and any taxes collected from customers and remitted to government authorities. We estimate an allowance for expected product returns based on historical return trends. Revenue is presented net of the sales return allowance, and the expected inventory right of recovery is presented as a reduction of cost of revenue. The introduction of new products, changes in customer confidence or shopping habits or other competitive and general economic conditions could cause actual returns to exceed our estimates. If actual return costs differ from previous estimates, the amount of the liability and corresponding revenue are adjusted in the period in which such costs occur. In addition, from time to time, our products may be damaged in transit, which can also increase return rates. Returned goods may also be damaged in transit as part of the return process which can impede our ability to resell the returned goods. From time to time, customers have abused our return policy by, for example, not appropriately returning shoes or returning shoes that have been worn repeatedly for all or most of the 30-day return window and cannot be resold. Competitive pressures could cause us to alter our return policies or our shipping policies, which could result in an increase in damaged products and an increase in product returns. If the rate of product returns increases significantly or if product return economics become less efficient, our business, financial condition, and results of operations could be harmed.

Counterfeit or “knock-off” products, as well as products that are “inspired-by-Allbirds,” may siphon off demand we have created for sustainable footwear and apparel, and may result in customer confusion, harm to our brand, a loss of our market share, and/or a decrease in our results of operations.

We face competition from counterfeit or “knock-off” products manufactured and sold by third parties in violation of our intellectual property rights, as well as from products that are inspired by our footwear in terms of sustainability, design, and style, including private label offerings by digital retailers. In the past, third parties have established websites to target users on Facebook or other social media platforms with “look alike” websites intended to trick users into believing that they were purchasing Allbirds shoes at a steep discount. Some individuals who actually made purchases from such “look alike” websites believed they had purchased from our actual website and subsequently submitted complaints to us.

These activities of third parties may result in customer confusion, require us to incur additional administrative costs to manage customer complaints related to counterfeit goods, divert customers from us, cause us to miss out on sales opportunities, and result in a loss of our market share. We could also be required to increase our marketing and advertising spend. If consumers are confused by these other products and believe them to be actual Allbirds, we could be forced to deal with dissatisfied customers who mistakenly blame us for poor service or poor-quality goods.

In addressing these or similar issues in the future, we may also be required to incur substantial expense to protect our brand and enforce our intellectual property rights, including through legal action in the United States or in foreign countries, which could negatively impact our results of operations and financial condition.

These and similar “counterfeit” or “inspired-by-Allbirds” issues could reoccur and could again result in customer confusion, harm to our brand, a loss of our market share, and/or a decrease in our results of operations.

Certain of our key operating metrics are subject to inherent challenges in measurement, and any real or perceived inaccuracies in such metrics or the underlying data may cause a loss of investor confidence in such metrics, and the market price of our Class A common stock may decline.

We track certain key operating metrics using internal and/or external data analytics tools, which have certain limitations, including, but not limited to, imperfect data collection (e.g., lack of emails and/or other identifiers for certain customers who purchase via our retail channels and do not supply such information). In addition, we rely on data received from third parties, including third-party platforms, to track certain performance indicators, and we may be limited in our ability to verify such data. In addition, our methodologies for tracking metrics may change over time, which could result in changes to the metrics we report. If we undercount or overcount performance due to the internal data analytics tools we use or issues with the data received from third parties, if our internal data analytics tools contain algorithmic or other technical errors, or if changes in access to third party data or external reporting standards require modifications to how we calculate certain operating metrics, the data we report may not be accurate or comparable with prior periods. In addition, limitations, changes, or errors with respect to how we measure data may affect our understanding of certain details of our business, which could affect our longer-term strategies. If our performance metrics are not, or are not perceived to be, accurate representations of our business, if we discover material inaccuracies in our metrics or the data on which such metrics are based, or if we can no longer calculate any of our key performance metrics with a sufficient degree of accuracy, investors could lose confidence in the accuracy and completeness of such metrics, which could cause the price of our Class A common stock to decline.

Our business is affected by seasonality.

Our business is affected by the general seasonal trends common to the retail footwear and apparel industry. As a result, historically, we have typically generated a higher proportion of net revenue, and incurred higher selling and marketing expenses, during the holiday season in the fourth quarter of the year compared to other quarters, and we expect these trends to continue. This seasonality may adversely affect our business and cause our results of operations to fluctuate.

Risks Related to Our Supply Chain

Our reliance on suppliers and manufacturers to provide materials for and to produce our products could cause problems in our supply chain.

We do not manufacture our products or the raw materials for them and rely instead on suppliers. Many of the materials used in our products are developed and manufactured by third parties and may be available, in the short-term, from only one or a very limited number of sources, some of whom were and may continue to be impacted by the COVID-19

pandemic and other external factors. Our contracts with some suppliers and manufacturers may not adequately meet our production requirements, and we compete with other companies for raw materials and production.

We have experienced, and may in the future experience, a significant disruption in the supply of raw materials from current sources and we may be unable to locate alternative materials suppliers of comparable quality at an acceptable price in time, or at all. These issues and risks were exacerbated by the COVID-19 pandemic, which resulted in travel limitations and stay-at-home orders in most or all parts of the world for much of 2020 and the early part of 2021. In addition, if we experience significant increased demand, or if we need to replace an existing supplier or manufacturer, we may be unable to locate additional supplies of raw materials or additional manufacturing capacity on terms that are acceptable to us, or at all, or we may be unable to locate any supplier or manufacturer with sufficient capacity to meet our requirements or to fill our orders in a timely manner. These issues and risks are increased as a result of our commitments to sustainability, including our use of specific materials and manufacturing processes and the sustainability and ESG-related requirements we impose on our suppliers, which generally limit the number of suppliers who could potentially satisfy our requirements. Identifying a suitable supplier is an involved process that requires us to become satisfied with its quality control, responsiveness and service, financial stability, environmental impact, and labor and other ethical practices. Even if we are able to expand existing or find new manufacturing or materials sources, we may encounter delays in production and added costs as a result of the time it takes to train our suppliers and manufacturers in our methods, products, and quality control standards. Delays related to supplier changes could also arise due to an increase in shipping times if new suppliers are located farther away from our markets or from other participants in our supply chain or if an alternative shipping and transportation route is required, any of which could increase our overall environmental impact and which could also negatively impact our reputation and the carbon footprint scoring of our products. Any delays, interruption, or increased costs in the supply of materials or manufacture of our products could have an adverse effect on our ability to meet customer demand for our products and result in lower net revenue and income from operations both in the short and long term.

Our business is subject to the risk of manufacturer concentration.

We depend significantly on a very limited number of third-party contract manufacturers for the sourcing of the vast majority of our products. For example, during 2023, we plan to fully transition to a new footwear manufacturing partner in Vietnam. As a result of this concentration in our supply chain, our business and operations would be negatively affected if any of our key manufacturers were to experience significant disruption affecting the price, quality, availability, or timely delivery of products. The partial or complete loss of these key manufacturers, or a significant adverse change in our relationship with any of these manufacturers, could result in lost sales, added costs, and distribution delays that could harm our business and customer relationships. In addition, as a result of our commitments to sustainability, including our use of specific materials and manufacturing processes and the sustainability and ESG-related requirements we impose on our contract manufacturers, there are generally fewer manufacturers who could potentially satisfy our requirements without substantial lead time or without requiring us to incur much higher costs, so we may be unable to replace a key manufacturer without substantial time and expense.

Failure of our contractors or our licensees' contractors to comply with our supplier code of conduct, contractual obligations, local laws, and other standards could harm our business.

We work with contractors, most of which are located outside of the United States, to manufacture our products. We require the contractors that directly manufacture our products as well as those that manufacture the materials used to manufacture our products to comply with our supplier code of conduct and other social, environmental, health, and safety standards for the benefit of workers. We also require these contractors to comply with applicable standards for product safety. Notwithstanding their contractual obligations to comply with our policies and applicable standards, from time to time, contractors may not comply with such standards or applicable local law or our licensees may fail to enforce such standards or applicable local law on their contractors. Significant or continuing noncompliance with such standards and laws by one or more contractors could harm our reputation or result in a product recall and, as a result, could have an adverse effect on our sales and financial condition. Similarly, agreements that we enter into with these contractors generally do not require blanket exclusivity with us; as a result, some contractors may be permitted to work with parties who could be deemed competitive, which could harm our business.

In addition, failure of one or more contractors to comply with applicable laws and regulations and contractual obligations could lead to litigation against us or require us to initiate litigation to enforce our contracts, resulting in increased legal expenses and costs. Furthermore, the failure of any such contractors to provide safe and humane factory conditions and oversight at their facilities could damage our reputation with customers or result in legal claims against us. Furthermore, any such noncompliance by our contractors, product recalls, or negative publicity regarding production methods, alleged practices, or workplace or related conditions of any of our suppliers, manufacturers, or licensees could

adversely affect our brand image, result in lost sales, require us to divert resources to address and remediate these issues, expose us to legal claims, and force us to locate alternative suppliers, manufacturers or licensees, any of which could have an adverse effect on our business, financial condition, and results of operations. Any of these issues with our contractors could have a greater negative impact on us, due to the importance of ESG and sustainability practices to our brand and business.

Failure of our suppliers or manufacturers to consistently provide high-quality materials and products could adversely affect our brand and reputation and cause our business and results of operations to suffer.

Our success depends on our ability to provide our customers with the sustainable footwear and apparel they seek, which in turn depends on the quantity and quality of the finished products provided by our manufacturing partners, which depends on the quantity and quality of the raw materials they receive from our supply partners. We may be unable to provide customers with the high-quality sustainable footwear and apparel they seek if our supply chain partners do not consistently produce high-quality products for us to sell.

We believe that many of our new customers find us by word of mouth and other non-paid referrals from existing customers. If existing customers are dissatisfied with their product experience due to defects in the materials or manufacturing of our products or other quality related concerns, then they may stop buying our products and may stop referring others to us, and we could experience an increase in the rate of product returns. If we are unable to retain existing customers and attract new customers due to quality issues that we fail to identify and remedy, our growth prospects would be harmed and our business could be adversely affected. If product quality issues are widespread or result in product recalls, our brand and reputation could be harmed, we could incur substantial costs, and our results of operations and financial condition could be adversely affected.

The fluctuating cost of raw materials could increase our cost of revenue and cause our results of operations and financial condition to suffer.

The raw materials and commodities used by our suppliers and manufacturers include tree fiber, merino wool, sugarcane, castor bean oil, natural rubber, recycled plastic bottles, and paper products. Our suppliers and manufacturers' costs for raw materials and commodities are affected by, among other things, weather, consumer demand, rising interest rates, inflation, speculation on the commodities market, the relative valuations and fluctuations of the currencies of producer versus consumer countries, and other factors that are generally unpredictable and beyond our control. In addition, if key suppliers, the footwear and apparel industry, or a group of countries adopt and enforce carbon pricing, then the price of raw materials and commodities could increase. Increases in the cost of raw materials have had and could continue to have a material adverse effect on our cost of revenue, results of operations, financial condition, and cash flows. As a result, this may have an impact on pricing of our products. For example, in August 2021, we implemented a slight price increase in certain of our products, and had further price increases in March 2022. It is uncertain if we will have to consider additional future price increases in our products as a result of increases in the cost of raw materials and supplies, partially due to the current inflationary environment. If we continue increasing the prices of our products, this may adversely impact demand for our products by our customers.

The operations of our suppliers, most of which are located outside of the United States, are subject to additional risks that are beyond our control and that could harm our business, financial condition, and results of operations.

Currently, most of our suppliers are located outside of the United States. As a result of our global suppliers, we are subject to risks associated with doing business abroad, including:

- political unrest, terrorism, labor disputes, and economic instability resulting in the disruption of trade from foreign countries in which our products are manufactured, including, for example, Vietnam, China, and Peru;
- the imposition of new laws and regulations, including those relating to labor conditions, quality, and safety standards, imports, duties, taxes, and other charges on imports, as well as trade restrictions and restrictions on currency exchange or the transfer of funds, particularly new or increased tariffs imposed by the United States on imports from countries where our products are manufactured, including, for example, Vietnam, China, and Peru;
- greater challenges and increased costs with enforcing and periodically auditing or reviewing our suppliers and manufacturers' compliance with our supplier code of conduct, including their labor and sustainability practices, given that their facilities are located outside of the United States and, in many cases, far away from our offices and management;

- reduced protection for intellectual property rights, including trademark protection, in some countries, particularly China;
- disruptions in operations due to global, regional, or local public health crises or other emergencies or natural disasters, including, for example, disruptions due to the ongoing COVID-19 pandemic given the emergence of new variants and disparities in availability of vaccines in different parts of the world;
- disruptions or delays in shipments; and
- changes in local economic conditions in countries where our manufacturers, suppliers, or customers are located.

These and other factors beyond our control, particularly in light of the COVID-19 pandemic, could interrupt our suppliers' production, influence the ability of our suppliers to export our products cost-effectively or at all, and inhibit our suppliers' ability to procure certain materials, any of which could harm our business, financial condition, and results of operations.

Shipping and delivery are critical parts of our business and any changes in, or disruptions to, our shipping and delivery arrangements could adversely affect our business, financial condition, and results of operations.

We rely on several ocean, air parcel, and "less than truckload" carriers to deliver the products we sell. If we are not able to negotiate acceptable pricing and other terms with these providers, or if these providers experience performance problems or other difficulties in processing our orders or delivering our products to customers, it could negatively impact our results of operations, financial condition, and our customers' experience. For example, changes to the terms of our shipping arrangements or the imposition of surcharges or surge pricing may adversely impact our margins and profitability. In addition, our ability to receive inbound inventory efficiently and ship merchandise to customers may be negatively affected by factors beyond our and these providers' control, including pandemic, weather, fire, flood, power loss, earthquakes, acts of war or terrorism, or other events specifically impacting other shipping partners, such as labor disputes, financial difficulties, system failures, and other disruptions to the operations of the shipping companies on which we rely. We have in the past experienced, and may in the future experience, shipping delays for reasons outside of our control. We are also subject to risks of damage or loss during delivery by our shipping vendors. If the products ordered by our customers are not delivered in a timely fashion, including to international customers, or are damaged or lost during the delivery process, our customers could become dissatisfied and cease buying products from us, which would adversely affect our business, financial condition, and results of operations.

If we do not successfully optimize, operate, and manage our global network of third-party owned and operated logistics and distribution centers, our business, financial condition, and results of operations could be harmed.

Our success depends on our global logistics and distribution network. Currently, we rely predominantly on a few third-party logistics providers to store our finished products in, and distribute our products to customers from, their distribution center locations in the United States, Canada, United Kingdom, the Netherlands, China, Japan, South Korea, and New Zealand. Our ability to meet customer expectations, manage inventory, complete sales, and achieve objectives for operating efficiencies and growth, particularly in emerging markets, depends on the proper operation of these third parties' distribution facilities, the development or expansion of additional distribution capabilities, and the timely performance of services by third parties (including those involved in shipping product to and from our distribution facilities). If we continue to add third-party logistics providers, require them to expand their fulfillment, distribution, and warehouse capabilities, including adding additional locations in new countries, add products categories with different fulfillment requirements, or change the mix of products that we sell, our global logistics and distribution network will become increasingly complex and operating it will become more challenging for us and our third-party logistics providers. The expansion and growth of our logistics and distribution center network may put pressure on our managerial, financial, operational, and other resources. In addition, we may be required to expand our capacity sooner than we anticipate. If we are unable to secure new or expand existing third-party logistics providers to meet our future needs, our order fulfillment and shipping times may be delayed and our business, financial condition, and results of operations could be adversely affected. The third-party owned and operated logistics and distribution centers we rely on could be interrupted by issues beyond our control, including information technology problems, disasters such as earthquakes or fires, or outbreaks of disease or government actions taken to mitigate their spread. For example, during the COVID-19 pandemic, several logistics providers we rely on faced staffing shortages, which impacted their businesses and resulted in delayed shipping and delivery times. Any significant failure in our distribution facilities could result in an adverse effect on our business. We maintain business interruption insurance, but it may not adequately protect us from adverse effects caused by significant disruptions in our third-party logistics and distribution centers.

Risks Related to Intellectual Property, Information Technology, and Data Security and Privacy

Our failure or inability to protect or enforce our intellectual property rights could diminish the value of our brand and weaken our competitive position.

We currently rely on a combination of trademark, trade dress, copyright, patent, and unfair competition laws, as well as confidentiality procedures and licensing arrangements, to establish and protect our intellectual property rights. The steps we take to protect our intellectual property rights may not be adequate to prevent infringement of these rights by others. We regularly face the imitation of our products, the manufacture and distribution of “knock-off” and counterfeit products, and the misappropriation of our brand and product names. For instance, we have had to litigate against a third party misappropriating our WOOL RUNNERS trademark and have had to enforce against third parties manufacturing and selling products that violate our design patents.

In addition, intellectual property protection may be unavailable or limited in some foreign countries where laws or law enforcement practices may not protect our intellectual property rights as fully as in the United States, and it may be more difficult for us to successfully challenge the use of our intellectual property rights by other parties in these countries. For instance, some of our trademark or trade dress applications may not be approved by the applicable governmental authorities because they are determined to lack sufficient distinctiveness, and, even if approved, may be challenged by third parties for this same reason. If we fail to protect and maintain our intellectual property rights, the value of our brand could be diminished, and our competitive position may suffer.

Our trademarks and other proprietary rights could potentially conflict with the rights of others, and we may be prevented from selling some of our products.

Our success depends in large part on our brand image. We believe that our trademarks and other proprietary rights have significant value and are important to identifying and differentiating our products from those of our competitors and creating and sustaining demand for our products. We have applied for and obtained some U.S., E.U., and foreign trademark registrations, and will continue to evaluate the registration of additional trademarks as appropriate. However, some or all of these pending trademark applications may be refused due to prior conflicting trademarks or for other reasons. We also have and may continue to encounter “squatters” or bad actors that either apply to register or “squat” on previously acquired trademarks that are identical or related to our trademarks. In such scenarios, third parties hope to use their prior rights as leverage to extract a favorable monetary settlement or acquisition of their rights; in some instances, we are required to expend both financial and internal resources to address such filings.

Moreover, even if our applications are approved, third parties may seek to oppose, invalidate, or otherwise challenge these registrations for these same reasons, particularly as we expand our business and the number of products we offer. For example, currently, we are defending invalidation actions in China against a number of our granted registrations.

Our defense of any claim, regardless of its merit, could be expensive and time consuming and could divert management resources. Successful infringement claims against us could result in significant monetary liability or prevent us from selling some of our products. In addition, resolution of claims may require us to redesign our products, license rights from third parties, or cease using those rights altogether. Any of these events could harm our business and cause our results of operations, liquidity, and financial condition to suffer.

The inability to acquire, use, or maintain our marks and domain names for our websites could substantially harm our business, financial condition, and results of operations.

We currently are the registrant of marks for our products in numerous jurisdictions and are the registrant of the internet domain name for the website allbirds.com, as well as various related domain names. However, we have not registered our marks represented by our domain names in all international jurisdictions. Domain names generally are regulated by internet regulatory bodies and may not be generally protectable as trademarks in and of themselves. We have incurred, and as our business grows, may continue to incur material costs in connection with the registration, maintenance, and protection of our marks. If we do not have or cannot obtain on reasonable terms the ability to use our marks in a particular country, or to use or register our domain name, we could be forced either to incur significant additional expenses to market our products within that country, including the development of a new brand and the creation of new promotional materials and packaging, or to elect not to sell products in that country. Either result could adversely affect our business, financial condition, and results of operations.

Furthermore, the regulations governing domain names and laws protecting marks and similar proprietary rights could change in ways that block or interfere with our ability to use relevant domains or the Allbirds brand. Regulatory bodies also

may establish additional generic or country-code top-level domains or may allow modifications of the requirements for registering, holding, or using domain names. As a result, we might not be able to register, use, or maintain the domain names that use the name Allbirds in all of the countries and territories in which we currently or intend to conduct business.

Additionally, we might not be able to prevent third parties from registering, using, or retaining domain names that interfere with our customer communications or infringe or otherwise decrease the value of our marks, domain names, and other proprietary rights. For example, we have in the past been the target of, and may in the future be the target of, fraudulent websites with similar domain names or content to us that attempt to divert our customer traffic and defraud our customers. Any inability to prevent these practices could adversely affect our brand and make it more difficult for users to find our website.

Any material disruption of our information technology systems or unexpected network interruption could disrupt our business and reduce our sales.

We are increasingly dependent on information technology networks and systems, our website, and various third parties to market and sell our products and to manage a variety of business processes and activities and to comply with regulatory, legal, and tax requirements. For example, we depend on information technology systems and third parties to operate our websites, process transactions online and in our stores, respond to customer inquiries, manage inventory, purchase, sell, and ship goods on a timely basis, and maintain cost-efficient operations. We also depend on our information technology infrastructure for digital marketing activities and for electronic communications among our personnel, customers, manufacturers, and suppliers around the world. Our website, portions of which are run through Shopify, and information technology systems, some of which are managed by third parties, may be susceptible to damage, disruptions, slowdowns, or shutdowns due to failures during the process of upgrading or replacing software, databases, or components, fire, flood, power outages, hardware failures, terrorist attacks, acts of war, break-ins, earthquakes, or catastrophic events.

Due to the importance of our website and internet-related operations, we are vulnerable to website downtime and other technical failures, which may be outside of our control. Further, any slowdown or material disruption of our systems, or the systems of our third-party service providers, or our website could disrupt our ability to track, record, and analyze the products that we sell and could negatively impact our operations, shipment of goods, ability to process financial information and transactions, and our ability to receive and process customer orders or engage in normal business activities. Our third-party technology providers may also change their policies, terms, or offerings from time to time, may fail to introduce new features and offerings that meet our needs as we expand, or may cease to provide services to us on favorable terms, or at all, which could require us to adjust how we use our information technology systems, including our website, or switch to alternative third-party service providers which could be costly, cause interruptions, and could ultimately adversely affect our business, financial condition, results of operations, and growth prospects. Furthermore, we could experience delays in reporting our financial results.

We use complex custom-built proprietary software in our technology infrastructure. Our proprietary software may contain undetected errors or vulnerabilities, some of which may be significant and may only be discovered after the software has been implemented in our production environment or released to end users. In addition, we seek to continually update and improve our software, and we may not always be successful in executing these upgrades and improvements, and the operation of our systems may be subject to slowdown or failure. For example, in the past we have experienced minor slowdowns and/or impaired functionality while updating our website. Moreover, new technologies or infrastructures may not be fully integrated with existing systems on a timely basis, or at all. Any errors or vulnerabilities discovered in our software after commercial implementation or release could result in damage to our reputation, loss of customers, exploitation by bad actors resulting in data breaches or unauthorized modification of our software, disruption to our digital channels, loss of revenue, or liability for damages, any of which could adversely affect our growth prospects and our business.

Additionally, if we expand our use of third-party services, including cloud-based services, our technology infrastructure may be subject to increased risk of slowdown or interruption as a result of integration with or subsequent dependence on such services and/or failures by such third parties, which are out of our control. Our net revenue depends on the number of visitors who shop on our website and the volume of orders we can handle. Unavailability of our website or mobile app or reduced order fulfillment performance would reduce the volume of goods sold and could also adversely affect customer perception of our brand. In addition, continued growth in our transaction volume, as well as surges in online traffic and orders associated with promotional activities or seasonal trends in our business, place additional demands on our technology platform, and could cause or exacerbate slowdowns or interruptions. If there is a substantial increase in the volume of traffic on our website or the number of orders placed by customers, we will be required to further expand.

scale, and upgrade our technology, transaction processing systems, and network infrastructure. There can be no assurance that we will be able to accurately project the rate or timing of increases, if any, in the use of our website or mobile app or expand, scale, and upgrade our technology, systems, and infrastructure to accommodate such increases on a timely basis. In order to remain competitive, we must continue to enhance and improve the responsiveness, functionality, and features of our website, mobile app and underlying technology infrastructure, which is particularly challenging given the rapid rate at which new technologies, customer preferences and expectations, and industry standards and practices are evolving in the eCommerce industry. These types of activities subject us to inherent costs and risks associated with replacing and changing these systems, including impairment of our ability to fulfill customer orders, potential disruption of our internal control structure, capital expenditures, additional administration, and operating expenses, acquisition, and retention of sufficiently skilled personnel to implement and operate the new systems, demands on management time, the introduction of errors or vulnerabilities, and other risks and costs of delays or difficulties in transitioning to or integrating new systems into our current systems. Our or our third-party vendors' inability to continue to update, improve, and scale our website or mobile app and the underlying technology infrastructure (including upgrades to or replacement of legacy systems with successor systems or building new policies, procedures, training programs, and monitoring tools) could harm our reputation and our ability to acquire, retain, and serve our customers, which could adversely affect our business, financial condition, and results of operations.

Further, we endeavor to continually upgrade existing technologies and business applications, and we may be required to implement new technologies or business applications in the future. The implementation of upgrades and changes requires significant investments. Our results of operations may be affected by the timing, effectiveness, and costs associated with the successful implementation of any upgrades or changes to our systems and infrastructure.

If the technology-based systems that give our customers the ability to shop with us online do not function effectively, our results of operations, as well as our ability to grow our digital business globally, could be materially adversely affected.

Any failure on our part to provide attractive, effective, reliable, user-friendly digital platforms that offer a wide assortment of merchandise with rapid delivery options and that continually meet the changing expectations of online shoppers could place us at a competitive disadvantage, result in the loss of digital and other sales, harm our reputation with customers, have a material adverse impact on the growth of our digital business globally, and could have a material adverse impact on our business and results of operations.

Risks specific to our digital business also include diversion of sales from our company-operated stores, difficulty in recreating the in-store experience through direct channels and liability for online content. Our failure to successfully respond to these risks might adversely affect sales in our digital business, as well as damage our reputation and brand.

In the event that it is more difficult for our customers to buy products from us on their mobile devices, or if our customers choose not to buy products from us on their mobile devices or to use mobile products that do not offer access to our websites, our customer growth could be harmed and our business, financial condition, and results of operations may be adversely affected.

We are subject to risks related to online payment methods.

We currently accept payments using a variety of methods, including credit cards and debit cards. As we offer new payment options to consumers, we may be subject to additional regulations, compliance requirements, fraud and other risks. For certain payment methods, we pay interchange and other fees, which may increase over time and raise our operating costs and lower profitability. We are also subject to payment card association operating rules and certification requirements, including the Payment Card Industry Data Security Standard, or PCI DSS, and rules governing electronic funds transfers, which could change or be reinterpreted to make it difficult or impossible for us to comply. Failure to comply with PCI DSS or to meet other payment card standards may result in the imposition of financial penalties or the allocation by the card brands of the costs of fraudulent charges to us.

If sensitive information about our customers is actually or alleged to have been disclosed, or if we or our third-party providers are subject to real or perceived cyberattacks or misuse, our customers may curtail use of our website or mobile app, we may be exposed to liability, and our reputation could suffer.

Operating our business and platform involves the collection, storage, and transmission of a variety of sensitive information, which we may share with our third-party service providers. In an effort to protect sensitive information, we rely on a variety of security measures, but advances in computer capabilities, increasingly sophisticated tools and methods used by hackers and cyber terrorists, new discoveries in the field of cryptography, or other developments may result in our

or our third party service providers' (a) failure or inability to detect cyberattacks or (b) failure or inability to adequately protect sensitive information.

Like other eCommerce companies, we are also vulnerable to hacking, malware, supply chain attacks, computer viruses, unauthorized access, and various other attacks by computer hackers (such as phishing or social engineering attacks, ransomware attacks, credential stuffing attacks, denial-of-service attacks, exploitation of software vulnerabilities, and other real or perceived cyberattacks) as well as cybersecurity incidents caused by telecommunication failures, user errors, or intentional or accidental actions or inactions by users with authorized access to our systems. Additionally, certain functional areas of our workforce operate in a "hybrid" or fully remote work environment, which has heightened the risk of these potential vulnerabilities. Any of these issues could lead to interruptions or shutdowns of our platform, loss or corruption of data or unauthorized access to, or disclosure of sensitive information. Cyberattacks could also result in the theft of our intellectual property, damage to our IT systems or disruption of our ability to make financial reports, and other public disclosures required of public companies. We have been subject to attempted cyber, phishing, or social engineering attacks in the past and may continue to be subject to such attacks and other cybersecurity incidents in the future. We and our third-party service providers may not have the resources or technical sophistication to anticipate or prevent all such cyberattacks. Moreover, techniques used to obtain unauthorized access to systems change frequently and may not be known until launched against us or our third-party service providers. Security breaches can also occur as a result of non-technical issues, including intentional or inadvertent actions by our employees, our third-party service providers, or their personnel.

If we or our third-party service providers experience, or are believed to have experienced, security breaches that result in marketplace performance or availability problems or the loss or corruption of, or unauthorized access to or disclosure of, sensitive information, consumers may become unwilling to provide us the information necessary to make purchases on our website. Existing customers may also decrease or stop their purchases altogether. While we maintain cyber errors and omissions insurance coverage that covers certain aspects of cyber risks, these losses may not be adequately covered by insurance or other contractual rights available to us. The successful assertion of one or more large claims against us that exceed or are not covered by our insurance coverage or changes in our insurance policies, including premium increases or the imposition of large deductible or co-insurance requirements, could make us unable to acquire such insurance and may have an adverse effect on our business, financial condition, and results of operations.

Furthermore, we may be required to disclose personal data pursuant to demands from individuals, privacy advocates, regulators, government agencies, and law enforcement agencies in various jurisdictions with conflicting privacy and security laws. Any disclosure or refusal to disclose personal data may result in a breach of privacy and data protection policies, notices, laws, rules, court orders, and regulations and could result in proceedings or actions against us in the same or other jurisdictions, damage to our reputation and brand, and inability to provide our products to customers in certain jurisdictions. Additionally, changes in the laws and regulations that govern our collection, use, and disclosure of customer data could impose additional requirements with respect to the retention and security of customer data, could limit our marketing activities, and have an adverse effect on our business, financial condition, and results of operations.

Failure to comply with federal, state, or foreign laws and regulations or our contractual obligations or industry requirements relating to privacy, data protection, and customer protection, or the expansion of current or the enactment of new laws and regulations relating to privacy, data protection, and customer protection, could adversely affect our business and our financial condition.

We collect and maintain significant amounts of data relating to our customers and employees, and we face risks inherent in handling large volumes of data, transferring such data to third parties, processing such data for tracking and marketing purposes (or providing such data to third parties for tracking and marketing purposes), and protecting the security of such data. Our actual or perceived failure to comply with any federal, state, or foreign laws and regulations, or applicable industry standards that govern or apply to our collection, use, retention, sharing, and security of data, or any failure by any of our third party service providers to protect such data that they may maintain on our behalf, could result in enforcement actions that require us to change our business practices in a manner that may negatively impact our revenue, result in indemnity obligations to our customers, distract our management, increase our costs of doing business, as well as expose ourselves to litigation, fines, civil, and/or criminal penalties and adverse publicity that could cause our customers to lose trust in us, negatively impacting our reputation and business (including our brand) in a manner that harms our financial position, results in a loss of customers and suppliers or an inability to process credit card payments, and may result in the imposition of monetary penalties. Laws and regulations in the United States and around the world restrict how information about individuals is collected, processed, stored, used, and disclosed, as well as set standards for its security, implement notice requirements regarding privacy practices, and provide individuals with certain rights regarding the use, disclosure,

and sale of their protected personal information. These laws and regulations are still being tested in courts, and they are subject to new and differing interpretations by courts and regulatory officials. We are working to comply with the privacy and data protection laws and regulations that apply to us, and we anticipate needing to devote significant additional resources to complying with these laws and regulations. It is possible that these laws and regulations may be interpreted and applied in a manner that is inconsistent from jurisdiction to jurisdiction or inconsistent with our current policies and practices.

In the United States, both federal and various state governments have adopted, or are considering, laws, guidelines, or rules for the collection, distribution, use, and storage of information collected from or about consumers or their devices. For example, California enacted the California Consumer Privacy Act, or the CCPA, which went into effect on January 1, 2020. The CCPA gives California residents expanded rights to access and delete their personal information, opt out of certain personal information sharing, and receive detailed information about how their personal information is used. The CCPA provides for civil penalties for violations, as well as statutory damages and a private right of action for data breaches that is expected to increase data breach litigation. Further, in November 2020, California voters passed the California Privacy Rights Act, or CPRA. The CPRA took effect on January 1, 2023 and creates obligations with respect to certain data relating to consumers as of January 1, 2022, significantly expands the CCPA, including by introducing additional obligations such as data minimization and storage limitations, granting additional rights to consumers, such as correction of personal information and additional opt-out rights, and creates a new entity, the California Privacy Protection Agency, to implement and enforce the law. Personal information we handle may be subject to the CCPA and CPRA, which may increase our compliance costs and potential liability. Further, Virginia, Colorado, Utah, and Connecticut have all passed privacy laws that took effect or will take effect in 2023, but aspects of these state privacy statutes remain unclear, resulting in further legal uncertainty and potentially requiring us to modify our data practices and policies and to incur substantial additional costs and expenses in an effort to comply. Other states have considered similar bills, which could be enacted in the future. In addition to fines and penalties that may be imposed for failure to comply with state law, some states also provide for private rights of action to customers for misuse of or unauthorized access to personal information.

Certain requirements from our third-party technology and platform providers may also cause us to modify our offerings due to privacy concerns or negatively affect our revenue due to reduced availability of information about consumers. For example, Apple iOS 14.5 requires apps in the Apple App Store to opt in to the tracking of users across apps and websites owned by third parties for advertising and measurement purposes. Google introduced a similar feature in early 2022. Changes like this may reduce the quality of the data and related metrics that can be collected or used by us and/or our partners. In addition, such changes could significantly inhibit the effectiveness of our targeted advertising and related activities.

In addition to risks posed by new privacy laws, we could be subject to claims alleging violations of long-established federal and state privacy and consumer protection laws, including those related to telephone and email communications with consumers. As an example, the Telephone Consumer Protection Act, or TCPA, is a federal law that imposes significant restrictions on the ability to make telephone calls or send text messages to mobile telephone numbers without the prior consent of the person being contacted. The TCPA provides for substantial statutory damages for violations, which has generated extensive class action litigation. In addition, class action plaintiffs in the United States are employing novel legal theories to allege that federal and state eavesdropping/wiretapping laws and state constitutions prohibit the use of analytics technologies widely employed by website and mobile app operators to understand how their users interact with their services. Despite our compliance efforts, our use of text messaging communications or similar analytics technologies could expose us to costly litigation, government enforcement actions, damages, and penalties, which could adversely affect our business, financial condition, and results of operations.

Outside of the United States, certain foreign jurisdictions, including the European Economic Area, or EEA, and the United Kingdom, have laws and regulations which are more restrictive in certain respects than those in the United States. For example, the EEA and the United Kingdom have adopted the GDPR, which may apply to our collection, control, use, sharing, disclosure, and other processing of data relating to an identified or identifiable living individual (personal data). The GDPR, and national implementing legislation in EEA member states and the United Kingdom, impose a strict data protection compliance regime including: providing detailed disclosures about how personal data is collected and processed (in a concise, intelligible and easily accessible form); granting new rights for data subjects in regard to their personal data (including the right to be “forgotten” and the right to data portability), as well as enhancing current rights (e.g., data subject access requests); requirements to have data processing agreements in place to govern the processing of personal data on behalf of other organizations; introducing the obligation to notify data protection regulators or supervisory authorities (and in certain cases, affected individuals) of significant data breaches; maintaining a record of data processing; and complying

with the principal of accountability and the obligation to demonstrate compliance through policies, procedures, trainings, and audits.

In addition, we are subject, or may become subject, to various other data privacy and security laws and regulations of other foreign jurisdictions, including those in China and South Korea. On June 10, 2021, the Peoples Republic of China, or the PRC, passed the PRC Data Security Law, or the DSL. The DSL, which became effective on September 1, 2021, imposes data privacy and cybersecurity obligations on entities carrying out processing of personal data and stipulates that entities processing of data outside China will be liable for damages to the interests of PRC citizens. Also, on August 20, 2021, the PRC passed the Personal Information Protection Law, or the PIPL. The PIPL, which took effect in November 2021, puts in place rules for processing personal information of PRC citizens. Like the GDPR and CCPA, the DSL and PIPL apply to processing of personal information outside China but for purpose of providing products or services to PRC citizens.

Since we collect and process personal information on PRC citizens, we are or may become subject to and may be ordered to comply with PRC regulations associated with the DSL and PIPL. In addition, we may be subject to heightened PRC regulatory scrutiny in the future. As there remains significant uncertainty in the interpretation and enforcement of the DSL and the PIPL, we cannot assure you that we will comply with such regulations in all respects. Any non-compliance may subject us to fines, orders to remediate or terminate any actions that are deemed illegal by regulatory authorities, as well as damage to our reputation, or legal proceedings against us, which may affect our business, financial condition, or results of operations.

We also may be subject to European Union rules with respect to cross-border transfers of personal data out of the EEA. Recent legal developments in Europe have created complexity and uncertainty regarding transfers of personal data from the EEA to the United States. We may make use of alternative data transfer mechanisms such as standard contractual clauses, or SCCs, approved by the European Commission on June 4, 2021. These new SCCs may require us to expend significant resources to update our contractual arrangements and to comply with such obligations. Further, data protection authorities may require measures to be put in place in addition to SCCs for transfers to countries outside of the EEA, as well as Switzerland and the United Kingdom. Our third-party service providers may also be affected by these changes. In addition to other impacts, we may experience additional costs to comply with these changes, and we and our customers face the potential for regulators in the EEA, Switzerland, or the United Kingdom to apply different standards to the transfer of personal data to the United States and other non-EEA countries, and to block, or require ad hoc verification of measures taken with respect to certain data flows to the United States and other non-EEA countries. We also may be required to engage in new contract negotiations with third parties that aid in processing data on our behalf, to the extent that any of our service providers or consultants have been relying on invalidated or insufficient contractual protections for compliance with evolving interpretations of and guidance for cross-border data transfers pursuant to the GDPR. In such cases, we may not be able to find alternative service providers, which could limit our ability to process personal data from the EEA, Switzerland, or the United Kingdom and increase our costs.

These recent developments may require us to review and amend the legal mechanisms by which we make and/or receive personal data transfers to/in the United States. As supervisory authorities issue further guidance on personal data export mechanisms, including circumstances where the standard contractual clauses cannot be used and/or start taking enforcement action, we could suffer additional costs, complaints, and/or regulatory investigations or fines, and/or if we are otherwise unable to transfer personal data between and among countries and regions in which we operate, it could affect the manner in which we provide our services, the geographical location or segregation of our relevant systems and operations, and could adversely affect our business, financial condition, and results of operations.

Fines for certain breaches of the GDPR are up to the greater of 20 million euros or 4% of total global annual turnover. In addition to the foregoing, a breach of the GDPR could result in regulatory investigations, reputational damage, orders to cease/change our processing of our data, enforcement notices, and/or assessment notices (for a compulsory audit). We may also face civil claims including representative actions and other class action type litigation (where individuals have suffered harm), potentially amounting to significant compensation or damages liabilities, as well as associated costs, diversion of internal resources, and reputational harm.

The United Kingdom has implemented legislation similar to the GDPR, including the U.K. Data Protection Act and legislation similar to the GDPR referred to as the U.K. GDPR, which provides for fines of up to the greater of 17.5 million British Pounds or 4% of a company's worldwide turnover, whichever is higher. Additionally, the relationship between the United Kingdom and the European Union in relation to certain aspects of data protection law remains unclear following the

United Kingdom's exit from the European Union, including with respect to regulation of data transfers between E.U. member states and the United Kingdom. On June 28, 2021, the European Commission announced a decision of "adequacy" concluding that the United Kingdom ensures an equivalent level of data protection to the GDPR, which provides some relief regarding the legality of continued personal data flows from the EEA to the United Kingdom. Some uncertainty remains, however, as this adequacy determination must be renewed after four years and may be modified or revoked in the interim. We cannot fully predict how the Data Protection Act, the U.K. GDPR, and other U.K. data protection laws or regulations may develop in the medium to longer term nor the effects of divergent laws and guidance regarding how data transfers to and from the United Kingdom will be regulated.

We are also subject to evolving E.U. privacy laws on cookies and e-marketing. In the European Union, regulators are increasingly focusing on compliance with requirements in the online behavioral advertising ecosystem, and current national laws that implement the ePrivacy Directive will be replaced by an E.U. regulation known as the ePrivacy Regulation which will significantly increase fines for non-compliance. In the European Union, informed consent is required for the placement of a cookie or similar technologies on a user's device and for direct electronic marketing. The GDPR also imposes conditions on obtaining valid consent, such as a prohibition on pre-checked consents and a requirement to ensure separate consents are sought for each type of cookie or similar technology. While the text of the ePrivacy Regulation is still under development and not expected to take effect until sometime in 2023, a European court decision and regulators' recent guidance are driving increased attention to cookies and tracking technologies. If regulators start to enforce the strict approach in recent guidance, this could lead to substantial costs, require significant systems changes, limit the effectiveness of our marketing activities, divert the attention of our technology personnel, adversely affect our margins, increase costs, and subject us to additional liabilities. Regulation of cookies and similar technologies, and any decline of cookies or similar online tracking technologies as a means to identify and potentially target individuals, may lead to broader restrictions and impairments on our marketing and personalization activities, and may negatively impact our efforts to understand users.

Furthermore, compliance with legal and contractual obligations requires us to make public statements about our privacy and data security practices, including the statements we make in our online privacy policy. Although we endeavor to comply with these statements, should they prove to be untrue or be perceived as untrue, even through circumstances beyond our reasonable control, we may face litigation, claims, investigations, inquiries, or other proceedings by the U.S. Federal Trade Commission, state attorneys general, and other federal, state, and foreign regulators and private litigants alleging violations of privacy or consumer protection laws.

Any actual or perceived non-compliance with these rapidly changing laws, regulations, or standards or our contractual obligations relating to privacy, data protection, and consumer protection by us or the third-party companies we work with could result in litigation and proceedings against us by governmental entities, consumers, or others, fines and civil or criminal penalties for us or company officials, obligations to cease offerings or to substantially modify our business in a manner that makes it less effective in certain jurisdictions, negative publicity, and harm to our brand and reputation, and reduced overall demand for our products, any of which could have an adverse effect on our business, financial condition, and results of operations.

Use of social media, emails, push notifications, and text messages in ways that do not comply with applicable laws and regulations, lead to the loss or infringement of intellectual property, or result in unintended disclosure may harm our reputation or subject us to fines or other penalties.

We use social media, emails, push notifications, and text messages as part of our omni-channel approach to marketing. As laws and regulations evolve to govern the use of these channels, the failure by us, our employees, or third parties acting at our direction to comply with applicable laws and regulations in the use of these channels could adversely affect our reputation or subject us to fines or other penalties. In addition, our employees or third parties acting at our direction may knowingly or inadvertently make use of social media in ways that could lead to the loss or infringement of intellectual property, as well as the public disclosure of proprietary, confidential, or sensitive personal information of our business, employees, learners, partners, or others. Information concerning us or our customers, whether accurate or not, may be posted on social media platforms at any time and may have an adverse impact on our brand, reputation, or business. The harm may be immediate without affording us an opportunity for redress or correction and could have a material adverse effect on our reputation, business, results of operations, financial condition, and prospects.

Risks Related to Other Legal, Regulatory, and Taxation Matters

Government regulation of the internet and eCommerce is evolving, and unfavorable changes or failure by us to comply with these regulations could substantially harm our business, financial condition, and results of operations.

We are subject to general business regulations and laws as well as regulations and laws specifically governing the internet and eCommerce. Existing and future regulations and laws could impede the growth of the internet, eCommerce, or mobile commerce, which could in turn adversely affect our growth. These regulations and laws may involve taxes, tariffs, privacy and data security, anti-spam, content protection, electronic contracts and communications, customer protection, and internet neutrality. It is not clear how existing laws governing issues such as property ownership, sales, and other taxes and customer privacy apply to the internet as the vast majority of these laws were adopted prior to the advent of the internet and do not contemplate or address the unique issues raised by the internet or eCommerce. It is possible that general business regulations and laws, or those specifically governing the internet or eCommerce, may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another and may conflict with other rules or our practices. We cannot be sure that our practices comply fully with all such laws and regulations. Any failure, or perceived failure, by us to comply with any of these laws or regulations could result in damage to our reputation, a loss in business, and proceedings or actions against us by governmental entities, customers, suppliers, or others. Any such proceeding or action could hurt our reputation, force us to spend significant amounts in defense of these proceedings, distract our management, increase our costs of doing business, decrease the use of our website and mobile app by customers and suppliers, and may result in the imposition of monetary liabilities. We may also be contractually liable to indemnify and hold harmless third parties from the costs or consequences of our own non-compliance with any such laws or regulations. As a result, adverse developments with respect to these laws and regulations could substantially harm our business, financial condition, and results of operations.

We have and may continue to face exposure to foreign currency exchange rate fluctuations.

Certain of our foreign revenue is denominated in currencies of the countries and territories where we sell our products outside of the United States. Similarly, certain of our foreign operating expenses are denominated in the currencies of the countries and territories in which our third-party vendors are located. For example, to acquire the supply of raw materials or commodities such as wool that we expect to require for our business, we may enter into long-term contracts with pricing denominated in currencies other than the U.S. dollar. Accordingly, changes in the value of foreign currencies relative to the U.S. dollar have affected and may in the future continue to affect our net revenue and results of operations. For example, in 2022, our net revenue and results of operations were negatively impacted by approximately \$8.0 million from unfavorable foreign exchange rates due to the strengthening U.S. dollar in certain international markets. As a result of such foreign currency exchange rate fluctuations, it has been and may continue to be more difficult to detect underlying trends in our business and results of operations. In addition, to the extent that fluctuations in currency exchange rates cause our results of operations to differ from our expectations or the expectations of our investors, the trading price of our Class A common stock could be lowered. We do not currently maintain a program to hedge transactional exposures in foreign currencies. However, in the future, we may use derivative instruments, such as foreign currency forward and option contracts, to hedge certain exposures to fluctuations in foreign currency exchange rates. The use of such hedging activities may not offset any or more than a portion of the adverse financial effects of unfavorable movements in foreign exchange rates over the limited time the hedges are in place and may introduce additional risks if we are unable to structure effective hedges with such instruments.

Existing and potential tariffs imposed by the United States or other governments or a global trade war could increase the cost of our products, which could have an adverse effect on our business, financial condition and results of operations; new trade restrictions could prevent us from importing or selling our products profitably.

The United States and the countries in which our products are produced or sold have imposed and may impose additional quotas, duties, tariffs, or other restrictions or regulations, or may adversely adjust prevailing quota, duty, or tariff levels. The results of any audits or related disputes regarding these restrictions or regulations (including, for example, regarding the proper import classification code, or HTS code, for a given product) could have an adverse effect on our financial statements for the period or periods for which the applicable final determinations are made. Countries impose, modify, and remove tariffs and other trade restrictions in response to a diverse array of factors, including global and national economic and political conditions, which make it impossible for us to predict future developments regarding tariffs and other trade restrictions. For example, the U.S. government has in recent years imposed increased tariffs on imports from certain foreign countries, such as China, and any imposition of additional tariffs by the United States could result in the adoption of tariffs by other countries, leading to a global trade war. Any such future tariffs by the United States or other countries could have a significant impact on our business. While we may attempt to renegotiate prices with suppliers or

diversify our supply chain in response to tariffs or shift production between manufacturers in different countries, such efforts may not yield immediate results or may be ineffective or not possible in the near-term. For example, we shifted production capacity from China to Vietnam, which means that the U.S. government's tariffs on certain imports from China currently only affect a small portion of our existing production volume. But we may be required to shift production capacity back to China (or other countries for which the U.S. government has imposed higher tariffs) due to lack of manufacturing expertise or capacity in relatively lower-tariff countries. We might also consider increasing prices to the end customer; however, this could reduce the competitiveness of our products and adversely affect net revenue.

Trade restrictions, including tariffs, quotas, economic sanctions, embargoes, safeguards, and customs restrictions, could increase the cost or reduce the supply of products available to us, could increase shipping times, or may require us to modify our supply chain organization or other current business practices, any of which could harm our business, financial condition, and results of operations.

We are also dependent on international trade agreements and regulations. The countries in which we produce and sell our products could impose or increase tariffs, duties, or other similar charges that could negatively affect our results of operations, financial position, or cash flows.

Adverse changes in, or withdrawal from, trade agreements or political relationships between the United States and countries where we sell or source our products, could negatively impact our results of operations or cash flows.

General geopolitical instability and the responses to it, such as the possibility of sanctions, trade restrictions, and changes in tariffs, including tariffs imposed by the United States and China, and the possibility of additional tariffs or other trade restrictions between the United States and other countries where we currently or might in the future manufacture or sell our products, could adversely impact our business. It is possible that further tariffs may be introduced, or increased. Such changes could adversely impact our business and could increase the costs of sourcing our products that are manufactured in countries other than the United States, or could require us to source more of our products from other countries.

If we fail to anticipate and manage any of these dynamics successfully, our gross margin and profitability could be adversely affected.

Any failure to comply with trade, anti-corruption, and other regulations could lead to investigations or actions by government regulators and negative publicity.

The labeling, distribution, importation, marketing, and sale of our products are subject to extensive regulation by various federal agencies, including the Federal Trade Commission, as well as by various other federal, state, provincial, local, and international regulatory authorities in the countries in which our products are currently distributed or sold. If we fail to comply with any of these regulations, we could become subject to enforcement actions or the imposition of significant penalties or claims, which could harm our results of operations or our ability to conduct our business. Legal proceedings or any investigations or inquiries by governmental agencies related to these or any other matters, could result in significant settlement amounts, damages, fines, or other penalties, divert financial and management resources, and result in significant legal fees. An unfavorable outcome of any particular proceeding could have an adverse impact on our business, financial condition, and results of operations. In addition, the adoption of new regulations or changes in the interpretation of existing regulations may result in significant compliance costs or discontinuation of product sales and could impair the marketing of our products, resulting in significant loss of net revenue.

Most of our products are derived from third-party supply and manufacturing partners in foreign countries and territories, including countries and territories perceived to carry an increased risk of corrupt business practices. We also have subsidiaries and/or employees and other agents working in several foreign countries and territories, including, but not limited to, the United Kingdom, the People's Republic of China, South Korea, and Hong Kong. We are subject to the U.S. Foreign Corrupt Practices Act of 1977, as amended, or FCPA, the U.S. domestic bribery statute contained in 18 U.S.C. § 201, the U.S. Travel Act, the USA PATRIOT Act, the U.K. Bribery Act 2010, and possibly other anti-bribery and anti-money laundering laws in countries in which we conduct activities. These laws prohibit companies and their employees and third-party intermediaries from corruptly promising, authorizing, offering or providing, directly or indirectly, improper payments or anything of value to foreign government officials, political parties and private-sector recipients for the purpose of obtaining or retaining business, directing business to any person or securing any advantage. In addition, U.S. public companies are required to maintain records that accurately and fairly represent their transactions and have an adequate system of internal accounting controls. In many foreign countries, including countries in which we may conduct business, it may be a local custom that businesses engage in practices that are prohibited by the FCPA or other applicable laws and

regulations. We face significant risks if we or any of our directors, officers, employees, agents, or other partners or representatives fail to comply with these laws, and governmental authorities in the United States and elsewhere could seek to impose substantial civil and/or criminal fines and penalties, which could adversely affect our reputation, business, financial condition, and results of operations.

While we have implemented policies and procedures relating to anti-bribery and anti-corruption compliance, our employees, contractors, and agents, and companies to which we outsource certain of our business operations, may take actions in violation of our policies and applicable law, for which we may be ultimately held responsible and which could lead to an adverse effect on our reputation, business, financial condition, and results of operations.

Any violation of the FCPA, other applicable anti-corruption laws, or anti-money laundering laws could result in whistleblower complaints, adverse media coverage, investigations, loss of export privileges, or severe criminal or civil sanctions, any of which could have an adverse effect on our business, financial condition, and results of operations. In addition, responding to any enforcement action may result in a significant diversion of management's attention and resources and significant defense costs and other professional fees.

Uncertainties in the interpretation and application of existing, new and proposed tax laws and regulations could materially affect our tax obligations and effective tax rate.

The tax regimes to which we are subject or under which we operate are unsettled and may be subject to significant change. The issuance of additional guidance related to existing or future tax laws, or changes to tax laws or regulations proposed or implemented by the current or a future U.S. presidential administration, Congress, or taxing authorities in other jurisdictions, including jurisdictions outside of the United States, could materially affect our tax obligations and effective tax rate. To the extent that such changes have a negative impact on us, our suppliers, manufacturers, or our customers, including as a result of related uncertainty, these changes may adversely impact our business, financial condition, results of operations, and cash flows.

The amount of taxes we pay in different jurisdictions depends on the application of the tax laws of various jurisdictions, including the United States, to our international business activities, tax rates, new or revised tax laws, or interpretations of tax laws and policies, and our ability to operate our business in a manner consistent with our corporate structure and intercompany arrangements. The taxing authorities of the jurisdictions in which we operate may challenge our methodologies for pricing intercompany transactions pursuant to our intercompany arrangements or disagree with our determinations as to the income and expenses attributable to specific jurisdictions. If such a challenge or disagreement were to occur, and our position was not sustained, we could be required to pay additional taxes, interest, and penalties, which could result in one-time tax charges, higher effective tax rates, reduced cash flows, and lower overall profitability of our operations. Our financial statements could fail to reflect adequate reserves to cover such a contingency. Similarly, a taxing authority could assert that we are subject to tax in a jurisdiction where we believe we have not established a taxable connection, often referred to as a "permanent establishment" under international tax treaties, and such an assertion, if successful, could increase our expected tax liability in one or more jurisdictions.

Although we believe that we currently collect sales taxes in all jurisdictions that require us to do so, a successful assertion by one or more jurisdictions requiring us to collect sales taxes where we currently do not collect sales taxes, or to collect additional sales taxes in a jurisdiction in which we currently collect sales taxes, could result in substantial tax liabilities (including penalties and interest). In addition, the imposition of additional sales tax collection obligations, whether for prior years or prospectively, could create additional administrative burdens for us, put us at a competitive disadvantage if similar obligations are not imposed on our competitors and decrease our future sales, which could have an adverse impact on our business and results of operations.

Our ability to use our net operating loss carryforwards may be limited.

We have incurred substantial net operating losses during our history. Subject to the limitations described below, unused net operating losses generally may carry forward to offset future taxable income if we achieve profitability in the future, unless such net operating losses expire under applicable tax laws. Under current law, unused U.S. federal net operating losses generated in tax years beginning after December 31, 2017, will not expire and may be carried forward indefinitely, but the deductibility of such federal net operating loss carryforwards is limited to 80% of taxable income. It is uncertain if and to what extent various states will conform to current federal tax law. In addition, our ability to utilize our federal net operating carryforwards may be limited under Section 382 of the Internal Revenue Code of 1986, as amended,

or the Code. The limitations apply if we experience an “ownership change,” which is generally defined as a greater than 50 percentage point change (by value) in the ownership of our equity by certain stockholders or groups of stockholders over a rolling three-year period. Similar provisions of state tax law may also apply to limit the use of our state net operating loss carryforwards. We have not yet completed a Section 382 analysis, and therefore, there can be no assurances that any previously experienced ownership changes have not materially limited our utilization of affected net operating loss carryforwards. Past or future changes in our stock ownership, including as a result of our initial public offering, some of which may be outside of our control, may have triggered or may trigger an ownership change that materially impacts our ability to utilize pre-change net operating loss carryforwards. Moreover, there may be periods during which the use of net operating loss carryforwards in various jurisdictions is suspended or otherwise subject to additional limitations. Accordingly, our ability to use our net operating loss carryforwards to offset taxable income may be subject to such limitations or special rules that apply at the state level, which could adversely affect our results of operations.

Risks Related to Our Status as a Public Benefit Corporation and Certified B Corporation

Our status as a public benefit corporation may not result in the benefits that we anticipate.

We are a PBC under Delaware law. As a PBC, we are required to produce a public benefit and to operate in a responsible and sustainable manner, while balancing our stockholders’ pecuniary interests, the best interests of those materially affected by our conduct, and the specific public benefit of environmental conservation that is identified by our certificate of incorporation. While we believe our PBC status is meaningful to customers, brand, employees, and other business partners and that our public benefit of environmental conservation is of vital importance to our planet, there is no assurance that we will achieve our public benefit purpose or that the expected positive impact from being a PBC will be realized. Accordingly, being a PBC and complying with our related obligations could negatively impact our ability to provide the highest possible return to our stockholders.

As a PBC, we are required to provide our stockholders with a report at least biennially assessing our overall public benefit performance and our success in achieving our specific public benefit purpose. To the extent we are unable to provide this report in a timely manner, or if the report is not viewed favorably by our stockholders, parties doing business with us, regulators, or others because we are unable to report sufficient progress toward our public benefit or otherwise, our reputation and status as a PBC may be harmed, which could in turn have a material adverse effect on our business, results of operations and financial condition.

If our publicly reported certified B Corp score declines, or if we lose our certified B Corp status, our reputation could be harmed and our business could suffer.

While not required by Delaware law or the terms of our certificate of incorporation, we have elected to have our social and environmental performance, accountability, and transparency assessed against the criteria established by an independent non-profit organization, B Lab, Inc., or B Lab. As a result of this assessment, we have been designated as a certified B Corp, which refers to a company that has been certified as meeting certain levels of social and environmental performance, accountability, and transparency. The standards set for B Corp certification may change over time. Our continued certification is at the sole discretion of B Lab. We believe that our B Corp status strengthens our credibility and trust among our customers, employees and business partners as well as within our industry. Investors who are focused on ESG- and sustainability-related initiatives may also place importance on our status as a B Corp, as an independent assessment of our social and environmental performance, accountability, and transparency. Any decline in our publicly reported B Corp score or change in our status, whether due to our choice or failure to meet the B Corp certification requirements, could create a perception that we are more focused on financial performance and no longer as committed to the values and standards shared by B Corps. This could harm our reputation and brand among customers, employees or business partners, which could harm our business and results of operations, and cause the stock price of our Class A common stock to decline.

Our directors have a fiduciary duty to consider not only our stockholders’ interests, but also our specific public benefit and the interests of other stakeholders affected by our conduct. If a conflict between such interests arises, there is no guarantee such a conflict would be resolved in favor of our stockholders.

While directors of traditional corporations are required to make decisions they believe to be in the best interests of their stockholders, directors of a PBC have a fiduciary duty to balance the stockholders’ pecuniary interests, the best interests of other stakeholders materially affected by the PBC’s conduct and the company’s specific public benefit. Under Delaware law, directors are shielded from liability for breach of these fiduciary obligations if they make informed and disinterested decisions that serve a rational purpose. Thus, our directors are not merely permitted, but obligated, to consider

our specific public benefit and the interests of other stakeholders. In the event of a conflict between the financial interests of our stockholders and the interests of our specific public benefit or our other stakeholders, our directors are obligated to make informed and disinterested decisions that serve a rational purpose; thus, there is no guarantee that such a conflict would be resolved in favor of our stockholders' financial interests. Accordingly, Delaware law and our PBC status could result in our board of directors making decisions which are less financially lucrative for our stockholders in the short- and/or long-term if the public benefit and other stakeholder considerations are significant; this could harm our business, results of operations, and financial condition, which in turn could cause our stock price to decline.

As a public benefit corporation, our focus on a specific public benefit purpose and producing a positive effect for society may negatively influence our financial performance.

As a PBC, our board of directors has a duty to balance (1) the pecuniary interest of our stockholders, (2) the best interests of those materially affected by our conduct, and (3) the specific public benefit of environmental conservation identified in our certificate of incorporation. While we believe our public benefit designation and obligations will benefit our stockholders, in balancing these interests our board of directors may authorize and we may take actions that we believe will benefit environmental conservation or some or all of our stakeholders, even if those actions do not maximize our short- or medium-term financial results. While we believe that this designation and obligation will benefit the company given the importance to our long-term success of our commitment to environmental conservation, it could cause our board of directors to make decisions and take actions not in keeping with the short-term or more narrow interests of our stockholders. Any longer-term benefits that are intended by or expected from such decisions or actions may not materialize within the timeframe we expect or at all and such decisions or actions may have an immediate negative effect. For example, we may choose to revise our policies in ways that we believe will further promote environmental conservation and sustainability, even though such changes may be costly; we may take actions, such as building or contracting with suppliers and service providers who have state-of-the-art manufacturing and distribution facilities with technology and quality control mechanisms that exceed the applicable legal requirements and industry standards, even though these actions may be more costly than other alternatives; we may be influenced to pursue programs and opportunities to demonstrate our commitments to our planet, the environment and the communities in which we live and work; or in responding to a possible proposal to acquire the company, our board of directors may be influenced by the interests of our stakeholders, including our flock, our suppliers, vendors, and manufacturers, and our customers, any or all of whose interests may be different from the interests of our stockholders.

We may be unable or slow to realize the benefits we expect from actions taken to promote environmental conservation, which could materially adversely affect our business, financial condition, and results of operations, which in turn could cause our stock price to decline.

As a public benefit corporation, we may be subject to increased derivative litigation concerning our duty to balance stockholder and public benefit interests, the occurrence of which may have an adverse impact on our financial condition and results of operations.

As a PBC, our stockholders (if they, individually or collectively, own at least 2% of our outstanding capital stock or shares having at least \$2 million in market value (whichever is less)) are entitled to file a derivative lawsuit claiming that our directors failed to balance stockholder and public benefit interests. Such derivative actions would be subject to the provision of our amended and restated certificate of incorporation requiring that, to the fullest extent permitted by law, such lawsuits be exclusively brought in the Court of Chancery of the State of Delaware or, if such court does not have subject matter jurisdiction thereof, the federal district court of the State of Delaware. Although traditional corporations are subject to other types of derivative actions brought by stockholders, this type of claim does not exist for traditional corporations. Therefore, we may be subject to the possibility of increased derivative litigation, which would require the attention of management and, as a result, may adversely impact management's ability to effectively execute our strategy. Any such derivative litigation could be costly and have an adverse impact on our financial condition and results of operations.

Risks Related to Ownership of Our Class A Common Stock

The market price of our Class A common stock may decline regardless of our operating performance, resulting in substantial losses for investors purchasing shares of our Class A common stock.

The market price of our Class A common stock may be highly volatile and may fluctuate significantly in response to numerous factors, many of which are beyond our control, including:

- changes to our business operations and strategy;

- actual or anticipated fluctuations in our financial condition and results of operations;
- the financial projections we may provide to the public, any changes in these projections, or our failure to meet these projections;
- failure of securities analysts to initiate or maintain coverage of our company, changes in financial estimates or ratings by any securities analysts who follow our company, or our failure to meet these estimates or the expectations of investors;
- announcements by us or our competitors of significant technical innovations, acquisitions, strategic partnerships, joint ventures, results of operations, or capital commitments;
- changes in stock market valuations and operating performance of other footwear and apparel companies generally, or those in our industry in particular;
- the sustainability targets we may provide to the public, any changes in these targets, or our failure to meet them;
- price and volume fluctuations in the overall stock market, including as a result of trends in the economy as a whole;
- changes in our board of directors or management;
- sales of large blocks of our Class A common stock, including sales by our co-founders and co-Chief Executive Officers or our other executive officers and directors or by their affiliates;
- lawsuits threatened or filed against us;
- anticipated or actual changes in laws, regulations, or government policies applicable to our business;
- changes in our capital structure, such as future issuances of debt or equity securities;
- short sales, hedging, and other derivative transactions involving our capital stock;
- general economic conditions in the United States and globally;
- other events or factors, including those resulting from war (such as Russia's invasion of Ukraine and the ongoing conflict), pandemics (including COVID-19), incidents of terrorism, or responses to these events; and
- the other factors described in this "Part I, Item 1A. Risk Factors" and in the section titled "Special Note Regarding Forward-Looking Statements" included elsewhere in this Annual Report on Form 10-K.

The stock market has recently experienced extreme price and volume fluctuations. The market prices of securities of companies have experienced fluctuations that often have been unrelated or disproportionate to their results of operations. Market fluctuations could result in extreme volatility in the price of shares of our Class A common stock. Price volatility may be greater if the public float and trading volume of shares of our Class A common stock is low. Furthermore, in the past, stockholders have sometimes instituted securities class action litigation against companies following periods of volatility in the market price of their securities. Any similar litigation against us could result in substantial costs, divert management's attention and resources, and harm our business, financial condition, and results of operations.

The dual class structure of our common stock may adversely affect the trading market for our Class A common stock.

We cannot predict whether our dual class structure will result in a lower or more volatile market price of our Class A common stock or in adverse publicity or other adverse consequences. For example, certain index providers have announced restrictions on including companies with dual class or multi-class share structures in certain of their indexes. In July 2017, S&P Dow Jones announced changes to their eligibility criteria for the inclusion of shares of public companies on certain indices, including the S&P 500, the S&P MidCap 400, and the S&P SmallCap 600, to exclude companies with multiple classes of shares of common stock from being added to these indices. As a result, our dual class capital structure would make us ineligible for inclusion in any of these indices, and mutual funds, exchange-traded funds, and other investment vehicles that attempt to passively track these indices will not be investing in our stock. Beginning in 2017, MSCI, a leading stock index provider, opened public consultations on their treatment of no-vote and multi-class structures and temporarily barred new multi-class listings from certain of its indices; however, in October 2018, MSCI announced its decision to

include equity securities “with unequal voting structures” in its indices and to launch a new index that specifically includes voting rights in its eligibility criteria. These policies are still fairly new, and it remains unclear what effect, if any, they will have on the valuations of publicly traded companies excluded from the indices in the longer term, but it is possible that they may depress these valuations compared to those of other similar companies that are included. Furthermore, we cannot assure you that other stock indices will not take a similar approach to S&P Dow Jones or FTSE Russell in the future. Exclusion from indices could make our Class A common stock less attractive to investors and, as a result, the market price of our Class A common stock could be adversely affected.

Sales, directly or indirectly, of a substantial amount of our Class A common stock in the public markets by our existing security holders may cause the price of our Class A common stock to decline.

Sales of a substantial number of shares of our Class A common stock (including any such shares issued upon conversion of shares of our Class B common stock) into the public market, particularly sales by our directors, executive officers, and principal stockholders, or the perception that these sales might occur, could cause the market price of our Class A common stock to decline. Many of our existing security holders have substantial unrecognized gains on the value of the equity they hold and may take steps to sell their shares or otherwise secure or limit their risk exposure to the value of their unrecognized gains on those shares. We are unable to predict the timing or effect of such sales on the market price of our Class A common stock.

In addition, as of December 31, 2022, we had stock options outstanding that, if fully exercised, would result in the issuance of 12,700,367 shares of Class B common stock and 2,687,819 shares of Class A common stock. All of the shares of common stock issuable upon the exercise of outstanding stock options, and the 17,328,139 shares of Class A common stock reserved and available for future issuance under our 2021 Equity Incentive Plan and 2021 Employee Stock Purchase Plan, are registered for public resale under the Securities Act. Accordingly, these shares will be able to be freely sold in the public market upon issuance subject to applicable vesting requirements.

Further, based on shares outstanding as of December 31, 2022, holders of a substantial number of shares of our Class B common stock had rights, subject to certain conditions, to require us to file registration statements for the public resale of such shares or to include such shares in registration statements that we may file for us or other stockholders.

The dual class structure of our common stock has the effect of concentrating voting control with our co-founders and co-Chief Executive Officers, Timothy Brown and Joseph Zwillinger, our directors, our principal stockholders, and their respective affiliates, which limits or precludes the ability of our other stockholders to influence corporate matters, including the election of directors and the approval of any change of control transaction.

Our Class B common stock has 10 votes per share and our Class A common stock has one vote per share. Our co-founders and co-Chief Executive Officers, Mr. Brown and Mr. Zwillinger, our directors, our principal stockholders, and their respective affiliates beneficially own a significant percentage of the voting power of our outstanding capital stock.

These stockholders will have the ability to control the outcome of matters submitted to our stockholders for approval, including the election of our directors and the approval of any change of control transaction. This concentrated control will limit or preclude the ability of our other stockholders to influence corporate matters for the foreseeable future, including the election of directors, amendments of our organizational documents, and any merger, consolidation, sale of all or substantially all of our assets, or other major corporate transaction requiring stockholder approval. In addition, this may prevent or discourage unsolicited acquisition proposals or offers for our capital stock.

Future transfers by holders of Class B common stock will generally result in those shares converting to Class A common stock, subject to limited exceptions, such as certain transfers effected for estate planning purposes. The conversion of Class B common stock to Class A common stock will have the effect, over time, of increasing the relative voting power of those holders of Class B common stock who retain their shares in the long term.

We do not intend to pay dividends for the foreseeable future.

We have never declared or paid any cash dividends on our capital stock, and we do not intend to pay any cash dividends in the foreseeable future. We expect to retain future earnings, if any, to fund the development and growth of our business. Any future determination to pay dividends on our capital stock will be at the discretion of our board of directors.

Additional stock issuances could result in significant dilution to our stockholders.

We may issue additional equity securities to raise capital, make acquisitions, or for a variety of other purposes. Additional issuances of our stock may be made pursuant to the exercise or conversion of new or existing convertible debt securities, warrants, stock options, or other equity incentive awards to new and existing service providers. Any such issuances will result in dilution to existing holders of our stock. We rely on equity-based compensation as an important tool in recruiting and retaining employees. The amount of dilution due to equity-based compensation of our employees and other additional issuances could be substantial.

Delaware law, our status as a public benefit corporation, and provisions in our amended and restated certificate of incorporation and amended and restated bylaws could make a merger, tender offer, or proxy contest more difficult, limit attempts by our stockholders to replace or remove our current management and depress the market price of our Class A common stock.

Provisions in our amended and restated certificate of incorporation and our amended and restated bylaws may discourage, delay or prevent a merger, acquisition or other change in control of us or tender offer that stockholders may consider favorable, including transactions in which stockholders might otherwise receive a premium for their shares. These provisions could also limit the price that investors might be willing to pay in the future for shares of our Class A common stock, thereby depressing the market price of our Class A common stock.

As a PBC, we may be less attractive as a takeover target than a traditional company. PBCs may also not be attractive targets for activists or hedge fund investors because new directors would still have to consider and give appropriate weight to the public benefit along with stockholder value, and stockholders can enforce this through derivative suits. Furthermore, by requiring the boards of directors of PBCs to consider additional constituencies other than maximizing stockholder value, Delaware PBC law could potentially make it easier for such a board to reject a hostile bid, even where the takeover would provide the greatest short-term financial yield to investors.

In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management. Because our board of directors is responsible for appointing the members of our management team, these provisions could in turn affect any attempt by our stockholders to replace current members of our management team. Among others, these provisions include those that:

- provide for a dual class common stock structure in which holders of our Class B common stock may have the ability to control the outcome of matters requiring stockholder approval, including the election of directors and significant corporate transactions, such as a merger or other sale of our company or its assets, even if they own significantly less than a majority of the outstanding shares of our common stock;
- restrict the forum for certain litigation against us to Delaware or the federal courts, as applicable;
- provide that our board of directors has the exclusive right to expand the size of our board of directors and to elect directors to fill a vacancy created by the expansion of our board of directors or the resignation, death or removal of a director, which prevents stockholders from being able to fill vacancies on our board of directors;
- divide our board of directors into three classes, Class I, Class II, and Class III, with each class serving staggered three-year terms, which may delay the ability of stockholders to change the membership of a majority of our board of directors;
- provide that a special meeting of stockholders may be called only by the chair of our board of directors, a chief executive officer, or our board of directors, which may delay the ability of our stockholders to force consideration of a proposal or to take action, including the removal of directors;
- prohibit cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates;
- provide that our board of directors may alter our amended and restated bylaws without obtaining stockholder approval;
- require the approval of holders of at least two-thirds of the voting power of the shares of capital stock entitled to vote at an election of directors to adopt, amend, or repeal our amended and restated bylaws or repeal the

provisions of our amended and restated certificate of incorporation regarding the election and removal of directors;

- require the approval of holders of at least two-thirds of the voting power of the shares of capital stock entitled to vote at an election of directors to amend or repeal any provisions of our amended and restated certificate of incorporation relating to our status as a PBC;
- require the approval of holders of at least two-thirds of the voting power of the shares of capital stock entitled to vote at an election of directors to merge or consolidate with or into another entity if, as a result of such merger or consolidation, the capital stock of Allbirds would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign corporation that is not a public benefit corporation or similar entity and the certificate of incorporation (or similar governing document) of which does not contain a public benefit provision identical to ours;
- require that stockholders must provide advance notice and additional disclosures in order to nominate individuals for election to our board of directors or to propose matters that can be acted upon at a stockholders' meeting, which may discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of our company; and
- authorize our board of directors to issue shares of preferred stock and to determine the terms of those shares, including preferences and voting rights, without stockholder approval, which could be used to significantly dilute the ownership of a hostile acquirer.

Moreover, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, or DGCL, which generally prohibits a person who owns in excess of 15% of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired in excess of 15% of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner.

Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware will be the sole and exclusive forum for certain stockholder litigation matters and the U.S. federal district courts will be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees, or stockholders.

Our amended and restated certificate of incorporation provides that, unless we otherwise consent in writing, (A) (1) any derivative action or proceeding brought on our behalf, (2) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, other employee or stockholder of Allbirds to us or our stockholders, (3) any action asserting a claim arising pursuant to any provision of the DGCL, our amended and restated certificate of incorporation, or our amended and restated bylaws (as either may be amended or restated) or as to which the DGCL confers exclusive jurisdiction on the Court of Chancery of the State of Delaware, or (4) any action asserting a claim governed by the internal affairs doctrine of the law of the State of Delaware shall, to the fullest extent permitted by law, be exclusively brought in the Court of Chancery of the State of Delaware or, if such court does not have subject matter jurisdiction thereof, the federal district court of the State of Delaware; and (B) the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. Section 22 of the Securities Act creates concurrent jurisdiction for federal and state courts over all such Securities Act actions, and thus both state and federal courts have jurisdiction to entertain such claims. Our amended and restated certificate of incorporation includes the provision outlined in (B) to prevent having to litigate claims in multiple jurisdictions and the threat of inconsistent or contrary rulings by different courts, among other considerations. Notwithstanding the foregoing, the exclusive forum provision shall not apply to claims seeking to enforce any liability or duty created by the Securities Exchange Act of 1934, or Exchange Act.

The choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, or other employees, which may discourage such lawsuits against us and our directors, officers, and other employees, although our stockholders will not be deemed to have waived our compliance with federal securities laws and the rules and regulations thereunder. While the Delaware courts have determined that such choice of forum provisions are facially valid and several state trial courts have enforced such provisions and required that suits asserting Securities Act claims be filed in federal court, there is no guarantee that courts of appeal will affirm the enforceability of such provisions and a stockholder may nevertheless seek to bring a claim in a venue other than those designated in the exclusive forum provisions. In such instance, we would expect to vigorously assert

the validity and enforceability of the exclusive forum provisions of our amended and restated certificate of incorporation. This may require significant additional costs associated with resolving such action in other jurisdictions and there can be no assurance that the provisions will be enforced by a court in those other jurisdictions. If a court were to find either exclusive forum provision contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with litigating Securities Act claims in state court, or both state and federal court, which could harm our business, financial condition, and results of operations. Any person or entity purchasing or otherwise acquiring or holding any interest in shares of our capital stock shall be deemed to have notice of and consented to the forum provisions in our amended and restated certificate of incorporation.

General Risk Factors

Our estimates of market opportunity and forecasts of market growth may prove to be inaccurate, and even if the market in which we compete achieves the forecasted growth, our business could fail to grow at similar rates, if at all.

Market opportunity estimates and growth forecasts, including those we have generated ourselves, are subject to significant uncertainty and are based on assumptions and estimates that may not prove to be accurate. The variables that go into the calculation of our market opportunity are subject to change over time, and there is no guarantee that any particular number or percentage of individuals covered by our market opportunity estimates will purchase our products at all or generate any particular level of revenue for us. Even if the market in which we compete meets the size estimates and growth forecasts, our business could fail to grow for a variety of reasons outside of our control, including competition in our industry. If any of these risks materialize, it could harm our business and prospects.

We may seek to grow our business through acquisitions of, or investments in, new or complementary businesses, facilities, technologies, or products, or through strategic alliances; the failure to adequately manage these acquisitions, investments, or alliances, to integrate them with our existing business, or to realize anticipated returns, could adversely affect us.

From time to time, we may consider opportunities to acquire or make investments in new or complementary businesses, facilities, technologies, offerings, or products, or enter into strategic alliances, that may enhance our capabilities, expand our outsourcing and supplier network, complement our current products, or expand the breadth of our markets. Acquisitions, investments and other strategic alliances involve numerous risks, including:

- problems integrating the acquired business, facilities, technologies, or products, including issues maintaining uniform standards, procedures, controls, policies, and culture;
- unanticipated costs associated with acquisitions, investments, or strategic alliances;
- diversion of management's attention from our existing business;
- adverse effects on existing business relationships with suppliers, outsourced manufacturing partners, and other third parties;
- risks associated with entering new markets in which we may have limited or no experience;
- potential loss of key employees of acquired businesses; and
- increased legal and accounting compliance costs.

We may be unable to identify acquisitions or strategic relationships we deem suitable. Even if we do, we may be unable to successfully complete any such transactions on favorable terms or at all, or to successfully integrate any acquired business, facilities, technologies, or products into our business or retain any key personnel, suppliers, or customers. Furthermore, even if we complete such transactions and effectively integrate the newly acquired business or strategic alliance into our existing operations, we may fail to realize the anticipated returns and/or fail to capture the expected benefits, such as strategic or operational synergies or cost savings. The efforts required to complete and integrate these transactions could be expensive and time-consuming and may disrupt our ongoing business and prevent management from focusing on our operations. If we are unable to identify suitable acquisitions or strategic relationships, or if we are unable to

integrate any acquired businesses, facilities, technologies, and products effectively, or if we fail to realize anticipated returns or capture expected benefits, our business, financial condition, and results of operations could be adversely affected.

The requirements of being a public company may increase our costs, strain our resources, divert management's attention, and affect our ability to attract and retain executive management and qualified board members.

As a public company, we are subject to the reporting requirements of the Exchange Act, the listing standards of The Nasdaq Stock Market, and other applicable securities rules and regulations. We expect that the requirements of these rules and regulations will continue to increase our legal, accounting, and financial compliance costs, make some activities more difficult, time-consuming, and costly, and place significant strain on our personnel, systems, and resources. Furthermore, several members of our management team do not have prior experience in running a public company. For example, the Exchange Act requires, among other things, that we file annual, quarterly, and current reports with respect to our business and results of operations. As a result of the complexity involved in complying with the rules and regulations applicable to public companies, our management's attention may be diverted from other business concerns, which could harm our business, financial condition, and results of operations. Although we have already hired additional employees to assist us in complying with these requirements, we may need to hire more employees in the future or engage outside consultants, which will increase our operating expenses.

In addition, changing laws, regulations, and standards relating to corporate governance and public disclosure are creating uncertainty for public companies, increasing legal and financial compliance costs, and making some activities more time-consuming. These laws, regulations, and standards are subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. We intend to invest substantial resources to comply with evolving laws, regulations, and standards, and this investment may result in increased general and administrative expenses and a diversion of management's time and attention from business operations to compliance activities. If our efforts to comply with new laws, regulations, and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to their application and practice, regulatory authorities may initiate legal proceedings against us, and our business may be harmed. As a public company that is subject to these new rules and regulations, it has been more expensive for us to obtain director and officer liability insurance compared to as a private company, and we may be required to accept reduced coverage or incur substantially higher costs to obtain coverage. These factors could also make it more difficult for us to attract and retain qualified members of our board of directors, particularly members who can serve on our audit and compensation and leadership management committees, and qualified executive officers.

As a result of the disclosure obligations required of a public company, our business and financial condition is more visible than it was as a private company, which may result in an increased risk of threatened or actual litigation, including by competitors and other third parties. If such claims are successful, our business, financial condition, and results of operations would be harmed, and even if the claims do not result in litigation or are resolved in our favor, these claims, and the time and resources necessary to resolve them, would divert the resources of our management and harm our business, financial condition, and results of operations.

As a result of being a public company, we are obligated to develop and maintain proper and effective internal control over financial reporting, and any failure to maintain the adequacy of these internal controls may adversely affect investor confidence in our company and, as a result, the value of our Class A common stock.

We are required, pursuant to Section 404 of the Sarbanes-Oxley Act, or Section 404, to furnish a report by management on, among other things, the effectiveness of our internal control over financial reporting commencing with this annual report on Form 10-K for the year ended December 31, 2022. This assessment is required to include disclosure of any material weaknesses identified by our management in our internal control over financial reporting. In addition, our independent registered public accounting firm will be required to attest to the effectiveness of our internal control over financial reporting in our first annual report required to be filed with the Securities and Exchange Commission, or SEC, following the date we are no longer an "emerging growth company." Our compliance with Section 404 has required and will continue to require that we incur substantial expenses and expend significant management efforts. We have and will likely need to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge and compile the system and process documentation necessary to perform the evaluation needed to comply with Section 404.

During the evaluation and testing process of our internal controls, if we identify one or more material weaknesses in our internal control over financial reporting, we will be unable to certify that our internal control over financial reporting is effective. We cannot assure you that there will not be material weaknesses or significant deficiencies in our internal control over financial reporting in the future. Any failure to maintain internal control over financial reporting could severely inhibit our ability to accurately report our financial condition or results of operations. If we are unable to conclude that our internal control over financial reporting is effective, or if our independent registered public accounting firm determines we have a material weakness or significant deficiency in our internal control over financial reporting, we could lose investor confidence in the accuracy and completeness of our financial reports, the market price of our Class A common stock could decline, and we could be subject to sanctions or investigations by the SEC or other regulatory authorities. Failure to remedy any material weakness in our internal control over financial reporting, or to implement or maintain other effective control systems required of public companies, could also restrict our future access to the capital markets.

We are an “emerging growth company,” and we cannot be certain if the reduced reporting and disclosure requirements applicable to emerging growth companies will make our Class A common stock less attractive to investors.

We are currently an “emerging growth company,” as defined in the Jumpstart Our Business Startups Act of 2012, or JOBS Act, and we may take advantage of certain exemptions from reporting requirements that are applicable to other public companies that are not “emerging growth companies,” including the auditor attestation requirements of Section 404, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a non-binding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. Pursuant to Section 107 of the JOBS Act, as an emerging growth company, we have elected to use the extended transition period for complying with new or revised accounting standards until those standards would otherwise apply to private companies. As a result, our consolidated financial statements may not be comparable to the financial statements of issuers who are required to comply with the effective dates for new or revised accounting standards that are applicable to public companies, which may make our Class A common stock less attractive to investors. In addition, if we cease to be an emerging growth company, we will no longer be able to use the extended transition period for complying with new or revised accounting standards.

We will remain an emerging growth company until the earliest of: (1) December 31, 2026, the last day of the fiscal year following the fifth anniversary of our initial public offering; (2) the last day of the first fiscal year in which our annual gross revenue is \$1.235 billion or more; (3) the date on which we have, during the previous rolling three-year period, issued more than \$1 billion in non-convertible debt securities; and (4) the date we qualify as a “large accelerated filer,” with at least \$700 million of equity securities held by non-affiliates.

We cannot predict if investors will find our Class A common stock less attractive if we choose to rely on these exemptions. For example, if we do not adopt a new or revised accounting standard, our future results of operations may not be comparable to the results of operations of certain other companies in our industry that adopted such standards. If some investors find our Class A common stock less attractive as a result, there may be a less active trading market for our Class A common stock, and our stock price may be more volatile.

If securities or industry analysts do not publish research, or publish inaccurate or unfavorable research, about our business, the price of our Class A common stock and trading volume could decline.

The trading market for our Class A common stock depends in part on the research and reports that securities or industry analysts publish about us or our business, our market and our competitors. We do not have any control over these analysts. If few securities analysts commence coverage of us, or if industry analysts cease coverage of us, the trading price for our Class A common stock would be negatively affected. If one or more of the analysts who cover us downgrade our Class A common stock or publish inaccurate or unfavorable research about our business, our Class A common stock price would likely decline. If one or more of these analysts cease coverage of us or fail to publish reports on us regularly, demand for our Class A common stock could decrease, which might cause our Class A common stock price and trading volume to decline.

We may incur losses from fraud or theft.

We have occasionally in the past incurred and may in the future incur losses from various types of fraud, including stolen credit card numbers, claims that a customer did not authorize a purchase, and merchant fraud. As a general matter, we are liable for fraudulent credit card transactions. Although we have measures in place to detect and reduce the occurrence of fraudulent activity on our digital platform, those measures may not always be effective. In addition to the direct costs of such losses, if the fraud is related to credit card transactions and becomes excessive, it could potentially result in us paying higher fees or affecting our ability to accept credit cards for payment. Our failure to adequately prevent

fraudulent transactions could damage our reputation, result in litigation or regulatory action, and lead to expenses that could substantially impact our results of operations.

Additionally, we have occasionally in the past been, and may in the future be, subject to fraudulent purchases by individuals purchasing our products in bulk with the intention of unlawfully reselling such products at a premium. While we have taken steps to detect and prevent such practices, our failure to identify those activities may adversely affect our brand and reputation.

We have occasionally in the past incurred and may in the future incur losses from theft or “leakage” of our products in our stores or in our distribution centers. While we have taken steps to detect and prevent such issues, those steps may not always be effective. In addition to the direct costs of such losses, such theft or “leakage” of our products could result in lost revenue and unlawful reselling of our products, which could adversely affect our brand and reputation.

If our estimates or judgments relating to our critical accounting policies prove to be incorrect, our results of operations could be adversely affected.

The preparation of financial statements in conformity with generally accepted accounting principles in the United States requires management to make estimates and assumptions that affect the amounts reported in our consolidated financial statements and accompanying notes appearing in Part II, Item 8 of this Annual Report on Form 10-K. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, as provided in the section titled “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Estimates” in Part II, Item 7 of this Annual Report on Form 10-K. The results of these estimates form the basis for making judgments about the carrying values of assets, liabilities, and equity, and the amount of revenue and expenses. Significant estimates and judgments include revenue recognition, stock-based compensation, and the fair value of our common stock. Our results of operations may be adversely affected if our assumptions change or if actual circumstances differ from those in our assumptions, which could cause our results of operations to fall below the expectations of securities analysts and investors, resulting in a decline in the market price of our Class A common stock.

We may be subject to periodic claims and litigation that could result in unexpected expenses and could ultimately be resolved against us.

From time to time, we may be involved in litigation and other proceedings, including matters related to product liability claims, stockholder class action and derivative claims, commercial disputes, and copyright infringement, challenging trademarks, and other intellectual property claims, as well as trade, regulatory, employment, and other claims related to our business or our sustainability and ESG practices, statements, and goals. Any of these proceedings could result in significant settlement amounts, damages, fines, or other penalties, divert financial and management resources, and result in significant legal fees. An unfavorable outcome of any particular proceeding could exceed the limits of our insurance policies, or the carriers may decline to fund such final settlements and/or judgments and could have an adverse impact on our business, financial condition, and results of operations. In addition, any proceeding could negatively impact our reputation among our customer and our brand image.

Extreme weather conditions, natural disasters, public health crises, political crises and instability, and other catastrophic events, including those caused or exacerbated by climate change, could negatively impact our results of operations and financial condition.

Extreme weather conditions and volatile changes in weather conditions in the areas in which our offices, retail stores, suppliers, customers, distribution centers, and vendors are located could adversely affect our results of operations and financial condition. Moreover, natural disasters such as earthquakes, hurricanes, tsunamis, floods, monsoons or wildfires, public health crises, such as pandemics and epidemics (including, for example, the COVID-19 pandemic), political crises, such as terrorist attacks, war and other political instability, or other catastrophic events, whether occurring in the United States or abroad, and their related consequences and effects, including energy shortages, could disrupt our operations, the operations of our vendors and other suppliers, or result in economic instability that could negatively impact customer spending, any or all of which would negatively impact our results of operations and financial condition. For example, our principal offices are located in Northern California, an area which has a history of earthquakes and wildfires, and are thus vulnerable to damage or disruption. In particular, these types of events could impact our global supply chain, including the ability of vendors to provide raw materials where and when needed, the ability of third parties to manufacture and ship merchandise, and our ability to ship products to customers from or to the impacted region(s).

In February 2022, armed conflict escalated between Russia and Ukraine. The sanctions announced by the United States and other countries against Russia and Belarus following Russia's invasion of Ukraine to date include restrictions on selling or importing goods, services, or technology in or from affected regions and travel bans and asset freezes impacting connected individuals and political, military, business, and financial organizations in Russia and Belarus. The United States and other countries could impose wider sanctions and take other actions should the conflict further escalate. Although we do not currently do business in either Russia, Belarus, or Ukraine, it is not possible to predict the broader consequences of this ongoing conflict, which could include further sanctions, embargoes, regional instability, and geopolitical shifts. It is also not possible to predict with certainty this ongoing conflict's additional adverse effects on existing macroeconomic conditions, consumer spending habits, currency exchange rates, and financial markets, all of which have impacted and could further impact our business, financial condition, and results of operations.

We may require additional capital to support business growth, and this capital might be unavailable or might be available only by diluting existing stockholders.

We intend to continue making investments to support our business growth and may require additional funds to support this growth. Our future capital requirements will depend on many factors, including our rate of revenue growth, the timing and extent of international expansion efforts and other growth initiatives, the expansion of our marketing activities and overall economic conditions. To the extent that current and anticipated future sources of liquidity are insufficient to fund our future business activities and requirements, we may need to engage in equity or debt financings to secure additional funds. In recent months, there has been volatility in and disruptions to the global economy, including the equity and debt financial markets. Any such volatility in and disruptions to the equity or debt markets, or further deterioration of such markets, including as a result of political unrest or war, may make any necessary equity or debt financing more difficult to obtain in a timely manner or on favorable terms, more costly or more dilutive. If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our Class A common stock. Any debt financing secured by us in the future could involve restrictive covenants relating to our capital raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities. In addition, we may not be able to obtain additional financing on terms favorable to us, if at all. If we are unable to obtain adequate financing or financing on terms satisfactory to us, when we require it, our ability to continue to support our business growth and to respond to business challenges could be significantly limited, and our business and prospects could fail or be adversely affected.

Item 1B. Unresolved Staff Comments

None.

Item 2. Properties

As of December 31, 2022, we operated 58 retail locations around the world. Our corporate headquarters is located in San Francisco, California, where we lease approximately 39,000 square feet of space under two leases that expire in December 2026. In addition to our corporate headquarters, we have satellite corporate office locations in Portland, London, Shanghai, Tokyo, Vietnam, and Seoul where we lease or have co-working arrangements that total approximately 16,000 square feet of office space. We use our corporate offices for product design and development, innovation around sustainable materials, operations, marketing, technology, and customer experience, as well as our other supporting teams. All of our offices and retail locations are leased, and we do not own any real property.

As of December 31, 2022, we also leased property in the following countries around the world that serve as our 58 retail locations, totaling approximately 180,000 square feet, as set forth below.

Country	# of Stores
United States	42
China	5
United Kingdom	3
Japan	2
Canada	2
Netherlands	1
Germany	1
South Korea	1
New Zealand	1
Total retail stores	58

While we believe that our current facilities are adequate to meet our foreseeable needs, we may lease additional facilities or vacate existing facilities as our operations require. We vacated our corporate office lease in San Diego in July 2022 and subleased the space to another tenant in November 2022.

Item 3. Legal Proceedings

From time to time, we may be subject to legal proceedings, claims, and government investigations in the ordinary course of business. We are not presently a party to any legal proceedings that, if determined adversely to us, would individually or taken together have a material adverse effect on our business, results of operations, financial condition, or cash flows. We have received, and may in the future continue to receive, claims arising from: our products, such as consumer claims and personal injury claims; our workforce, our technology, and business processes, such as worker classification and patent claims; our sustainability and ESG practices, statements, and goals; and our intellectual property, such as trademarks and copyright infringement claims. The results of any current or future litigation cannot be predicted with certainty, and regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources, harm to our brand and reputation, and other factors.

Item 4. Mine Safety Disclosures

Not applicable.

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market Price of Our Class A Common Stock

Our Class A common stock, par value \$0.0001 per share, is listed on The Nasdaq Stock Market under the symbol "BIRD" and began trading on November 3, 2021. Prior to that date, there was no public trading market for our Class A common stock.

Holders of Record

As of February 28, 2023, we had 26 holders of record of our Class A common stock and 29 holders of record of our Class B common stock. Because many of our shares of Class A common stock are held in street name by brokers and other nominees on behalf of stockholders, we are unable to estimate the total number of beneficial owners of our Class A common stock represented by these holders of record.

Dividend Policy

We have never declared or paid any cash dividends on our capital stock, and we do not intend to pay any cash dividends in the foreseeable future. We expect to retain future earnings, if any, to fund the development and growth of our business. Any future determination to pay dividends on our capital stock will be at the discretion of our board of directors.

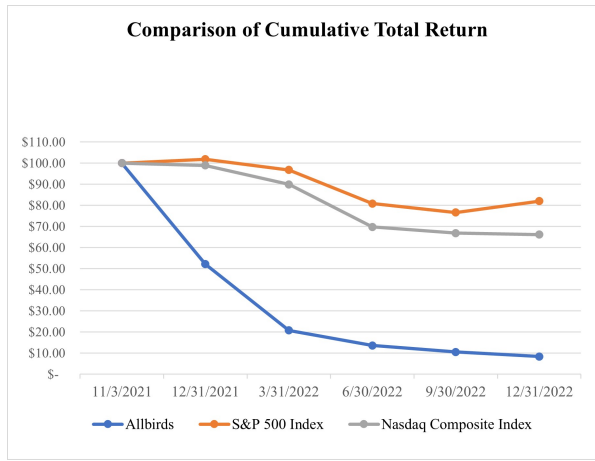
Securities Authorized for Issuance under Equity Compensation Plans

See the section titled "Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters" for information regarding securities authorized for issuance.

Stock Performance Graph

This performance graph shall not be deemed "soliciting material" or to be "filed" with the SEC, for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities under that Section, and shall not be deemed to be incorporated by reference into any of our filings under the Securities Act.

The following graph compares (i) the cumulative total stockholder return on our Class A common stock from November 3, 2021 (the date our Class A common stock commenced trading on the Nasdaq Stock Market) through December 31, 2022 with (ii) the cumulative total return of the Standard & Poor's (S&P) 500 Index and the Nasdaq Composite Index over the same period, assuming the investment of \$100 in our Class A common stock and in both of the other indices on November 3, 2021 and the reinvestment of dividends. The graph uses the closing market price on November 3, 2021 of \$28.89 per share as the initial value of our Class A common stock. As discussed above, we have never declared or paid a cash dividend on our Class A common stock and do not anticipate declaring or paying a cash dividend in the foreseeable future.



Unregistered Sales of Equity Securities

None.

Issuer Purchases of Equity Securities

None.

Item 6. [Reserved]

Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our consolidated financial statements and related notes appearing elsewhere in this Annual Report on Form 10-K. As discussed in the section titled “Special Note Regarding Forward-Looking Statements,” the following discussion and analysis contains forward-looking statements that involve risks and uncertainties, as well as assumptions that, if they never materialize or prove incorrect, could cause our results to differ materially from those expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below, and those discussed in the section titled “Risk Factors” included under Part I, Item 1A, above.

Overview

Allbirds is a global lifestyle brand that innovates with naturally derived materials to make better footwear and apparel products in a better way, while treading lighter on our planet.

We began our journey in 2015 with three fundamental beliefs about the emerging generation of consumers: first, these consumers recognize that climate change is an existential threat to the human race; second, these consumers connect their purchase decisions with their impact on the planet, demanding more from businesses; and third, these consumers do not want to compromise between looking good, feeling good, and doing good. We became a public benefit corporation, or PBC, under Delaware law and earned our B Corporation, or B Corp, certification in 2016, codifying how we take into account the impact our actions have on all of our stakeholders, including the environment, our flock of employees, communities, consumers, and investors. We have achieved our rapid growth through a digitally-led vertical retail

distribution strategy. We market directly to consumers via our localized multilingual digital platform and our physical footprint of 58 retail stores as of December 31, 2022. By primarily serving consumers directly, we cut out the layers of costs associated with traditional wholesalers, creating a more efficient cost structure and higher gross margin. Our direct distribution model allows us to control our sales channels and build deep relationships with our customers by delivering high-quality products through a seamless and immersive brand experience, whether shopping on our website, on our app, or in one of our Allbirds stores. Designing and creating innovative, sustainable materials is a challenging process for both our internal R&D teams as well as our supply chain partners. We have invested time and resources to train our manufacturers to use our natural materials, which we believe makes it difficult to replicate our novel manufacturing processes at our product quality.

Recent Financial Performance

- Net revenue grew approximately 7.3% for the year ended December 31, 2022 compared to the same period in 2021 and 35.8% compared to the same period in 2020.
- Gross margin decreased to 43.5% for the year ended December 31, 2022 as compared to 52.9% for the same period in 2021.
- Net loss was \$101.4 million for the year ended December 31, 2022 as compared to \$45.4 million for the same period in 2021.
- Adjusted EBITDA loss was \$60.4 million for the year ended December 31, 2022 as compared to a loss of \$11.7 million for the same period in 2021.

Adjusted EBITDA is a financial measure that is not calculated in accordance with generally accepted accounting principles in the United States, or GAAP. See the section titled “Non-GAAP Financial Measures” below for the definition of adjusted EBITDA, as well as a reconciliation of adjusted financial measures to their most directly comparable GAAP financial measures.

Recent Developments

March 2023 Strategic Transformation

In March 2023, we announced the implementation a strategic transformation plan to reignite growth in the coming years, as well as improve capital efficiency, and drive profitability. The plan focuses on four key areas:

Our product and brand initiatives include increasing focus on core franchise management, through a concentration on comfort and quality and better commercialization of our innovative materials, as well as increased investments into brand marketing.

Our store-based distribution initiatives in the United States include optimizing our existing store fleet and selectively expanding our third party wholesale channel. Store optimization will include slowing the pace of new store openings and investing in corporate and retail store talent and store marketing.

Our international go-to-market strategy initiative encompasses evaluating ways to reduce complexity and grow internationally in a cost- and capital-efficient manner. We may potentially partner with distributors in certain markets in the future, which we expect would have impacts to both our short and long term results of operations, though the impact is uncertain this time.

Our cost savings and capital efficiency initiatives build upon cost and cash optimization work that we began in 2022, described in further detail in the “August 2022 Restructuring” section below. This includes plans to fully transition to a new footwear manufacturing partner by the end of 2023, which will potentially accelerate cost of revenue, SG&A and cash optimization savings over the next three years.

August 2022 Simplification Initiatives

In August 2022, we announced the implementation of simplification initiatives designed to generate cost of revenue savings, streamline workflows, and lower operating costs. These initiatives focus on reducing costs related to our supply chain and selling, general, and administrative expense. We expect these initiatives to result in estimated annualized selling,

general, and administrative expense savings of approximately \$13 million to \$15 million. We substantially completed these simplification initiatives in the fourth quarter of 2022.

Our supply chain initiatives included reduction of logistics costs in the United States by transitioning to automated distribution centers and a dedicated returns processor, optimizing inventory to accelerate logistics cost savings, which included inventory write-downs and write-offs over certain products, and accelerating the scaling of our manufacturing base to reduce product carbon footprint and product costs over time. We recognized costs of \$19.1 million primarily related to the write-down and liquidation of certain first generation apparel products in the year ended December 31, 2022, which are recorded within cost of revenue on the consolidated statement of operations and comprehensive loss. We also recognized revenue of \$2.0 million primarily related to the liquidation of certain first generation apparel products in the year ended December 31, 2022, which is recorded within net revenue on the consolidated statement of operations and comprehensive loss.

Our selling, general, and administrative expense initiatives included slowing the pace of corporate new hires and backfills for departing employees, reducing our global corporate workforce, and reducing corporate office space to reflect a new hybrid working environment. Related to this, we recognized expenses of \$0.8 million in the year ended December 31, 2022, which is recorded within restructuring expense on the consolidated statement of operations and comprehensive loss. These expenses are primarily related to severance and other employee termination-related costs, including the impact of stock-based compensation, resulting from the reduction of our global corporate workforce of approximately 8% in 2022. We ceased use of one of our corporate office leases in the United States in the third quarter of 2022 and began subleasing the space to another tenant in the fourth quarter of 2022.

Key Factors Affecting Our Performance

Our financial and operating conditions have been, and will continue to be affected by a number of factors, including:

Ability to Grow Brand Awareness and Drive Efficient Customer Acquisition

The ability to communicate our mission of making better things in a better way is integral to our success in engaging new customers and introducing them to our products and brand. Allbirds is still relatively unknown to consumers worldwide, underscoring a large opportunity to scale our customer base and drive future growth. Our continued focus on elevating our product offerings combined with our differentiated brand approach and authenticity is critical to attracting new customers and increasing closet share. Further, we must continue to emphasize our commitment to people, the planet, and our investors in order to further increase our reach and highlight the integrity of our brand. We believe our brand strength will enable us to continue to grow brand awareness, allowing us to deepen relationships with consumers and expand our access to global markets.

As we continue to scale and build our global brand awareness, our goal is to acquire new customers in a cost-effective way. We will continue to evaluate our go-to-market strategy, both in the U.S. and internationally, and invest in customer acquisition while the underlying customer unit economics indicate the return on investment is strong. The continued execution of our customer acquisition strategy is key to acquiring more customers and driving growth and profitability for our business. Our ability to acquire more customers depends significantly on a number of factors, including the level and pattern of consumer spending in the product categories in which we operate and our ability to expand our brand awareness. Starting in 2022, we began to selectively enter into retail partnerships with third parties, such as Nordstrom, REI, Dick's Sporting Goods and Scheels, to distribute our products on a limited basis in an effort to build brand awareness and establish greater customer credibility in the market for our products. As part of our strategic transformation plan announced in March 2023, we intend to leverage these third-party partnerships further to increase brand awareness and reach new customers.

Continued Growth Within Existing Customer Base and Increasing Closet Share

In addition to seeking to acquire new customers, we continuously seek ways to engage with our large and growing base of existing customers. We aim to grow our closet share within our existing customer base by focusing and developing on our core franchises. We believe we must continue to both innovate with new products and focus on core products in order to drive consumer engagement and increase our closet share. While we continue to do this, we must constantly evaluate and improve our strategy to anticipate current and future consumer preferences and demands. At the same time, it is critical that we maintain our long-trusted commitment to offering the most comfortable, high performance, and sustainable products. In connection with our strategic transformation plan announced in March 2023, we intend to reconnect with our core customers by focusing our product strategy on our core franchise products. Our continued growth

within our existing customer base will depend in part on our ability to focus our product strategy to appeal to our existing customers.

Execution of Our Vertical Retail Distribution Strategy and Optimization of Our Store Fleet

Our long-term growth strategy relies on our ability to grow across our digital and retail channels, while still maintaining our goal of medium to long-term profitability. We believe an omni-channel buying experience is important to meeting the needs of our growing customer base while also growing revenue. We expect net revenue and gross margin to benefit from a higher mix of sales through our physical retail channel, due to a lower return rate and decreased shipping costs.

Although we continue to view retail stores as key to reaching new customers and increasing penetration of omni-channel customers, we plan to try to optimize our store fleet and focus on ensuring that our retail stores are efficiently driving customer acquisition, as store traffic has not fully recovered to pre-pandemic levels. These optimization efforts may include a combination of efforts, including evaluating the number of new store openings and slowing the pace of new retail store openings, investing in store marketing, expanding our third-party partnerships, and exploring partnering with distributors in certain international markets.

Our store count by primary geographical market is presented in the table below, as of the dates presented:

	Store Count by Primary Geographical Market									
	December 31, 2020	March 31, 2021	June 30, 2021	September 30, 2021	December 31, 2021	March 31, 2022	June 30, 2022	September 30, 2022	December 31, 2022	
United States	12	12	15	19	23	27	32	38	42	
International ⁸	10	10	12	12	12	12	14	13	16	
Total	22	22	27	31	35	39	46	51	58	

Growing Our Product Innovation Platform

Innovation has been core to the Allbirds brand since our inception in 2015. Our future innovation and product pipeline will depend, in part, on our ability to apply our expertise in materials science to source and commercialize materials that are sustainable, durable, and comfortable. Our success in leveraging these materials in our products is partially reliant on the ability of our manufacturing and supply chain partners to produce and distribute these materials at scale. It also takes months of testing before we commercialize new materials and products, which could cause delays in our existing growth plans. In addition, these initiatives may require ongoing investments which may lead to additional expenses that could delay our ability to achieve medium to long-term profitability. For example, in 2022, we debuted a new shoe within our lifestyle footwear offering, the Plant Pacer, which uses 100% plastic- and petroleum-free MIRUM plant leather from Natural Fiber Welding, Inc.

Ability to Scale Infrastructure for Profitable Growth

To grow our business, we intend to continue to improve our operational and capital efficiency and thoughtfully optimize our infrastructure. Our ability to scale relies upon our supply chain infrastructure. We believe our investments in direct and meaningful relationships with all of our partners, from raw materials suppliers to Tier 1 manufacturers and logistics providers, helps put us on a path of achieving profitable growth in the future. We will continue to make similar investments in developing partnerships across the full supply chain. Most importantly, we are firmly committed to reducing our carbon footprint and our environmental impact. This commitment may require current and future investments, which may result in higher expenses.

Macroeconomic Trends

Consumers are increasingly becoming more conscious of the products they purchase and are seeking brands that are responsible and purpose-driven. Consumers' increasing care in the products and brands they trust have contributed to significant demand for our products. Our status as a PBC and a B Corp highlight our commitment to sustainability and our purpose while providing an objective reference point for consumers. As a purpose-native company, we believe we are well-positioned at the intersection of key macro trends impacting our industry. However, changes in macro-level consumer spending trends, including as a result of increases in inflation and interest rates, the strengthening of the U.S. dollar in

⁸ In the third quarter of 2022, we opened two new international stores and had three store leases expire, resulting in a net reduction of one lease.

relation to foreign currencies, the crises in Ukraine, and the COVID-19 pandemic, could result in fluctuations in our results of operations. For example, during 2022, we utilized promotions to compete in a highly promotional environment and to drive sales. We expect to continue utilizing promotions, which may negatively impact our gross profit in the near term.

Seasonality

Our business is affected by general seasonal trends common to the retail footwear and apparel industry, with a larger percentage of our sales occurring during the end-of-year holiday period that typically falls within our fourth quarter. For example, we generated approximately 28%, 35% and 36% of our full year net revenue during the fourth quarters of 2022, 2021, and 2020, respectively.

Impact of COVID-19

The COVID-19 pandemic continues to impact the global economy and cause disruption and volatility. While the vast majority of our retail stores were open during the year ended December 31, 2022, certain locations in China and Europe were temporarily closed based on government and health authority guidance. To date, we have not permanently closed any of our retail stores due to COVID-19. Further, despite volatile sourcing and logistics headwinds, we were able to launch several new product styles during 2022, including the Tree Flyer and the Pacer in both canvas and plant leather.

We believe we will continue to experience varying levels of disruption and volatility in different markets, based on the possible sustained spread or resurgence of the pandemic. Any government response thereto increases the uncertainty regarding future economic conditions that will impact our business in the future. See the section titled “Risk Factors—Risks Related to Our Business, Brand, Products, and Industry—The COVID-19 pandemic has had, and may in the future continue to have, a material adverse impact on our business” in Part I, Item 1A. Risk Factors, for further details.

Components of Results of Operations

Net Revenue

We generate net revenue primarily from sales of our products. We sell products directly through our own digital channels (including our websites and mobile app), our leased retail stores, and third-party wholesalers. As of December 31, 2022, the majority of our sales are through our digital channels and leased retail stores. Net revenue consists of sales of our products and shipping revenue, net of allowances for returns, discounts, and any taxes collected from customers. Revenue is recognized when we satisfy our performance obligations by transferring control of the promised goods to the customer. This occurs either upon shipment or upon receipt, depending on the terms of sale. We expect recent soft sales trends to continue into 2023, contributing to an overall decrease in net revenue from 2022.

Cost of Revenue

Cost of revenue consists primarily of the cost of purchased inventory, inbound and outbound shipping costs, import duties, distribution center and related equipment costs, and inventory write-downs or write-offs. Shipping costs to receive products from our suppliers are included in the cost of inventory and recognized as cost of revenue upon sale of products to our customers. We expect our cost of revenue to decrease or increase in absolute dollars in line with net revenue fluctuations.

Gross Profit and Gross Margin

Gross profit represents net revenue less the cost of revenue. Gross margin is gross profit expressed as a percentage of net revenue. Our gross margin may fluctuate from period to period based on a number of factors, including business outcomes, the mix of products we sell, the geographies and channels through which we sell our products, price increases or decreases, the innovation initiatives we undertake in each product category, cost drivers, such as commodity prices, transportation rates, manufacturing costs, and inventory write-downs or write-offs, among other factors. We expect that the combination of our strategy and growth initiatives in 2023 will result in a stronger gross margin profile.

Operating Expense

Selling, General, and Administrative expense

Selling, general, and administrative expense (“SG&A expense”), consists of salaries, stock-based compensation, benefits, payroll taxes, bonuses, and other related costs, which we refer to as personnel and related expenses (including for retail employees), as well as third-party consulting and contractor expenses, including non-employee stock-based

compensation. Selling, general, and administrative expense also includes fixed and variable lease costs for corporate offices and retail stores, depreciation and amortization expense, software costs, third-party professional fees, public company operating costs, and costs related to other office functions. During 2022, we reduced our global corporate workforce by 8% and subleased one of our corporate offices in the United States as part of an effort to streamline workflows and lower operating cost, as well as executing on certain other cost control actions that will continue into 2023, including reducing our hiring and cutting discretionary spending. We expect these actions, together with our strategic transformation plan on cost and cash optimization, as announced in March 2023, to reduce costs included in SG&A expense, however, the changing prices of goods and services caused by inflation and other macroeconomic factors may cause fluctuations in SG&A expense, notwithstanding our cost control actions. Inclusive of these cost control actions, we still expect total SG&A expense to increase over time.

Marketing Expense

Marketing expense consists of advertising costs incurred to acquire new customers, retain existing customers, and build our brand awareness. We expect marketing expense to continue to increase in absolute dollars as we continue to expand our brand awareness, reignite our focused product strategy, introduce new products and iterations, and implement new marketing strategies.

Impairment Expense

Impairment expense consists of non-cash impairment charges relating to long-lived assets, which include property and equipment and operating lease right-of-use assets.

Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset group may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset group to future undiscounted net cash flows expected to be generated by the assets. If the carrying amount of an asset group exceeds its estimated undiscounted net future cash flows, an impairment charge is recognized for the amount by which the carrying amount of the asset group exceeds its fair value.

Restructuring Expense

Restructuring expense consists of severance and other personnel costs, including stock-based compensation, related to the reduction of our global corporate workforce by 8% in 2022. Restructuring expense also consists of professional service fees, and other costs associated with exit and disposal activities. We expect restructuring expense to increase in 2023 as a result of our March 2023 strategic transformation plan.

Interest Income (Expense)

Interest income (expense) primarily consists of interest income generated from our cash and cash equivalents, offset by interest expense associated with our credit agreement with JPMorgan Chase Bank, N.A. We expect interest income and expense to fluctuate based on our future bank balances, credit line utilization, and the interest rate environment.

Other Income (Expense)

Other income (expense) consists of gains or losses on foreign currency, gains or losses on sales of property and equipment, changes in the fair value of our equity investments, and changes in the fair value of our preferred stock warrant liability.

The change in fair value for our preferred stock warrant liability was related to mark to market accounting and fluctuated as the value of the underlying preferred equity increased or decreased. In November 2021, immediately prior to the completion of the IPO, and upon the issuance of shares of Class B common stock, pursuant to the terms of our outstanding convertible preferred stock warrants, our preferred stock warrants were automatically exchanged for Class B common stock on a one-to-one basis and the preferred stock warrant liability was reclassified to additional paid-in capital on the condensed consolidated balance sheet. Therefore, subsequent to November 2021, there is no longer an impact to other income (expense) as a result of changes in the fair value of the preferred stock warrant liability.

Income Tax (Provision) Benefit

Our provision for income taxes consists of U.S. federal and state income taxes and income taxes in certain foreign jurisdictions in which we conduct business. We record deferred tax assets and liabilities based on differences between the book and tax bases of assets and liabilities. The deferred tax assets and liabilities are calculated by applying enacted tax

rates and laws to taxable years in which such differences are expected to reverse. Because we have a recent history of pre-tax book losses and are expected to be in a pre-tax book loss position in the near term, a valuation allowance was maintained against the deferred tax assets in the United States, China, Hong Kong, and Vietnam as of December 31, 2022.

Results of Operations

The following table sets forth our consolidated statements of operations data for each of the periods indicated:

	Year Ended December 31,		
	2022	2021	2020
	(in thousands)		
Consolidated Statements of Operations Data:			
Net revenue	\$ 297,766	\$ 277,472	\$ 219,296
Cost of revenue	168,138	130,810	106,555
Gross profit	129,628	146,662	112,741
Operating expense:			
Selling, general, and administrative expense ⁽¹⁾⁽²⁾	166,736	122,200	86,694
Marketing expense	59,109	57,338	55,271
Impairment expense	3,286	—	—
Restructuring expense	782	—	—
Total operating expense	229,913	179,538	141,965
Loss from operations	(100,285)	(32,876)	(29,224)
Interest income (expense)	19	(178)	(297)
Other income (expense)	139	(11,506)	(452)
Loss before provision for income taxes	(100,127)	(44,560)	(29,973)
Income tax (provision) benefit	(1,227)	(810)	4,113
Net loss	\$ (101,354)	\$ (45,370)	\$ (25,860)
Other comprehensive loss:			
Foreign currency translation (loss) gain	(4,277)	(1,290)	2,245
Total comprehensive loss	\$ (105,631)	\$ (46,660)	\$ (23,615)

(1) Includes stock-based compensation expense of \$19.0 million, \$9.7 million, and \$6.6 million for the years ended December 31, 2022, 2021, and 2020, respectively.

(2) Includes depreciation and amortization expense of \$15.8 million, \$9.8 million, and \$7.1 million for the years ended December 31, 2022, 2021, and 2020, respectively.

The following table sets forth our consolidated results of operations as a percentage of net revenue, for the periods presented:

	Year Ended December 31,		
	2022	2021	2020
Consolidated Statements of Operations Data, as a Percentage of Net Revenue:			
Net revenue	100.0 %	100.0 %	100.0 %
Cost of revenue	56.5 %	47.1 %	48.6 %
Gross profit	43.5 %	52.9 %	51.4 %
Operating expense:			
Selling, general, and administrative expense	56.0 %	44.0 %	39.5 %
Marketing expense	19.9 %	20.7 %	25.2 %
Impairment expense	1.1 %	— %	— %
Restructuring expense	0.3 %	— %	— %
Total operating expense	77.2 %	64.7 %	64.7 %
Loss from operations	(33.7)%	(11.8)%	(13.3)%
Interest income (expense)	0.0 %	(0.1)%	(0.1)%
Other income (expense)	0.0 %	(4.1)%	(0.2)%
Loss before provision for income taxes	(33.6)%	(16.1)%	(13.7)%
Income tax (provision) benefit	(0.4)%	(0.3)%	1.9 %
Net loss	(34.0)%	(16.4)%	(11.8)%
Other comprehensive loss:			
Foreign currency translation (loss) gain	(1.4)%	(0.5)%	1.0 %
Total comprehensive loss	(35.5)%	(16.8)%	(10.8)%

Comparison of the Years Ended December 31, 2022 and 2021

	Year Ended December 31,		\$ Change	% Change
	2022	2021		
(dollars in thousands)				
Net revenue	\$ 297,766	\$ 277,472	\$ 20,294	7.3 %

Net revenue increased by \$20.3 million, or 7.3%, for the year ended December 31, 2022 compared to the year ended December 31, 2021. Our sales growth was driven by an 8.4% increase in the number of units sold. This was partially offset by unfavorable foreign exchange rates which had an estimated \$8.0 million impact. In the U.S., retail store sales was the primary driver of the increase in number of units sold as a result of 19 new stores opened during the year. Outside of the U.S., net revenue was roughly flat, as the business was negatively impacted by external headwinds, including unfavorable foreign exchange rates, continuing COVID-19 restrictions in China, and a decrease in discretionary consumer spending as a result of macroeconomic conditions such as increasing inflation.

Cost of Revenue, Gross Profit, and Gross Margin

	Year Ended December 31,		\$ Change	% Change
	2022	2021		
(dollars in thousands)				
Cost of revenue	\$ 168,138	\$ 130,810	\$ 37,328	28.5 %
Gross profit	129,628	146,662	(17,034)	(11.6)%
Gross margin	43.5 %	52.9 %		(17.6)%

Cost of revenue increased by \$37.3 million, or 28.5%, for the year ended December 31, 2022 compared to the year ended December 31, 2021. The increase was primarily driven by an increase in costs of \$19.1 million related to inventory optimization, primarily inventory write-downs and liquidation of end of life inventory, an increase of 8.4% in the volume of units sold, and an increase of \$11.8 million in freight and warehousing costs.

Gross profit decreased by \$17.0 million, or 11.6%, in the year ended December 31, 2022 compared to the year ended December 31, 2021. The decrease in gross profit was primarily driven by an impact of \$17.1 million related to inventory optimization, primarily inventory write-downs and liquidation of end of life inventory, as well as the impact of promotions, partially offset by an 8.4% in the volume of units sold.

Gross margin declined from 52.9% to 43.5% for the year ended December 31, 2022 compared to the year ended December 31, 2021, as a result of costs related to our inventory optimization, primarily inventory write-downs and liquidation of end of life inventory, higher freight and warehousing costs, increased promotional activity, and unfavorable foreign exchange rates, partially offset by a higher mix of margin accretive retail store sales.

Operating Expenses

	Year Ended December 31,		\$ Change	% Change
	2022	2021		
	(dollars in thousands)			
Operating expense:				
Selling, general, and administrative expense	\$ 166,736	\$ 122,200	\$ 44,536	36.4 %
Marketing expense	59,109	57,338	1,771	3.1 %
Impairment expense	3,286	—	3,286	N/A
Restructuring expense	782	—	782	N/A
Total operating expense	\$ 225,845	\$ 179,538	\$ 46,307	25.8 %

Selling, general, and administrative expense

Selling, general, and administrative expense increased \$44.5 million, or 36.4%, for the year ended December 31, 2022 compared to the year ended December 31, 2021. The increase was primarily driven by an increase of \$9.5 million in personnel and related expenses as a result of higher headcount, an increase of \$8.9 million in rent, utilities, and office expenses as a result of 23 new stores in operation, an increase of \$8.6 million in stock-based compensation and common stock warrant expense, and an increase of \$5.9 million of depreciation and amortization as a result of acquiring assets for the build out of new stores and new internally developed software projects during the year. The remaining \$11.6 million increase was composed of other miscellaneous operating and third-party professional expenses and fees.

Marketing expense

Marketing expense increased \$1.8 million, or 3.1%, for the year ended December 31, 2022 compared to the year ended December 31, 2021. As a percentage of net revenue, marketing expense improved from 20.7% to 19.9%, due to improvements in marketing efficiencies, partially offset by our sales decline in the fourth quarter.

Impairment expense

Impairment expense increased by \$3.3 million for the year ended December 31, 2022 compared to the year ended December 31, 2021 as a result of impairment of certain operating lease right-of-use assets and property and equipment in China that were impacted by COVID-related closures.

Restructuring expense

Restructuring expense increased by \$0.8 million for the year ended December 31, 2022 compared to the year ended December 31, 2021, and consisted primarily of severance and related costs of \$0.7 million as a result of the 8% reduction of our global corporate workforce in 2022.

Interest Income (Expense)

	Year Ended December 31,		\$ Change	% Change
	2022	2021		
	(dollars in thousands)			
Interest income (expense)	\$ 19	\$ (178)	\$ 197	NM ⁹

Interest income increased by \$0.2 million, for the year ended December 31, 2022 compared to the year ended December 31, 2021. The increase was driven by an increase in interest income on our cash and cash equivalents.

Other Income (Expense)

	Year Ended December 31,		\$ Change	% Change
	2022	2021		
	(dollars in thousands)			
Other income (expense)	\$ 139	\$ (11,506)	\$ 11,645	NM ²

Other income increased \$11.6 million, for the year ended December 31, 2022 compared to the year ended December 31, 2021. The increase was primarily due to a decrease of \$10.6 million of expense relating to the mark to market adjustment to reflect the fair value of our preferred stock warrant liability in 2021 that was not present in 2022 and an increase of \$1.0 million related to a gain on foreign currency.

Income Tax Provision

	Year Ended December 31,		\$ Change	% Change
	2022	2021		
	(dollars in thousands)			
Income tax provision	\$ (1,227)	\$ (810)	\$ (417)	51.5 %

Income tax provision increased by \$0.4 million, or 51.5%, for the year ended December 31, 2022 compared to the year ended December 31, 2021, primarily due to a mix of taxable income in foreign jurisdictions that resulted in differences in the effective tax rates.

Comparison of the Years Ended December 31, 2021 and 2020

Net Revenue

	Year Ended December 31,		\$ Change	% Change
	2021	2020		
	(dollars in thousands)			
Net revenue	\$ 277,472	\$ 219,296	\$ 58,176	26.5 %

Net revenue increased \$58.2 million, or 26.5%, for the year ended December 31, 2021 compared to the year ended December 31, 2020. Our sales growth was driven by a \$57.7 million increase in the volume of units sold as a result of

⁹ NM - Not meaningful.

strong consumer demand across geographies and channels and a strong response to new product launches during the year, with the remaining \$0.5 million due to an increase in our average selling price per unit driven by modest price increases in certain of our products and product mix.

Cost of Revenue, Gross Profit, and Gross Margin

	Year Ended December 31,		\$ Change	% Change
	2021	2020		
	(dollars in thousands)			
Cost of revenue	\$ 130,810	\$ 106,555	\$ 24,255	22.8 %
Gross profit	146,662	112,741	33,921	30.1 %
Gross margin	52.9 %	51.4 %		2.8 %

Cost of revenue increased by \$24.3 million, or 22.8%, in the year ended December 31, 2021 compared to the year ended December 31, 2020. The increase was primarily driven by an increase in the volume of units sold. Gross profit increased by \$33.9 million, or 30.1%, in the year ended December 31, 2021 compared to the year ended December 31, 2020. The increase in gross profit was driven by a \$29.9 million increase in the volume of units sold, with the remaining \$4.0 million due to an increase in gross margin rate. Our gross margin improved from 51.4% to 52.9% for the year ended December 31, 2021 compared to the year ended December 31, 2020, primarily due to favorable channel and geography mix, sales of higher gross margin products such as apparel, cost savings through achieving economies of scale with manufacturers and key service providers, and a modest price increase in certain of our products, partially offset by higher distribution center and logistics costs.

Operating Expenses

	Year Ended December 31,		\$ Change	% Change
	2021	2020		
	(dollars in thousands)			
Operating expense:				
Selling, general, and administrative expense	\$ 122,200	\$ 86,694	\$ 35,506	41.0 %
Marketing expense	57,338	55,271	2,067	3.7 %
Total operating expense	\$ 179,538	\$ 141,965	\$ 37,573	26.5 %

Selling, general, and administrative expense

Selling, general, and administrative expense increased \$35.5 million, or 41.0%, in the year ended December 31, 2021 compared to the year ended December 31, 2020. The increase was primarily driven by an increase of \$13.3 million in personnel and related expenses as a result of higher headcount, an increase of \$4.7 million in stock-based compensation and common stock warrant expense, an increase of \$3.7 million in rent expense as a result of an increased number of stores in operation, and an increase of \$2.7 million of depreciation and amortization. The remaining \$11.1 million increase was composed of other miscellaneous operating and third-party professional expenses and fees, including \$4.0 million in additional expenses as a result of becoming a public company.

Marketing expense

Marketing expense increased \$2.1 million, or 3.7%, in the year ended December 31, 2021 compared to the year ended December 31, 2020. As a percentage of net revenue, marketing expense improved from 25.2% to 20.7%, due to improvements in marketing efficiencies.

Interest Expense

	Year Ended December 31,		\$ Change	% Change
	2021	2020		
	(dollars in thousands)			
Interest expense	\$ (178)	\$ (297)	\$ 119	(40.1)%

Interest expense decreased \$0.1 million, or 40.1%, in the year ended December 31, 2021 compared to the year ended December 31, 2020. The decrease was primarily driven by less borrowing under the Credit Agreement in 2021 as compared to 2020.

Other Expense

	Year Ended December 31,		\$ Change	% Change
	2021	2020		
	(dollars in thousands)			
Other expense	\$ (11,506)	\$ (452)	\$ (11,054)	2445.6 %

Other expense increased \$11.1 million, or 2445.6%, in the year ended December 31, 2021 compared to the year ended December 31, 2020. The increase was primarily driven by a mark to market adjustment to reflect the increase in fair value of our preferred stock warrant liability as a result of the increase in the value of the underlying preferred equity. As noted above, in connection with our IPO in November 2021, the preferred stock warrant liability was reclassified to additional paid-in capital. Therefore, subsequent to November 2021, there will no longer be an impact to other expense related to the preferred stock warrant liability.

Income Tax Benefit (Provision)

	Year Ended December 31,		\$ Change	% Change
	2021	2020		
	(dollars in thousands)			
Income tax (provision) benefit	\$ (810)	\$ 4,113	\$ (4,923)	(119.7)%

Income tax (provision) benefit decreased by \$4.9 million, or 119.7%, in the year ended December 31, 2021 compared to the year ended December 31, 2020, resulting in an income tax provision, primarily due to the fact that the 2020 tax benefit reflected the carryback of net operating losses under the Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act, which is nonrecurring. In the prior year ended December 31, 2020, we elected to carry back 2018 and 2019 net operating losses to prior tax years.

Non-GAAP Financial Measures

This Annual Report on Form 10-K and accompanying financial tables include references to adjusted EBITDA and adjusted EBITDA margin, which are non-GAAP financial measures. We believe that these non-GAAP financial measures, when reviewed in conjunction with GAAP financial measures, and not in isolation or as substitutes for analysis of our results of operations under GAAP, are useful to investors as they are widely used measures of performance, and the adjustments we make to these non-GAAP financial measures provide investors further insight into our profitability and additional perspectives in comparing our performance to other companies and in comparing our performance over time on a consistent basis. These non-GAAP financial measures should not be considered as alternatives to net loss or net loss margin as calculated and presented in accordance with GAAP.

Adjusted EBITDA is defined as net loss before stock-based compensation expense, including common stock warrant expense, depreciation and amortization expense, impairment expense, restructuring expense, other income or expense (consisting of non-cash changes in the fair value of our equity investments, non-cash gains or losses on foreign currency, non-cash gains or losses on sales of property and equipment, and non-cash changes in fair value of our preferred stock warrant liability), interest income or expense, and income tax provision or benefit.

Adjusted EBITDA margin is defined as adjusted EBITDA divided by net revenue.

There are a number of limitations related to the use of these non-GAAP financial measures. Some of these limitations are:

- adjusted EBITDA and adjusted EBITDA margin do not reflect stock-based compensation expense, including common stock warrant expense, and therefore do not include all of our compensation costs;
- adjusted EBITDA and adjusted EBITDA margin do not reflect depreciation and amortization expense and, although these are a non-cash expense, the assets being depreciated may have to be replaced in the future, increasing our cash requirements;

- adjusted EBITDA and adjusted EBITDA margin do not reflect impairment expense for long-lived assets and, although these are a non-cash expense, the assets being impaired may not recover their fair value, increasing our cash requirements;
- adjusted EBITDA and adjusted EBITDA margin do not reflect severance, reorganization, exit, disposal and other costs associated with restructuring plans, which reduce cash available to us;
- adjusted EBITDA and adjusted EBITDA margin do not reflect other income or expense that may reduce cash available to us if the actual cash received is lower than the cash paid;
- adjusted EBITDA and adjusted EBITDA margin do not reflect interest income or expense, or the cash required to service interest on our debt, which reduces cash available to us; and
- adjusted EBITDA and adjusted EBITDA margin do not reflect income tax expense, or tax payments that may reduce cash available to us.

Further, other companies, including companies in our industry, may calculate these non-GAAP financial measures differently, which reduces their usefulness as comparative measures. Because of these limitations, we consider, and investors should consider, these non-GAAP financial measures together with other operating and financial performance measures presented in accordance with GAAP.

The following table presents a reconciliation of adjusted EBITDA to its most comparable GAAP measure, net loss:

	Year Ended December 31,		
	2022	2021	2020
	(in thousands) (unaudited)		
Net loss	\$ (101,354)	\$ (45,370)	\$ (25,860)
Add (deduct):			
Stock-based compensation expense, including common stock warrant expense	20,026	11,408	6,684
Depreciation and amortization expense	15,754	9,813	7,110
Impairment expense	3,286	—	—
Restructuring expense	782	—	—
Other (income) expense	(19)	178	297
Interest (income) expense	(139)	11,506	452
Income tax provision (benefit)	1,227	810	(4,113)
Adjusted EBITDA ⁽¹⁾	\$ (60,437)	\$ (11,655)	\$ (15,430)

(1) We are no longer excluding the revenue and cost of revenue impact associated with the inventory optimization related to the previously announced discontinuation of our first generation apparel business, the Simplification Initiatives, from Adjusted EBITDA. The impact of this change to our adjusted EBITDA for the year ended December 31, 2022 is an increase to Adjusted EBITDA loss of \$17.1 million.

Adjusted EBITDA decreased by \$48.8 million in the year ended December 31, 2022 compared to the year ended December 31, 2021. The decrease in adjusted EBITDA was primarily driven by the \$56.0 million increase in net loss and \$11.6 million decrease in other expense, which was partially offset by increases in stock-based compensation and depreciation and amortization.

Adjusted EBITDA increased by \$3.8 million in the year ended December 31, 2021 compared to the year ended December 31, 2020. The increase in adjusted EBITDA, despite the increase in net loss, was primarily driven by increases in stock-based compensation, depreciation and amortization, other expense, and income tax provision, partially offset by \$4.0 million in additional expenses as a result of becoming a public company.

We define adjusted EBITDA margin as adjusted EBITDA divided by net revenue. The following table presents net loss and adjusted EBITDA as percentages of net revenue:

	Year Ended December 31,		
	2022	2021	2020
	(in thousands) (unaudited)		
Net revenue	\$ 297,766	\$ 277,472	\$ 219,296
Net loss	\$ (101,354)	\$ (45,370)	\$ (25,860)
Net loss margin	(34.0)%	(11.8)%	(7.5)%
Adjusted EBITDA	\$ (60,437)	\$ (11,655)	\$ (15,430)
Adjusted EBITDA margin	(20.3)%	(4.2)%	(7.0)%

Adjusted EBITDA margin declined from (4.2)% to (20.3)% in the year ended December 31, 2022 compared to the year ended December 31, 2021 and improved from (7.0)% to (4.2)% in the year ended December 31, 2020 compared to the year ended December 31, 2019. The changes were primarily driven by the same factors as noted in the adjusted EBITDA discussion above.

Liquidity and Capital Resources

As of December 31, 2022, we had cash and cash equivalents of \$167.1 million. Our operations have been funded primarily through cash flows from the sale of our products and net proceeds from private sales of equity securities. We completed our IPO in November 2021 and received aggregate proceeds of \$237.0 million, net of the underwriting discounts and commissions of \$15.8 million and before offering costs of \$5.4 million.

We believe our existing cash and cash equivalent balances, cash flow from operations, and amounts available for borrowing under the Credit Agreement will be sufficient to meet our cash requirements over the next 12 months. We believe we will meet longer-term expected future cash requirements and obligations through a combination of our existing cash and cash equivalent balances, cash flow from operations, amounts available for borrowing under the Credit Agreement and issuances of equity securities or debt offerings.

Our material cash requirements for future capital expenditures, expected to be between \$10 million and \$15 million in 2023, may vary materially from those currently planned and will depend on many factors, including our revenue growth rate, the impact of our strategic transformation plan, our ability to scale across categories, geographies, and channels, our human capital costs which are not accurately estimable, our ability to execute on new marketing initiatives, the timing and extent of spending to support investments in growth and technology initiatives, the market adoption of new products, ESG initiatives to reduce and offset our carbon emissions, and overall market conditions. As we begin to execute on our strategic transformation plan announced in March 2023, we expect to see a decrease in future capital expenditures due to fewer store openings in the U.S. as well as in international markets if we transition our international go-to-market strategy to partnerships with distributors in certain markets. To the extent that current and anticipated future sources of liquidity are insufficient to fund our future business activities and requirements, we may be required to seek additional equity or debt financing. The sale of additional equity would result in additional dilution to our stockholders. The incurrence of additional debt financing would result in debt service obligations and the instruments governing such debt could provide for operating and financing covenants that would restrict our operations. There can be no assurances that we will be able to raise additional capital when needed or on terms acceptable to us. The inability to raise capital if needed would adversely affect our ability to achieve our business objectives.

Our material cash requirements include the following contractual and other obligations:

Debt

In February 2019, we entered into the Credit Agreement. The Credit Agreement is an asset-based loan with a revolving line of credit of up to \$40.0 million and an optional accordion of up to \$35.0 million. The Credit Agreement has a maturity date of February 20, 2024. As of December 31, 2022 and 2021, we had no outstanding balances under the Credit

Agreement. See Note 9, Long-Term Debt, of our consolidated financial statements included in Part II, Item 8, for more information regarding the Credit Agreement.

Inventory Purchase Obligations

Inventory purchase obligations relate to a supplier agreement that requires us, through our manufacturers, to purchase a minimum quantity of materials per year. As of December 31, 2022, we had inventory purchase obligations of \$17.7 million, with \$2.3 million payable within 12 months. See Note 15, Commitments and Contingencies, of our consolidated financial statements included in Part II, Item 8, for more information regarding our inventory purchase obligations.

Operating Leases

We lease various office and retail spaces for our operations with lease terms ranging from 1 year to 12 years, certain of which contain renewal provisions. As of December 31, 2022, we had undiscounted operating lease commitments of \$125.7 million, with \$14.1 million payable within 12 months. See Note 16, Leases, of our consolidated financial statements included in Part II, Item 8, for more information regarding our operating lease commitments.

Cash Flows

	Year Ended December 31,		
	2022	2021	2020
	(in thousands)		
Net cash used in operating activities	\$ (90,583)	\$ (50,850)	\$ (34,578)
Net cash used in investing activities	(32,292)	(25,636)	(16,281)
Net cash provided by financing activities	3,581	238,152	102,189
Effect of foreign exchange rate changes on cash, cash equivalents, and restricted cash	(1,515)	(341)	909
Net (decrease) increase in cash, cash equivalents, and restricted cash	<u>\$ (120,809)</u>	<u>\$ 161,325</u>	<u>\$ 52,239</u>

Operating Activities

Our largest sources of operating cash are cash payments received from customers for sales of our products. Our primary uses of cash from operating activities are for personnel and related expenses, selling and marketing expenses, and third-party professional fees. We have generated negative operating cash flows and have supplemented working capital through net proceeds from the sale of equity securities, including proceeds from our IPO in November 2021.

Net cash used in operating activities mainly consists of our net loss adjusted for certain non-cash items, including stock-based compensation, depreciation and amortization of property and equipment, inventory write-offs and write-downs, and changes in operating assets and liabilities during each year.

During 2022, net cash used in operating activities was \$90.6 million, which consisted of a net loss of \$101.4 million and a net increase of \$40.6 million in our operating assets and liabilities, partially offset by non-cash charges of \$51.4 million added back to net loss. The change in operating assets and liabilities was primarily due to an increase of \$24.7 million in inventory due to higher inventory on hand and higher inbound freight costs, as well as a decrease of \$18.5 million in accounts payable due to timing of payments.

During 2021, net cash used in operating activities was \$50.9 million, which consisted of a net loss of \$45.4 million, partially offset by non-cash charges of \$31.8 million and a net change of \$37.3 million in our operating assets and liabilities. The change in operating assets and liabilities was primarily due to an increase of \$48.5 million in inventory due to a combination of higher in-transit inventory, resulting from extended lead times and higher inbound freight costs. Additionally, the change in operating assets and liabilities was due to an increase in \$11.5 million in prepaid and other current assets largely due to an increase in accounts and other receivables, offset by an increase of \$25.2 million in accounts payable and accrued expenses due to timing of payments and an increase of other long-term liabilities of \$5.3 million due to an increase in deferred rent liabilities.

Investing Activities

Net cash used in investing activities primarily relates to capital expenditures to support our growth and investment in property and equipment for expansion of our business.

Net cash used in investing activities in 2022, 2021, and 2020 was \$32.3 million, \$25.6 million, and \$16.3 million, respectively, and consisted primarily of cash outflows for the purchases of property and equipment to support the opening of retail stores across the U.S. and internationally.

Financing Activities

Net cash provided by financing activities in 2022 was \$3.6 million, primarily due to net proceeds from the exercise of stock options, the issuance of common stock under the employee stock purchase plan, and the receipt of a repayment for a non-recourse promissory note, offset by payments of deferred offering costs and taxes withheld on employee stock awards.

Net cash provided by financing activities in 2021 and 2020 was \$238.2 million and \$102.2 million, respectively, primarily due to \$237.0 million of offering proceeds from our IPO in November 2021 and net proceeds from issuances of our Series E preferred stock, respectively.

Critical Accounting Estimates

Our consolidated financial statements and the related notes thereto included elsewhere in this Annual Report on Form 10-K are prepared in accordance with GAAP. The preparation of our consolidated financial statements in conformity with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, costs and expenses, and related disclosures. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Actual results could differ significantly from the estimates made by management. To the extent that there are differences between our estimates and actual results, our future financial statement presentation, financial condition, results of operations, and cash flows will be affected.

We believe that the following accounting estimates involve a high degree of judgment and complexity. Accordingly, these are the policies we believe are the most critical to aid in fully understanding and evaluating our financial condition and results of our operations. See Note 2, Significant Accounting Policies, in the notes to our consolidated financial statements included in Part II, Item 8, for a description of our other significant accounting policies and estimates.

Revenue Recognition

Our primary source of revenue is from sales of shoes and apparel products. We determine revenue recognition in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 606, Revenue from Contracts with Customers. Revenue is recognized when transfer of control to the customer has occurred, which is either upon shipment or upon receipt, depending on the terms of sale. The transaction price is determined based upon the invoiced sales price, less anticipated sales returns from and discounts to customers. As customers may return products, we record a reserve for estimated product returns in each reporting period as a reduction of net revenue, which is based on historical return trends. We record the expected customer refund liability as a reduction to revenue, and the expected inventory right of recovery as a reduction of cost of revenue. We believe revenue recognition is subject to uncertainty as actual return costs can differ from previous estimates based on the amount of customer returns or exchanges, which would result in adjustments to the amount of liability and corresponding revenue in the period in which such differences occur. In making such estimates, we analyze historical returns, current economic trends and changes in customer demand and acceptance of our products.

Inventory

Inventory consists of finished goods, stated at the lower of cost or net realizable value. We value our inventory using the weighted-average cost method and include product costs from our suppliers, freight, import duties and other landing costs. We periodically review inventory and make provisions as necessary to appropriately value end of life, slow-moving, damaged, and excess inventory. To determine if the value of inventory requires a write-down, we estimate the net realizable value of inventory by considering current and anticipated demand, customer preferences and buying trends, the age of the merchandise, and product quality. Inventory write-downs are recognized in cost of revenue in the condensed consolidated statements of operations and comprehensive loss. Our reserve estimates require us to make assumptions based on the current rate of sales, age of inventory, salability and profitability of inventory, all of which may be affected by changes in our product mix and consumer preferences. These adjustments are estimates which could vary significantly,

either favorably or unfavorably, from actual requirements if future economic conditions, customer demand or other factors differ from expectations.

Impairment of Long-Lived Assets

We evaluate the recoverability of property and equipment, operating lease right-of-use assets, and other long-lived assets, including identifiable intangible assets with definite lives, whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Long-lived assets are reviewed for recoverability at the lowest level in which there are identifiable cash flows (asset group). The asset group is typically at the country-level for store assets and the corporate-level for corporate assets. The carrying amount of a country asset group includes stores' operating lease right-of-use assets and property and equipment, primarily leasehold improvements. Recoverability of assets held and used is measured by comparing the carrying amount of an asset or an asset group to the estimated undiscounted future net cash flows expected to be generated by the asset or asset group. If the carrying amount of an asset or asset group exceeds these estimated future cash flows, an impairment charge is recognized as the amount by which the carrying amount of the assets exceeds the fair value of the asset or asset group, based on estimated discounted net future cash flows. Assumptions used in these forecasts are consistent with internal planning, and include revenue growth rates, gross margins, and operating expense in relation to the current economic environment and our future expectations, competitive factors in its various markets, inflation, revenue trends and other relevant economic factors that may impact the asset group under evaluation.

There is uncertainty in the projected undiscounted future cash flows used in our impairment review analysis, which requires the use of estimates and assumptions. If our actual performance does not achieve our projections, or if the assumptions used change in the future, we may be required to recognize impairment charges in future periods, and any such charges could be material. We determine that triggering events, primarily related to a current-period and history of operating cash flow losses and the impact of COVID-related store closures, occurred during 2022 that required an impairment review of our long-lived assets. Based on the results of this analysis, we recorded non-cash impairment charges of \$3.3 million.

Any material changes in the sum of our undiscounted cash flow estimates resulting from different assumptions used as of December 31, 2022 for those asset groups included in our evaluation could result in a material change in the long-lived asset impairment charge for fiscal year 2022. Our projections are estimates, which could vary significantly, either favorably or unfavorably, from actual results if future economic conditions, consumer demand and competitive environments differ from our expectations.

Stock-Based Compensation

We measure and recognize compensation expense for all stock-based awards, including stock options and restricted stock units, or RSUs, granted to employees, directors, and non-employees, and stock purchase rights granted under the 2021 ESPP, or ESPP Rights, to employees, based on the estimated fair value of the awards on the date of grant. The fair value of each stock option and ESPP Right granted is estimated using the Black-Scholes option-pricing model. The fair value of each RSU award is based on the estimated fair value of our common stock on the date of grant.

The Black-Scholes option pricing model requires the input of highly subjective assumptions, including the fair value of the underlying common stock, the expected term of the option, the expected volatility of the price of our common stock, risk-free interest rates, and the expected dividend yield of our common stock. The assumptions used to determine the fair value of the option awards represent management's best estimates. These estimates involve inherent uncertainties and the application of management's judgment over the assumptions listed below. The related stock-based compensation expense is recognized on a straight-line basis over the requisite service period of the awards. We account for forfeitures as they occur instead of estimating the number of awards expected to be forfeited.

These assumptions and estimates are as follows:

Fair value of common stock—As our common stock was not publicly traded prior to November 2021, the fair value was determined by our board of directors, with input from management and valuation reports prepared by third-party valuation specialists. Stock-based compensation for financial reporting purposes is measured based on updated estimates of fair value when appropriate, such as when additional relevant information related to the estimate becomes available in a valuation report issued as of a subsequent date. After our IPO, the fair value of our common stock is determined by the closing price, on the grant date, of our common stock, which is traded on Nasdaq.

Expected dividend yield—We have never declared or paid any cash dividends and do not presently plan to pay cash dividends in the foreseeable future. As a result, an expected dividend yield of zero percent was used.

Expected volatility—As we did not have a trading history for our common stock prior to November 2021, the expected volatility was estimated by taking the average historic price volatility for industry peers, consisting of several public companies in our industry which are either similar in size, stage of life cycle, or financial leverage, over a period equivalent to the expected term of the awards.

Expected term—The expected term of options represents the period of time that options are expected to be outstanding. Our historical stock option exercise experience does not provide a reasonable basis upon which to estimate an expected term due to a lack of sufficient data. For stock options granted to employees, we estimate the expected term by using the simplified method. The simplified method calculates the expected term as the average of the time-to-vesting and the contractual life of the options. For stock options granted to non-employees, the expected term equals the contractual term of the option.

Risk-free interest rate—The risk-free interest rate for the expected term of the options was based on the U.S. Treasury yield curve in effect at the time of the grant.

The assumptions for expected volatility and expected term are the two assumptions that most significantly affect the grant date fair value of stock options and ESPP Rights. Changes in expected risk-free rate of return do not significantly impact the calculation of fair value and determining this input is not highly subjective.

We will continue to use judgment in evaluating the assumptions related to our stock-based compensation on a prospective basis. As we continue to accumulate additional data related to our common stock, we may refine our estimation process, which could materially impact our future stock-based compensation expense. Changes in these subjective assumptions can materially affect the estimate of the fair value of stock options and ESPP Rights and, consequently, the related amount of stock-based compensation expense recognized in our consolidated statements of operations and comprehensive loss.

Fair Value of Common Stock

Prior to our IPO in November 2021, given the absence of a public trading market of our common stock and in accordance with the American Institute of Certified Public Accountants Accounting and Valuation Guide, Valuation of Privately-Held Company Equity Securities Issued as Compensation, our board of directors exercised reasonable judgment and considered numerous and subjective factors to determine the best estimate of fair value of our common stock, including:

- independent third-party valuations of our common stock;
- the prices at which our common and convertible preferred stock were sold to outside or existing investors;
- the rights, preferences, and privileges of our convertible preferred stock relative to those of our common stock;
- our results of operations, financial position, and capital resources;
- industry outlook;
- the lack of marketability of our common stock;
- the fact that the option grants involve illiquid securities in a private company;
- the likelihood of achieving a liquidity event, such as an initial public offering or a sale of our company, given prevailing market conditions;
- the history and nature of our business, industry trends, and competitive environment; and
- general economic outlook including economic growth, inflation and unemployment, interest rate environment, and global economic trends.

In valuing our common stock, our board of directors determined the equity value of our business using various valuation methods including the sale of preferred stock to unrelated third parties, combinations of income, and market approaches with input from management. The income approach estimates value based on the expectation of future cash flows that a company will generate. These future cash flows are discounted to their present values using a discount rate derived from an analysis of the cost of capital of comparable publicly traded companies in our industry or similar business operations as of each valuation date and is adjusted to reflect the risks inherent in our cash flows. For each valuation, the equity value determined by the income and market approaches was then allocated to the common stock using either the option pricing method, or OPM, or a hybrid method. The hybrid method is a hybrid of the probability weighted expected return method, or PWERM, and the OPM.

The OPM is based on a Black-Scholes option pricing model, which allows for the identification of a range of possible future outcomes, each with an associated probability. The OPM is appropriate to use when the range of possible future outcomes is difficult to predict and thus creates highly speculative forecasts. PWERM involves a forward-looking analysis of the possible future outcomes of the enterprise. This method is particularly useful when discrete future outcomes can be predicted at a relatively high confidence level with a probability distribution. Discrete future outcomes considered under the PWERM include an initial public offering, as well as non-initial public offering market-based outcomes. Determining the fair value of the enterprise using the PWERM requires us to develop assumptions and estimates for both the probability of an initial public offering liquidity event and stay private outcomes, as well as the values we expect those outcomes could yield. Our common stock valuations prior to March 2021 were based on the OPM. Beginning in March 2021 and prior to our IPO in November 2021, we valued our common stock based on a hybrid method of the PWERM and the OPM.

In addition, we considered any secondary transactions involving our capital stock. In our evaluation of those transactions, we considered the facts and circumstances of each transaction to determine the extent to which they represented a fair value exchange. Factors considered include transaction volume, timing, whether the transactions occurred among willing and unrelated parties, and whether the transactions involved investors with access to our financial information.

Application of these approaches involves the use of estimates, judgment, and assumptions that are highly complex and subjective, such as those regarding our expected future revenue, expenses, and cash flows, discount rates, market multiples, the selection of comparable companies, and the probability of possible future events. Changes in any or all of these estimates and assumptions or the relationships between those assumptions impact our valuations as of each valuation date and may have a material impact on the valuation of our common stock.

For valuations after the completion of our IPO, our board of directors determines the fair value of each share of underlying common stock based on the closing price of our common stock on The Nasdaq Stock Market as reported on the date of grant. Future expense amounts for any particular period could be affected by changes in our assumptions or market conditions.

Recent Accounting Pronouncements

For information on recent accounting pronouncements, see Note 2, Significant Accounting Policies, in the notes to our consolidated financial statements included in Part II, Item 8.

Emerging Growth Company Status

We are currently an "emerging growth company," as defined in the Jumpstart Our Business Startups Act of 2012, or JOBS Act, and we may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies. We may take advantage of these exemptions until we are no longer an emerging growth company. Section 107 of the JOBS Act provides that an emerging growth company can take advantage of the extended transition period afforded by the JOBS Act for the implementation of new or revised accounting standards. We have elected to use the extended transition period for complying with new or revised accounting standards and, as a result of this election, our financial statements may not be comparable to companies that comply with public company effective dates. We may take advantage of these exemptions up until December 31, 2026, the last day of the fiscal year following the fifth anniversary of our initial public offering or such earlier time that we are no longer an emerging growth company. We would cease to be an emerging growth company if we have more than \$1.235 billion in annual gross revenue, we have more than \$700.0 million in market value of our Class A stock held by non-affiliates or we issue more than \$1.0 billion of non-convertible debt securities over a three-year period.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk

We are exposed to market risks, which arise during the ordinary course of business from changes in interest rates, foreign currency exchange rates, and inflationary factors. A discussion of our primary market risk exposures is presented below.

Interest Rate Risk

As of December 31, 2022, we had cash and cash equivalents of \$167.1 million and a revolving line of credit of up to \$40.0 million with JPMorgan Chase Bank, N.A., under which we had no amounts outstanding. Cash and cash equivalents consists primarily of cash held in financial institutions within the United States and internationally and cash in transit from third-party credit card providers. Borrowings under the revolving line of credit bear interest at variable rates.

We are exposed to market risk relating to changes in interest rates as they can affect the amount of interest income we earn on our cash and cash equivalents and the amount of interest payments we make on our debt borrowings. We do not enter into investments for trading or speculative purposes and have not used any derivative financial instruments to manage our interest rate risk exposure. As of December 31, 2022, a hypothetical 10% change in interest rates would not have resulted in a material impact on our consolidated financial statements.

Foreign Currency Risk

Our consolidated financial statements are presented in U.S. dollars and the functional currency of our international subsidiaries is generally the applicable local currency. Accordingly, our results of operations are subject to fluctuations due to changes in foreign currency exchange rates, particularly changes in the Chinese yuan, British pound, Japanese yen, euro, Korean won, and Vietnamese dong. Fluctuations in foreign currency exchange rates may cause us to recognize transaction gains and losses in our consolidated statements of operations and comprehensive loss. Although we have not historically entered into derivative or hedging transactions, given the recent unfavorable foreign exchange rates and its impact to our revenue, we may do so in the future if our exposure to foreign currency becomes more significant. As of December 31, 2022, a hypothetical 10% change in the relative value of the U.S. dollar to other currencies would not have had a material effect on our results of operations.

Foreign currency exchange differences which arise on translation of our international subsidiaries' balance sheets into U.S. dollars are recorded in accumulated other comprehensive (loss) income within stockholders' equity on the consolidated balance sheet. As of December 31, 2022 and 2021, we had accumulated other comprehensive loss of \$3.6 million and accumulated other comprehensive income of \$0.7 million, respectively, as a result of foreign currency translation adjustments.

Inflation Risk

Given the recent rise in inflation, there have been and may continue to be additional pressures on the ongoing increases in supply chain and logistics costs, materials costs, and labor costs. Although we do not believe that inflation has had a material impact on our business, financial condition or results of operations, our business could be more affected by inflation in the future which could have an adverse effect on our ability to maintain current levels of gross margin and operating expenses as a percentage of net revenue if we are unable to fully offset such higher costs through price increases and cost reductions. Additionally, because we purchase inventory from our suppliers, we may be adversely impacted by their inability to adequately mitigate inflationary, industry, or economic pressures.

Item 8. Financial Statements and Supplementary Data

ALLBIRDS, INC.

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the shareholders and the Board of Directors of Allbirds, Inc.:

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Allbirds, Inc. and subsidiaries (the "Company") as of December 31, 2022 and 2021, the related consolidated statements of operations and comprehensive loss, convertible preferred stock and stockholders' equity (deficit), and cash flows, for each of the three years in the period ended December 31, 2022, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022, and 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2022, in conformity with accounting principles generally accepted in the United States of America.

Change in Accounting Principle

As discussed in Note 2 to the financial statements, the Company has changed its method of accounting for leases effective January 1, 2022, due to the adoption of Accounting Standards Codification Topic 842, Leases.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits, we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Deloitte & Touche LLP

San Francisco, California
March 10, 2023

We have served as the Company's auditor since 2016.

CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share amounts)

	December 31, 2022	December 31, 2021
Assets		
Current assets:		
Cash and cash equivalents	\$ 167,136	\$ 288,576
Accounts receivable	9,206	10,978
Inventory	116,796	106,876
Prepaid expenses and other current assets	15,796	37,938
Total current assets	308,934	444,368
Property and equipment—net	54,340	37,955
Operating lease right-of-use assets	91,232	—
Other assets	7,858	6,106
Total assets	\$ 462,364	\$ 488,429
Liabilities and stockholders' equity		
Current liabilities:		
Accounts payable	12,245	30,726
Accrued expenses and other current liabilities	23,448	46,243
Current lease liabilities	10,263	—
Deferred revenue	4,057	4,187
Total current liabilities	50,012	81,156
Noncurrent liabilities:		
Noncurrent lease liabilities	95,583	—
Other long-term liabilities	—	10,269
Total noncurrent liabilities	95,583	10,269
Total liabilities	\$ 145,595	\$ 91,425
Commitments and contingencies (Note 15)		
Stockholders' equity:		
Class A Common stock, \$0.0001 par value; 2,000,000,000 shares authorized as of December 31, 2022 and 2021; 96,768,745 and 49,016,511 shares issued and outstanding as of December 31, 2022 and 2021, respectively	10	5
Class B Common stock, \$0.0001 par value; 200,000,000 shares authorized as of December 31, 2022 and 2021; 53,137,729 and 98,036,009 shares issued and outstanding as of December 31, 2022 and 2021, respectively	5	10
Additional paid-in capital	559,106	533,709
Accumulated other comprehensive (loss) income	(3,611)	666
Accumulated deficit	(238,741)	(137,386)
Total stockholders' equity	316,769	397,004
Total liabilities and stockholders' equity	\$ 462,364	\$ 488,429

See accompanying notes to consolidated financial statements.

**CONSOLIDATED STATEMENTS OF OPERATIONS AND
COMPREHENSIVE LOSS**
(in thousands, except share and per share amounts)

	Year Ended December 31,		
	2022	2021	2020
Net revenue	\$ 297,766	\$ 277,472	\$ 219,296
Cost of revenue	168,138	130,810	106,555
Gross profit	129,628	146,662	112,741
Operating expense:			
Selling, general, and administrative expense	166,736	122,200	86,694
Marketing expense	59,109	57,338	55,271
Impairment expense	3,286	—	—
Restructuring expense	782	—	—
Total operating expense	229,913	179,538	141,965
Loss from operations	(100,285)	(32,876)	(29,224)
Interest income (expense)	19	(178)	(297)
Other income (expense)	139	(11,506)	(452)
Loss before provision for income taxes	(100,127)	(44,560)	(29,973)
Income tax (provision) benefit	(1,227)	(810)	4,113
Net loss	\$ (101,354)	\$ (45,370)	\$ (25,860)
Net loss per share data:			
Net loss per share attributable to common stockholders, basic and diluted	\$ (0.68)	\$ (0.65)	\$ (0.49)
Weighted average shares used in computing net loss per share attributable to common stockholders, basic and diluted	148,754,428	69,308,930	53,005,424
Other comprehensive loss:			
Foreign currency translation (loss) gain	(4,277)	(1,290)	2,245
Total comprehensive loss	\$ (105,631)	\$ (46,660)	\$ (23,615)

See accompanying notes to consolidated financial statements.

CONSOLIDATED STATEMENTS OF CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)
(in thousands, except share amounts)

	Class A Common Stock		Class B Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive (Loss) Income	Accumulated Deficit	Total Stockholders' (Deficit) Equity	Convertible Preferred Stock	
	Shares	Amount	Shares	Amount					Shares	Amount
Balance as of December 31, 2019	—	\$ —	53,690,145	\$ 5	\$ 57,322	\$ (289)	\$ (66,156)	\$ (9,118)	62,187,015	\$ 102,302
Issuance of Series D Preferred Stock (net of \$78 issuance costs)	—	—	—	—	—	—	—	—	155,209	1,922
Issuance of Series E Preferred Stock (net of \$174 issuance costs)	—	—	—	—	—	—	—	—	8,648,695	99,825
Exercise of stock options	—	—	492,604	—	440	—	—	440	—	—
Repurchase of invested common stock shares	—	—	(499,480)	—	—	—	—	—	—	—
Vesting of warrants	—	—	—	—	192	—	—	192	—	—
Stock-based compensation	—	—	—	—	6,594	—	—	6,594	—	—
Comprehensive income	—	—	—	—	—	2,245	—	2,245	—	—
Net loss	—	—	—	—	—	—	(25,860)	(25,860)	—	—
Balance as of December 31, 2020	—	\$ —	53,683,269	\$ 5	\$ 64,548	\$ 1,956	\$ (92,016)	\$ (25,507)	70,990,919	\$ 204,049
Conversion of convertible preferred stock to Class B common stock upon IPO	—	—	70,990,919	7	204,042	—	—	204,049	(70,990,919)	(204,049)
Issuance of Class A common stock upon IPO, net of underwriting discounts, commissions, and offering costs	16,850,799	2	—	—	231,551	—	—	231,553	—	—
Exercise of stock options	—	—	3,274,745	—	5,484	—	—	5,484	—	—
Exercise of common stock warrants	—	—	1,150,956	—	395	—	—	395	—	—
Vesting of common stock warrants	—	—	—	—	1,476	—	—	1,476	—	—
Vesting of restricted stock units	204	—	—	—	—	—	—	—	—	—
Reclassification of preferred stock warrant liability to additional paid-in capital due to conversion to Class B common stock upon IPO	—	—	1,104,560	—	16,469	—	—	16,469	—	—
Conversion of Class B shares into Class A common stock	32,165,508	3	(32,165,508)	(3)	—	—	—	—	—	—
Stock-based compensation	—	—	—	—	9,744	—	—	9,744	—	—
Comprehensive loss	—	—	—	—	—	(1,290)	—	(1,290)	—	—
Net loss	—	—	—	—	—	—	(45,370)	(45,370)	—	—
Balance as of December 31, 2021	49,016,511	\$ 5	98,038,941	\$ 10	\$ 533,709	\$ 666	\$ (137,386)	\$ 397,004	—	\$ —
Issuance of common stock under employee stock purchase plan	311,509	—	—	—	1,201	—	—	1,201	—	—
Exercise of stock options	—	—	1,743,005	—	2,585	—	—	2,585	—	—
Exercise of common stock warrants, net of shares withheld	—	—	25,717	—	—	—	—	—	—	—
Vesting of common stock warrants	—	—	—	—	843	—	—	843	—	—
Vesting of restricted stock units	770,791	—	—	—	—	—	—	—	—	—
Repayment of non-recourse promissory note	—	—	—	—	539	—	—	539	—	—
Conversion of Class B shares into Class A common stock	46,669,934	5	(46,669,934)	(5)	—	—	—	—	—	—
Stock-based compensation	—	—	—	—	20,230	—	—	20,230	—	—
Comprehensive loss	—	—	—	—	—	(4,277)	—	(4,277)	—	—
Net loss	—	—	—	—	—	—	(101,354)	(101,354)	—	—
Balance as of December 31, 2022	96,768,745	\$ 10	53,137,729	\$ 5	\$ 559,106	\$ (3,611)	\$ (238,741)	\$ 316,769	—	\$ —

See accompanying notes to consolidated financial statements.

CONSOLIDATED STATEMENTS OF CASH FLOWS
 (in thousands)

	Year Ended December 31,		
	2022	2021	2020
Cash flows from operating activities:			
Net loss	\$ (101,354)	\$ (45,370)	\$ (25,860)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	14,679	9,653	7,088
Amortization of debt issuance costs	49	49	49
Stock-based compensation	19,873	11,245	6,784
Inventory write-down	14,437	—	—
Deferred taxes	(898)	252	(39)
Impairment expense	3,279	—	—
Change in fair value of preferred stock warrant liability	—	10,624	(749)
Changes in assets and liabilities:			
Accounts receivable	1,605	(9,110)	(740)
Inventory	(24,742)	(48,476)	(13,867)
Prepaid expenses and other current assets	18,100	(11,505)	(11,249)
Operating lease right-of-use assets and current and noncurrent lease liabilities	12,265	—	—
Accounts payable and accrued expenses	(37,593)	25,240	1,249
Other long-term liabilities	(10,157)	5,289	1,944
Deferred revenue	(126)	1,259	812
Net cash used in operating activities	<u>(90,583)</u>	<u>(50,850)</u>	<u>(34,578)</u>
Cash flows from investing activities:			
Purchase of property and equipment	(31,363)	(24,181)	(14,350)
Investment in equity securities	—	(250)	(2,000)
Changes in security deposits	(929)	(1,205)	69
Net cash used in investing activities	<u>(32,292)</u>	<u>(25,636)</u>	<u>(16,281)</u>
Cash flows from financing activities:			
Proceeds from initial public offering, net of underwriting discounts and commissions	—	236,964	—
Proceeds from the issuance of preferred stock, net of issuance costs	—	—	101,749
Proceeds from bank loans	—	—	18,294
Principal payments on bank loans	—	—	(18,294)
Payments of deferred offering costs	(744)	(4,691)	—
Repayment of non-recourse promissory note	539	—	—
Proceeds from issuance of common stock under the employee stock purchase plan	1,201	—	—
Proceeds from the exercise of common stock warrants	—	395	—
Proceeds from the exercise of stock options	2,751	5,484	440
Taxes withheld and paid on employee stock awards	(166)	—	—
Net cash provided by financing activities	<u>3,581</u>	<u>238,152</u>	<u>102,189</u>
Effect of foreign exchange rate changes on cash, cash equivalents, and restricted cash	(1,515)	(341)	909
Net (decrease) increase in cash, cash equivalents, and restricted cash	(120,809)	161,325	52,239
Cash, cash equivalents, and restricted cash—beginning of year	288,576	127,251	75,012
Cash, cash equivalents, and restricted cash—end of year	<u>\$ 167,767</u>	<u>\$ 288,576</u>	<u>\$ 127,251</u>

	Year Ended December 31,		
	2022	2021	2020
Supplemental disclosures of cash flow information:			
Cash paid for interest	\$ 88	\$ 118	\$ 235
Cash paid for taxes	\$ 1,424	\$ 438	\$ 110
Noncash investing and financing activities:			
Purchase of property and equipment included in accrued liabilities	\$ 601	\$ 979	\$ 138
Repurchase of stock options	\$ —	\$ —	\$ 640
Non-cash exercise of common stock warrants	\$ 35	\$ 39	\$ —
Deferred offering costs included in accrued liabilities	\$ —	\$ 744	\$ —
Stock-based compensation included in capitalized internal-use software	\$ 1,199	\$ —	\$ —
Reconciliation of cash, cash equivalents, and restricted cash:			
Cash and cash equivalents	\$ 167,136	\$ 288,576	\$ 126,551
Restricted cash included in prepaid expenses and other current assets	632	—	700
Total cash, cash equivalents, and restricted cash	\$ 167,767	\$ 288,576	\$ 127,251

See accompanying notes to consolidated financial statements.

ALLBIRDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
AS OF DECEMBER 31, 2022 AND 2021 AND FOR THE YEARS ENDED DECEMBER 31, 2022, 2021, AND 2020**1. Description of Business**

Allbirds, Inc. (“Allbirds” and, together with its wholly owned subsidiaries, the “Company,” “we,” or “our”) was incorporated in the state of Delaware on May 6, 2015. Headquartered in San Francisco, California, Allbirds is a global lifestyle brand that innovates with naturally derived materials to make better footwear and apparel products in a better way, while treading lighter on our planet. The majority of our revenue is from sales directly to consumers via our digital and retail channels.

2. Significant Accounting Policies

Basis of Preparation—The consolidated financial statements have been presented in U.S. dollars and prepared in accordance with United States generally accepted accounting principles (“GAAP”). Certain monetary amounts, percentages, and other figures included elsewhere in these consolidated financial statements and accompanying notes have been subject to rounding adjustments. As such, figures shown as totals in certain tables may not be the arithmetic aggregation of the figures that precede them, and figures expressed as percentages in the text may not total 100% or, as applicable, when aggregated may not be the arithmetic aggregation of the percentages that precede them.

Principles of Consolidation—The consolidated financial statements include the accounts of Allbirds, Inc. and our wholly owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

Use of Estimates—The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates.

Coronavirus (“COVID-19”) Pandemic—In December 2019, a novel strain of coronavirus (“COVID-19”) was reported, and during 2020 and 2021 expanded into a worldwide pandemic, leading to significant business and supply chain disruptions. During the year ended December 31, 2022, aspects of our business continued to be affected by COVID-19. During these periods, the vast majority of our retail stores around the world remained open. To date, we have not permanently closed any of our retail stores due to COVID-19. Our distribution centers and retail stores continue to operate with restrictive and precautionary measures in place, subject to national, state, and local rules and regulations. At times, our suppliers and logistical service providers have experienced disruptions that have affected our operations worldwide. Similar impacts or other disruptions could occur in the future. Given the uncertainty regarding the length, severity, and ability to combat the COVID-19 pandemic, we cannot reasonably estimate the future impact on our results of operations, cash flows, or financial condition.

Dual class Common Stock—In September 2021, we filed our Eighth Amended and Restated Certificate of Incorporation, which established a dual class common stock structure. In November 2021, in connection with the closing of our Initial Public Offering (IPO), we also filed our Ninth Amended and Restated Certificate of Incorporation, which authorized a total of 2,000,000,000 shares of Class A common stock, 200,000,000 shares of Class B common stock, and 20,000,000 shares of preferred stock.

Initial Public Offering—On November 3, 2021, our Class A common stock began trading on The Nasdaq Global Select Market. In connection with the closing of the IPO on November 5, 2021, we received aggregate proceeds of \$237.0 million, net of the underwriting discounts and commissions of \$15.8 million and before offering costs of \$5.4 million. Immediately prior to the closing of the IPO, all 70,990,919 shares of our convertible preferred stock then outstanding were converted into an equivalent number of shares of Class B common stock and we reclassified \$204.0 million of convertible preferred stock to additional paid-in-capital.

Segments—Operating segments are defined as components of an entity for which separate financial information is available and that is regularly reviewed by our chief operating decision maker (“CODM”), in deciding how to allocate resources to an individual segment and in assessing performance. Our CODMs are the co-Chief Executive Officers. We operate in one operating segment and one reportable segment, as the CODMs review financial information presented on a consolidated basis for purposes of making operating decisions, allocating resources, and evaluating financial performance.

ALLBIRDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
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The following table presents long-lived assets by geographic area, comprising property and equipment - net, definite-lived intangible assets, and operating lease right-of-use assets:

(in thousands)	December 31, 2022	December 31, 2021
Long-lived assets:		
United States	\$ 126,988	\$ 33,384
International	18,638	4,571
Total long-lived assets	<u>\$ 145,626</u>	<u>\$ 37,955</u>

Foreign Currency Transactions—Our reporting currency is the U.S. dollar. The functional currency for each subsidiary included in these consolidated financial statements that is domiciled outside of the United States is generally the applicable local currency of that country or the U.S. dollar. The translation of foreign currencies into U.S. dollars is performed for assets and liabilities using current foreign currency exchange rates in effect at the balance sheet date and for revenues and expense accounts using average foreign currency exchange rates during the period. Capital accounts are translated at historical foreign currency exchange rates. Translation gains and losses are included in stockholders' equity or deficit as a component of accumulated other comprehensive income or loss. Adjustments that arise from foreign currency exchange rate changes on transactions denominated in a currency other than the functional currency are included in other income or expense on the consolidated statements of operations and comprehensive loss.

Cash, Cash Equivalents, and Restricted Cash—We consider all highly liquid investments with an original maturity date of three months or less as cash equivalents. Cash and cash equivalents are comprised primarily of domestic and foreign bank accounts and money market funds. These cash and cash equivalents are valued based on Level 1 inputs, which consist of quoted prices in active markets. We place our cash and cash equivalents with several high credit quality financial institutions which, at times, may be in excess of Federal Deposit Insurance Corporation ("FDIC") insurance limits. We have not experienced any losses in such accounts and periodically evaluate the credit worthiness of the financial institutions. Our foreign bank accounts are not subject to FDIC insurance.

Restricted cash serves as collateral for a bond with the United States Customs and Border Protection ("CBP"), which allows us to take possession of our inventory before all formalities with the CBP are completed for imported products. Restricted cash is included in prepaid expenses and other current assets on the consolidated balance sheets.

Accounts Receivable—Accounts receivable consist primarily of amounts due from customers, which results from sales to customers including credit card deposits in transit at the balance sheet date, the majority of which are settled within two to three business days, and wholesale accounts receivable, which are settled per the terms of the sale. Wholesale accounts receivable was \$6.3 million and \$7.9 million as of December 31, 2022 and 2021, respectively. Credit card receivables were \$2.1 million and \$2.2 million as of December 31, 2022 and 2021, respectively.

During the fourth quarter of 2021, we made an accounting policy change to present customer accounts receivable that are not credit card receivables, within the accounts receivable line on the consolidated balance sheet to align with management's reporting. These types of receivables were historically immaterial and are included in prepaid and other current assets within the consolidated financial statements and accompanying footnotes for periods presented prior to 2021.

Inventory—Inventory consists of finished goods, stated at the lower of cost or net realizable value. We value our inventory using the weighted-average cost method and include product costs from our suppliers, freight, import duties and other landing costs.

We periodically review inventory and record reserves as necessary to appropriately value slow-moving, damaged, and excess inventory. To determine if the value of inventory requires a write-down, we estimate the market value of inventory by considering current and anticipated demand, customer preferences and buying trends, and the age of the merchandise. As of December 31, 2022 and 2021, we recorded an inventory reserve to reduce the value of our inventory by \$8.3 million and \$1.7 million, respectively, within inventory on the consolidated balance sheets. Related to these inventory reserves, and also including actual shrinkage which is recorded throughout the year based on the results of physical inventory counts, we recorded \$15.9 million, \$0.4 million, and \$2.3 million in cost of revenue in the consolidated statements of operations and comprehensive loss for the years ended December 31, 2022, 2021, and 2020, respectively.

ALLBIRDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
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Property and Equipment—Property and equipment are stated at cost. Depreciation and amortization are computed using the straight-line method over the estimated useful lives of the respective assets, which are generally three to five years. Leasehold improvements are amortized over the shorter of estimated useful lives of the assets or the term of the associated property lease. Expenditures for repairs and maintenance are expensed as incurred. Upon disposal, the cost and related accumulated depreciation are removed from the accounts, and the resulting gain or loss is reflected in the consolidated statements of operations and comprehensive loss as other income or expense.

Useful lives by major asset classes are below:

Asset Class	Estimated Useful Lives
Computers and equipment	3 years
Furniture and fixtures	3 years
Machinery and equipment	5 years
Internal-use software	3 years
Leasehold improvements	Shorter of lease term or estimated useful life

Leases—We determine if an arrangement is or contains a lease at inception by evaluating various factors, including if the contract conveys the right to control the use of an identified asset for a period of time in exchange for consideration and other facts and circumstances. Lease classification is determined at the lease commencement date. Right-of-use assets represent our right to use an underlying asset for the lease term, and lease liabilities represent our obligation to make payments arising from the lease. Operating lease right-of-use assets and liabilities are recognized at the lease commencement date based on the present value of lease payments over the lease term. Lease payments consist primarily of the fixed payments under the arrangement, less any lease incentives. Variable lease payments are expensed as incurred and include certain non-lease components, such as maintenance and other services provided by the lessor to the extent the charges are variable.

We use an estimate of our incremental borrowing rate (“IBR”) based on the information available at the lease commencement date in determining the present value of lease payments, unless the implicit rate is readily determinable. The IBR is the company specific rate of interest that would have to be paid by us to borrow on a collateralized basis over a similar term of the lease in a similar economic environment as of the date of the lease. In determining the appropriate IBR, we consider various factors, including, but not limited to, the lease term, our credit rating, U.S Treasury rates, and the currency in which the arrangement is denominated. Our lease terms may include options to extend or terminate the lease when it is reasonably certain that we will exercise that option. Lease expense for lease payments is recognized on a straight-line basis over the lease term.

We do not separate non-lease components from lease components for our leases. In addition, we do not recognize right-of-use assets and lease liabilities for short-term leases, which have a lease term of 12 months or less and do not include an option to purchase the underlying asset that we are reasonably certain to exercise. Lease cost for short-term leases is recognized on a straight-line basis over the lease term.

Any impairment to the associated right-of-use assets is recognized in the period the impairment occurs and is recorded in the consolidated statements of operations and comprehensive loss.

Operating leases are included in operating lease right-of-use assets, current lease liabilities, and noncurrent lease liabilities on the consolidated balance sheets. We did not have any finance leases for any periods presented.

Capitalized Internal-Use Software—Costs of software developed for internal-use is accounted for in accordance with Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) Subtopic 350-40, *Internal-Use Software*. Capitalization of costs begins when the preliminary project stage is completed, management authorizes and commits to funding the computer software project, it is probable that the project will be completed, and the software will be used to perform the function intended. Such costs are capitalized in the period incurred. Capitalization ceases at the point when the project is substantially complete and ready for its intended use. The capitalized costs are amortized using the straight-line method over the estimated useful lives of the software, which is generally three years. For the years ended December 31, 2022, 2021, and 2020, we capitalized \$8.9 million, \$5.4 million, and \$5.7 million, respectively, in internal-use software recorded within property and equipment in the consolidated balance sheets.

ALLBIRDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
AS OF DECEMBER 31, 2022 AND 2021 AND FOR THE YEARS ENDED DECEMBER 31, 2022, 2021, AND 2020

Impairment of Long-Lived Assets—We evaluate the recoverability of property and equipment, operating lease right-of-use assets, and other long-lived assets, including identifiable intangible assets with definite lives, whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Long-lived assets are reviewed for recoverability at the lowest level in which there are identifiable cash flows (asset group). The asset group is typically at the country-level for store assets and the corporate-level for corporate assets. The carrying amount of a country asset group includes stores' operating lease right-of-use assets and property and equipment, primarily leasehold improvements. Recoverability of assets held and used is measured by comparing the carrying amount of an asset or an asset group to the estimated undiscounted future net cash flows expected to be generated by the asset or asset group. If the carrying amount of an asset or asset group exceeds these estimated future cash flows, an impairment charge is recognized as the amount by which the carrying amount of the assets exceeds the fair value of the asset or asset group, based on estimated discounted net future cash flows. Assumptions used in these forecasts are consistent with internal planning, and include revenue growth rates, gross margins, and operating expense in relation to the current economic environment and our future expectations, competitive factors in its various markets, inflation, revenue trends and other relevant economic factors that may impact the asset group under evaluation.

There is uncertainty in the projected undiscounted future cash flows used in our impairment review analysis, which requires the use of estimates and assumptions. If our actual performance does not achieve our projections, or if the assumptions used change in the future, we may be required to recognize impairment charges in future periods, and any such charges could be material. We determine that triggering events, primarily related to a current-period and history of operating cash flow losses, occurred during 2022 that required an impairment review of our long-lived assets. Based on the results of this analysis, we recorded non-cash impairment charges of \$3.3 million, recognized as impairment expense in our consolidated statements of operations and comprehensive loss. \$2.4 million of the charge related to a reduction of the carrying value of our operating lease right-of-use assets, and \$0.9 million related to a reduction of the carrying value of leasehold improvements included within property and equipment - net.

There were no impairment losses recorded for the years ended December 31, 2021 and 2020.

Restructuring—In the third quarter of 2022, we announced plans to streamline workflows and lower operating costs. As part of this effort, we reduced our global corporate workforce by terminating 24 individuals, representing approximately 8% of our global corporate workforce, resulting in severance and employee-related termination costs, including stock-based compensation, recognized as restructuring expense in the consolidated statements of operations and comprehensive loss. In addition, we vacated one of our corporate office leases in the United States and subleased the space to another lessee.

The following table presents a roll-forward of our severance and employee-related termination costs, which is included within accrued expenses and other current liabilities in the consolidated balance sheets:

(in thousands)	Severance and employee-related termination costs
Balance as of December 31, 2021	\$ —
Charges	665
Cash Payments	(665)
Balance as of December 31, 2022	\$ —

Revenue Recognition—Our primary source of revenue is from sales of shoes and apparel products. We account for revenue in accordance with FASB ASC 606, *Revenue from Contracts with Customers*, for all periods presented.

We recognize revenue through the following steps:

1. identification of the contract, or contracts, with the customer;
2. identification of the performance obligations in the contract;
3. determination of the transaction price;
4. allocation of the transaction price to the performance obligations in the contract; and

ALLBIRDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
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5. recognition of revenue when, or as, we satisfy a performance obligation.

Revenue transactions associated with the sale of our inventory comprise a single performance obligation which consists of the sale of products to customers through our direct to consumer or wholesale channels. Payment is due either at the time of purchase or within a timeframe specified in the contract, without significant financing components. The consideration received from customers is not variable. We satisfy the performance obligation and record revenues when transfer of control to the customer has occurred, based on the terms of sale. A customer is considered to have control once they are able to direct the use and receive substantially all of the benefits of the product. Control is transferred to wholesale customers upon shipment. Control transfers to retail store customers at the time of sale and to digital customers upon shipment. This transfer of control represents a single deliverable and revenue is recognized at a point in time. We account for shipping and handling fees charged to customers as revenue and we account for shipping and handling costs as fulfillment costs. We recognize the revenue and cost associated with shipping and handling at the time the products are shipped to the customer. Discounts provided to customers are accounted for as a reduction of revenue. Revenues are presented net of any taxes collected from customers and remitted to governmental authorities.

We have two types of contract liabilities: (i) cash collections of purchases, which are included in deferred revenue and are recognized as revenue upon shipment; and (ii) unredeemed gift cards and merchandise credits, which are included in deferred revenue and recognized as revenue upon redemption.

Gift cards sold to customers do not carry an expiration date and are recorded as deferred revenue until they are redeemed, at which point revenue is recognized. From historical experience, a majority of gift cards are redeemed within a 12-month period from the card issuance date.

We record a reserve for estimated product returns, based upon historical return trends, in each reporting period as an offsetting decrease of net revenue, with an increase to our sales-refund reserve in accrued expenses. We have also recorded a related inventory returns receivable in prepaid expenses and other current assets, with an offsetting decrease to cost of revenue, as of December 31, 2022 and 2021 in the consolidated balance sheets.

For the years ended December 31, 2022, 2021, and 2020, we recognized \$4.2 million, \$2.9 million, and \$2.1 million respectively, of revenue that was deferred as of December 31, 2021, 2020, and 2019. As of December 31, 2022 and 2021, we had \$0.4 million and \$0.7 million, respectively, in cash collections of purchases via our digital channel which had not yet shipped, and \$3.6 million and \$3.5 million, respectively, in gift card liabilities included in deferred revenue in the consolidated balance sheets. The deferred revenue balance of \$4.1 million at December 31, 2022 is expected to be recognized over the next 12 months.

The following table disaggregates our net revenue by geographic area, where no individual foreign country contributed in excess of 10% of net revenue for the years ended December 31, 2022, 2021, and 2020. We recognized the following net revenue by geographic area based on the primary shipping address of the customer when the sale was made in our digital or third party channel, and based on the physical store location when the sale was at a retail store:

(in thousands)	December 31, 2022	December 31, 2021	December 31, 2020
Net revenue by primary geographical market:			
United States	\$ 229,814	\$ 209,786	\$ 166,960
International	67,952	67,686	52,336
Total net revenue	<u>\$ 297,766</u>	<u>\$ 277,472</u>	<u>\$ 219,296</u>

Cost of Revenue—Cost of revenue primarily consists of the cost of purchased inventory, inbound and outbound shipping costs, import duties, distribution center and related equipment costs, and inventory write-offs and write-downs. Shipping costs to receive products from our suppliers are included in the cost of inventory and recognized as cost of revenue upon sale of products to our customers.

Selling, General, and Administrative Expense—Selling, general, and administrative expense consists of personnel and related expenses, including stock-based compensation, as well as third-party consulting and contractor expenses. It also includes fixed and variable lease costs, depreciation and amortization expense, software costs, third-party professional fees, payment processing fees, and other general expenses.

ALLBIRDS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
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Marketing Expense—Marketing expense consists of advertising costs and is expensed as incurred.

Stock-Based Compensation—Stock-based compensation expense related to stock awards, including stock options and restricted stock units (“RSUs”), and stock purchase rights granted under the 2021 Employee Stock Purchase Plan (“ESPP Rights”), is recognized based on the estimated fair value of the awards on the date of the grant. The fair value of each stock option award and ESPP Right is valued on the grant date using the Black-Scholes option pricing model. The fair value of each RSU is based on the estimated fair value of our common stock on the date of grant. Stock-based compensation is generally recognized on a straight-line basis over the requisite service period, which is generally the vesting period of the respective award. Forfeitures are accounted for in the period in which they occur.

The Black-Scholes option pricing model requires the input of highly subjective assumptions, including the fair value of the underlying common stock, the expected term of the option, the expected volatility of the price of our common stock, risk-free interest rates and the expected dividend yield of our common stock. The assumptions used to determine the fair value of the option awards represent management’s best estimates. These estimates involve inherent uncertainties and the application of management’s judgment.

Prior to our IPO in November 2021 and the absence of a public trading market of our common stock, and in accordance with the American Institute of Certified Public Accountants Accounting and Valuation Guide, Valuation of Privately-Held Company Equity Securities Issued as Compensation, our board of directors exercised reasonable judgment and considered numerous and subjective factors to determine the best estimate of fair value of our common stock.

In valuing our common stock, our board of directors determined the equity value of our business using various valuation methods, including the sale of preferred stock to unrelated third parties and combinations of income and market approaches, with input from management. In addition, we also considered any secondary transactions involving our capital stock. In our evaluation of those transactions, we considered the facts and circumstances of each transaction to determine the extent to which they represented a fair value exchange. Factors considered include transaction volume, timing, whether the transactions occurred among willing and unrelated parties, and whether the transactions involved investors with access to our financial information.

Income Taxes—We record deferred tax assets and liabilities based on differences between the book and tax bases of assets and liabilities. The deferred tax assets and liabilities are calculated by applying enacted tax rates and laws to taxable years in which such differences are expected to reverse. We determine whether a valuation allowance is necessary in accordance with the provisions of the FASB ASC 740, *Income Taxes*. We recognize the benefits from our deferred tax assets only when an analysis of both positive and negative factors indicate that it is more likely than not that the benefits will be realized.

Our estimate of the potential outcome of any uncertain tax position is subject to our assessment of relevant risks, facts, and circumstances existing at that time. Obtaining new information, settlements with tax authorities and the expiration of statutes of limitations may cause adjustments in income tax expense in the period this occurs.

Fair Value Measurements—FASB ASC 820, *Fair Value Measurements*, defines fair value, establishes a framework for measuring fair value under GAAP, and enhances disclosures about fair value measurements. It clarifies that fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. As a basis for considering such assumptions, ASC 820 establishes a three-tier value hierarchy, which prioritizes the inputs used in measuring fair value as follows:

Level 1—Observable inputs, such as quoted prices in active markets

Level 2—Inputs other than the quoted prices in active markets that are observable either directly or indirectly

Level 3—Unobservable inputs in which there is little or no market data, which requires us to develop our own assumptions.

This hierarchy requires us to use observable market data, when available, and to minimize the use of unobservable inputs when determining fair value. We record cash and cash equivalents, accounts receivable, accounts payable, and

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accrued expenses at cost. The carrying values of these instruments approximate their fair value due to their short-term maturities. We hold certain assets and liabilities that are required to be measured at fair value on both a recurring and non-recurring basis, which are outlined in Note 8, Fair Value Measurements.

Emerging Growth Company—As an “emerging growth company,” the Jumpstart Our Business Startups Act, or the JOBS Act, allows us to delay adoption of new or revised accounting pronouncements applicable to public companies until such pronouncements are made applicable to private companies. For certain pronouncements, we have elected to use the adoption dates applicable to private companies. As a result, our financial statements may not be comparable to the financial statements of issuers who are required to comply with the effective date for new or revised accounting standards that are applicable to public companies.

Recently Adopted Accounting Pronouncements

In February 2016, the FASB issued Accounting Standards Update No. 2016-02, *Leases (Topic 842)* (“ASU 2016-02” or “ASC 842”), which requires recognition of lease assets and lease liabilities in the balance sheet by the lessees for lease contracts with a lease term of more than 12 months. We adopted ASC 842 as of January 1, 2022, under the modified retrospective transition approach. The new standard provides a number of optional practical expedients in transition. We elected practical expedients permitted under the standard, specifically to not reassess our prior conclusions about lease identification, to not reassess lease classification, and to not reassess whether any expired or existing contracts are or contain leases. We did not elect the practical expedient allowing the use of hindsight which would require us to reassess the lease term of its leases based on all facts and circumstances through the effective date and did not elect the practical expedient pertaining to land easements as this is not applicable to our current contract portfolio.

Upon adopting ASC 842, we recognized operating lease right-of-use assets and current and noncurrent lease liabilities on our consolidated balance sheets for our retail stores and corporate offices. Upon adoption, we recorded operating lease right-of-use assets of \$75.0 million, and current and noncurrent lease liabilities of \$84.4 million. We reclassified \$8.9 million of historical deferred rent, prepaid rent, and tenant improvement allowances to operating lease right-of-use assets. The adoption did not impact our consolidated statements of operations and comprehensive loss or opening balance of accumulated deficit. See Note 16, Leases, for more details over our operating leases.

In August 2018, the FASB issued ASU No. 2018-15, *Goodwill and Other—Internal-Use Software (Subtopic 350-40): Customer’s Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement that is a Service Contract* (“ASU 2018-15”). In discussing the topic of cloud computing accounting, ASU 2018-15 aligns the accounting for costs incurred to implement a cloud computing arrangement that is a service arrangement with the guidance on capitalizing costs associated with developing or obtaining internal-use software. ASU 2018-15 can be applied on a retrospective or prospective basis and is effective for financial statements issued for fiscal years beginning after December 15, 2020, and interim periods within those fiscal years. Early adoption is permitted. On January 1, 2021, we adopted ASU 2018-15 prospectively and cloud computing implementation costs incurred on or after January 1, 2021 are included in other assets in the consolidated balance sheet and are presented within operating cash flows. As of December 31, 2022, capitalized implementation costs for cloud computing arrangements were not material. The adoption did not have a material impact on our consolidated financial statements.

In December 2021, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes* (“ASU 2019-12”), which is intended to simplify various aspects related to accounting for income taxes. ASU 2019-12 removes certain exceptions to the general principles in Topic 740 and also clarifies and amends existing guidance to improve consistent application. For emerging growth companies that have elected the extended transition period for adopting new or revised accounting standards, ASU 2019-12 is effective for the Company’s fiscal year beginning after December 15, 2021, and interim periods within fiscal years beginning after December 15, 2022, with early adoption permitted. The adoption did not have a material impact on our consolidated financial statements.

Recently Issued Accounting Pronouncements

In June 2016, the FASB issued ASU 2016-13, *Credit Losses (Topic 326) - Measurement of Credit Losses on Financial Instruments* (“ASU 2016-13”). ASU 2016-13 requires entities to use a forward-looking approach based on current expected credit losses to estimate credit losses on certain types of financial instruments, including trade and account receivables, which may result in the earlier recognition of allowance for losses. In November 2019, the FASB issued Accounting Standards Update 2019-10, which deferred the effective date for nonpublic entities, including emerging growth companies,

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that had not yet adopted ASU 2016-13. Under the amended guidance, the standard will be effective for our fiscal years beginning after December 15, 2022, and interim periods within those fiscal years, with early adoption permitted. The adoption of ASU 2016-13 is not expected to have a material impact on our consolidated financial statements and related disclosures.

In March 2020, the FASB issued ASU 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*. This guidance provides temporary optional expedients and exceptions to accounting guidance on contract modifications and hedge accounting to ease entities' financial reporting burdens as the market transitions from the London Interbank Offered Rate (LIBOR) and other interbank offered rates to alternative reference rates. ASU 2020-04 is effective for fiscal years beginning after December 31, 2022. We are currently evaluating the impact of adopting this ASU on our consolidated financial statements and related disclosures.

In August 2020, the FASB issued ASU No. 2020-06, *Accounting for Convertible Instruments and Contracts in an Entity's Own Equity*, which simplifies the accounting for certain convertible instruments, amends the guidance on derivative scope exceptions for contracts in an entity's own equity, and modifies the guidance on diluted earnings per share calculations as a result of these changes. The guidance is effective for our fiscal years beginning after December 15, 2023, including interim periods within those fiscal years. The adoption of ASU 2020-06 is not expected to have a material impact on our consolidated financial statements and related disclosures.

3. Inventory

Inventory consisted of the following as of December 31, 2022 and 2021:

(in thousands)	December 31, 2022	December 31, 2021
Finished goods	\$ 125,065	\$ 108,585
Reserve to reduce inventories to net realizable value	(8,269)	(1,709)
Total inventory	<u>\$ 116,796</u>	<u>\$ 106,876</u>

4. Property and Equipment - Net

Property and equipment consisted of the following as of December 31, 2022 and 2021:

(in thousands)	December 31, 2022	December 31, 2021
Leasehold improvements	\$ 40,305	\$ 27,137
Furniture and fixtures	23,988	15,276
Internal-use software	23,393	14,453
Machinery and equipment	884	780
Computers and equipment	1,937	1,236
Total property and equipment - gross	90,507	58,882
Less: accumulated depreciation and amortization	(36,167)	(20,927)
Total property and equipment - net	<u>\$ 54,340</u>	<u>\$ 37,955</u>

Depreciation and amortization expense for the years ended December 31, 2022, 2021, and 2020 was \$15.8 million, \$9.8 million, and \$6.7 million, respectively, recognized as selling, general, and administrative expense in the consolidated statements of operations and comprehensive loss. There were \$0.0 million, \$0.2 million, and \$0.0 million assets disposed of in the years ended December 31, 2022, 2021, and 2020, respectively. As of December 31, 2022 and 2021, unamortized capitalized internal-use software costs were \$16.5 million and \$10.6 million, respectively.

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5. Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consisted of the following as of December 31, 2022 and 2021:

(in thousands)	December 31, 2022	December 31, 2021
Prepaid expenses	\$ 6,283	\$ 7,865
Inventory returns receivable	1,090	1,351
Security deposits	463	1,106
Tax receivable	6,420	22,594
Other receivables	908	5,022
Restricted cash	632	—
Total prepaid expenses and other current assets*	<u>\$ 15,796</u>	<u>\$ 37,938</u>

As part of the adoption of ASC 842, we reclassified \$4.6 million of other receivables to operating lease right-of-use assets and current and noncurrent lease liabilities as of December 31, 2022. The other receivables being reclassified consisted of lease incentives for the construction of leasehold improvements for new retail store openings.

6. Other Assets

Other assets consisted of the following as of December 31, 2022 and 2021:

(in thousands)	December 31, 2022	December 31, 2021
Investment in equity securities	\$ 2,250	\$ 2,250
Security deposits	4,417	3,025
Intangible assets	133	622
Debt issuance costs	57	107
Deferred tax assets	1,001	102
Total other assets	<u>\$ 7,858</u>	<u>\$ 6,106</u>

Investments in equity securities

On November 20, 2020, we entered into an agreement to make a minority equity investment of \$2.0 million in Natural Fiber Welding, Inc. in exchange for 201,207 shares of Series A-3 Preferred Stock. Our investment is carried at cost, less any impairment, plus or minus changes resulting from observable price changes in orderly transactions for an identical or similar investment of the same issuer. Throughout the year, we assess whether impairment indicators exist to trigger the performance of an impairment analysis. There were no impairment charges or observable price changes for the years ended December 31, 2022 and 2021.

On November 22, 2021, we made a \$0.3 million investment in NoHo ESG, Inc. via a simple agreement for future equity ("SAFE"). The SAFE provides that we will automatically receive shares of the entity based on the conversion rate of future equity rounds up to a valuation cap. If there is a liquidity event, such as a change in control or initial public offering, we will have the option of receiving a cash payment equal to the purchase amount or receiving a number of shares of common stock based on the purchase amount divided by the liquidity price, assuming we fail to select the cash option. Our investment is carried at cost, less any impairment, plus or minus changes resulting from observable price changes in orderly transactions for an identical or similar investment of the same issuer. Throughout the year, we assess whether impairment indicators exist to trigger the performance of an impairment analysis. There were no impairment charges or observable price changes for the years ended December 31, 2022 and 2021.

Definite-lived intangible assets

Intangible assets include intellectual property purchased from West Harbor Technologies, LLC for \$1.3 million, including transaction costs of \$0.1 million, in January 2020. The intangible asset has an estimated useful life of 3 years and

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amortization of \$0.4 million, \$0.4 million, and \$0.4 million was recognized in selling, general, and administrative expense in the consolidated statements of operations and comprehensive loss for the years ended December 31, 2022, 2021, and 2020, respectively.

7. Accrued Expenses and Other Current Liabilities

Accrued expenses consisted of the following as of December 31, 2022 and 2021:

(in thousands)	December 31, 2022	December 31, 2021
Sales-refund reserve	\$ 4,534	\$ 5,452
Taxes payable	3,336	17,930
Employee-related liabilities	2,624	5,021
Accrued expenses	12,954	17,840
Total accrued expenses and other current liabilities	\$ 23,448	\$ 46,243

8. Fair Value Measurements*Items Measured at Fair Value on a recurring basis*

Money Market Funds—In December 2022, we transferred \$82.0 million of cash to JPMorgan Chase Bank, N.A to invest in a U.S. treasury securities money market fund. The funds are classified as cash and cash equivalents on our consolidated balance sheet as of December 31, 2022 and represent Level 1 assets on the fair value hierarchy.

Warrant Liability—The fair value of our preferred stock warrant liability was based on significant unobservable inputs, which represent Level 3 measurements within the fair value hierarchy. In determining the fair value of the convertible preferred stock warrant liability, we used the probability weighted average values from (i) a Black-Scholes calculation and (ii) an option pricing model. We measure and report our preferred stock warrant liability at the estimated fair value on a recurring basis. As discussed further in Note 11, Warrants, the preferred stock warrant liability was estimated using assumptions related to the remaining contractual term of the warrants, the risk-free interest rate and volatility of comparable public companies over the remaining term, and the fair value of underlying shares. The significant unobservable inputs used in the fair value measurement of the preferred stock warrant liability were the fair value of the underlying stock at the valuation date and the estimated term of the warrants. The value from the Black-Scholes calculation reflects the value in an initial public offering scenario with the contractual term of the warrants, which was weighted by management's estimated probability of a potential initial public offering at the applicable valuation date. The value from the option pricing model reflects the value in an alternative exit scenario at which point the warrants were expected to be exercised. Generally, increases or decreases in the fair value of the underlying stock and estimated term would result in a directionally similar impact to the fair value measurement.

In November 2021, immediately prior to the completion of the IPO and pursuant to the terms of the convertible preferred stock warrants, there was an automatic exchange of the outstanding convertible preferred stock warrants for shares of Class B common stock on a one-to-one basis. As a result, the final remeasurement date of the preferred stock warrant liability was on November 3, 2021, and the preferred stock warrant liability was reclassified to additional paid-in capital. As of December 31, 2022 and 2021, there was no preferred stock warrant liability remaining on our consolidated balance sheets; therefore, there was no impact to other income (expense) for the year ended December 31, 2022.

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The following table summarizes, for assets and liabilities measured at fair value, the respective fair value and classification by level of input within the fair value hierarchy as of December 31, 2022. We had no liabilities measured at fair value as of December 31, 2022:

(in thousands)	December 31, 2022			
	Level 1	Level 2	Level 3	Total
Assets				
Money market funds	\$ 82,000	\$ —	\$ —	\$ 82,000
	\$ 82,000	\$ —	\$ —	\$ 82,000

The following table presents a summary of the changes in fair value of our Level 3 liabilities for the years ended December 31, 2021, and 2020:

(in thousands)	Warrants
Balance at December 31, 2020	\$ 5,845
Increase in fair value included in other expense as of the November 3, 2021 valuation date	10,624
Settlement of liability upon IPO and reclassification to additional paid-in capital	\$ (16,469)
Balance at December 31, 2021	\$ —

Items Measured at Fair Value on a non-recurring basis

Equity Investments—Our equity investments in NFW and Noho ESG represent non-marketable equity securities in privately held companies that do not have a readily determinable fair value and are accounted for under the measurement alternative in ASC 321. The investments are accounted for at cost and adjusted based on observable price changes from orderly transactions for identical or similar investments of the same issuer or impairment. During the year ended December 31, 2022 and 2021, there were no observable price changes or impairments. As of December 31, 2022 and 2021, the carrying value of our investments was \$2.3 million.

9. Long-term Debt

On February 20, 2019, we entered into a credit agreement with JPMorgan Chase Bank, N.A (the “Credit Agreement”). The Credit Agreement is an asset-based loan with a revolving line of credit of up to \$40.0 million and an optional accordion, which, if exercised, would allow the Company to increase the aggregate commitment by up to \$35.0 million, subject to obtaining additional lender commitments and satisfying certain conditions. Pursuant to the terms of the revolving credit facility, we may reduce the total amount available for borrowing under such facility, subject to certain conditions. The Credit Agreement has a maturity date of February 20, 2024.

The Credit Agreement contains customary representations and warranties and customary affirmative and negative covenants applicable to us and our subsidiaries, including, among other things, restrictions on indebtedness, liens, investments, mergers, dispositions, dividends and other distributions and a financial covenant that requires the Company to maintain a specified minimum fixed charge coverage ratio. In addition, the Credit Agreement contains certain customary events of default including, but not limited to, failure to pay interest, principal and fees or other amounts when due, material misrepresentations or misstatements in any representation or warranty, covenant defaults, certain cross defaults to other material indebtedness, certain judgment defaults and events of bankruptcy.

As of December 31, 2022, borrowings under our revolving credit facility use the London Interbank Offered Rate (“LIBOR”), as a reference rate. Interest on borrowings under the revolving credit facility accrues at a variable rate equal to (i) the one-month LIBOR (adjusted LIBOR Rate for a one month interest period on a given day) plus 2.50%, plus (ii) a specified spread of 1.25% or 1.5% dependent on the average quarterly loan balance, calculated on the last day of each fiscal quarter being less than \$32.0 million or greater than or equal to \$32.0 million, respectively. The commitment fee under the Credit Agreement is 0.20% per annum on the average daily unused portion of each lender’s commitment. In addition, we are required to pay a fronting fee of 0.125% per annum on the average daily aggregate face amount of issued and outstanding letters of credit. Interest, commitment fees and fronting fees are payable monthly, in arrears. In March

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2023, prior to the filing of our 2022 Form 10-K, we amended our Credit Agreement to replace the LIBOR reference rate with the Term Secured Overnight Financing Rate (“SOFR”). Refer to Note 19, Subsequent Events, for further details.

During 2020, we drew down \$14.0 million from the line of credit and fully repaid the principal and associated interest and fees during the year. As of December 31, 2022 and 2021, there were no amounts outstanding under the Credit Agreement.

10. Stockholders’ Equity

As of December 31, 2022 and December 31, 2021, we were authorized to issue 2,220,000,000 shares of capital stock, comprised of 2,000,000,000 shares of Class A common stock, 200,000,000 shares of Class B common stock, and 20,000,000 shares of preferred stock. All classes of our stock as of December 31, 2022 and 2021 have a par value of \$0.0001.

In September 2021, prior to the completion of the IPO, we filed our Eighth Amended and Restated Certificate of Incorporation and implemented a dual class common stock structure where all existing shares of common stock were reclassified into Class B common stock on a one-to-one basis. We also authorized a new class of common stock, the Class A common stock. Authorized capital stock was 2,275,812,755 shares, of which 2,000,000,000 shares was Class A common stock, 200,000,000 shares was Class B common stock, and 75,812,755 shares was preferred stock. The common stock and the preferred stock each had a par value of \$0.0001 per share.

In November 2021, in connection with the completion of the IPO, we filed our Ninth Amended and Restated Certificate of Incorporation, which authorized a total of 2,000,000,000 shares of Class A common stock, 200,000,000 shares of Class B common stock, and 20,000,000 shares of preferred stock. The common stock and the preferred stock each have a par value of \$0.0001 per share.

Preferred stock

In November 2021, immediately prior to the completion of the IPO, all 70,990,919 shares of convertible preferred stock converted into an equivalent number of shares of Class B common stock and the Company reclassified \$204.0 million of convertible preferred stock to additional paid-in-capital. As of December 31, 2022, there were no shares of convertible preferred stock issued and outstanding.

Common Stock

As of December 31, 2022 and 2021, the Company had two classes of common stock: Class A common stock and Class B common stock. Each class had a par value of \$0.0001.

Voting—Holders of Class A common stock are entitled to one vote per share on all matters to be voted upon by the stockholders, and holders of Class B common stock are entitled to 10 votes per share on all matters to be voted upon by the stockholders. The holders of our Class A common stock and Class B common stock generally vote together as a single class on all matters submitted to a vote of our stockholders, unless otherwise required by Delaware law or our amended and restated certificate of incorporation. Delaware law could require either holders of our Class A common stock or Class B common stock to vote separately as a single class in the following circumstances: (i) if we were to seek to amend our amended and restated certificate of incorporation to increase or decrease the number of authorized shares of a class of our capital stock, then that class would be required to vote separately to approve the proposed amendment; (ii) if we were to seek to amend our amended and restated certificate of incorporation to increase or decrease the par value of a class of our capital stock, then that class would be required to vote separately to approve the proposed amendment; and (iii) if we were to seek to amend our amended and restated certificate of incorporation in a manner that alters or changes the powers, preferences or special rights of a class of our capital stock in a manner that affected its holders adversely, then that class would be required to vote separately to approve the proposed amendment. As a result, in these limited instances, the holders of a majority of the Class A common stock could defeat an amendment to our amended and restated certificate of incorporation. Our amended and restated certificate of incorporation does not provide for cumulative voting for the election of directors.

Dividends—Holders of Class A common stock and Class B common stock are entitled to ratably receive dividends if, as and when declared from time to time by our board of directors at its own discretion out of funds legally available for that

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purpose, after payment of dividends required to be paid on outstanding preferred stock, if any. Under Delaware law, we can only pay dividends either out of “surplus” or out of the current or the immediately preceding year’s net profits. Surplus is defined as the excess, if any, at any given time, of the total assets of a corporation over its total liabilities and statutory capital. The value of a corporation’s assets can be measured in a number of ways and may not necessarily equal their book value.

Right to Receive Liquidation Distributions—Upon our dissolution, liquidation, or winding-up, the assets legally available for distribution to our stockholders are distributable ratably among the holders of our Class A common stock and Class B common stock, subject to prior satisfaction of all outstanding debt and liabilities and the preferential rights and payment of liquidation preferences, if any, on any outstanding shares of preferred stock.

Conversion—Each share of our Class B common stock is convertible at any time at the option of the holder into one share of our Class A common stock. Each share of our Class B common stock will convert automatically into one share of our Class A common stock upon any transfer, whether or not for value, except for (i) certain permitted transfers to entities, to the extent the transferor retains sole dispositive power and exclusive voting control with respect to the shares of Class B common stock, and (ii) certain other permitted transfers described in our amended and restated certificate of incorporation. In addition, if held by a natural person (including a natural person serving in a sole trustee capacity), each share of our Class B common stock will convert automatically into one share of our Class A common stock upon the death or incapacity of such natural person as described in our amended and restated certificate of incorporation. All outstanding shares of our Class B common stock will convert automatically into an equivalent number of shares of our Class A common stock upon the final conversion date, defined as the later of (a) the last trading day of the fiscal quarter immediately following the tenth anniversary of November 5, 2021 and (b) the date fixed by our board of directors that is no less than 61 days and no more than 180 days following the date on which the outstanding shares of Class B common stock first represent less than 10% of the aggregate number of the then outstanding shares of Class A common stock and Class B common stock (except if the final conversion date determined according to (a) or (b) would otherwise occur on or after the record date of any meeting of stockholders and before or at the time the vote at such meeting is taken, then the final conversion date shall instead be the last trading day of the fiscal quarter during which such vote was taken).

Other Matters—The Class A common stock and Class B common stock have no preemptive rights pursuant to the terms of our amended and restated certificate of incorporation and our amended and restated bylaws. There are no redemption or sinking fund provisions applicable to the Class A common stock and Class B common stock. All outstanding shares of our Class A common stock are fully paid and non-assessable.

Shares of common stock reserved for future issuance as of December 31, 2022 and 2021 consist of the following:

	December 31, 2022	December 31, 2021
Shares reserved for convertible preferred stock outstanding	—	—
2015 Equity Incentive Plan:		
Options issued and outstanding	12,700,367	16,181,331
Shares available for future option grants	—	—
2021 Equity Incentive Plan:		
Options issued and outstanding	2,687,819	189,342
Shares available for future option grants	13,236,891	14,306,487
RSUs outstanding	4,788,964	160,227
PSUs outstanding	787,660	—
2021 Employee Stock Purchase Plan:		
Shares available for future grants	4,091,248	2,932,232
Total shares of common stock reserved for future issuance	<u>38,292,949</u>	<u>33,769,619</u>

Upon the completion of the IPO on November 5, 2021, our board of directors may, without further action by our stockholders, fix the rights, preferences, privileges, and restrictions of up to an aggregate of 20,000,000 shares of preferred stock in one or more series and authorize their issuance. The voting, dividend, and liquidation rights of the holders of common stock are subject to and qualified by the rights, powers, and preferences of the holders of preferred stock. As of

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December 31, 2022, there were 20,000,000 shares of preferred stock authorized and no shares of preferred stock issued or outstanding.

11. Warrants**Preferred Stock Warrants**

In connection with a 2015 agreement with Venture Lending and Leasing VII and Venture Lending and Leasing VIII (the "VLL Agreement"), we issued warrants to purchase 1,104,560 shares of our Preferred Stock at an exercise price of \$0.10 that expire on September 30, 2026 with an initial fair value of \$0.8 million. The preferred stock warrants contained a down round and anti-dilution adjustment provision on the exercise price. We would have recognized, on a prospective basis, the value of the effect of the down round feature in the warrant when it was triggered (i.e., when the exercise price is adjusted downward). This value is measured as the difference between (1) the financial instrument's fair value (without the down round feature) using the pre-trigger exercise price and (2) the financial instrument's fair value (with the down round feature) using the reduced exercise price. The value of the effect of the down round feature would have been reflected in the change in fair value of the warrant liability. The preferred stock warrants could have been exercised in whole or in part at any time and included a cashless exercise option which would have allowed the holder to receive fewer shares of stock in exchange for the warrants rather than paying cash to exercise. The preferred stock warrants could have been exercised for either Series Seed Preferred Stock or Series A Preferred Stock.

The preferred stock warrants were classified as a liability and initially recorded at fair value upon entering the VLL Agreement. It was subsequently remeasured to fair value at each reporting date and the changes in the fair value of the warrant liability are recognized in other expense in the consolidated statements of operations and comprehensive loss. In November 2021, immediately prior to the completion of the IPO and per the terms of the preferred stock warrant agreement, the convertible preferred stock warrants then outstanding were automatically exchanged for 1,104,560 shares of Class B common stock on a one-to-one basis and the Company reclassified the preferred stock warrant liability to additional paid-in capital upon the conversion. As the preferred stock warrants were exchanged for Class B common stock on November 3, 2021, the final remeasurement date of the liability was on November 3, 2021. Therefore, as of December 31, 2022, no preferred stock warrants were outstanding and no preferred stock warrant liability was recorded on our consolidated balance sheet.

Common Stock Warrants

Through 2019, we issued warrants to purchase common stock to various third parties. We determined the fair value of these warrants using the Black-Scholes option pricing model.

Following is a summary of the terms of the warrants and warrant activity as well as warrants outstanding at December 31, 2022:

Date of issuance	October 2015/ March 2016	October 1, 2016	July 2018 - Allotment 1	July 2018 - Allotment 2
Number of warrants	2,103,930	157,580	122,735	184,100
Exercise Price	\$ 0.10	\$ 0.07	\$ 1.28	\$ 1.28
Status	Vested	Vested	Vested	Partially vested
Expiration	October 2024	October 2026	July 2028	July 2028

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Date of issuance	October 2015/ March 2016	October 2016	July 2018
Outstanding at December 31, 2020	717,225	157,580	306,835
Exercised 2021	717,225.00	157,580.00	276,151.00
Outstanding at December 31, 2021	—	—	30,684
Exercised 2022	—	—	30,684
Outstanding at December 31, 2022	—	—	—
Fair value at December 31, 2022 (in thousands)	\$ —	\$ —	\$ —

2018 Common Stock Warrants—In July 2018, we issued 122,735 warrants to purchase common stock to a third party with an exercise price of \$1.28 per share. Fifty percent of the warrants vested immediately upon issuance and the remainder of the warrants vest ratably over 24 months. An additional 184,100 warrants to purchase common stock were also issued in July 2018 to the same third-party with an exercise price of \$1.28 per share, and vested ratably over 36 months, beginning when services were first rendered in 2019. In accordance with the agreement, expenses are recognized in the period services are received.

We recorded \$1.0 million, \$1.5 million, and \$0.2 million in common stock warrant expense for the years ended December 31, 2022, 2021, and 2020, respectively.

12. Stock Transactions

On September 5, 2018, we received a promissory note from an employee in consideration for the early exercise of 825,000 shares of common stock options. In June 2020, the employee resigned from the company and the promissory note was amended and restated to reflect the loan amount related to the vested shares, and the cancellation of indebtedness and our repurchase of the employee's unvested shares. The promissory note is secured by the underlying shares of common stock and bears interest at the lesser of 2.86% per annum or the maximum rate permissible by law (which under the laws of the State of California shall be deemed to be the laws relating to permissible rates of interest on commercial loans). During the third quarter of 2022, the promissory note was paid in full, including all accrued interest. The repayment of \$0.5 million was recognized within additional paid-in capital in stockholder's equity on the consolidated balance sheet. The associated shares are legally outstanding and were historically included in shares of common stock outstanding in the condensed consolidated financial statements but were historically excluded from our net loss per share calculations, as these shares of common stock were considered unvested until the underlying promissory notes were repaid. After repayment of the loan, the vested shares are now considered outstanding for purposes of our net loss per share calculations.

On November 19, 2018, we received a promissory note from an employee in consideration for the early exercise of 220,000 shares of common stock options. The promissory note is secured by the underlying shares of common stock and bears interest at 2.86% per annum. As of December 31, 2022, the promissory note was outstanding.

Since the notes are limited recourse notes, the note receivables are not reflected in our consolidated balance sheets as of December 31, 2022 and 2021.

13. Stock-Based Compensation*2015 Equity Incentive Plan*

In 2015, we adopted the 2015 Equity Incentive Plan (the "2015 Plan") that authorized the granting of options for shares of common stock. Our 2015 Plan provided for the grant of incentive stock options, non-statutory stock options, stock appreciation rights, restricted stock awards, restricted stock unit ("RSU") awards, and other stock awards. The 2015 Plan was terminated in connection with the adoption of the 2021 Equity Incentive Plan (the "2021 Plan") in November 2021 in connection with the IPO, and we will not grant any additional awards under the 2015 Plan. However, the 2015 Plan will continue to govern the terms and conditions of the outstanding awards previously granted thereunder.

2021 Equity Incentive Plan

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In September 2021, our board of directors adopted, and our stockholders approved, the 2021 Plan, which became effective in connection with the IPO in November 2021. The 2021 Plan provides for the grant of incentive stock options, nonqualified stock options, stock appreciation rights, restricted stock awards, RSU awards, performance awards, and other forms of equity compensation. The number of shares of our Class A common stock reserved for issuance under the 2021 Plan will automatically increase on January 1 of each year for a period of 10 years, beginning on January 1, 2022 and continuing through (and including) January 1, 2031, in an amount equal to 4% of the total number of share of our common stock (both Class A and Class B) outstanding on December 31 of the immediately preceding year, except that, before the date of any such increase, our board of directors may determine that the increase for such year will be the lesser number of shares. Additionally, to the extent that any stock options outstanding under the 2015 Plan expire, terminate prior to exercise, are not issued because the award is settled in cash, are forfeited because of the failure to vest, or are reacquired or withheld (or not issued) to satisfy a tax withholding obligation or the purchase or exercise price, if any, the shares of Class B common stock reserved for issuance pursuant to such equity awards will become available for issuance as shares of Class A common stock under the 2021 Plan. The maximum number of shares of our Class A common stock that may be issued on the exercise of incentive stock options under the 2021 Plan will be 100,000,000 shares.

2021 Employee Stock Purchase Plan

In September 2021, our board of directors adopted, and our stockholders approved, the 2021 Employee Stock Purchase Plan (the “2021 ESPP”), which became effective in connection with the IPO in November 2021. The 2021 ESPP authorizes the issuance of shares of Class A common stock pursuant to purchase rights granted to employees. A total of 4,091,248 shares of the Company’s Class A common stock have been reserved for future issuance under the 2021 ESPP as of December 31, 2022. The number of shares of our Class A common stock reserved for issuance will automatically increase on January 1 of each year for a period of 10 years, beginning on January 1, 2022 and continuing through (and including) January 1, 2031, by the lesser of (1) 1% of the total number of shares of our common stock (both Class A and Class B) outstanding on December 31 of the immediately preceding year and (2) 2,850,000 shares, except that, before the date of any such increase, our board of directors may determine that such increase will be less than the amount set forth in clauses (1) and (2). The price at which Class A common stock is purchased under the 2021 ESPP is equal to 85% of the fair market value of a share of the Company’s Class A common stock on the first day of the offering period or the date of purchase, whichever is lower. Offering periods are six months long and begin on November 3 and May 3 of each year. The initial offering period began on November 3, 2021.

Stock Options

A summary of the status of the 2015 Plan and the 2021 Plan as of December 31, 2022 and 2021, and changes during the periods then ended is presented below:

	Options Outstanding			Aggregate Intrinsic Value (in thousands)
	Number of Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (in years)	
Outstanding at December 31, 2021	16,370,673	\$ 4.23	7.70	\$ 177,593
Granted	2,573,789	4.47		
Exercised	(1,743,005)	1.47		9,569
Forfeited	(1,402,464)	4.94		
Cancelled	(410,807)	4.51		
Outstanding at December 31, 2022	15,388,186	\$ 3.71	6.43	\$ 6,101
Vested and exercisable at December 31, 2022	9,350,663	3.25	5.17	6,101

For the years ended December 31, 2022, 2021, and 2020, the aggregate intrinsic value of stock options exercised under both equity incentive plans was \$9.6 million, \$34.0 million, and \$1.7 million, respectively. Aggregate intrinsic value represents the difference between the exercise price of the options and the fair value of our common stock as of the reporting date.

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The weighted-average fair value of options granted during the years ended December 31, 2022, 2021, and 2020 was \$2.57, \$4.42, and \$4.80 per share, respectively. We calculated the fair value of each option using an expected volatility over the expected life of the option, which was estimated using the average volatility of comparable publicly traded companies. The expected life of options granted is based on the simplified method to estimate the expected life of the stock options, giving consideration to the contractual terms and vesting schedules. The following weighted average assumptions were used for issuances during the years ended December 31, 2022, 2021, and 2020, for employees and non-employees:

	December 31, 2022	December 31, 2021	December 31, 2020
Risk-free interest rate	2.90 %	0.98 %	0.97 %
Dividend yield	—	—	—
Volatility	46.87 %	51.43 %	49.49 %
Expected lives (in years)	5.9	6.1	6.0

Option Repricing—In May 2022, the compensation and leadership management committee of our board of directors approved a repricing of certain stock options held by employees (the “Repricing”), whereby certain previously granted and still outstanding vested and unvested stock options were repriced on a one-for-one basis to \$4.39 per share, which represented the closing market price of our Class A common stock on May 20, 2022 (the “Repricing Date”). No other terms of the repriced stock options were modified, and the repriced stock options will continue to vest according to their original vesting schedules and will retain their original expiration dates. As a result of the Repricing, vested and unvested stock options outstanding as of the Repricing Date, with original exercise prices ranging from \$4.70 to \$14.45, were repriced. The repricing resulted in one-time incremental stock-based compensation expense of \$1.6 million, of which \$0.1 million was related to vested stock options and was recognized on the Repricing Date in the second quarter of 2022, and \$1.5 million was related to unvested stock options, which is recognized on a straight-line basis over the remaining requisite service period of the repriced stock options.

2021 ESPP

The following table summarizes the weighted-average assumptions used in estimating the fair value of the 2021 ESPP grants for the following offering periods, using the Black Scholes option-pricing model:

	Offering Period - November 3, 2022 to May 2, 2023	Offering Period - May 3, 2022 to November 2, 2022	Offering Period - November 3, 2021 to May 2, 2022
Risk-free interest rate	4.44 %	2.97 %	1.63 %
Dividend yield	—	—	—
Volatility	43.42 %	47.15 %	63.00 %
Expected lives (in years)	0.5	0.5	0.5

RSUs

After completion of the IPO in November 2021, the Company began granting RSUs to certain employees. The RSUs granted had service-based vesting conditions. The service-based vesting condition for these awards is typically satisfied over four years, with a cliff vesting period of one year and continued vesting quarterly thereafter. The service-based vesting condition for refresh grants of RSUs to existing employees is typically satisfied over three years with vesting occurring quarterly, subject to the employees' continued service to us. RSUs and the related stock-based compensation are recognized on a straight-line basis over the requisite service period.

RSU activity during the year ended December 31, 2022 was as follows:

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	Number of Shares	Weighted-Average Grant Date Fair Value per Share
Unvested at December 31, 2021	160,227	\$ 22.33
Granted	6,231,236	4.65
Vested	(770,791)	5.79
Forfeited	(831,708)	5.74
Unvested at December 31, 2022	4,788,964	\$ 4.86

Performance Stock Units

In May 2022, we granted a target amount of 0.8 million RSUs with market-based and service-based vesting conditions ("PSUs") to certain executives. The market vesting criteria is based on achievement of certain total shareholder return ("TSR") results relative to the S&P Total Market Consumer Discretionary Index (the "Index") during a one-year, two-year, and three-year performance period, respectively, beginning on June 1, 2022, and ending on May 31, 2025. The market condition allows for a range of vesting from 0% to 150% of the target amount, depending on the relative TSR achieved by us against the Index. In addition to the market condition, these PSUs are subject to the continuing service of the executives and vest in three equal annual installments. The fair value of PSUs is measured on the grant date using a Monte Carlo simulation model. Each of the three performance periods is considered an individual tranche of the award (referred to as "Tranche 1," "Tranche 2" and "Tranche 3," respectively).

	Number of Shares	Grant Date Fair Value per Share	Requisite Service Period
Tranche 1	262,553	\$ 4.77	June 1, 2022 - May 31, 2023
Tranche 2	262,553	\$ 5.16	June 1, 2022 - May 31, 2024
Tranche 3	262,554	\$ 5.41	June 1, 2022 - May 31, 2025

The total grant date fair value of the awards was determined to be \$4.0 million, with each tranche of the awards representing \$1.3 million, \$1.4 million, and \$1.4 million of the total expense, respectively. Stock-based compensation expense related to PSUs is recognized on a straight-line basis over their requisite service periods, regardless of whether the market condition is ultimately satisfied. Stock-based compensation expense is not reversed if the achievement of the market condition does not occur. We recognized stock-based compensation expense of \$1.4 million as of December 31, 2022 as selling, general and administrative expense in the condensed consolidated statements of operations and comprehensive loss related to these awards. We recognized no stock-based compensation expense for these awards prior to May 2022.

PSU activity for the year ended December 31, 2022 was as follows:

	Target Number of Shares	Weighted-Average Grant Date Fair Value per Share
Unvested at December 31, 2021	—	\$ —
Granted	787,660	5.11
Vested	—	—
Forfeited	—	—
Unvested at December 31, 2022	787,660	\$ 5.11

Stock-based Compensation Expense

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Stock-based compensation expense, included in selling, general, and administrative expense in the consolidated statements of operations and comprehensive loss, for the years ended December 31, 2022, 2021, and 2020, was comprised of the following:

(in thousands)	December 31, 2022	December 31, 2021	December 31, 2020
Stock-based compensation, gross of amounts capitalized	\$ 20,231	\$ 9,744	\$ 6,594
Capitalized stock-based compensation	(1,200)	—	—
Total stock-based compensation, net of amounts capitalized	\$ 19,031	\$ 9,744	\$ 6,594

As of December 31, 2022, there was approximately \$17.4 million of total unrecognized compensation cost related to outstanding unvested stock options under both equity incentive plans. The remaining unrecognized compensation cost is expected to be recognized over the weighted-average remaining vesting period of approximately 2.34 years.

As of December 31, 2022, there was approximately \$21.2 million of total unrecognized compensation cost related to outstanding unvested RSUs under the 2021 Plan. The remaining unrecognized compensation cost is expected to be recognized over the weighted-average remaining vesting period of approximately 2.66 years.

14. Income Taxes

The components of loss before provision for income taxes are as follows for the years ended December 31, 2022, 2021, and 2020:

(in thousands)	December 31, 2022	December 31, 2021	December 31, 2020
Loss before provision for income taxes			
United States	\$ (97,277)	\$ (45,527)	\$ (29,889)
Foreign	(2,850)	967	(84)
	\$ (100,127)	\$ (44,560)	\$ (29,973)

Our total (provision) benefit for income taxes consists of the following for the years ended December 31, 2022, 2021, and 2020:

(in thousands)	December 31, 2022	December 31, 2021	December 31, 2020
Current:			
Federal	\$ —	\$ (185)	\$ 4,024
State	(195)	19	(48)
Foreign	(1,931)	(392)	(217)
	(2,125)	(558)	3,759
Deferred			
Federal	75	(75)	—
State	—	—	—
Foreign	823	(177)	354
	898	(252)	354
	\$ (1,227)	\$ (810)	\$ 4,113

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The reconciliation of our effective tax rate to the statutory federal rate of 21% for the years ended December 31, 2022, 2021, and 2020, is as follows:

(in thousands)	December 31, 2022	December 31, 2021	December 31, 2020
Income tax benefit at statutory rate	(21.00)%	(21.00)%	(21.00)%
State income taxes-net of federal provision (benefit)	(4.38)%	(5.84)%	(3.77)%
Foreign rate differential	0.32 %	0.10 %	0.22 %
Stock-based compensation	1.78 %	(1.77)%	3.83 %
Warrant fair value adjustment	— %	5.01 %	(0.52)%
Charitable contribution	(0.15)%	(0.06)%	(0.43)%
Return to provision and other	(0.10)%	1.67 %	(0.14)%
Benefits provided by the CARES Act	— %	(0.02)%	(6.22)%
Uncertain tax positions	0.26 %	0.66 %	1.16 %
Tax credits	(1.03)%	(2.64)%	(6.93)%
Other	0.76 %	0.39 %	— %
Valuation allowance	24.77 %	25.33 %	20.08 %
	<u>1.23 %</u>	<u>1.83 %</u>	<u>(13.72)%</u>

Significant components of our net deferred tax assets as of December 31, 2022 and 2021, which are included in other assets in the consolidated balance sheets, are as follows:

(in thousands)	December 31, 2022	December 31, 2021
Deferred tax asset:		
Inventory	\$ 2,956	\$ 2,792
Deferred rent	—	2,339
Accruals	732	1,237
Stock-based compensation	2,837	1,032
Net operating loss carryforwards	20,126	9,403
R&D credits	4,284	3,246
Charitable contributions	2,932	2,492
Intangibles	697	1,473
Deferred revenue	974	831
Advertising	1,533	971
Intercompany payable	552	552
Lease liability	23,511	—
Section 174 capitalized costs	6,721	—
Other	755	519
Total gross deferred tax assets	68,610	26,887
Less: valuation allowance	(45,745)	(21,607)
Total deferred tax assets	22,865	5,280
Deferred tax liabilities:		
Prepaid expenses	(118)	(88)
Depreciation	(1,694)	(5,089)
Right-of-use assets	(20,052)	—
Total deferred tax liabilities	(21,864)	(5,177)
Net deferred tax assets	\$ 1,001	\$ 103

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We record deferred income taxes using enacted tax laws and rates for the years in which the taxes are expected to be paid. Deferred income tax assets and liabilities are recorded based on the differences between the financial reporting and income tax bases of assets and liabilities.

Because we have a recent history of pre-tax book losses and are expected to be in pre-tax book loss in the immediate future, both of which are considered significant negative evidence, the deferred tax assets in the United States and certain foreign jurisdictions have been reduced by a valuation allowance to an amount that is more likely than not to be realized.

The United States federal tax rules generally provide for a 100% deduction for dividends received from foreign subsidiaries. Nevertheless, companies must still apply the guidance of ASC 740 to account for the tax consequences of outside basis differences and other tax impacts of their investments in foreign subsidiaries, including potential state income tax and foreign withholding taxes on distributions. We consider all of the undistributed earnings of our foreign subsidiaries to be indefinitely reinvested and, as a result, no liability for U.S. federal and state income taxes nor foreign withholding taxes has been provided. If we were to repatriate the undistributed earnings of our foreign subsidiaries of approximately \$2.4 million back to the U.S., the impact to the consolidated financial statements would not be material.

A tabular reconciliation of the total amounts of unrecognized tax benefits for the year presented is as follows:

(in thousands)	December 31, 2022	December 31, 2021	December 31, 2020
Unrecognized tax benefits - at beginning of year	\$ 1,265	\$ 691	\$ 417
Increases in balances related to tax positions taken in prior years	175	23	—
Decreases in balances related to tax positions taken in prior years	(70)	(63)	(13)
Increases in balances related to tax positions taken in current year	264	614	287
Unrecognized tax benefits - at end of year	<u>\$ 1,634</u>	<u>\$ 1,265</u>	<u>\$ 691</u>

We follow the guidance for accounting for uncertainty in income taxes in accordance with FASB ASC 740, which clarifies uncertainty in income taxes recognized in an enterprise's financial statements. The standard also prescribes a recognition threshold and measurement standard for the financial statement recognition and measurement of an income tax position taken, or expected to be taken, in an income tax return. Only tax positions that meet the more likely than not recognition threshold may be recognized. In addition, the standard provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, and disclosure. As of December 31, 2022, 2021, and 2020, the balance of unrecognized tax benefits of \$1.6 million, \$1.3 million, and \$0.7 million, respectively, relate to tax credits that, if recognized, would be in the form of a carryforward which is expected to require a full valuation allowance based on present circumstances. Therefore, these unrecognized tax benefits would not have an effect on the effective tax rate. The unrecognized tax benefits are not expected to materially change in the next twelve months. The total amounts of interest and penalties recognized for the years ended December 31, 2022, 2021, and 2020 were not material. Our tax years for 2016 through 2022 are still subject to examination by the tax authorities.

At December 31, 2022, we had income tax net operating loss carryforwards for our U.S. federal, state, and foreign operations of approximately \$71.4 million, \$72.8 million, and \$4.5 million respectively. At December 31, 2021, we had income tax net operating loss carryforwards for our U.S. federal, state, and foreign operations of approximately \$33.8 million, \$27.9 million, and \$2.8 million, respectively. The federal tax loss carryforwards do not expire. The state and foreign tax loss carryforwards will begin to expire in 2031 and 2026, respectively.

At December 31, 2022, we had federal and state research and development credit carryforwards of \$3.6 million and \$2.7 million, respectively. The federal tax credit carryforwards will begin to expire in 2035. The state tax credit carryforwards do not expire.

Utilization of some of the federal and state NOL and credit carryforwards are subject to annual limitations due to the "change in ownership" provisions of the IRC and similar state provisions. We do not anticipate these limitations, if any, will significantly impact our ability to utilize the NOLs and tax credit carryforwards.

15. Commitments and Contingencies

Purchase Commitments

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On December 15, 2022, we renewed our supplier agreement with Braskem S.A., a Brazilian petrochemical company. The contract requires us, through our manufacturers, to commit to purchase a minimum amount of material per year until 2027. We purchased approximately \$4.4 million in material in 2022. The table below shows the minimum purchase amounts per year:

(in thousands)	Braskem S.A.	
Fiscal year ended December 31,		
2023	\$	2,260
2024		3,171
2025		3,624
2026		4,077
2027		4,530
Total minimum purchase commitments	\$	17,662

Contingencies

We are subject to various claims and legal proceedings that arise in the ordinary course of our business activities. Although the outcome of any legal proceedings cannot be predicted with certainty, for the years ended December 31, 2022, 2021, and 2020, our ultimate liability, if any, is not expected to have a material effect on our financial position or operations.

16. Leases

We lease various office and retail spaces under non-cancelable operating leases with various expiration dates through fiscal 2033, certain of which contain renewal provisions. These renewal provisions are not reasonably certain to be exercised and therefore are not factored into the determination of lease payments. We have no lease agreements that are classified as finance leases.

The components of lease costs, recognized as selling, general, and administrative expense in the consolidated statements of operations and comprehensive loss, along with the weighted-average lease term and weighted-average discount rate for operating leases, are as follows:

(in thousands, except for lease term and discount rate)	December 31, 2022	
Operating lease costs	\$	16,508
Variable lease costs		759
Short-term lease costs		596
Sublease income		(6)
Total lease costs	\$	17,857

Weighted-average remaining lease term (in years)	7.29
Weighted-average discount rate	4.39 %

Supplemental cash flow information related to operating leases are as follows:

(in thousands)	December 31, 2022	
Cash paid for amounts included in the measurement of operating lease liabilities	\$	14,657
Operating lease liabilities arising from obtaining right-of-use assets		34,492

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Future minimum lease payments under non-cancelable operating leases with initial lease terms in excess of one year, included in our lease liabilities as of December 31, 2022, are as follows:

(in thousands)	Operating Leases (1)
Fiscal year ended December 31,	
2023	\$ 14,120
2024	18,196
2025	17,315
2026	15,799
2027 and after	60,253
Total undiscounted operating lease payments	\$ 125,683
Less: imputed discount	(19,848)
Total operating lease liabilities	\$ 105,835

(1) 2023 amounts as shown above are net of cash inflows for tenant improvement allowances expected to be received during the year. Operating lease payments exclude legally binding minimum lease payments related to executed leases for which we have not yet taken possession of the leased premises.

17. Net Loss Per Share

We compute net loss per share using the two-class method required for participating securities and multiple classes of common stock. The two-class method requires net income or loss be allocated between common stock and participating securities based upon their respective rights to receive dividends as if all income or loss for the period had been distributed. The rights, including the liquidation and dividend rights and sharing of losses of the Class A common stock and Class B common stock are identical, other than voting, transfer, and conversion rights. As the liquidation and dividend rights and sharing of losses are identical, the undistributed earnings are allocated on a proportionate basis and the resulting net loss per share attributed to common stockholders will, therefore, be the same for both Class A and Class B common stock on an individual or combined basis.

The following table sets forth the computation of basic and diluted net loss per share attributable to common stockholders for the periods presented:

(in thousands, except share and per share data)	December 31, 2022	December 31, 2021	December 31, 2020
Numerator:			
Net loss attributable to common stockholders	\$ (101,354)	\$ (45,370)	\$ (25,860)
Denominator:			
Weighted-average shares used in computing net loss per share attributable to common stockholders, basic and diluted	148,754,428	69,308,930	53,005,424
Net loss per share attributable to common stockholders, basic and diluted	\$ (0.68)	\$ (0.65)	\$ (0.49)

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The following shares of preferred stock and common stock were excluded from the computation of diluted net loss per share attributable to common stockholders for the periods presented, because including them would have been antidilutive:

	December 31, 2022	December 31, 2021	December 31, 2020
Outstanding stock options	15,388,186	16,370,673	15,611,571
Convertible preferred stock	—	—	70,990,919
Convertible preferred stock warrants	—	—	1,104,560
Common stock warrants	—	30,684	1,181,640
2021 ESPP	773	946	—
RSUs	4,788,964	160,227	—
PSUs	787,660	—	—
Total anti-dilutive securities	20,965,583	16,562,530	88,888,690

18. Benefit Plan

We sponsor a 401(k) defined contribution plan covering eligible employees who elect to participate. We are allowed to make discretionary profit sharing and matching contributions as defined in the plan and as approved by our board of directors. No discretionary profit-sharing contributions were made for the years ended December 31, 2022, 2021, and 2020. We made \$1.4 million, \$1.3 million, and \$1.1 million in matching contributions for the years ended December 31, 2022, 2021, and 2020, respectively. We have no intention to terminate the plan.

19. Subsequent Events

In March 2023, prior to the filing of our 2022 Form 10-K, we amended our Credit Agreement to replace the LIBOR reference rate with the Term Secured Overnight Financing Rate ("SOFR"). As amended, interest on borrowings under the revolving credit facility accrues at a variable rate equal to (i) SOFR, plus (ii) 0.10%, plus (iii) a specified spread of 1.25% or 1.50% dependent on the average quarterly revolver availability, calculated on the last day of each fiscal quarter being greater than 20% of the total revolver commitments or less than or equal to 20% of the total revolver commitments, respectively. There were no other material changes to the Credit Agreement as a result of the amendment.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosures

None.

Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We maintain “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act, that are designed to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is (1) recorded, processed, summarized and reported, within the time periods specified in the SEC’s rules and forms and (2) accumulated and communicated to our management, including our principal executive officer and principal financial officer, to allow timely decisions regarding required disclosure.

Our management, with the participation of our principal executive officer and principal financial officer, evaluated, as of December 31, 2022, the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Based on that evaluation, our principal executive officer and principal financial officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

Management’s Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15(d)-15(f) and under the Exchange Act). Our management, including our principal executive officer and principal financial officer, has assessed the effectiveness of our internal control over financial reporting as of December 31, 2022, based on the framework set forth in Internal Control-Integrated Framework (2013), issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Our internal control over financial reporting includes policies and procedures that provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external reporting purposes in accordance with GAAP. Based on the results of our evaluation, management concluded that our internal control over financial reporting was effective as of December 31, 2022.

Our independent registered public accounting firm, Deloitte & Touche LLP, was not required to perform an evaluation of our internal control over financial reporting as of December 31, 2022, because as an “emerging growth company”, we are exempt from Section 404(b) of the Sarbanes-Oxley Act of 2002.

Inherent Limitation on Effectiveness of Controls and Procedures

In designing and evaluating our disclosure controls and procedures, our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the company have been detected. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting that occurred during the quarter ended December 31, 2022 that has materially affected or is reasonably likely to materially affect our internal control over financial reporting.

Item 9B. Other Information

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections

Not applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

Executive Officers and Directors

We maintain a code of business conduct and ethics that incorporates our code of ethics applicable to our directors, officers, and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. Our code of business conduct and ethics is available under the Governance section of our Investor Relations website at ir.allbirds.com. We intend to satisfy the disclosure requirement under Item 5.05 of Form 8-K regarding amendments to, or waiver from, a provision of our code of business conduct and ethics by posting such information on the website address and location specified above.

The remaining information required by this item is incorporated by reference to the definitive proxy statement for our 2023 annual meeting of stockholders, which will be filed with the SEC no later than 120 days after December 31, 2022, under the captions “Information Regarding the Board of Directors and Corporate Governance,” “Election of Directors,” and “Executive Officers.”

Item 11. Executive Compensation

The information required by this item is incorporated by reference to the definitive proxy statement for our 2023 annual meeting of stockholders, which will be filed with the SEC no later than 120 days after December 31, 2022, under the captions “Executive Compensation” and “Non-Employee Director Compensation.”

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by this item is incorporated by reference to the definitive proxy statement for our 2023 annual meeting of stockholders, which will be filed with the SEC no later than 120 days after December 31, 2022, under the caption “Security Ownership of Certain Beneficial Owners and Management.”

Item 13. Certain Relationships and Related Transactions, and Director Independence

The information required by this item is incorporated by reference to the definitive proxy statement for our 2023 annual meeting of stockholders, which will be filed with the SEC no later than 120 days after December 31, 2022, under the captions “Transactions with Related Persons” and “Independence of the Board of Directors.”

Item 14. Principal Accounting Fees and Services

The information required by this item is incorporated by reference to the definitive proxy statement for our 2023 annual meeting of stockholders, which will be filed with the SEC no later than 120 days after December 31, 2022, under the caption “Ratification of Selection of Independent Registered Public Accounting Firm.”

PART IV

Item 15. Exhibits, Financial Statement Schedules

(a) The following documents are filed as part of this Annual Report on Form 10-K:

(1) Consolidated Financial Statements

The consolidated financial statements are filed as part of this Annual Report on Form 10-K under "Item 8. Financial Statements and Supplementary Data."

(2) Financial Statement Schedules

The financial statement schedules are omitted because they are either not applicable or the information required is presented in the financial statements and notes thereto under "Item 8. Financial Statements and Supplementary Data."

(3) Exhibits

The documents listed in the following Exhibit Index of this Annual Report on Form 10-K are incorporated by reference or are filed with this Annual Report on Form 10-K, in each case as indicated therein (numbered in accordance with Item 601 of Regulation S-K):

Exhibit Number	Exhibit Title	Incorporated by Reference			
		Form	File Number	Exhibit	Filing Date
3.1	Ninth Amended and Restated Certificate of Incorporation of the Registrant.	8-K	001-40963	3.1	November 5, 2021
3.2	Amended and Restated Bylaws of the Registrant.	8-K	001-40963	3.2	November 5, 2021
4.1	Form of Class A Common Stock Certificate of the Registrant.	S-1/A	333-259188	4.1	September 15, 2021
4.2	Fifth Amended and Restated Investors' Rights Agreement by and among the Registrant and certain of its stockholders, dated September 22, 2020.	S-1	333-259188	10.1	August 31, 2021
4.3	Description of Securities.	10-K	001-40963	4.2	March 16, 2022
10.1#	Allbirds, Inc. 2015 Equity Incentive Plan, as amended, and forms of agreements thereunder.	S-1	333-259188	10.2	August 31, 2021
10.2#	Allbirds, Inc. 2021 Equity Incentive Plan and forms of agreements thereunder.	S-1/A	333-259188	10.3	October 25, 2021
10.3#	Allbirds, Inc. 2021 Employee Stock Purchase Plan.	10-Q	001-40963	10.2	December 7, 2021
10.4#	Form of indemnification agreement by and between the Registrant and each of its directors and executive officers.	S-1	333-259188	10.5	August 31, 2021
10.5#	Allbirds, Inc. Severance and Change in Control Plan and form of participation agreement thereunder.	S-1/A	333-259188	10.11	October 25, 2021
10.6#	Non-Employee Director Compensation Policy.	10-K	001-40963	10.6	March 16, 2022
10.7#	Offer Letter by and between the Registrant and Michael Bufano.	S-1/A	333-259188	10.6	September 15, 2021
10.8#	Offer Letter by and between the Registrant and Joe Vernachio.	S-1/A	333-259188	10.7	September 15, 2021

10.9	Standard Multi-Tenant Office Lease – Gross, by and among the Registrant, International Settlement Holding Corporation, Kristina Gavello Marital Trust, Gail Gavello, James A. Maciel, Gregory A. Maciel, Barry A. Maciel by Gregory A. Maciel POA, Barry Maciel Trust, Claude D. Perasso, Clotilde Gorla, Claudia Bressie, Laura Perell, Jeanne Peters and Mary Anne Scarlett, dated July 13, 2016, as amended by Lease Extension Agreement, dated August 24, 2021.	S-1/A	333-259188	10.8	September 15, 2021
10.10	Standard Lease Agreement, by and between the Registrant and Hotaling Partners, LLC, dated November 28, 2017, as amended by First Lease Amendment, dated June 26, 2019.	S-1	333-259188	10.9	August 31, 2021
10.11	Standard Lease Agreement, by and between the Registrant and Eclipse Champagne Building, LLC, dated December 17, 2018, as amended by First Lease Amendment, dated June 26, 2019.	S-1	333-259188	10.10	August 31, 2021
10.12*	Credit Agreement, dated as of February 20, 2019, among the Registrant, the Lenders Party Thereto and JPMorgan Chase Bank, N.A., as Administrative Agent				
10.13*	First Amendment to Credit Agreement, dated as of March 8, 2023, among the Registrant, the other Loan Parties thereto, the lending institutions party thereto as the Lenders, and JPMorgan Chase Bank, N.A., as the Administrative Agent				
21.1	List of Subsidiaries of the Registrant.	S-1/A	333-259188	21.1	September 27, 2021
23.1*	Consent of Deloitte & Touche LLP, independent registered accounting firm.				
24.1*	Power of Attorney (included in the signature pages attached to this Annual Report on Form 10-K).				
31.1*	Certification of Principal Executive Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				
31.2*	Certification of Principal Financial Officer pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				
32.1†	Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.				
32.2†	Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.				
101.INS*	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document				
101.SCH*	Inline XBRL Taxonomy Extension Schema Document				
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document				
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document				
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document				

101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	The cover page from the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2022, has been formatted in Inline XBRL and contained in Exhibits 101

* Filed herewith.

Indicates a management contract or compensatory plan or arrangement.

† The certifications attached as Exhibits 32.1 and 32.2 that accompany this Annual Report on Form 10-K are not deemed filed with the SEC and are not to be incorporated by reference into any filing of the Registrant under the Securities Act of 1933, as amended, or the Exchange Act, whether made before or after the date of this Annual Report on Form 10-K, irrespective of any general incorporation language contained in such filing.

Item 16. Form 10-K Summary

None.

SIGNATURES

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

ALLBIRDS, INC.

Date: March 10, 2023

By: /s/ Joseph Zwillinger
 Joseph Zwillinger
 Co-Chief Executive Officer
(Principal Executive Officer)

Date: March 10, 2023

By: /s/ Michael Bufano
 Michael Bufano
 Chief Financial Officer
(Principal Financial Officer)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose individual signature appears below hereby authorizes and appoints Joseph Zwillinger, Timothy Brown, and Michael Bufano, and each of them, with full power of substitution and resubstitution and full power to act without the other, as his or her true and lawful attorney-in-fact and agent to act in his or her name, place and stead and to execute in the name and on behalf of each person, individually and in each capacity stated below, and to file any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing, ratifying and confirming all that said attorneys-in-fact and agents or any of them or their or his substitute or substitutes may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report has been signed by the following persons on behalf of the Company and in the capacities and on the dates indicated:

Signature	Title	Date
<u>/s/ Joseph Zwillinger</u> Joseph Zwillinger	Co-Chief Executive Officer and Director <i>(Principal Executive Officer)</i>	March 10, 2023
<u>/s/ Michael Bufano</u> Michael Bufano	Chief Financial Officer <i>(Principal Financial Officer and Principal Accounting Officer)</i>	March 10, 2023
<u>/s/ Neil Blumenthal</u> Neil Blumenthal	Director	March 10, 2023
<u>/s/ Dick Boyce</u> Dick Boyce	Director	March 10, 2023
<u>/s/ Timothy Brown</u> Timothy Brown	Co-Chief Executive Officer and Director	March 10, 2023
<u>/s/ Mandy Fields</u> Mandy Fields	Director	March 10, 2023
<u>/s/ Ann Freeman</u> Ann Freeman	Director	March 10, 2023
<u>/s/ Dan Levitan</u> Dan Levitan	Director	March 10, 2023

/s/ Emily Weiss
Emily Weiss

Director

March 10, 2023

J.P.Morgan

CREDIT AGREEMENT

dated as of

February 20, 2019

among

ALLBIRDS, INC.
and its Affiliates Party Hereto

the Lenders Party Hereto

and

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

JPMORGAN CHASE BANK, N.A.,
as Sole Bookrunner and Sole Lead Arranger

ASSET BASED LENDING

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EXHIBITS:

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<u>Exhibit B</u> – Form of Opinion of Loan Parties’ Counsel
<u>Exhibit C</u> – Form of Borrowing Base Certificate
<u>Exhibit D</u> – Form of Compliance Certificate

Exhibit E – Joinder Agreement

Exhibit F-1 – U.S. Tax Certificate (For Foreign Lenders that are not Partnerships for U.S. Federal Income Tax Purposes)

Exhibit F-2 – U.S. Tax Certificate (For Foreign Participants that are not Partnerships for U.S. Federal Income Tax Purposes)

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Exhibit F-4 – U.S. Tax Certificate (For Foreign that are Partnerships for U.S. Federal Income Tax Purposes)

Exhibit G – Form of Credit Card Notice

CREDIT AGREEMENT

This Credit Agreement, dated as of February 20, 2019 (as it may be amended or otherwise modified from time to time, together with all Exhibits and Schedules annexed hereto from time to time, each of which is incorporated herein and made a part hereof, this "Agreement"), is by and among Allbirds, Inc., and each other Person at any time party hereto as a Borrower, the other Loan Parties party hereto, the lending institutions party hereto as the Lenders, and JPMorgan Chase Bank, N.A., as the Administrative Agent.

The parties hereto agree as follows:

ARTICLE 1

Definitions

Section 1.0a Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"Account" has the meaning assigned to such term in the Security Agreement and includes any Credit Card Accounts.

"Account Debtor" means any Person obligated on an Account.

"Acquisition" means any transaction, or any series of related transactions, consummated on or after the Effective Date, by which any Loan Party (a) acquires any going business or all or substantially all of the assets of any Person, whether through purchase of assets, merger, or otherwise or (b) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the Equity Interests of a Person that have ordinary voting power for the election of directors or other similar management personnel of a Person (other than Equity Interests having such power only by reason of the happening of a contingency) or a majority of the outstanding Equity Interests of a Person.

"Adjusted LIBO Rate" means, with respect to any Eurodollar Borrowing for any Interest Period or for any CBFRR Borrowing, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period, multiplied by (b) the Statutory Reserve Rate.

"Adjusted One Month LIBOR Rate" means, for any day, an interest rate per annum equal to the sum of (a) 2.50% plus (b) the Adjusted LIBO Rate for a one month interest period on such day (or if such day is not a Business Day, the immediately preceding Business Day); provided that, for the avoidance of doubt, the Adjusted LIBO Rate for any day will be based on the LIBO Screen Rate at approximately 11:00 a.m. London time on such day; provided, further, that, if the LIBO Screen Rate at such time is less than zero, such rate will be deemed to be zero for purposes of this Agreement.

"Administrative Agent" means JPMorgan Chase Bank, N.A. (including its successors and assigns), in its capacity as administrative agent for the Lenders hereunder.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the specified Person.

“Agent Indemnitee” has the meaning assigned to such term in Section 9.03(c).

“Aggregate Credit Exposure” means, at any time, the aggregate Credit Exposure of all of the Lenders at such time.

“Aggregate Revolving Commitment” means, at any time, the aggregate of the Revolving Commitments of all of the Lenders, as increased or reduced from time to time pursuant to the terms and conditions hereof. As of the Effective Date, the Aggregate Revolving Commitment is \$40,000,000.

“Aggregate Revolving Exposure” means, at any time, the aggregate Revolving Exposure of all of the Lenders at such time (with the Swingline Exposure of each Lender calculated assuming that all of the Lenders have funded their participations in all Swingline Loans outstanding at such time).

“Agreement” has the meaning assigned to such term in the introductory paragraph of this Credit Agreement.

“Allbirds” means Allbirds, Inc., a Delaware corporation, and its successors and assigns.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to any Loan Party or any of their Subsidiaries from time to time concerning or relating to bribery or corruption.

“Applicable Parties” has the meaning assigned to it in Section 8.03(c).

“Applicable Percentage” means, with respect to any Lender, (a) with respect to Revolving Loans, LC Exposure, Overadvances, or Swingline Loans, a percentage equal to a fraction the numerator of which is such Lender’s Revolving Commitment and the denominator of which is the Aggregate Revolving Commitment, provided that, if the Revolving Commitments have terminated or expired, the Applicable Percentages will be determined based upon such Lender’s share of the Aggregate Revolving Exposure at that time and (b) with respect to Protective Advances or with respect to the Aggregate Credit Exposure, a percentage based upon such Lender’s share of the Aggregate Credit Exposure and the unused Commitments; provided that, in accordance with Section 2.20, so long as any Lender is a Defaulting Lender, such Defaulting Lender’s Commitment will be disregarded in the calculations under clause (a) and clause (b) preceding.

“Applicable Rate” means, for any day, with respect to any Loan, or with respect to the commitment fees payable hereunder, as the case may be, the applicable rate per annum set forth below under the caption “Revolver CBF Spread”, “Revolver Eurodollar Spread”, or “Commitment Fee Rate”, as the case may be, based upon the Average Quarterly Availability during the most recently ended fiscal quarter of Allbirds; provided that the “Applicable Rate” will be the applicable rates per annum set forth below in Category 1 during the period from the Effective Date to, and including, the last day of the fiscal quarter of Allbirds ending on or about March 31, 2019:

<u>Average Quarterly Availability</u>	<u>Revolver Eurodollar Spread</u>	<u>Revolver CBFR REVLIBOR30 Spread</u>	<u>Revolver CBFR CB Floating Rate Spread</u>	<u>Commitment Fee Rate</u>
<u>Category 1</u> Greater than 20.0% of the Aggregate Revolving Commitment	1.25%	1.25%	0.00%	0.20%
<u>Category 2</u> Less than or equal to 20.0% of the Aggregate Revolving Commitment	1.50%	1.50%	0.00%	0.20%

For purposes of the foregoing, each change in the Applicable Rate resulting from a change in Average Quarterly Availability will be effective during the period commencing on and including the first day of each fiscal quarter of Allbirds and ending on the last day of such fiscal quarter, it being understood and agreed that, for purposes of determining the Applicable Rate on the first day of any fiscal quarter of Allbirds, the Average Quarterly Availability during the most recently ended fiscal quarter of Allbirds will be used. Notwithstanding the foregoing, the Average Quarterly Availability will be deemed to be in Category 2 if the Borrowers fail to deliver any Borrowing Base Certificate or related information required to be delivered by them pursuant to Section 5.01, during the period from the expiration of the time for delivery thereof until five days after each such Borrowing Base Certificate and related information is so delivered.

“Approved Electronic Platform” has the meaning assigned to such term in Section 8.03(a).

“Approved Fund” has the meaning assigned to such term in Section 9.04.

“Arranger” means JPMorgan Chase Bank, N.A. in its capacity as sole bookrunner and sole lead arranger hereunder.

“Assignment and Assumption” means an assignment and assumption agreement entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form (including electronic records generated by the use of an electronic platform) approved by the Administrative Agent.

“Availability” means, at any time, an amount equal to (a) the lesser of (i) the Aggregate Revolving Commitment or (ii) the Borrowing Base, minus (b) the Aggregate Revolving Exposure.

“Availability Period” means the period from and including the Effective Date to but excluding the earlier of the Maturity Date or the date of termination of the Commitments.

“Available Revolving Commitment” means, at any time, the Aggregate Revolving Commitment, minus the Aggregate Revolving Exposure.

“Average Quarterly Availability” means, for any fiscal quarter of Allbirds, an amount equal to the average daily Availability during such fiscal quarter, as determined by the Administrative Agent’s system of records; provided that, in order to determine Availability on

any day for purposes of this definition, Borrowing Base for such day will be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 5.01 as of such day.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time that is described in the EU Bail-In Legislation Schedule.

“Banking Services” means each and any of the following bank services provided to any Loan Party or its Subsidiaries by JPMCB or any of its Affiliates: (a) credit cards for commercial customers (including, without limitation, “commercial credit cards” and purchasing cards), (b) stored value cards, (c) merchant processing services, and (d) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, any direct debit scheme or arrangement, overdrafts, cash pooling services, and interstate depository network services).

“Banking Services Obligations” means any and all obligations of the Loan Parties and their Subsidiaries, whether absolute or contingent and howsoever and whensoever created, arising, evidenced, or acquired (including all renewals, extensions, and modifications thereof and substitutions therefor) in connection with Banking Services.

“Banking Services Reserves” means all Reserves that the Administrative Agent from time to time establishes in its Permitted Discretion for Banking Services then provided or outstanding.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy”, as now and hereafter in effect, or any successor statute.

“Bankruptcy Event” means, with respect to any Person, when such Person becomes the subject of a voluntary or involuntary bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors, or similar Person charged with the reorganization or liquidation of its business, appointed for it, or, in the determination of the Administrative Agent in its Permitted Discretion, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment or has had any order for relief in such proceeding entered in respect thereof, provided that a Bankruptcy Event will not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides such Person with immunity from the jurisdiction of courts within the U.S. or any other applicable jurisdiction or from the enforcement of judgments or writs of attachment on such Person’s assets or permits such Person (or such Governmental Authority or instrumentality), to reject, repudiate, disavow, or disaffirm any contracts or agreements made by such Person.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code to which Section 4975 of the Code applies, and (c) any Person whose assets include (for purposes

of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Borrower” or “Borrowers” means, individually or collectively, Allbirds and any other Person at any time a party hereto as a Borrower. As of the Effective Date, Allbirds is the only Borrower.

“Borrower Representative” has the meaning assigned to such term in Section 11.01.

“Borrowing” means (a) Revolving Loans of the same Type, made, converted, or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect, (b) Loans of the same Type, made, converted, or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect, (c) a Swingline Loan, (d) a Protective Advance, and (e) an Overadvance.

“Borrowing Base” means, at any time, the sum of (a) up to 90.0% of the face amount of the Borrowers’ Eligible Credit Card Accounts at such time, plus (b) up to 85.0% of the face amount of the Borrowers’ Eligible Trade Accounts at such time, plus (c) the lesser of up to (i) 90.0% of the Borrowers’ Eligible Inventory, at such time, valued at the lower of cost or market value, determined on a weighted average moving cost basis and (ii) the product of 90.0%, multiplied by the Net Orderly Liquidation Value percentage identified in the most recent inventory appraisal ordered by the Administrative Agent multiplied by the Borrowers’ Eligible Inventory, valued at the lower of cost or market value, determined on a weighted average moving cost basis, plus (d) 100% of the Borrowers’ Qualified Cash Balances, minus (e) Reserves.

“Borrowing Base Certificate” means a certificate, signed and certified as accurate and complete by a Financial Officer of the Borrower Representative, in substantially the form of Exhibit C or another form that is acceptable to the Administrative Agent in its sole discretion.

“Borrowing Request” means a request by the Borrower Representative for a Revolving Borrowing in accordance with Section 2.03.

“Burdensome Restrictions” means any consensual encumbrance or restriction of the type described in Section 6.10(a) or Section 6.10(b).

“Business Day” means any day that is not a Saturday, Sunday, or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that, when used in connection with a Eurodollar Loan or a Loan accruing interest at REVLIBOR30 Rate without giving effect to the proviso contained in the definition for “REVLIBOR30 Rate”, the term “Business Day” excludes any day on which banks are not open for general business in London.

“Capital Expenditures” means, without duplication, any expenditure or commitment to expend money for any purchase or other acquisition of any asset that would be classified as a fixed or capital asset on a consolidated balance sheet prepared in accordance with GAAP, minus, in the case of the Loan Parties and their subsidiaries, (a) any software development costs to the extent deducted under the definition of EBITDA for any applicable period, (b) expenditures of insurance proceeds to rebuild or replace any asset after a casualty loss, and (c) leasehold improvement expenditures to the extent a Loan Party is reimbursed by the lessor within 180 days of such expenditures.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases or financing leases on a balance sheet of such Person under

GAAP, and the amount of such obligations will be the capitalized amount thereof determined in accordance with GAAP.

“CB Floating Rate” means the Prime Rate; provided that the CB Floating Rate will never be less than the Adjusted One Month LIBOR Rate on such day (or if such day is not a Business Day, the immediately preceding Business Day). Any change in the CB Floating Rate due to a change in the Prime Rate or the Adjusted One Month LIBOR Rate will be effective from and including the effective date of such change in the Prime Rate or the Adjusted One Month LIBOR Rate, respectively.

“CBFR”, when used in reference to: (a) a rate of interest, refers to the REVLIBOR30 Rate and (b) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the REVLIBOR30 Rate.

“CFC” means a “controlled foreign corporation” as defined in Section 957 of the Code.

“Change in Control” means (a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than the Permitted Holders, become, or obtain rights (whether by means of warrants, options, or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of at least 50.1% of the outstanding voting Equity Interests of Allbirds on a fully diluted basis, (b) occupation at any time of a majority of the seats (other than vacant seats) on the board of directors of Allbirds by Persons who were not (i) directors of Allbirds on the Effective Date or nominated, appointed or approved for consideration by shareholders for election by the board of directors of Allbirds, (ii) approved by the board of directors of Allbirds as director candidates prior to their election, nor (iii) appointed by directors so nominated, appointed, or approved; or (c) except for transactions permitted under this Agreement, Allbirds ceases to own (directly or indirectly), free and clear of all Liens or other encumbrances (other than Permitted Encumbrances), 100% of the outstanding voting Equity Interests of the other Borrowers on a fully diluted basis.

“Change in Law” means the occurrence after the date of this Agreement (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement) of any of the following: (a) the adoption of or taking effect of any law, rule, regulation, or treaty; (b) any change in any law, rule, regulation, or treaty or in the administration, interpretation, implementation, or application thereof by any Governmental Authority; or (c) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender’s or the Issuing Bank’s holding company, if any) with any request, guideline, requirement, or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that notwithstanding anything herein to the contrary, (y) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements, or directives thereunder or issued in connection therewith or in the implementation thereof and (z) all requests, rules, guidelines, requirements, or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority), or the U.S. or foreign regulatory authorities, in each case pursuant to Basel III, in each case will be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued, or implemented.

“Charges” has the meaning assigned to such term in Section 9.17.

“Class”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Swingline Loans, or Protective Advances, or Overadvances.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” means any and all property owned, leased, or operated by a Person covered by the Collateral Documents and any and all other property of any Loan Party, now existing or hereafter acquired, that may at any time be, become, or be intended to be, subject to a Lien in favor of the Administrative Agent, on behalf of itself, the Lenders, and the other Secured Parties, to secure the Secured Obligations.

“Collateral Access Agreement” has the meaning assigned to such term in the Security Agreement.

“Collateral Documents” means, collectively, the Security Agreement, the NZ Security Agreement, and any other agreements, instruments, and documents executed in connection with this Agreement that are intended to create, perfect, or evidence Liens to secure the Secured Obligations, including, without limitation, all other security agreements, pledge agreements, mortgages, deeds of trust, loan agreements, notes, guarantees, subordination agreements, pledges, powers of attorney, consents, assignments, contracts, fee letters, notices, leases, financing statements, and all other written matter whether heretofore, now, or hereafter executed by any Loan Party and delivered to the Administrative Agent.

“Collection Account” has the meaning assigned to such term in the Security Agreement.

“Commercial LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding commercial Letters of Credit, plus (b) the aggregate amount of all LC Disbursements relating to commercial Letters of Credit that have not yet been reimbursed by or on behalf of the Borrowers. The Commercial LC Exposure of any Revolving Lender at any time will be its Applicable Percentage of the aggregate Commercial LC Exposure at such time.

“Commitment” means, with respect to each Lender, such Lender’s Revolving Commitment, together with the commitment of such Lender to acquire participations in Protective Advances hereunder. The initial amount of each Lender’s Commitment is set forth on the Commitment Schedule, or in the Assignment and Assumption or other documentation or record (as such term is defined in Section 9-102(a)(70) of the New York Uniform Commercial Code) as provided in Section 9.04(b)(ii)(C), pursuant to which such Lender has assumed its Commitment, as applicable.

“Commitment Schedule” means the Schedule attached hereto identified as such.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Communications” has the meaning assigned to such term in Section 8.03(c).

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Control” means 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.

“Controlled Disbursement Account” means any deposit account of the Borrowers maintained with the Administrative Agent as a zero balance, cash management account pursuant to and under any agreement between a Borrower and the Administrative Agent, as modified and

amended from time to time, and through which all disbursements of a Loan Party are made and settled on a daily basis with no uninvested balance remaining overnight.

“Credit Card Account” means an Account or any “payment intangible” (as defined in the UCC) together with all income, payments, and proceeds thereof, owed by a major credit or debit card issuer (including Visa, MasterCard, American Express, Discover, and such other issuers approved by the Administrative Agent) or any credit card processor or merchant bank providing credit card processing services to a Borrower resulting from charges by a customer of such Borrower on credit or debit cards issued by such issuer or processed by such processor or merchant bank in connection with the sale of goods by such Borrower, or services performed by such Borrower, in each case in the ordinary course of its business.

“Credit Card Notice” means a notice by a Borrower to a credit card issuer or credit card processor that (i) includes a directive to such credit card issuer or credit card processor to remit payments directly to the Collection Account, (ii) includes a requirement that the credit card issuer or credit card processor will not make any payments except as specified in such Credit Card Notice or as specified by the Administrative Agent in writing, and (iii) substantially in the form of Exhibit (G) or is otherwise in form and substance acceptable to the Administrative Agent.

“Credit Exposure” means, as to any Lender at any time, such Lender’s Revolving Exposure at such time.

“Credit Party” means the Administrative Agent, the Issuing Bank, the Swingline Lender, or any other Lender.

“DDA Access Product” means the bank service provided to any Loan Party by JPMCB in its sole discretion consisting of direct access to schedule payments from the Funding Account by electronic, internet, or other access mechanisms that may be agreed upon from time to time by JPMCB and the funding of such payments under the Loan Borrowing Option in the DDA Access Product Agreement.

“DDA Access Product Agreement” means JPMCB’s Treasury Services End of Day Investment & Loan Sweep Service Terms, as in effect on the date of this Agreement, as the same may be amended or otherwise modified from time to time.

“Default” means any event or condition that constitutes an Event of Default or that upon notice, lapse of time, or both would, unless cured or waived, become an Event of Default.

“Defaulting Lender” means any Lender that (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in Letters of Credit or Swingline Loans, or (iii) pay over to any Credit Party any other amount required to be paid by such Lender hereunder, unless, in the case of clause (i), preceding, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular Default, if any) has not been satisfied, (b) has notified any Borrower or any Credit Party in writing, or has made a public statement, to the effect that such Lender does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including the particular Default, if any) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by a Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans and

participations in then outstanding Letters of Credit and Swingline Loans under this Agreement, provided that such Lender will cease to be a Defaulting Lender pursuant to this clause (c) upon such Credit Party's receipt of such certification in form and substance satisfactory to it and the Administrative Agent, or (d) has become the subject of (i) a Bankruptcy Event or (ii) a Bail-In Action.

"Disclosed Matters" means the actions, suits, proceedings, and environmental matters disclosed in Schedule 3.06.

"Disposition" or "Dispose" means the sale, transfer, license, lease, or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) of any property by any Person (including any sale and leaseback transaction and any issuance of Equity Interests by a Subsidiary of such Person), including any sale, assignment, transfer, or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Dividing Person" has the meaning assigned to it in the definition of "Division".

"Division" means the division of the assets, liabilities, and/or obligations of a Person (the "Dividing Person") among two or more Persons (whether pursuant to a "plan of division", "divisive merger", or similar arrangement), that may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

"Division Successor" means any Person that, upon the consummation of a Division of a Dividing Person, holds all or any portion of the assets, liabilities, and/or obligations previously held by such Dividing Person immediately prior to the consummation of such Division. A Dividing Person that retains any of its assets, liabilities, and/or obligations after a Division will be deemed a Division Successor upon the occurrence of such Division.

"Document" has the meaning assigned to such term in the Security Agreement.

"Dollars", "dollars", and "\$" refer to lawful money of the U.S.

"Domestic Subsidiary" means a Subsidiary organized under the laws of a jurisdiction located in the U.S., but excluding any such Subsidiary that is a FSHCO.

"Dominion Event Date" means (a) the date of the occurrence of any Event of Default resulting from non-compliance by the Loan Parties with the terms of Section 5.01(g), Section 5.01(h), or Section 6.12 (provided that any such Event of Default resulting from a failure to comply with the terms of Section 5.01(g) or Section 5.01(h) will not result in a Dominion Event Date if the Loan Parties deliver the reporting information required by Section 5.01(g) or Section 5.01(h), as the case may be, within five Business Days of notice from the Administrative Agent of the Loan Parties' failure to comply with Section 5.01(g) or Section 5.01(h)), (b) the date of the occurrence of any Event of Default under clause (a), clause (b), clause (h), clause (i), or clause (j) of Article 7, or (c) any date on which Availability is less than 10.0% of the Aggregate Revolving Commitment.

"Dominion Period" means any period of time beginning on a Dominion Event Date and continuing through a Dominion Termination Date, if any.

"Dominion Termination Date" means, the first day after any period of 30 consecutive days occurring after a Dominion Event Date, during which none of the conditions specified in the definition of Dominion Event Date exist.

“**EBITDA**” means, for any period, Net Income for such period, **plus** (a) without duplication and to the extent deducted in determining Net Income for such period, the sum of (i) Interest Expense for such period, (ii) expense for income taxes paid or accrued, (iii) all amounts attributable to depreciation and amortization expense for such period, (iv) any non-cash charges attributable to impairment of goodwill or other intangible assets, impairment of long-lived assets and any extraordinary, unusual, or non-recurring non-cash expenses or losses, (v) non-cash compensation expense arising from the sale or issuance of stock or the granting of stock options, (vi) fees and expenses directly incurred or paid in connection with (A) the Transactions, (B) any Permitted Acquisition or any other acquisition not prohibited by this Agreement, and (C) to the extent permitted hereunder, issuances or incurrence of Indebtedness, issuances of Equity Interests, or refinancing transactions and modifications of instruments of Indebtedness; **provided** that the aggregate amount of fees and expenses added back pursuant to this **clause (vi)** will not exceed 15.0% of EBITDA for any applicable period (prior to giving effect to the addback of such items pursuant to this **clause (vi)**), (vii) any non-recurring charges, costs, losses, fees, and expenses directly incurred or paid directly as a result of discontinued operations or any sale or disposition of any asset of any Loan Party; **provided** that amounts added back to this **clause (vii)** will be actual and not projected and will be without duplication of amounts added back pursuant to **clause (viii)** following, (viii) restructuring charges or reserves, including write-downs and write-offs, including any one-time costs incurred in connection with Permitted Acquisitions or any other acquisitions not prohibited by this Agreement and costs related to the closure, consolidation, and integration of facilities, information technology infrastructure and legal entities, and severance and retention bonuses; **provided** that amounts added back pursuant to this **clause (viii)** are actual and not projected, and do not exceed 15.0% of EBITDA for any applicable period (prior to giving effect to the addback of such items pursuant to this **clause (viii)**), (ix) adjustments relating to purchase price allocation accounting, and (x) net losses (including all fees, expenses, and charges related thereto) on the retirement or extinguishment of indebtedness, (xi) non-cash exchange, translation, or performance losses relating to any hedging transactions or foreign currency fluctuations, (xii) any extraordinary non-cash charges for such period, and (xiii) any other non-cash charges for such period (but excluding any non-cash charge in respect of an item that was included in Net Income in a prior period, and any non-cash charge that relates to the write-down or write-off of inventory), **minus** (b) without duplication and to the extent included in Net Income, (i) any cash payments made during such period in respect of non-cash charges described in **clause (a)(xiii)** preceding taken in a prior period, (ii) any software development costs to the extent capitalized during such period, (iii) interest income, (iv) exchange, translation, or performance gains relating to any hedging transactions or foreign currency fluctuations, and (v) any extraordinary gains and any non-cash items of income for such period, all calculated on a consolidated basis in accordance with GAAP.

“**ECP**” means an “eligible contract participant” as defined in Section 1(a)(18) of the Commodity Exchange Act or any regulations promulgated thereunder and the applicable rules issued by the Commodity Futures Trading Commission and/or the SEC.

“**EEA Financial Institution**” means (a) any institution established in any EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country that is a parent of an institution described in **clause (a)** preceding, or (c) any institution established in an EEA Member Country that is a subsidiary of an institution described in **clause (a)** or **clause (b)** preceding and is subject to consolidated supervision with its parent.

“**EEA Member Country**” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate, or accept such contract or record.

“Electronic System” means any electronic system, including e-mail, e-fax, web portal access for such Borrower, and any other Internet or extranet-based site, whether such electronic system is owned, operated, or hosted by the Administrative Agent or any Issuing Bank and any of their respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

“Eligible Accounts” means Eligible Credit Card Accounts and Eligible Trade Accounts.

“Eligible Credit Card Account” means at the time of any determination thereof, any Credit Card Account that satisfies the following criteria at the time of creation and continues to meet such criteria at the time of such determination: such Credit Card Account (i) is owned by a Borrower; (ii) has been earned by performance and represents the bona fide amount due to the applicable Borrower from a credit card issuer or credit card processor, and in each case originated in the ordinary course of business of the applicable Borrower; (iii) unless owed by Visa, MasterCard, American Express Company, Discover, or any credit card processor or merchant bank providing credit card processing services to a Borrower acceptable to the Administrative Agent in its Permitted Discretion; and (iv) is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clause (a) through clause (m) following. Without limiting the foregoing, to qualify as an Eligible Credit Card Account, a Credit Card Account must indicate no Person other than a Borrower as payee or remittance party. In determining the amount to be so included, the face amount of a Credit Card Account will be reduced by, without duplication, to the extent not reflected in such face amount or otherwise excluded below, (y) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges, or other allowances (including any amount that the applicable Borrower may be obligated to rebate to a customer, a credit card issuer or a credit card processor pursuant to the terms of any agreement or understanding (written or oral)) and (z) the aggregate amount of all cash received in respect of such Credit Card Account but not yet applied by the applicable Borrower to reduce the amount of such Credit Card Account. Except as otherwise agreed by the Administrative Agent in its Permitted Discretion, a Credit Card Account will not be an Eligible Credit Card Account if:

(i) such Credit Card Account does not constitute an “account” (as defined in the UCC) or “payment intangible” (as defined in the UCC);

(ii) such Credit Card Account has been outstanding for more than seven Business Days from the date of the applicable sale to a customer of a Borrower;

(iii) a Borrower does not have good, valid, and marketable title, free and clear of any Lien to such Credit Card Account, excluding any rights of offset of a credit card issuer or processor in the ordinary course of business;

(iv) such Credit Card Account is not subject to a first priority perfected Lien (excluding any rights of offset of a credit card issuer or processor in the ordinary course of business) in favor of the Administrative Agent, for the benefit of the Lenders (it being

the intent that chargebacks in the ordinary course by such processors will not be deemed a violation of this clause (d));

(v) such Credit Card Account is disputed, is with recourse, or is subject to a claim, counterclaim, offset, or chargeback that has been asserted (to the extent of such claim, counterclaim, offset, or chargeback);

(vi) the credit card issuer or the credit card processor with respect to such Credit Card Account has the right under certain circumstances to require the applicable Borrower to repurchase such Credit Card Account from such credit card issuer or credit card processor;

(vii) such Credit Card Account is due from a credit card issuer or credit card processor that has (i) applied for, suffered, or consented to the appointment of any receiver, custodian, trustee, or liquidator of its assets, (ii) had possession of all or a material part of its property taken by any receiver, custodian, trustee, or liquidator, (iii) filed, or had filed against it, any request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, winding-up, or voluntary or involuntary case under any state or federal bankruptcy laws, (iv) admitted in writing its inability, or is generally unable to, pay its debts as they become due, (v) become insolvent, (vi) ceased operation of its business, or (vii) taken any corporate action, legal proceedings, or other procedure or step is taken in relation to (A) the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, administration, or reorganization (by way of voluntary arrangements, scheme of arrangement, or otherwise), (B) a composition, compromise, assignment, or arrangement with any creditor, (C) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager, or other similar officer in respect of such Account Debtor or any of their assets, or (D) enforcement of any Lien over any assets of such Account Debtor, or any analogous procedure or step is taken in any jurisdiction;

(viii) such Credit Card Account is not a valid, legally enforceable obligation of the applicable credit card issuer or credit card processor with respect thereto;

(ix) such Credit Card Account does not conform to in all material respects all representations, warranties, or other provisions in the Loan Documents relating to Credit Card Accounts;

(x) such Credit Card Account is due from a credit card issuer or credit card processor that is not located in the U.S. unless the applicable credit card issuer or credit card processor remits payment directly to the Collection Account (as defined in the Security Agreement);

(xi) is owed in any currency other than U.S. dollars, unless such Credit Card Account is reported in the applicable Borrowing Base Certificate in a U.S. dollar equivalent amount at the time of submission of the applicable Borrowing Base Certificate;

(xii) such Credit Card Account is evidenced by "chattel paper" (as defined in the UCC) or an "instrument" (as defined in the UCC) of any kind unless such chattel paper or instrument is in the possession of the Administrative Agent, and to the extent necessary or appropriate, endorsed to the Administrative Agent; or

(xiii) any Credit Card Account due from a credit card issuer or credit card processor that:

- (1) the Administrative Agent has not received a copy of a Credit Card Notice sent by the Borrower to the applicable credit card issuer or credit card processor; or
- (2) the Administrative Agent has received a copy of a Credit Card Notice sent to the applicable credit card issuer or credit card processor, but either the Administrative Agent or the Borrower has determined that, notwithstanding the instructions in the applicable Credit Card Notice, such credit card issuer or credit card processor is not following the instructions given in such Credit Card Notice.

The Administrative Agent retains the right, from time to time in its Permitted Discretion, to establish additional standards of eligibility for Credit Card Accounts.

“Eligible Inventory” means, at any time, the Inventory of a Borrower that the Administrative Agent determines in its Permitted Discretion is eligible as the basis for the extension of Revolving Loans and Swingline Loans and the issuance of Letters of Credit. Without limiting the Administrative Agent’s discretion provided herein, Eligible Inventory of a Borrower will not include any Inventory:

- (i) that is not subject to a first priority perfected Lien in favor of the Administrative Agent;
- (ii) that is subject to any Lien other than (i) a Lien in favor of the Administrative Agent and (ii) a Permitted Encumbrance that does not have priority over the Lien in favor of the Administrative Agent;
- (iii) that is, in the Administrative Agent’s opinion, slow moving, obsolete, unmerchantable, defective, used, unfit for sale, not salable at prices approximating at least the cost of such Inventory in the ordinary course of business, or unacceptable due to age, type, category, and/or quantity;
- (iv) with respect to which any covenant, representation, or warranty contained in this Agreement or in the Security Agreement has been breached or is not true and that does not conform to all standards imposed by any Governmental Authority;
- (v) in which any Person other than such Borrower (i) has any direct or indirect ownership, interest, or title or (ii) is indicated on any purchase order or invoice with respect to such Inventory as having or purporting to have an interest therein;
- (vi) that is not finished goods or that constitutes work-in-process, raw materials, spare or replacement parts, subassemblies, packaging and shipping material, manufacturing supplies, samples, prototypes, displays or display items, bill-and-hold or ship-in-place goods, goods that are returned or marked for return, repossessed goods, defective or damaged goods, goods held on consignment, or goods that are not of a type held for sale in the ordinary course of business;
- (vii) that is not located in the U.S. or New Zealand or is in transit with a common carrier from vendors and suppliers, provided that, up to the greater of \$10,000,000 or 25.0% of the Aggregate Revolving Commitment of Inventory in transit from vendors and suppliers may be included as Eligible Inventory despite the foregoing provision of this clause (g) if:
 - (1) the Administrative Agent has received (A) a true and correct copy of the bill of lading and other shipping documents for such Inventory and

(B) evidence of satisfactory casualty insurance naming the Administrative Agent as lender loss payee and otherwise covering such risks as the Administrative Agent may reasonably request;

(2) for inventory that is in transit within the U.S. or New Zealand, the bill of lading is non-negotiable and the Administrative Agent has received, if requested, a duly executed Collateral Access Agreement, in form and substance satisfactory to the Administrative Agent, from the applicable customs broker, freight forwarder, or carrier for such Inventory;

(3) for inventory that is in transit to a Borrower in the U.S. or New Zealand from outside the U.S. or New Zealand, either

(A) the bill of lading is negotiable and the Administrative Agent has received (x) confirmation that the bill is issued in the name of such Borrower and consigned to the order of the Administrative Agent or a third party acceptable to the Administrative Agent (which may be Flexport International LLC or another customs broker acceptable to the Administrative Agent; such third party being referred to hereinafter as a "transit agent"), and an acceptable agreement among the Borrowers, the Administrative Agent, and the transit agent has been executed and delivered, in which the transit agent agrees, in part, that it holds the negotiable bill of lading and other shipping documents and all Inventory represented thereby as agent for the Administrative Agent and has granted the Administrative Agent access to such Inventory, (y) confirmation that such Borrower has paid for the goods, and (z) an estimate from such Borrower of the customs duties, customs fees and all other amounts due to the transit agent associated with the Inventory in order to establish an appropriate Reserve; or

(B) the bill of lading is non-negotiable and, the Administrative Agent has received (x) confirmation that the bill is issued in the name of such Borrower or a transit agent, and an acceptable agreement among the Borrowers, the Administrative Agent, and the transit agent has been executed and delivered, in which the transit agent agrees, in part, that it holds the non-negotiable bill of lading and other shipping documents and all Inventory represented thereby as agent for the Administrative Agent and has granted the Administrative Agent access to such Inventory, (y) confirmation that such Borrower has paid for the goods, and (z) an estimate from such Borrower of the customs duties, customs fees and all other amounts due to the transit agent associated with the Inventory in order to establish an appropriate Reserve,

(4) the common carrier is not an Affiliate of the applicable vendor or supplier or any Loan Party, and

(5) the transit agent (as described in clause (iii) preceding) is not an Affiliate of any Loan Party;

(viii) that is located in any location leased by such Borrower (i) unless (A) the lessor has delivered to the Administrative Agent a Collateral Access Agreement or (B) a Reserve for rent, charges, and other amounts due or to become due with respect to such facility has been established by the Administrative Agent in its Permitted Discretion or (ii) where less than \$100,000 of Inventory of the Borrowers is located at such location;

(ix)that is located in any third party warehouse or is in the possession of a bailee (other than a third party processor) and is not evidenced by a Document (other than bills of lading to the extent permitted pursuant to clause (g), preceding) (i) unless (A) such warehouseman or bailee has delivered to the Administrative Agent a Collateral Access Agreement and such other documentation as the Administrative Agent may require or (B) an appropriate Reserve has been established by the Administrative Agent in its Permitted Discretion or (ii) where less than \$100,000 of Inventory of the Borrowers is located;

(x)[reserved]

(xi)that is a discontinued product or component thereof;

(xii)that is the subject of a consignment by such Borrower as consignor;

(xiii)that is perishable;

(xiv)that contains or bears any intellectual property rights licensed to such Borrower unless the Administrative Agent is satisfied that it may sell or otherwise dispose of such Inventory without (i) infringing the rights of such licensor, (ii) violating any contract with such licensor, or (iii) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such Inventory under the current licensing agreement;

(xv)that is not reflected in a current perpetual inventory report of such Borrower (unless such Inventory is reflected in a report to the Administrative Agent as "in transit" Inventory);

(xvi)for which reclamation rights have been asserted by the seller; or

(xvii)that has been acquired from a Sanctioned Person.

The Administrative Agent retains the right, from time to time in its Permitted Discretion, to establish additional standards of eligibility for Inventory.

"Eligible Trade Accounts" means, at any time, the Accounts, excluding any Credit Card Accounts, of a Borrower that the Administrative Agent determines in its Permitted Discretion are eligible as the basis for the extension of Revolving Loans and Swingline Loans and the issuance of Letters of Credit. Without limiting the Administrative Agent's discretion provided herein, Eligible Trade Accounts will not include any Account of a Borrower:

(i)that is not subject to a first priority perfected security interest in favor of the Administrative Agent;

(ii)that is subject to any Lien other than (i) a Lien in favor of the Administrative Agent and (ii) a Permitted Encumbrance that does not have priority over the Lien in favor of the Administrative Agent;

(iii)(i) that is unpaid more than 90 days after the date of the original invoice therefor or more than 60 days after the original due date therefor, or (ii) that has been written off the books of such Borrower or otherwise designated as uncollectible;

(iv)that is owing by an Account Debtor for which more than 50.0% of the Accounts owing from such Account Debtor and its Affiliates are ineligible pursuant to clause (c), preceding;

(v)[reserved]

(vi)with respect to which any covenant, representation, or warranty contained in this Agreement or in the Security Agreement has been breached or is not true;

(vii)that (i) does not arise from the sale of goods or performance of services in the ordinary course of business, (ii) is not evidenced by an invoice or other documentation satisfactory to the Administrative Agent that has been sent to the Account Debtor, (iii) represents a progress billing or is contingent upon such Borrower's completion of any further performance; provided that such Accounts will not be ineligible solely as a result of the customer having a right to return goods purchased in the ordinary course of business (whether contractual or common law), (iv) represents a sale on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment, cash-on-delivery, or any other repurchase or return basis, or (v) relates to payments of interest;

(viii)for which the goods giving rise to such Account have not been shipped to the Account Debtor or for which the services giving rise to such Account have not been performed by such Borrower or if such Account was invoiced more than once (excluding "reminder notices" and other normal follow-up correspondence and billing matters with respect to previous invoices);

(ix)with respect to which any check or other instrument of payment has been returned uncollected for any reason;

(x)that is owed by an Account Debtor that has (i) applied for, suffered, or consented to the appointment of any receiver, custodian, trustee, or liquidator of its assets, (ii) had possession of all or a material part of its property taken by any receiver, custodian, trustee, or liquidator, (iii) filed, or had filed against it, any request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, winding-up, or voluntary or involuntary case under any state or federal bankruptcy laws, (iv) admitted in writing its inability, or is generally unable to, pay its debts as they become due, (v) become insolvent, or (vi) ceased operation of its business;

(xi)that is owed by any Account Debtor that has sold all or substantially all of its assets;

(xii)that, unless otherwise agreed to in writing by the Administrative Agent in its Permitted Discretion, is owed by an Account Debtor that (i) does not maintain its chief executive office in the U.S., Canada, or New Zealand or (ii) is not organized under applicable law of the U.S., any state of the U.S., or the District of Columbia, Canada, or any province of Canada, or New Zealand unless, in any such case, such Account is backed by a Letter of Credit acceptable to the Administrative Agent that is in the possession of, and is directly drawable by, the Administrative Agent;

(xiii)that is owed in any currency other than U.S. dollars or any other currency agreed to in writing by the Administrative Agent in its Permitted Discretion;

(xiv)that is owed by (i) any government (or any department, agency, public corporation, or instrumentality thereof) of any country other than the U.S. unless such Account is backed by a Letter of Credit acceptable to the Administrative Agent that is in the possession of, and is directly drawable by, the Administrative Agent or (ii) any government of the U.S., or any department, agency, public corporation, or instrumentality thereof, unless the Federal Assignment of Claims Act of 1940, as amended (31 U.S.C. § 3727 et seq. and 41 U.S.C. § 15 et seq.), and any other steps necessary to perfect the Lien

of the Administrative Agent in such Account have been complied with to the Administrative Agent's satisfaction;

(xv)that is owed by any Affiliate of any Loan Party or any employee, officer, director, agent, or stockholder of any Loan Party or any of its Affiliates;

(xvi)[reserved]

(xvii)that is owed by an Account Debtor or any Affiliate of such Account Debtor to which any Loan Party is indebted, but only to the extent of such indebtedness, or is subject to any security, deposit, progress payment, retainage, or other similar advance made by or for the benefit of an Account Debtor, in each case to the extent thereof;

(xviii)that is subject to any counterclaim, deduction, defense, setoff, or dispute but only to the extent of any such counterclaim, deduction, defense, setoff, or dispute;

(xix)that is evidenced by any promissory note, chattel paper, or instrument;

(xx)that is owed by an Account Debtor that is a Sanctioned Person;

(xxi)with respect to which such Borrower has made any agreement with the Account Debtor for any reduction thereof, other than discounts and adjustments given in the ordinary course of business but only to the extent of any such reduction, or any Account that was partially paid and such Borrower created a new receivable for the unpaid portion of such Account;

(xxii)that does not comply in all material respects with the requirements of all applicable laws and regulations, whether Federal, state, or local, including the Federal Consumer Credit Protection Act, the Federal Truth in Lending Act, and Regulation Z of the Board;

(xxiii)that is for goods that have been sold under a purchase order or pursuant to the terms of a contract or other agreement or understanding (written or oral) that indicates or purports that any Person other than such Borrower has or has had an ownership interest in such goods, or that indicates any party other than such Borrower as payee or remittance party; or

(xxiv)that was created on cash on delivery terms.

In determining the amount of an Eligible Trade Account of a Borrower, the face amount of an Account may, in the Administrative Agent's Permitted Discretion, be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits, or credits pending, promotional program allowances, price adjustments, finance charges, or other allowances (including any amount that such Borrower may be obligated to rebate to an Account Debtor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by such Borrower to reduce the amount of such Account. The Administrative Agent retains the right, from time to time in its Permitted Discretion, to establish additional standards of eligibility for Accounts.

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to (a) the environment, (b) preservation or reclamation of natural resources, (c) the management, Release, or threatened Release of any Hazardous Material, or (d) health and safety matters.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties, or indemnities), of any Borrower or Subsidiary directly or indirectly resulting from or based upon (a) any violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment, or disposal of any Hazardous Materials, (c) any exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment, or (e) any contract, agreement, or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust, or other equity ownership interests in a Person, and any warrants, options, or other rights entitling the holder thereof to purchase or acquire any of the foregoing, but excluding any debt securities convertible into any of the foregoing.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with a Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or Section 4001(14) of ERISA or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived), (b) the failure to satisfy the “minimum funding standard” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived, (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, (d) the incurrence by any Borrower or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan, (e) the receipt by any Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, (f) the incurrence by any Borrower or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal of any Borrower or any ERISA Affiliate from any Plan or Multiemployer Plan, or (g) the receipt by any Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Borrower or any ERISA Affiliate of any notice, concerning the imposition upon any Borrower or any ERISA Affiliate of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, in critical status, or in reorganization, within the meaning of Title IV of ERISA.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“Eurodollar”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bears interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default” has the meaning assigned to such term in [Article 7](#).

“Excess Availability” means, at any time, an amount equal to the result of (a) Availability, minus (b) the aggregate amount of all outstanding accounts payable that have been unpaid for more than 60 days after the due date therefor (other than accounts payable being contested or disputed in good faith).

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation, or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an ECP at the time the Guarantee of such Guarantor or the grant of such security interest becomes or would become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion will apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“Excluded Taxes” 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, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes; (b) in the case of a Lender, withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan, Letter of Credit, or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan, Letter of Credit, or Commitment (other than pursuant to an assignment request by the Borrowers under Section 2.19(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender acquired the applicable interest in a Loan, Letter of Credit, or Commitment or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Recipient’s failure to comply with Section 2.17(f); and (d) any withholding Taxes imposed under FATCA.

“Extenuating Circumstance” means any period during which the Administrative Agent has determined in its sole discretion (a) that due to unforeseen and/or nonrecurring circumstances, it is impractical and/or not feasible to submit or receive a Borrowing Request or Interest Election Request by email or fax or through Electronic System and (b) to accept a Borrowing Request or Interest Election Request telephonically.

“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 agreement entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules, or practices adopted pursuant to any intergovernmental agreement, treaty, or convention among Governmental Authorities and implementing such Sections of the Code.

“Federal Funds Effective Rate” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions (as determined in such manner as the NYFRB sets forth on its public website from time to time) and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate, provided that, if the Federal Funds Effective Rate as so determined would be less than zero, such rate will be deemed to be zero for the purposes of this Agreement.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System of the U.S.

“**FHSCO**” means a Subsidiary that owns no assets other than Equity Interests of, and Indebtedness from, one or more CFCs.

“**Financial Officer**” means the chief financial officer, vice president of finance, head of finance, principal accounting officer, treasurer, or controller of a Borrower.

“**Fixed Charge Coverage Ratio**” means, as of any date, the ratio of (a) EBITDA, minus Unfinanced Capital Expenditures, divided by (b) Fixed Charges.

“**Fixed Charges**” means, for any period, without duplication, cash Interest Expense, plus scheduled principal payments on Indebtedness (excluding with respect to the Loan Parties the Revolving Loans) actually made, plus expenses for taxes paid in cash, plus Restricted Payments paid in cash, plus Capital Lease Obligation payments.

“**Flood Laws**” has the meaning assigned to such term in Section 8.10.

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

“**Foreign Subsidiary**” means any Subsidiary that is not a Domestic Subsidiary.

“**Funding Account**” has the meaning assigned to such term in Section 4.01(h).

“**GAAP**” means generally accepted accounting principles in the U.S.

“**Governmental Authority**” means the government of the U.S., any other nation, or 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.

“**Guarantee**” of or by any Person (the “**guarantor**”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities, or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital, or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee does not include endorsements for collection or deposit in the ordinary course of business.

“**Guaranteed Obligations**” has the meaning assigned to such term in Section 10.01.

“**Guarantors**” means all Loan Guarantors and any non-Loan Parties (if any) that have delivered an Obligation Guaranty, and the term “Guarantor” means each or any one of them individually.

“**Hazardous Materials**” means: (a) any substance, material, or waste that is included within the definitions of “hazardous substances,” “hazardous materials,” “hazardous waste,” “toxic substances,” “toxic materials,” “toxic waste,” or words of similar import in any

Environmental Law; (b) those substances listed as hazardous substances by the U.S. Department of Transportation (or any successor agency) (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) (40 C.F.R. Part 302 and amendments thereto); and (c) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical.

“TBA” has the meaning assigned to such term in Section 1.05.

“IFRS” means the body of pronouncements issued by the International Accounting Standards Board (IASB), including International Financial Reporting Standards and interpretations approved by the IASB, International Accounting Standards and Standing Interpretations Committee interpretations approved by the predecessor International Accounting Standards Committee and adapted for use in the European Union.

“Impacted Interest Period” has the meaning assigned to such term in the definition of “LIBO Rate”.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes, or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (k) obligations under any earn-out (which for all purposes of this Agreement will be valued at the maximum potential amount payable with respect to such earn-out), (l) any other Off-Balance Sheet Liability and (m) obligations, whether absolute or contingent and howsoever and whensoever created, arising, evidenced, or acquired (including all renewals, extensions, and modifications thereof and substitutions therefor), under (i) any and all Swap Agreements and (ii) any and all cancellations, buy backs, reversals, terminations, or assignments of any Swap Agreement transaction. The Indebtedness of any Person includes the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by, or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a) preceding, Other Taxes.

“Indemnitee” has the meaning assigned to such term in Section 9.03(b).

“Ineligible Institution” has the meaning assigned to such term in Section 9.04(b).

“Information” has the meaning assigned to such term in Section 9.12.

“Interest Election Request” means a request by the Borrower Representative to convert or continue a Revolving Borrowing in accordance with Section 2.08.

“Interest Expense” means, for any period, total interest expense (including that attributable to Capital Lease Obligations) for such period with respect to all outstanding Indebtedness (including all commissions, discounts, and other fees and charges owed with respect to letters of credit and bankers’ acceptances and net costs under Swap Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP), calculated on a consolidated basis for such period in accordance with GAAP.

“Interest Payment Date” means (a) with respect to any CBF Loan (other than a Swingline Loan), the first Business Day of each calendar month and the Maturity Date and (b) with respect to any Eurodollar Loan, the last day of each Interest Period applicable to the Borrowing of which such Loan is a part (and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months duration, each day prior to the last day of such Interest Period that occurs at intervals of three months duration after the first day of such Interest Period) and the Maturity Date.

“Interest Period” means, with respect to any Eurodollar Borrowing, the period commencing on the date of such Eurodollar Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three, or six months (or, with the consent of each Lender, twelve months) thereafter, as the Borrower Representative may elect; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period will be extended to the next succeeding Business Day unless, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period will end on the next preceding Business Day and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) will end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially will be the date on which such Borrowing is made and thereafter will be the effective date of the most recent conversion or continuation of such Borrowing.

“Interpolated Rate” means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent (which determination will be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period (for which the LIBO Screen Rate is available) that is shorter than the Impacted Interest Period and (b) the LIBO Screen Rate for the shortest period (for which the LIBO Screen Rate is available) that exceeds the Impacted Interest Period, in each case, at such time; provided, that if any Interpolated rate is less than zero, such rate will be deemed to be zero for purposes of this Agreement.

“Inventory” has the meaning assigned to such term in the Security Agreement.

“Investment” has the meaning assigned to such term in Section 6.04.

“IRS” means the United States Internal Revenue Service.

“Issuing Bank” means, individually and collectively, each of JPMCB, in its capacity as the issuer of Letters of Credit hereunder, and any other Revolving Lender from time to time designated by the Borrower Representative as an Issuing Bank, with the consent of such Revolving Lender and the Administrative Agent, and their respective successors in such capacity as provided in Section 2.06(i). Any Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by its Affiliates, in which case the term “Issuing Bank” will include any such Affiliate with respect to Letters of Credit issued by such Affiliate (it being agreed that

such Issuing Bank will, or will cause such Affiliate to, comply with the requirements of [Section 2.06](#) with respect to such Letters of Credit). At any time there is more than one Issuing Bank, all singular references to the Issuing Bank will mean any Issuing Bank, either Issuing Bank, each Issuing Bank, the Issuing Bank that has issued the applicable Letter of Credit, or both (or all) Issuing Banks, as the context may require.

“[Issuing Bank Sublimit](#)” means, as of the Effective Date, (i) \$20,000,000, in the case of JPMCB and (ii) such amount as is designated to the Administrative Agent and the Borrower Representative in writing by an Issuing Bank; [provided](#) that any Issuing Bank will be permitted at any time to increase or reduce its Issuing Bank Sublimit upon providing five Business Days prior written notice thereof to the Administrative Agent and the Borrower Representative.

“[Joinder Agreement](#)” means a Joinder Agreement in substantially the form of [Exhibit E](#).

“[JPMCB](#)” means JPMorgan Chase Bank, N.A., a national banking association, in its individual capacity, and its successors.

“[LC Collateral Account](#)” has the meaning assigned to such term in [Section 2.06\(j\)](#).

“[LC Disbursement](#)” means any payment made by an Issuing Bank pursuant to a Letter of Credit.

“[LC Exposure](#)” means, at any time, the sum of the Commercial LC Exposure and the Standby LC Exposure at such time. The LC Exposure of any Revolving Lender at any time will be its Applicable Percentage of the aggregate LC Exposure at such time.

“[Lenders](#)” means the Persons listed on the Commitment Schedule and any other Person that has become a Lender hereunder pursuant to [Section 2.09](#) or an Assignment and Assumption or otherwise, other than any such Person that ceases to be a Lender hereunder pursuant to an Assignment and Assumption or otherwise. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender and the Issuing Bank.

“[Letter of Credit Agreement](#)” has the meaning assigned to such term in [Section 2.06\(b\)](#).

“[Letters of Credit](#)” means the letters of credit issued pursuant to this Agreement, and the term “[Letter of Credit](#)” means any one of them or each of them singularly, as the context may require.

“[LIBO Rate](#)” means, with respect to any Eurodollar Borrowing for any applicable Interest Period or for any CBFR Borrowing, LIBO Screen Rate at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; [provided](#) that, if the LIBO Screen Rate is not available at such time for such Interest Period (an “[Impacted Interest Period](#)”), then the LIBO Rate will be the Interpolated Rate, subject to [Section 2.14](#) in the event that the Administrative Agent concludes that it is not possible to determine such Interpolated Rate (which conclusion will be conclusive and binding absent manifest error). Notwithstanding the above, to the extent that “LIBO Rate” or “Adjusted LIBO Rate” is used in connection with a CBFR Borrowing, such rate will be determined as modified by the definition of Adjusted One Month LIBOR Rate.

“[LIBO Screen Rate](#)” means, for any day and time, with respect to any Eurodollar Borrowing for any Interest Period or for any CBFR Borrowing, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars) for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, 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 from time to time as selected by the Administrative Agent in its reasonable discretion); provided that if the LIBO Screen Rate as so determined would be less than zero, such rate will be deemed to be zero for the purposes of this Agreement.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge, or security interest (including a security interest as defined in section 17(1)(a) of the PPSA) in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease, or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset, and (c) in the case of securities, any purchase option, call, or similar right of a third party with respect to such securities.

“Loan Borrowing Option” has the meaning assigned to such term in the DDA Access Product Agreement.

“Loan Documents” means, collectively, this Agreement, any promissory notes issued pursuant to this Agreement, any Letter of Credit Agreement, the Collateral Documents, the Loan Guaranty, any Obligation Guaranty, and all other agreements, instruments, documents, and certificates identified in Section 4.01 executed and delivered to, or in favor of, the Administrative Agent or any Lender and including all other pledges, powers of attorney, consents, assignments, contracts, notices, letter of credit agreements, letter of credit applications, and any agreements between the Borrower Representative and the Issuing Bank regarding the Issuing Bank’s Issuing Bank Sublimit or the respective rights and obligations between the Borrower and the Issuing Bank in connection with the issuance by the Issuing Bank of Letters of Credit, and all other written matter whether heretofore, now, or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Administrative Agent or any Lender in connection with this Agreement or the transactions contemplated hereby. Any reference in this Agreement or any other Loan Document to a Loan Document will include all appendices, exhibits, or schedules thereto, and all amendments, restatements, supplements, or other modifications thereto, and will refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

“Loan Guarantor” means (a) each Borrower at any time party hereto with respect to the Secured Obligations of the other Borrowers and (b) any other Loan Party at any time party hereto that is not a Borrower.

“Loan Guaranty” means Article 10 of this Agreement.

“Loan Parties” means, collectively, the Borrowers, the Loan Guarantors, any other Person that becomes a party to this Agreement pursuant to a Joinder Agreement, and their respective successors and assigns, and the term “Loan Party” means any one of them or all of them individually, as the context may require.

“Loans” means the loans and advances made by the Lenders pursuant to this Agreement, including Swingline Loans, Overadvances, and Protective Advances.

“Margin Stock” means margin stock within the meaning of Regulation T, Regulation U, and Regulation X, as applicable.

“Material Adverse Effect” means a material adverse effect on (a) the business, operations, or financial condition, of the Loan Parties taken as a whole, (b) the ability of any Loan Party to perform any of its Obligations, (c) the Collateral, or the Administrative Agent’s Liens (on behalf of itself and other Secured Parties) on the Collateral, or the priority of such

Liens, or (d) the rights of, or benefits available to, the Administrative Agent, the Issuing Bank, or the Lenders under any of the Loan Documents.

“Material Indebtedness” means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, of any one or more of the Loan Parties in an outstanding principal amount exceeding \$10,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Loan Parties in respect of any Swap Agreement at any time will be the maximum aggregate amount (giving effect to any netting agreements) that such Loan Party would be required to pay if such Swap Agreement were terminated at such time.

“Maturity Date” means February 20, 2024 or any earlier date on which the Commitments are reduced to zero or otherwise terminated pursuant to the terms hereof.

“Maximum Rate” has the meaning assigned to such term in Section 9.17.

“Moody’s” means Moody’s Investors Service, Inc.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Income” means, for any Person (the “subject Person”) for any period, the consolidated net income (or loss), determined on a consolidated basis for the subject Person in accordance with GAAP; provided that the following will be excluded from the determination of Net Income (a) the income (or deficit) of any Person accrued prior to the date it becomes a subsidiary of the subject Person or is merged into or consolidated with the subject Person, (b) the income (or deficit) of any Person (other than a subsidiary of the subject Person) in which the subject Person has an ownership interest, except to the extent that any such income is actually received by the subject Person in the form of dividends or similar distributions, and (c) the undistributed earnings of any subsidiary of the subject Person to the extent that the declaration or payment of dividends or similar distributions by such subsidiary is not at the time permitted by the terms of any contractual obligation (other than under any Loan Document) or Requirement of Law applicable to such Subsidiary.

“Net Orderly Liquidation Value” means, with respect to Inventory of any Person, the orderly liquidation value thereof as determined in a manner acceptable to the Administrative Agent by an appraiser acceptable to the Administrative Agent, net of all costs of liquidation thereof.

“Net Proceeds” means, with respect to any event, (a) the cash proceeds received in respect of such event including (i) any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds, and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, minus (b) the sum of (i) all reasonable fees and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such event, (ii) in the case of a sale, transfer, or other disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event, and (iii) the amount of all taxes paid (or reasonably estimated to be payable) and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year and that are directly attributable to

such event (as determined reasonably and in good faith by a Financial Officer of the Borrower Representative).

“Non-Consenting Lender” has the meaning assigned to such term in Section 9.02(d).

“NYFRB” means the Federal Reserve Bank of New York.

“NYFRB Rate” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by the Administrative Agent; provided, further, that if any of the aforesaid rates as so determined would be less than zero, such rate will be deemed to be zero for purposes of this Agreement.

“NZ Security Agreement” means that certain General Security Deed, dated on or about the Effective Date, as such agreement may be amended, restated, or otherwise modified from time to time.

“Obligated Party” has the meaning assigned to such term in Section 10.02.

“Obligation Guaranty” means any Guarantee of all or any portion of the Secured Obligations executed and delivered to the Administrative Agent for the benefit of the Secured Parties by a guarantor that is not a Loan Party.

“Obligations” means all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities, and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership, or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of any of the Loan Parties to any of the Lenders, the Administrative Agent, the Issuing Bank, or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law, or otherwise, arising or incurred under this Agreement or any of the other Loan Documents or in respect of any of the Loans made or reimbursement or other obligations incurred or any of the Letters of Credit or other instruments at any time evidencing any thereof.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Off-Balance Sheet Liability” of a Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any indebtedness, liability, or obligation under any so-called “synthetic lease” transaction entered into by such Person, and (c) any indebtedness, liability, or obligation arising with respect to any other transaction that is the functional equivalent of or takes the place of borrowing but that does not constitute a liability on the balance sheet of such Person (other than operating leases).

“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 Taxes (other than a connection arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to, or enforced, any

Loan Document, or sold or assigned an interest in any Loan, Letter of Credit, or any Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing, or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement, or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19).

“Overadvance” has the meaning assigned to such term in Section 2.05(b).

“Overnight Bank Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings by U.S.-managed banking offices of depository institutions (as such composite rate are determined by the NYFRB as set forth on its public website from time to time) and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Paid in Full” or “Payment in Full” means, (a) the payment in full in cash of all outstanding Loans and LC Disbursements, together with accrued and unpaid interest thereon, (b) the termination, expiration, or cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Administrative Agent of a cash deposit, or at the discretion of the Administrative Agent a backup standby letter of credit satisfactory to the Administrative Agent and the Issuing Bank, in an amount equal to 105% of the LC Exposure as of the date of such payment), (c) the payment in full in cash of the accrued and unpaid fees, including the applicable Prepayment Fee, if any, (d) the payment in full in cash of all reimbursable expenses and other Secured Obligations (other than Unliquidated Obligations for which no claim has been made and other obligations expressly stated to survive such payment and termination of this Agreement), together with accrued and unpaid interest thereon, (e) the termination of all Commitments, and (f) the termination of the Swap Agreement Obligations and the Banking Services Obligations or entering into other arrangements satisfactory to the Secured Parties counterparties thereto.

“Parent” means, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

“Participant” has the meaning assigned to such term in Section 9.04(c).

“Participant Register” has the meaning assigned to such term in Section 9.04(c).

“Payment Condition” is deemed to be satisfied in connection with a Restricted Payment or Investment if:

(i) no Event of Default has occurred and is continuing or would result immediately after giving effect to such Restricted Payment or Investment; and

(ii) any one of the following circumstances then exist:

(1) no Credit Exposure is outstanding;

(2) if any Credit Exposure is outstanding, immediately after giving effect to such Restricted Payment or Investment, the Borrowers have Excess Availability calculated on a pro forma basis after giving effect to such Restricted Payment or Investment of not less than the greater of (A) 15.0% of the Aggregate Revolving Commitment or (B) \$6,000,000; or

(3) if any Credit Exposure is outstanding, (A) immediately after giving effect to such Restricted Payment or Investment, the Borrowers have Excess Availability calculated on a pro forma basis after giving effect to such Restricted Payment or Investment of not less than the greater of (y) 10.0% of the Aggregate Revolving Commitment or (z) \$4,000,000 and (B) the Fixed Charge Coverage Ratio of the Loan Parties calculated on a pro forma and consolidated basis for the immediately preceding twelve calendar months is not less than 1.10 to 1.00; and

with respect to clause (ii) and clause (iii) preceding, the Borrower Representative has delivered to the Administrative Agent a written certification with respect thereto and attaching calculations therefor, as applicable.

“**PBGC**” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“**Permitted Acquisition**” means any Acquisition by any Loan Party in a transaction that satisfies each of the following requirements:

(i) no Event of Default has occurred and is continuing or would result immediately after giving effect to such Restricted Payment or Investment;

(ii) such Acquisition is not a hostile or contested acquisition;

(iii) the business acquired in connection with such Acquisition is (i) located in the U.S., (ii) organized under applicable U.S. and state laws, and (iii) not engaged, directly or indirectly, in any line of business other than the businesses in which the Loan Parties are engaged on the Effective Date and any business activities that are substantially similar, related, or incidental thereto;

(iv) [reserved]

(v) as soon as available, but not less than 30 days prior to such Acquisition, the Borrower Representative has provided the Administrative Agent (i) notice of such Acquisition and (ii) a copy of all business and financial information reasonably requested by the Administrative Agent, including pro forma financial statements, statements of cash flow, and Availability projections;

(vi) if the Accounts and Inventory acquired in connection with such Acquisition are proposed to be included in the determination of the Borrowing Base, the Administrative Agent has conducted an audit and field examination of such Accounts and Inventory, the results of which must be satisfactory to the Administrative Agent in its Permitted Discretion;

(vii) the total cash consideration and Indebtedness assumed or incurred in connection with such Acquisition does not exceed \$10,000,000;

(viii) if such Acquisition is an acquisition of the Equity Interests of a Person, such Acquisition is structured so that the acquired Person becomes a Wholly-Owned Subsidiary of a Borrower and a Loan Party pursuant to the terms of this Agreement;

(ix) if such Acquisition is an acquisition of assets, such Acquisition is structured so that a Loan Party acquires such assets;

(x) if such Acquisition is an acquisition of Equity Interests, such Acquisition will not result in any violation of Regulation U;

(xi)if such Acquisition involves a merger or a consolidation involving a Loan Party, such Loan Party is the surviving entity;

(xii)no Loan Party, as a result of or in connection with any such Acquisition, assumes or incurs any direct or contingent liabilities (whether relating to environmental, tax, litigation, or other matters) that could have a Material Adverse Effect;

(xiii)in connection with an Acquisition of the Equity Interests of any Person, all Liens on property of such Person that constitute Collateral are terminated unless the Administrative Agent and the Lenders in their sole discretion consent otherwise, and in connection with an Acquisition of the assets of any Person, all Liens on such assets are terminated;

(xiv)[reserved]

(xv)[reserved]

(xvi)[reserved]

(xvii)all actions required to be taken with respect to any newly acquired or formed Wholly-Owned Subsidiary of a Loan Party required under Section 5.14 have been taken; and

(xviii)the Borrower Representative has delivered to the Administrative Agent the final executed material documentation relating to such Acquisition within 15 days following the consummation thereof.

“Permitted Discretion” means a determination made in good faith in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

“Permitted Encumbrances” means:

(i)Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 5.04;

(ii)carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s, and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in compliance with Section 5.04;

(iii)pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance, and other social security laws or regulations;

(iv)(i) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds, and other obligations of a like nature, in each case in the ordinary course of business and (ii) rights of offset of a credit card issuer or processor in the ordinary course of business;

(v)judgment Liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article 7; and

(vi)easements, zoning restrictions, rights-of-way, and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected

property or interfere with the ordinary conduct of business of any Borrower or any Subsidiary;

provided that the term “Permitted Encumbrances” does not include any Lien securing Indebtedness, except with respect to clause (d)(i) preceding.

“Permitted Holders” means any combination of one or more of (a) Tiger Global Investment Partners X, L.P., (b) Timothy Oliver Brown, and (c) Maveron Equity Partners V, L.P.

“Permitted Investments” means:

(i) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the U.S. (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the U.S.), in each case maturing within one year from the date of acquisition thereof;

(ii) investments in commercial paper maturing within one year from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody’s;

(iii) investments in certificates of deposit, bankers’ acceptances, and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the U.S. or any state thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000;

(iv) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) preceding and entered into with a financial institution satisfying the criteria described in clause (c) preceding;

(v) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody’s, and (iii) have portfolio assets of at least \$500,000,000; and

(vi) any other investments in cash, cash equivalents, or for which there is a ready and liquid marketplace (including, mutual funds and marketable securities) for buying and selling such investments and that are permitted pursuant to an investment policy approved by the board of directors of Allbirds and provided to the Administrative Agent.

“Permitted Liens” means Permitted Encumbrances and Liens permitted under Section 6.02.

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

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which any Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Plan Asset Regulations” means 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time.

“PPSA” means the New Zealand Personal Property Securities Act 1999.

“Prepayment Event” means:

- (i) during any Dominion Period, Disposition of any Collateral;
- (ii) during any Dominion Period, any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any Collateral; and
- (iii) the incurrence by any Loan Party of any Indebtedness, other than Indebtedness permitted under Section 6.01.

“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate will be effective from and including the date such change is publicly announced or quoted as being effective.

“Projections” has the meaning assigned to such term in Section 5.01(f).

“Protective Advance” has the meaning assigned to such term in Section 2.04.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Qualified Cash Balance” means, at any time, the aggregate collected balance in deposit accounts (as defined in the UCC) and securities accounts (as defined in Section 8-501 of the UCC) of the Borrowers maintained with the Administrative Agent that are designated by the Borrowers and the Administrative Agent to hold “qualified cash” and that are subject to a Deposit Account Control Agreement (as defined in the Security Agreement); provided that any such securities accounts only hold investments of cash and other Permitted Investments included in clause (a) through clause (e) of the definition thereof with maturities of less than 90 days from the date of acquisition.

“Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding \$10,000,000 at the time the relevant Loan Guaranty or grant of the relevant security interest becomes or would become effective with respect to such Swap Obligation or such other Person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Recipient” means, as applicable, (a) the Administrative Agent, (b) any Lender, and (c) any Issuing Bank, or any combination thereof (as the context requires).

“Refinance Indebtedness” has the meaning assigned to such term in Section 6.01(f).

“Register” has the meaning assigned to such term in Section 9.04(b).

“Regulation D” means Regulation D of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation T” means Regulation T of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation U” means Regulation U of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation X” means Regulation X of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, partners, members, trustees, employees, agents, administrators, managers, representatives, and advisors of such Person and such Person’s Affiliates.

“Release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing, or dumping of any substance into the environment.

“Report” means reports prepared by the Administrative Agent or another Person showing the results of appraisals, field examinations, or audits pertaining to the assets of the Loan Parties from information furnished by or on behalf of the Borrowers, after the Administrative Agent has exercised its rights of inspection pursuant to this Agreement, which Reports may be distributed to the Lenders by the Administrative Agent.

“Reporting Frequency Change Period” means any period occurring between (a) the date three Business Days after the earlier to occur of (i) any Event of Default or (ii) Availability being less than 12.5% of the Aggregate Revolving Commitment and (b) the date that for a period of 30 consecutive days Availability has been equal to or greater than 12.5% of the Aggregate Revolving Commitment and no Event of Default has been in existence.

“Required Lenders” means, subject to Section 2.20, at any time, Lenders having Credit Exposure and unused Commitments representing at least 51.0% of the sum of the Aggregate Credit Exposure and unused Commitments at such time; provided that, as long as there are only two Lenders, Required Lenders will mean both Lenders.

“Requirement of Law” means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation, and bylaws or operating, management, or partnership agreement, or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction, or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Reserves” means any and all reserves that the Administrative Agent deems necessary, in its Permitted Discretion, to maintain (including reserves for accrued and unpaid interest on the Secured Obligations, Banking Services Reserves, volatility reserves, reserves for rent at locations leased by any Loan Party and for consignee’s, warehousemen’s, and bailee’s charges, reserves for dilution of Accounts (including Credit Card Accounts), reserves for Inventory shrinkage, reserves for customs charges and shipping charges related to any Inventory in transit, reserves for Swap Agreement Obligations, reserves for uninsured losses of any Loan Party, reserves for uninsured, underinsured, un-indemnified or under-indemnified liabilities or potential liabilities with respect to any litigation, and reserves for taxes, fees, assessments, and other governmental charges) with respect to the Collateral or any Loan Party.

“**Responsible Officer**” means, with respect to any Loan Party, the president, Financial Officer, or other executive officer of such Loan Party.

“**Restricted Payment**” means any dividend or other distribution (whether in cash, securities, or other property) with respect to any Equity Interests of Allbirds or any Subsidiary, or any payment (whether in cash, securities, or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation, or termination of any such Equity Interests or any option, warrant, or other right to acquire any such Equity Interests.

“**REVLIBOR30 Rate**” means the London interbank offered rate administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars) for a one month period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, 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 from time to time as selected by the Administrative Agent in its reasonable discretion; in each case the “**REVLIBOR30 Screen Rate**”) at approximately 11:00 a.m., London time, two Business Days prior to the first Business Day of each month, adjusted monthly on the first Business Day of each month; provided that, (x) if the REVLIBOR30 Screen Rate is less than zero, such rate will be deemed to be zero for purposes of this Agreement and (y) if the REVLIBOR30 Screen Rate is not available at such time for such a period, then the REVLIBOR30 Rate will be equal to the CB Floating Rate.

“**Revolving Commitment**” means, with respect to each Lender, the commitment, if any, of such Lender to make Revolving Loans and to acquire participations in Letters of Credit, Overadvances, and Swingline Loans hereunder, expressed as an amount representing the maximum aggregate permitted amount of such Lender’s Revolving Exposure hereunder, as such commitment may be reduced or increased from time to time pursuant to (a) [Section 2.09](#) and (b) assignments by or to such Lender pursuant to [Section 9.04](#). The initial amount of each Lender’s Revolving Commitment is set forth on the Commitment Schedule, or in the Assignment and Assumption pursuant to which such Lender has assumed its Revolving Commitment or assigned a portion of its Revolving Commitment, as applicable.

“**Revolving Exposure**” means, with respect to any Lender at any time, the sum of (a) the outstanding principal amount of such Lender’s Revolving Loans, its LC Exposure, and its Swingline Exposure at such time, plus (b) an amount equal to its Applicable Percentage of the aggregate principal amount of Protective Advances outstanding at such time, plus (c) an amount equal to its Applicable Percentage of the aggregate principal amount of Overadvances outstanding at such time.

“**Revolving Lender**” means, as of any date of determination, a Lender with a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Exposure.

“**Revolving Loan**” means a Loan made pursuant to [Section 2.01\(a\)](#).

“**S&P**” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business.

“**Sale and Leaseback Transaction**” has the meaning assigned to such term in [Section 6.06](#).

“**Sanctioned Country**” means, at any time, a country, region, or territory that is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the United Nations Security Council, the European Union or any European Union member state, Her Majesty’s Treasury of the United Kingdom, or other relevant sanctions authority, (b) any Person operating, organized, or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in clause (a) or clause (b) preceding, or (d) any Person otherwise the subject of any Sanctions.

“Sanctions” means all economic or financial sanctions or trade embargoes imposed, administered, or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or (b) the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom, or other relevant sanctions authority.

“SEC” means the Securities and Exchange Commission of the U.S.

“Secured Obligations” means all Obligations, together with all (a) Banking Services Obligations and (b) Swap Agreement Obligations owing to one or more Lenders or their respective Affiliates; provided that the definition of “Secured Obligations” will not create any guarantee by any Guarantor of (or grant of security interest by any Guarantor to support, as applicable) any Excluded Swap Obligations of such Guarantor for purposes of determining any obligations of any Guarantor.

“Secured Parties” means (a) the Administrative Agent, (b) the Lenders, (c) each Issuing Bank, (d) each provider of Banking Services, to the extent the Banking Services Obligations in respect thereof constitute Secured Obligations, (e) each counterparty to any Swap Agreement, to the extent the obligations thereunder constitute Secured Obligations, (f) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document, and (g) the successors and assigns of each of the foregoing.

“Security Agreement” means that certain Pledge and Security Agreement (including any and all supplements thereto), dated as of the date hereof, among the Loan Parties and the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, and any other pledge or security agreement entered into, after the date of this Agreement by any other Loan Party (as required by this Agreement or any other Loan Document) or any other Person for the benefit of the Administrative Agent and the other Secured Parties, as the same may be amended, restated, supplemented, or otherwise modified from time to time.

“Settlement” has the meaning assigned to such term in Section 2.05(d).

“Settlement Date” has the meaning assigned to such term in Section 2.05(d).

“Standby LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all standby Letters of Credit outstanding at such time, plus (b) the aggregate amount of all LC Disbursements relating to standby Letters of Credit that have not yet been reimbursed by or on behalf of the Borrowers at such time. The Standby LC Exposure of any Revolving Lender at any time will be its Applicable Percentage of the aggregate Standby LC Exposure at such time.

“Statements” has the meaning assigned to such term in Section 2.18(f).

“Statutory Reserve Rate” means a fraction (expressed as a decimal), (a) the numerator of which is the number one and (b) the denominator of which is the number one, minus the

aggregate of the maximum reserve percentage (including any marginal, special, emergency, or supplemental reserves) established by the Federal Reserve Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D). Such reserve percentages include those imposed pursuant to Regulation D. Eurodollar Loans will be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions, or offsets that may be available from time to time to any Lender under Regulation D or any comparable regulation. The Statutory Reserve Rate will be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subordinated Indebtedness" of a Person means any Indebtedness of such Person the payment of which is subordinated to payment of the Secured Obligations to the written satisfaction of the Administrative Agent.

"subsidiary," means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association, or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association, or other entity (a) of which securities or other ownership interests representing more than 50.0% of the equity or more than 50.0% of the ordinary voting power or, in the case of a partnership, more than 50.0% of the general partnership interests are, as of such date, owned, controlled, or held or (b) that is, as of such date, otherwise Controlled, by the parent and/or one or more subsidiaries of the parent.

"Subsidiary," means any direct or indirect subsidiary of Allbirds or another Loan Party, as applicable.

"Swap Agreement" means any agreement with respect to any swap, forward, spot, future, credit default, or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value, or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees, or consultants of the Loan Parties or the Subsidiaries will be a Swap Agreement.

"Swap Agreement Obligations" means any and all obligations of the Loan Parties, whether absolute or contingent and howsoever and whensoever created, arising, evidenced, or acquired (including all renewals, extensions, and modifications thereof and substitutions therefor), under (a) any and all Swap Agreements permitted hereunder with a Lender or an Affiliate of a Lender and (b) any and all cancellations, buy backs, reversals, terminations, or assignments of any Swap Agreement transaction permitted hereunder with a Lender or an Affiliate of a Lender.

"Swap Obligation" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract, or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act or any rules or regulations promulgated thereunder.

"Swingline Exposure" means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Revolving Lender at any time will be its Applicable Percentage of the total Swingline Exposure at such time.

“Swingline Lender” means JPMCB, in its capacity as lender of Swingline Loans hereunder. Any consent required of the Administrative Agent or the Issuing Bank will be deemed to be required of the Swingline Lender and any consent given by JPMCB in its capacity as the Administrative Agent or the Issuing Bank will be deemed given by JPMCB in its capacity as the Swingline Lender.

“Swingline Loan” has the meaning assigned to such term in Section 2.05(a).

“Target Balance” has the meaning assigned to such term in the DDA Access Product Agreement.

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

“Transactions” means the execution, delivery, and performance by the Loan Parties of this Agreement and the other Loan Documents, the borrowing of Loans and other credit extensions, the use of the proceeds thereof, and the issuance of Letters of Credit hereunder.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the CBFR.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of California or in any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

“Unfinanced Capital Expenditures” means, for any period, Capital Expenditures made during such period that are not financed from the proceeds of any Indebtedness (other than the Revolving Loans; it being understood and agreed that, to the extent any Capital Expenditures are financed with Revolving Loans, such Capital Expenditures will be deemed Unfinanced Capital Expenditures); provided that, with respect to the Loan Parties, Unfinanced Capital Expenditures will not include any Capital Expenditures made prior to January 1, 2020.

“Unliquidated Obligations” means, at any time, any Secured Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Secured Obligation that is (a) an obligation to reimburse a bank for drawings not yet made under a letter of credit issued by it, (b) any other obligation (including any guarantee) that is contingent in nature at such time, or (c) an obligation to provide collateral to secure any of the foregoing types of obligations.

“U.S.” means the United States of America.

“U.S. Person” means a “United States person” within the meaning of Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 2.17(f)(ii)(B)(3).

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

Section 1.0b Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”), by Type (e.g., a “Eurodollar Loan”), or by Class and Type (e.g., a “Eurodollar Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”), by Type (e.g., a “Eurodollar Borrowing”), or by Class and Type (e.g., a “Eurodollar Revolving Borrowing”).

Section 1.0c Terms Generally. The definitions of terms herein will apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun includes the corresponding masculine, feminine, and neuter forms. The words “include”, “includes” and “including” will be deemed to be followed by the phrase “without limitation”. The word “law” will be construed as referring to all statutes, rules, regulations, codes, and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply) and all judgments, orders, and decrees of all Governmental Authorities. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein will be construed as referring to such agreement, instrument, or other document as from time to time amended, restated, supplemented, or otherwise modified (subject to any restrictions on such amendments, restatements, supplements, or modifications set forth herein), (b) any definition of or reference to any statute, rule, or regulation will be construed as referring thereto as from time to time amended, supplemented, or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person will be construed to include such Person’s successors and assigns (subject to any restrictions on assignments set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that has succeeded to any or all functions thereof, (d) the words “herein”, “hereof”, and “hereunder”, and words of similar import, will be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits, and Schedules will be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (f) any reference in any definition to the phrase “at any time” or “for any period” will refer to the same time or period for all calculations or determinations within such definition, and (g) the words “asset” and “property” will 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.

Section 1.0d Accounting Terms; GAAP.

(i) Except as otherwise expressly provided herein, all terms of an accounting or financial nature will be construed in accordance with GAAP, as in effect from time to time; provided that, if after the date hereof the Loan Parties migrate to IFRS or there occurs any change in GAAP or in the application thereof on the operation of any provision hereof and the Borrower Representative notifies the Administrative Agent that the Borrowers request an amendment to any provision hereof to eliminate the effect of such migration to IFRS or change in GAAP or in the application thereof (or if the Administrative Agent notifies the Borrower Representative that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such migration to IFRS or change in GAAP or in the application thereof, then such provision will be interpreted on the basis of GAAP as

in effect and applied immediately before such migration or change has become effective until such notice has been withdrawn or such provision amended in accordance herewith.

(ii) Notwithstanding anything to the contrary contained in Section 1.04(a) or in the definition of “Capital Lease Obligations,” in the event of an accounting change requiring all leases to be capitalized, only those leases (assuming for purposes hereof that such leases were in existence on the date hereof) that would constitute capital leases in conformity with GAAP on the date hereof will be considered capital leases, and all calculations and deliverables under this Agreement or any other Loan Document will be made or delivered, as applicable, in accordance therewith.

Section 1.0e Interest Rates; LIBOR Notifications. The interest rate on Eurodollar Loans is determined by reference to the LIBO Rate, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the “IBA”) for purposes of the IBA setting the London interbank offered rate. As a result, it is possible that commencing in 2022, the London interbank offered rate may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on Eurodollar Loans. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of the London interbank offered rate. In the event that the London interbank offered rate is no longer available or in certain other circumstances as set forth in Section 2.14(c), such Section 2.14(c) provides a mechanism for determining an alternative rate of interest. The Administrative Agent will notify the Borrower Representative, pursuant to Section 2.14, in advance of any change to the reference rate upon which the interest rate on Eurodollar Loans is based. However, the Administrative Agent does not warrant or accept any responsibility for, and will not have any liability with respect to, the administration, submission, or any other matter related to the London interbank offered rate or other rates in the definition of “LIBO Rate” or with respect to any alternative or successor rate thereto, or replacement rate thereof, including, without limitation, whether the composition or characteristics of any such alternative, successor, or replacement reference rate, as it may or may not be adjusted pursuant to Section 2.14(c), will be similar to, or produce the same value or economic equivalence of, the LIBO Rate or have the same volume or liquidity as did the London interbank offered rate prior to its discontinuance or unavailability.

Section 1.0f Status of Obligations. In the event that any Loan Party at any time issues or has outstanding any Subordinated Indebtedness, such Loan Party will take, and will cause each other Loan Party to take, all such actions as are necessary to cause the Secured Obligations to constitute senior indebtedness (however denominated) in respect of such Subordinated Indebtedness and to enable the Administrative Agent and the Lenders to have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness. Without limiting the foregoing, the Secured Obligations are hereby designated as “senior indebtedness” and as “designated senior indebtedness” and words of similar import under and in respect of any indenture or other agreement or instrument under which such Subordinated Indebtedness is outstanding and are further given all such other designations as are required under the terms of any such Subordinated Indebtedness in order that the Lenders may have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness.

ARTICLE 2

The Credits

Section 1.0a Commitments. Subject to the terms and conditions set forth herein, each Lender severally (and not jointly) agrees to make Revolving Loans in dollars to the Borrowers from time to time during the Availability Period in an aggregate principal amount that will not result in (a) such Lender's Revolving Exposure exceeding such Lender's Revolving Commitment or (b) the Aggregate Revolving Exposure exceeding the lesser of (i) the Aggregate Revolving Commitment, minus Reserves or (ii) the Borrowing Base, subject to the Administrative Agent's authority, in its sole discretion, to make Protective Advances and Overadvances pursuant to the terms of Section 2.04 and Section 2.05. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay, and reborrow Revolving Loans.

Section 1.0b Loans and Borrowings.

(i) Each Loan (other than a Swingline Loan) will be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. The failure of any Lender to make any Loan required to be made by it will not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender will be responsible for any other Lender's failure to make Loans as required. Any Protective Advance, any Overadvance, and any Swingline Loan will be made in accordance with the procedures set forth in Section 2.04 and Section 2.05.

(ii) Subject to Section 2.14, each Revolving Borrowing will be comprised entirely of CBFR Loans or Eurodollar Loans as the Borrower Representative may request in accordance herewith, provided that all Borrowings made on the Effective Date must be made as CBFR Borrowings but may be converted into Eurodollar Borrowings in accordance with Section 2.08. Each Swingline Loan will be a CBFR Loan. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan (and in the case of an Affiliate, the provisions of Section 2.14, Section 2.15, Section 2.16, and Section 2.17 will apply to such Affiliate to the same extent as to such Lender); provided that any exercise of such option will not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement.

(iii) At the commencement of each Interest Period for any Eurodollar Revolving Borrowing, such Borrowing must be in an aggregate amount that is an integral multiple of \$500,000 and not less than \$1,000,000. CBFR Revolving Borrowings may be in any amount. Revolving Borrowings of more than one Type and Class may be outstanding at the same time; provided that there will not at any time be more than a total of five Eurodollar Borrowings outstanding.

(iv) Notwithstanding any other provision of this Agreement, the Borrower Representative will not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

Section 1.0c Requests for Revolving Borrowings. To request a Revolving Borrowing, the Borrower Representative must notify the Administrative Agent of such request either in writing (delivered by hand or fax) by delivering a Borrowing Request signed by a Responsible Officer of the Borrower Representative or through Electronic System if arrangements for doing so have been approved by the Administrative Agent (or if an Extenuating Circumstance exists,

by telephone) not later than (y) in the case of a Eurodollar Borrowing, 10:00 a.m., Chicago time, three Business Days before the date of the proposed Borrowing or (z) in the case of a CBFR Borrowing, 12:00 noon, Chicago time, on the date of the proposed Borrowing; provided that any such notice of a CBFR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e) may be given not later than 9:00 a.m., Chicago time, on the date of such proposed Borrowing. Each such Borrowing Request will be irrevocable and each such telephonic Borrowing Request, if permitted, must be confirmed immediately upon the cessation of the Extenuating Circumstance by hand delivery, facsimile, or a communication through Electronic System to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by a Responsible Officer of the Borrower Representative. Each such written (or if permitted, telephonic) Borrowing Request must specify the following information:

- (i) the name of the applicable Borrower(s);
- (ii) the aggregate amount of the requested Revolving Borrowing and a breakdown of the separate wires comprising such Borrowing;
- (iii) the date of such Revolving Borrowing, which must be a Business Day;
- (iv) whether such Revolving Borrowing is to be a CBFR Borrowing or a Eurodollar Borrowing; and
- (v) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which must be a period contemplated by the definition of the term "Interest Period."

If no election as to the Type of Revolving Borrowing is specified, then the requested Revolving Borrowing will be a CBFR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Revolving Borrowing, then the applicable Borrower(s) will be deemed to have selected an Interest Period of one month duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent will advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

Section 1.0d Protective Advances.

(i) Subject to the limitations set forth below, the Administrative Agent is authorized by the Borrowers and the Lenders, from time to time in the Administrative Agent's sole discretion (but will have absolutely no obligation to), to make Loans to the Borrowers, on behalf of all Lenders, that the Administrative Agent, in its Permitted Discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations, or (iii) to pay any other amount chargeable to or required to be paid by the Borrowers pursuant to the terms of this Agreement, including payments of reimbursable expenses (including costs, fees, and expenses as described in Section 9.03) and other sums payable under the Loan Documents (any of such Loans are herein referred to as "Protective Advances"); provided that the aggregate amount of Protective Advances outstanding at any time will not at any time exceed 10.0% of the Revolving Commitment; provided, further, that the Aggregate Revolving Exposure after giving effect to the Protective Advances being made will not exceed the Aggregate Revolving Commitment. Protective Advances may be made even if the conditions precedent set forth in Section 4.02 have not been satisfied. The Protective Advances will be secured by the Liens in favor of the Administrative Agent in and to the Collateral and will constitute Obligations hereunder. All Protective Advances will be CBFR Borrowings. The making

of a Protective Advance on any one occasion will not obligate the Administrative Agent to make any Protective Advance on any other occasion. The Administrative Agent's authorization to make Protective Advances may be revoked at any time by the Required Lenders. Any such revocation must be in writing and will become effective prospectively upon the Administrative Agent's receipt thereof. At any time that there is sufficient Availability and the conditions precedent set forth in Section 4.02 have been satisfied, the Administrative Agent may request the Revolving Lenders to make a Revolving Loan to repay a Protective Advance. At any other time the Administrative Agent may require the Lenders to fund their risk participations described in Section 2.04(b).

(ii) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default), each Lender will be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent, without recourse or warranty, an undivided interest and participation in such Protective Advance in proportion to such Lender's Applicable Percentage. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Advance purchased hereunder, the Administrative Agent will promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Protective Advance.

Section 1.0e Swingline Loans and Overadvances.

(i) The Administrative Agent, the Swingline Lender, and the Revolving Lenders agree that in order to facilitate the administration of this Agreement and the other Loan Documents, promptly after the Borrower Representative requests a CBFR Borrowing, at any time there are two or more Revolving Lenders, the Swingline Lender may elect to have the terms of this Section 2.05(a) apply to such Borrowing Request by advancing, on behalf of the Revolving Lenders and in the amount requested, same day funds to the Borrowers, on the date of the applicable Borrowing to the Funding Account(s) (each such Loan made solely by the Swingline Lender pursuant to this Section 2.05(a) is referred to in this Agreement as a "Swingline Loan"), with settlement among them as to the Swingline Loans to take place on a periodic basis as set forth in Section 2.05(d). Each Swingline Loan will be subject to all the terms and conditions applicable to other CBFR Loans funded by the Revolving Lenders, except that all payments thereon will be payable to the Swingline Lender solely for its own account. In addition, the Borrowers hereby authorize the Swingline Lender to, and the Swingline Lender may, subject to the terms and conditions set forth herein (but without any further written notice required), not later than 1:00 p.m., Chicago time, on each Business Day, make available to the Borrowers by means of a credit to the Funding Account(s), the proceeds of a Swingline Loan to the extent necessary to pay items to be drawn on any Controlled Disbursement Account that Business Day; provided that, if on any Business Day there is insufficient borrowing capacity to permit the Swingline Lender to make available to the Borrowers a Swingline Loan in the amount necessary to pay all items to be so drawn on any such Controlled Disbursement Account on such Business Day, then the Borrowers will be deemed to have requested a CBFR Borrowing pursuant to Section 2.03 in the amount of such deficiency to be made on such Business Day. In addition, the Borrowers hereby authorize the Swingline Lender to, and the Swingline Lender will, subject to the terms and conditions set forth herein (but without any further written notice required), to the extent that from time to time on any Business Day funds are required under the DDA Access Product to reach the Target Balance (a "Deficiency Funding Date"), make available to the applicable Borrower the proceeds of a Swingline Loan in the amount of such deficiency up to the Target Balance, by means of a credit to the applicable Funding Account on or before the start of business on the next succeeding Business Day, and such Swingline Loan will be

deemed made on such Deficiency Funding Date. The aggregate amount of Swingline Loans outstanding at any time will not exceed 10.0% of the Revolving Commitment. The Swingline Lender will not make any Swingline Loan if the requested Swingline Loan exceeds Availability (before or after giving effect to such Swingline Loan). All Swingline Loans will be CBFR Borrowings.

(ii) Any provision of this Agreement to the contrary notwithstanding, at the request of the Borrower Representative, the Administrative Agent may in its sole discretion (but with absolutely no obligation) on behalf of the Revolving Lenders, (y) make Revolving Loans to the Borrowers in amounts that exceed Availability (any such excess Revolving Loans are herein referred to collectively as "Overadvances") or (z) deem the amount of Revolving Loans outstanding to the Borrowers that are in excess of Availability to be Overadvances; provided that no Overadvance will result in a Default due to the Borrowers' failure to comply with Section 2.01 for so long as such Overadvance remains outstanding in accordance with the terms of this clause (b), but solely with respect to the amount of such Overadvance. In addition, Overadvances may be made even if the condition precedent set forth in Section 4.02(c) has not been satisfied. All Overadvances will constitute CBFR Borrowings. The making of an Overadvance on any one occasion will not obligate the Administrative Agent to make any Overadvance on any other occasion. The authority of the Administrative Agent to make Overadvances is limited to an aggregate amount not to exceed 10.0% of the Revolving Commitment at any time, no Overadvance may remain outstanding for more than 30 days, and no Overadvance will cause any Revolving Lender's Revolving Exposure to exceed its Revolving Commitment; provided that, the Required Lenders may at any time revoke the Administrative Agent's authorization to make Overadvances. Any such revocation must be in writing and will become effective prospectively upon the Administrative Agent's receipt thereof.

(iii) Upon the making of a Swingline Loan or an Overadvance (whether before or after the occurrence of a Default and regardless of whether a Settlement has been requested with respect to such Swingline Loan or Overadvance), each Revolving Lender will be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Swingline Lender or the Administrative Agent, as the case may be, without recourse or warranty, an undivided interest and participation in such Swingline Loan or Overadvance in proportion to its Applicable Percentage of the Aggregate Revolving Commitment. The Swingline Lender or the Administrative Agent may, at any time, require the Revolving Lenders to fund their participations. From and after the date, if any, on which any Revolving Lender is required to fund its participation in any Swingline Loan or Overadvance purchased hereunder, the Administrative Agent will promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Swingline Loan or Overadvance.

(iv) The Administrative Agent, on behalf of the Swingline Lender, will request settlement (a "Settlement") with the Revolving Lenders on at least a weekly basis or on any date that the Administrative Agent elects, by notifying the Revolving Lenders of such requested Settlement by facsimile, telephone, or e-mail no later than 12:00 noon Chicago time on the date of such requested Settlement (the "Settlement Date"). Each Revolving Lender (other than the Swingline Lender, in the case of the Swingline Loans) will transfer the amount of such Revolving Lender's Applicable Percentage of the outstanding principal amount of the applicable Loan with respect to which Settlement is requested to the Administrative Agent, to such account of the Administrative Agent as the Administrative Agent may designate, not later than 2:00 p.m., Chicago time, on such Settlement Date. Settlements may occur during the existence of a Default and whether or not the applicable conditions precedent set forth in Section 4.02 have then been satisfied.

Such amounts transferred to the Administrative Agent will be applied against the amounts of the Swingline Lender's Swingline Loans and, together with the Swingline Lender's Applicable Percentage of such Swingline Loan, will constitute Revolving Loans of such Revolving Lenders, respectively. If any such amount is not transferred to the Administrative Agent by any Revolving Lender on such Settlement Date, the Swingline Lender will be entitled to recover from such Lender on demand such amount, together with interest thereon, as specified in Section 2.07.

Section 1.0f Letters of Credit.

(i)General. Subject to the terms and conditions set forth herein, the Borrower Representative may request the issuance of Letters of Credit for its own account or for the account of another Loan Party denominated in dollars as the applicant thereof for the support of its or its Subsidiaries' obligations, in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any Letter of Credit Agreement, the terms and conditions of this Agreement will control. Notwithstanding anything herein to the contrary, the Issuing Bank will have no obligation hereunder to issue, and will not issue, any Letter of Credit (i) the proceeds of which would be made available to any Person (A) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is the subject of any Sanctions or (B) in any manner that would result in a violation of any Sanctions by any party to this Agreement, (ii) if any order, judgment, or decree of any Governmental Authority or arbitrator by its terms purports to enjoin or restrain the Issuing Bank from issuing such Letter of Credit, or any Requirement of Law relating to the Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank prohibits, or requests that the Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or imposes upon the Issuing Bank with respect to such Letter of Credit any restriction, reserve, or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or imposes upon the Issuing Bank any unreimbursed loss, cost, or expense that was not applicable on the Effective Date and that the Issuing Bank in good faith deems material to it, or (iii) if the issuance of such Letter of Credit would violate one or more policies of the Issuing Bank applicable to letters of credit generally; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements, or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements, or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the U.S. or foreign regulatory authorities, in each case pursuant to Basel III, will in each case be deemed not to be in effect on the Effective Date for purposes of clause (i) preceding, regardless of the date enacted, adopted, issued, or implemented.

(ii)Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal, or extension of an outstanding Letter of Credit), the Borrower Representative must deliver by hand or facsimile (or transmit through Electronic System, if arrangements for doing so have been approved by the Issuing Bank) to the Issuing Bank and the Administrative Agent (reasonably in advance of, but in any event no less than three Business Days prior to the requested date of issuance, amendment, renewal, or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed, or extended, and specifying the date of issuance, amendment, renewal, or extension (that must be a Business Day), the date on which such Letter of Credit is to expire (that must

comply with Section 2.06(c)), the amount of such Letter of Credit, the name and address of the beneficiary thereof, and such other information as is necessary to prepare, amend, renew, or extend such Letter of Credit. In addition, as a condition to any such Letter of Credit issuance, the applicable Borrower must have entered into a continuing agreement (or other letter of credit agreement) for the issuance of letters of credit and/or must submit a letter of credit application, in each case as required by the Issuing Bank and using such bank's standard form (each, a "Letter of Credit Agreement"). A Letter of Credit will be issued, amended, renewed, or extended only if (and upon issuance, amendment, renewal, or extension of each Letter of Credit the Borrowers will be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal, or extension (i) the aggregate LC Exposure does not exceed \$20,000,000, (ii) the aggregate Standby LC Exposure does not exceed \$20,000,000, (iii) the aggregate Commercial LC Exposure does not exceed \$20,000,000, (iv) no Revolving Lender's Revolving Exposure exceeds its Revolving Commitment, and (v) the Aggregate Revolving Exposure does not exceed the lesser of (A) the Aggregate Revolving Commitment, minus Reserves or (B) the Borrowing Base. Notwithstanding the foregoing or anything to the contrary contained herein, no Issuing Bank will be obligated to issue or modify any Letter of Credit if, immediately after giving effect thereto, the outstanding LC Exposure in respect of all Letters of Credit issued by such Person and its Affiliates would exceed such Issuing Bank's Issuing Bank Sublimit. Without limiting the foregoing and without affecting the limitations contained herein, it is understood and agreed that the Borrower Representative may from time to time request that an Issuing Bank issue Letters of Credit in excess of its individual Issuing Bank Sublimit in effect at the time of such request, and each Issuing Bank agrees to consider any such request in good faith. Any Letter of Credit so issued by an Issuing Bank in excess of its individual Issuing Bank Sublimit then in effect will nonetheless constitute a Letter of Credit for all purposes of this Agreement, and will not affect the Issuing Bank Sublimit of any other Issuing Bank, subject to the limitations on the aggregate LC Exposure set forth in clause (i) of this Section 2.06(b).

(iii)Expiration Date. Each Letter of Credit will expire (or be subject to termination or non-renewal by notice from the Issuing Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any renewal or extension thereof, including, without limitation, any automatic renewal provision, one year after such renewal or extension) or (ii) the date that is five Business Days prior to the Maturity Date.

(iv)Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank or the Revolving Lenders, the Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by the Borrowers on the date due as provided in Section 2.06(e), or of any reimbursement payment required to be refunded to the Borrowers for any reason. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this clause (d) in respect of Letters of Credit is absolute and unconditional and will not be affected by any circumstance whatsoever, including any amendment, renewal, or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment will be made without any offset, abatement, withholding, or reduction whatsoever.

(v) Reimbursement. If the Issuing Bank makes any LC Disbursement in respect of a Letter of Credit, the Borrowers will reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 11:00 a.m., Chicago time, on (i) the Business Day that the Borrower Representative receives notice of such LC Disbursement, if such notice is received prior to 9:00 a.m., Chicago time, on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower Representative receives such notice, if such notice is received after 9:00 a.m., Chicago time, on the day of receipt; provided that the Borrowers may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or Section 2.05 that such payment be financed with a CBFR Revolving Borrowing or a Swingline Loan in an equivalent amount and, to the extent so financed, the Borrowers' obligation to make such payment will be discharged and replaced by the resulting CBFR Revolving Borrowing or Swingline Loan. If the Borrowers fail to make such payment when due, the Administrative Agent will notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the Borrowers in respect thereof, and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Revolving Lender will pay to the Administrative Agent such Lender's Applicable Percentage of the payment then due from the Borrowers, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 will apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent will promptly pay to the Issuing Bank the amounts so received by the Administrative Agent from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrowers pursuant to this clause (e), the Administrative Agent will distribute such payment to the Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this clause (e) to reimburse the Issuing Bank, then to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Revolving Lender pursuant to this clause (e) to reimburse the Issuing Bank for any LC Disbursement (other than the funding of CBFR Revolving Loans or a Swingline Loan as contemplated above) will not constitute a Loan and will not relieve the Borrowers of their obligation to reimburse such LC Disbursement.

(vi) Obligations Absolute. The Borrowers' joint and several obligation to reimburse LC Disbursements as provided in Section 2.06(e) will be absolute, unconditional, and irrevocable, and will be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, any Letter of Credit Agreement, or this Agreement, or any term or provision therein or herein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent, or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) any payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrowers' obligations hereunder. None of the Administrative Agent, the Revolving Lenders, the Issuing Bank, or any of their Related Parties, will have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss, or delay in transmission or delivery of any draft, notice, or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, or any consequence arising from causes beyond the control of the Issuing Bank; provided that, the foregoing will not be construed to excuse the Issuing Bank from liability to the Borrowers to the extent of any direct damages (as

opposed to special, indirect, consequential, or punitive damages, claims in respect of which are hereby waived by the Borrowers to the extent permitted by applicable law) suffered by any Borrower that are caused by the Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Issuing Bank (as finally determined by a court of competent jurisdiction), the Issuing Bank will be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented that appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(vii)Disbursement Procedures. The Issuing Bank will, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank will promptly notify the Administrative Agent and the applicable Borrower by telephone (confirmed by fax or through Electronic Systems) of such demand for payment and whether the Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice will not relieve the Borrowers of their obligation to reimburse the Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement.

(viii)Interim Interest. If the Issuing Bank makes any LC Disbursement, then, unless the Borrowers reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof will bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrowers reimburse such LC Disbursement, at the rate per annum then applicable to CBFR Revolving Loans and such interest will be payable on the date when such reimbursement is due; provided that, if the Borrowers fail to reimburse such LC Disbursement when due pursuant to Section 2.06(e), then Section 2.13(d) will apply. Interest accrued pursuant to this clause will be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to Section 2.06(e) to reimburse the Issuing Bank will be for the account of such Lender to the extent of such payment.

(ix)Replacement of the Issuing Bank.

(1) The Issuing Bank may be replaced at any time by written agreement among the Borrower Representative, the Administrative Agent, the replaced Issuing Bank, and the successor Issuing Bank. The Administrative Agent will notify the Revolving Lenders of any such replacement of the Issuing Bank. At the time any such replacement becomes effective, the Borrowers will pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank will have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" will be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context requires. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank will remain a party hereto and will continue to have all the rights and obligations of an Issuing Bank under this

Agreement with respect to Letters of Credit then outstanding and issued by it prior to such replacement, but will not be required to issue additional Letters of Credit.

(2) Subject to the appointment and acceptance of a successor Issuing Bank, the Issuing Bank may resign as an Issuing Bank at any time upon 30 days prior written notice to the Administrative Agent, the Borrower Representative, and the Lenders, in which case, such Issuing Bank will be replaced in accordance with this Section.

(x)Cash Collateralization. If any Event of Default occurs and is continuing, on the Business Day that the Borrower Representative receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Lenders with LC Exposure representing greater than 50.0% of the aggregate LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Borrowers must deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders (the "LC Collateral Account"), an amount in cash equal to 105% of the amount of the LC Exposure as of such date, plus accrued and unpaid interest thereon; provided that, the obligation to deposit such cash collateral will become effective immediately, and such deposit will become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to any Borrower described in clause (h) or clause (i) of Article 7. Such Borrower also will deposit cash collateral in accordance with this clause as and to the extent required by Section 2.10(b), Section 2.11(b), or Section 2.20. Each such deposit will be held by the Administrative Agent as collateral for the payment and performance of the Secured Obligations. The Administrative Agent will have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and the Borrowers hereby grant the Administrative Agent a security interest in the LC Collateral Account and all money or other assets on deposit therein or credited thereto. Other than any interest earned on the investment of such deposits, which investments will be made at the option and sole discretion of the Administrative Agent and at the Borrowers' risk and expense, such deposits will not bear interest. Interest or profits, if any, on such investments will accumulate in the LC Collateral Account. Moneys in the LC Collateral Account will be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, will be held for the satisfaction of the reimbursement obligations of the Borrowers for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Lenders with LC Exposure representing greater than 50.0% of the aggregate LC Exposure), be applied to satisfy other Secured Obligations. If the Borrowers are required to provide an amount of cash collateral hereunder as a result of the occurrence of one or more Events of Default, such amount (to the extent not applied as aforesaid) will be returned to the Borrowers within three Business Days after all such Events of Default have been waived (as confirmed in writing by the Administrative Agent).

(xi)Issuing Bank Reports to the Administrative Agent. Unless otherwise agreed by the Administrative Agent, each Issuing Bank will, in addition to its notification obligations set forth elsewhere in this Section, report in writing to the Administrative Agent (i) periodic activity (for such period or recurrent periods as may be requested by the Administrative Agent) in respect of Letters of Credit issued by such Issuing Bank, including all issuances, extensions, amendments, and renewals, all expirations and cancellations and all disbursements and reimbursements, (ii) reasonably prior to the time that such Issuing Bank issues, amends, renews, or extends any Letter of Credit, the date of such issuance, amendment, renewal, or extension, and the stated amount of the Letters of Credit issued, amended, renewed, or extended by it and outstanding after giving effect to such issuance, amendment, renewal, or extension (and whether the amounts thereof

have changed), (iii) on each Business Day on which such Issuing Bank makes any LC Disbursement, the date and amount of such LC Disbursement, (iv) on any Business Day on which any Borrower fails to reimburse an LC Disbursement required to be reimbursed to such Issuing Bank on such day, the date of such failure and the amount of such LC Disbursement, and (v) on any other Business Day, such other information as the Administrative Agent may reasonably request as to the Letters of Credit issued by such Issuing Bank.

(xii) **LC Exposure Determination.** For all purposes of this Agreement, the amount of a Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof will be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at the time of determination.

(xiii) **Letters of Credit Issued for Account of Subsidiaries.** Notwithstanding that a Letter of Credit issued or outstanding hereunder supports any obligations of, or is for the account of, a Subsidiary, or states that a Subsidiary is the "account party," "applicant," "customer," "instructing party", or the like of or for such Letter of Credit, and without derogating from any rights of the Issuing Bank (whether arising by contract, at law, in equity, or otherwise) against such Subsidiary in respect of such Letter of Credit, the Borrowers (i) will reimburse, indemnify, and compensate the Issuing Bank hereunder for such Letter of Credit (including to reimburse any and all drawings thereunder) as if such Letter of Credit had been issued solely for the account of a Borrower and (ii) irrevocably waive any and all defenses that might otherwise be available to any of them as a guarantor or surety of any or all of the obligations of such Subsidiary in respect of such Letter of Credit. Each Borrower hereby acknowledges that the issuance of such Letters of Credit for any of their Subsidiaries inures to the benefit of the Borrowers, and that each Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

Section 1.0g Funding of Borrowings.

(i) Each Lender will make each Loan to be made by such Lender hereunder on the proposed date thereof solely by wire transfer of immediately available funds by 2:00 p.m., Chicago time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender's Applicable Percentage; provided that, Swingline Loans will be made as provided in Section 2.05. The Administrative Agent will make such Loans available to the Borrower Representative by promptly crediting the funds so received in the aforesaid account of the Administrative Agent to the Funding Account(s); provided that CBR Revolving Loans made to finance the reimbursement of (i) an LC Disbursement as provided in Section 2.06(e) will be remitted by the Administrative Agent to the Issuing Bank and (ii) a Protective Advance or an Overadvance will be retained by the Administrative Agent.

(ii) Unless the Administrative Agent has received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.07(a) and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers each severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the applicable Borrower to but excluding the date of payment to the Administrative Agent, at

(i) in the case of such Lender, the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or
(ii) in the case of the Borrowers, the interest rate applicable to CBFR Loans. If such Lender pays such amount to the Administrative Agent, then such amount will constitute such Lender's Loan included in such Borrowing, provided that any interest received from a Borrower by the Administrative Agent during the period beginning when the Administrative Agent funded the Borrowing until such Lender pays such amount will be solely for the account of the Administrative Agent.

Section 1.0h Interest Elections.

(i) Each Borrowing initially will be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, will have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower Representative may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower Representative may elect different options with respect to different portions of the affected Borrowing, in which case each such portion will be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion will be considered a separate Borrowing. This Section will not apply to Swingline Borrowings, Overadvances, or Protective Advances, which may not be converted or continued.

(ii) To make an election pursuant to this Section, the Borrower Representative must notify the Administrative Agent of such election either in writing (delivered by hand or fax) by delivering an Interest Election Request signed by a Responsible Officer of the Borrower Representative or through Electronic System if arrangements for doing so have been approved by the Administrative Agent (or if an Extenuating Circumstance exists, by telephone) by the time that a Borrowing Request would be required under Section 2.03 if the Borrowers were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request will be irrevocable and each such telephonic Interest Election Request, if permitted, must be confirmed immediately upon the cessation of the Extenuating Circumstance by hand delivery, Electronic System, or fax to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by a Responsible Officer of the Borrower Representative.

(iii) Each written (or if permitted, telephonic) Interest Election Request (including requests submitted through Electronic System) will specify the following information in compliance with Section 2.02:

- (1) the name of the applicable Borrower and the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clause (iii) and clause (iv) following will be specified for each resulting Borrowing);
- (2) the effective date of the election made pursuant to such Interest Election Request, which must be a Business Day;
- (3) whether the resulting Borrowing is to be a CBFR Borrowing or a Eurodollar Borrowing; and

(4) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which must a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrowers will be deemed to have selected an Interest Period of one month duration.

(iv) Promptly following receipt of an Interest Election Request, the Administrative Agent will advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(v) If the Borrower Representative fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing will be converted to a CBFR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower Representative, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing will be converted to a CBFR Borrowing at the end of the Interest Period applicable thereto.

Section 1.0i Termination and Reduction of Commitments; Increase in Revolving Commitments.

(i) Unless previously terminated, the Revolving Commitments will terminate on the Maturity Date.

(ii) The Borrowers may at any time terminate the Revolving Commitments upon Payment in Full of the Secured Obligations.

(iii) The Borrowers may from time to time reduce the Revolving Commitments; provided that (i) each reduction of the Revolving Commitments will be in an amount that is an integral multiple of \$500,000 and not less than \$5,000,000 and (ii) the Borrowers will not terminate or reduce the Revolving Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.11, the Aggregate Revolving Exposure would exceed the lesser of (A) the Aggregate Revolving Commitment or (B) the Borrowing Base.

(iv) The Borrower Representative will notify the Administrative Agent of any election to terminate or reduce the Commitments under Section 2.09(b) or Section 2.09(c) at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent will advise the Lenders of the contents thereof. Each notice delivered by the Borrower Representative pursuant to this Section will be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower Representative may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower Representative (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments will be permanent. Each reduction of the Commitments will be made ratably among the Lenders in accordance with their respective Commitments.

(v)The Borrowers will have the right to increase the Aggregate Revolving Commitment by obtaining additional Revolving Commitments, either from one or more of the Lenders or another lending institution provided that (i) any such request for an increase must be in a minimum amount of \$5,000,000, (ii) the Borrower Representative, on behalf of the Borrowers, may make a maximum of three such requests, (iii) after giving effect thereto, the sum of the total of the additional Commitments will not exceed \$35,000,000, (iv) the Administrative Agent and the Issuing Bank have approved the identity of any such new Lender, such approvals not to be unreasonably withheld, (v) any such new Lender assumes all of the rights and obligations of a "Lender" hereunder, and (vi) the procedures described in Section 2.09(f), have been satisfied. Nothing contained in this Section 2.09 constitutes, or may otherwise be deemed to be, a commitment on the part of any Lender to increase its Commitment hereunder at any time.

(vi)Any amendment hereto for such an increase or addition must be in form and substance satisfactory to the Administrative Agent and will only require the written signatures of the Administrative Agent, the Borrowers, and each Lender being added or increasing its Commitment, subject only to the approval of all Lenders if any such increase or addition would cause the Aggregate Revolving Commitment to exceed \$75,000,000. As a condition precedent to such an increase or addition, the Borrowers must deliver to the Administrative Agent (i) a certificate of each Loan Party signed by an authorized officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase and (B) in the case of the Borrowers, certifying that, before and after giving effect to such increase or addition, (1) the representations and warranties contained in Article 3 and the other Loan Documents are true and correct, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date and (2) no Default exists and (ii) legal opinions and documents consistent with those delivered on the Effective Date, to the extent requested by the Administrative Agent.

(vii)On the effective date of any such increase or addition, (i) any Lender increasing (or, in the case of any newly added Lender, extending) its Revolving Commitment will make available to the Administrative Agent such amounts in immediately available funds as the Administrative Agent determines, for the benefit of the other Lenders, as being required in order to cause, after giving effect to such increase or addition and the use of such amounts to make payments to such other Lenders, each Lender's portion of the outstanding Revolving Loans of all the Lenders to equal its revised Applicable Percentage of such outstanding Revolving Loans, and the Administrative Agent will make such other adjustments among the Lenders with respect to the Revolving Loans then outstanding and amounts of principal, interest, commitment fees, and other amounts paid or payable with respect thereto as are necessary, in the opinion of the Administrative Agent, in order to effect such reallocation and (ii) the Borrowers will be deemed to have repaid and reborrowed all outstanding Revolving Loans as of the date of any increase (or addition) in the Aggregate Revolving Commitment (with such reborrowing to consist of the Types of Revolving Loans, with related Interest Periods if applicable, specified in a notice delivered by the Borrower Representative, in accordance with the requirements of Section 2.03). The deemed payments made pursuant to clause (ii) of the immediately preceding sentence must be accompanied by payment of all accrued interest on the amount prepaid and, in respect of each Eurodollar Loan, will be subject to indemnification by the Borrowers pursuant to the provisions of Section 2.16 if the deemed payment occurs other than on the last day of the related Interest Periods. Within a reasonable time after the effective date of any increase or addition, the Administrative Agent will, and is hereby authorized and directed to, revise the Commitment Schedule to reflect such increase or addition and will distribute such revised Commitment Schedule to each of the Lenders and the Borrower Representative, whereupon such revised

Commitment Schedule will replace the previous Commitment Schedule and become part of this Agreement.

Section 1.j Repayment of Loans; Evidence of Debt.

(i)The Borrowers hereby unconditionally promise to pay (i) to the Administrative Agent for the account of each Revolving Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date, (ii) to the Administrative Agent the then unpaid amount of each Protective Advance on the earlier of the Maturity Date or demand by the Administrative Agent, and (iii) to the Administrative Agent the then unpaid principal amount of each Overadvance on the earlier of the Maturity Date or demand by the Administrative Agent.

(ii)At all times during a Dominion Period, on each Business Day, the Administrative Agent will apply all funds credited to the Collection Account on the immediately preceding Business Day (at the discretion of the Administrative Agent, whether or not immediately available), first to prepay any Protective Advances and Overadvances that may be outstanding, pro rata, and second to prepay the Revolving Loans (including Swingline Loans) and to cash collateralize outstanding LC Exposure. Notwithstanding the foregoing, to the extent any funds credited to the Collection Account constitute Net Proceeds, the application of such Net Proceeds will be subject to Section 2.11(c). If no Dominion Period is in effect, upon request of the Borrower Representative, any collected funds in the Collection Account will be transferred to the Funding Account.

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

(iv)The Administrative Agent will maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Class and Type thereof, and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder, and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(v)The entries made in the accounts maintained pursuant to Section 2.10(c) or Section 2.10(d) will be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that, the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein will not in any manner affect the obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement.

(vi)Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrowers will prepare, execute, and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon will at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form.

Section 1.k Prepayment of Loans.

(i)The Borrowers will have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with Section 2.11(f)

of this Section and, if applicable, payment of any break funding expenses under Section 2.16.

(ii) Except for Overadvances permitted under Section 2.05, in the event and on such occasion that the Aggregate Revolving Exposure exceeds the lesser of (i) the Aggregate Revolving Commitment or (ii) the Borrowing Base, the Borrowers will prepay the Revolving Loans, LC Exposure, and/or Swingline Loans or cash collateralize LC Exposure in an account with the Administrative Agent pursuant to Section 2.06(j), as applicable, in an aggregate amount equal to such excess. In addition, except for Overadvances permitted under Section 2.05.

(iii) In the event and on each occasion that any Net Proceeds are received by or on behalf of any Loan Party in respect of any Prepayment Event, if such Prepayment Event occurs during the existence of a Dominion Period, the Borrowers will, immediately after such Net Proceeds are received by such Loan Party, prepay the Obligations and cash collateralize the LC Exposure as set forth in Section 2.11(e) below in an aggregate amount equal to 100% of such Net Proceeds.

(iv) [reserved]

(v) All amounts required to be prepaid pursuant to Section 2.11(c) will be applied, first to prepay any Protective Advances and Overadvances that may be outstanding, pro rata, and second to prepay the Revolving Loans (including Swingline Loans) without a corresponding reduction in the Revolving Commitments and to cash collateralize outstanding LC Exposure.

(vi) The Borrower Representative must notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by fax) or through Electronic System, if arrangements for doing so have been approved by the Administrative Agent, of any prepayment hereunder not later than (i) 10:00 a.m., Chicago time, (A) in the case of prepayment of a Eurodollar Revolving Borrowing, three Business Days before the date of prepayment or (B) in the case of prepayment of a CBFR Revolving Borrowing, on the date of prepayment. Each such notice will be irrevocable and must specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Revolving Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Revolving Borrowing, the Administrative Agent will advise the Lenders of the contents thereof. Each partial prepayment of any Revolving Borrowing must be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Revolving Borrowing will be applied ratably to the Revolving Loans included in the prepaid Borrowing. Prepayments must be accompanied by (i) accrued interest to the extent required by Section 2.13 and (ii) break funding payments pursuant to Section 2.16.

Section 1.1 Fees.

(i) The Borrowers agree to pay to the Administrative Agent for the account of each Lender a commitment fee, that will accrue at the Applicable Rate on the average daily amount of the Available Revolving Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which the Revolving Commitments terminate. Accrued commitment fees will be payable in arrears on the first Business Day of each calendar month and on the date on which the Revolving

Commitments terminate, commencing on the first such date to occur after the Effective Date. All commitment fees will be computed on the basis of a year of 360 days and will be payable for the actual number of days elapsed, (including the first day but excluding the last day).

(ii)The Borrowers agree to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee with respect to its participations in Letters of Credit, that will accrue at the same Applicable Rate used to determine the interest rate applicable to Eurodollar Revolving Loans on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure and (ii) to the Issuing Bank a fronting fee, that will accrue at 0.125% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) attributable to Letters of Credit issued by the Issuing Bank during the period from and including the Effective Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure, as well as the Issuing Bank's standard fees and commissions with respect to the issuance, amendment, cancellation, negotiation, transfer, presentment, renewal, or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of each calendar month will be payable on the first Business Day of each calendar month following such last day, commencing on the first such date to occur after the Effective Date; provided that all such fees will be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate will be payable on demand. Any other fees payable to the Issuing Bank pursuant to this Section 2.12(b) will be payable within ten days after demand. All participation fees and fronting fees will be computed on the basis of a year of 360 days and will be payable for the actual number of days elapsed (including the first day but excluding the last day).

(iii)The Borrowers agree to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrowers and the Administrative Agent.

(iv)[reserved]

(v)All fees payable hereunder must be paid on the dates due, in immediately available funds, to the Administrative Agent (or to the Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders. Fees paid will not be refundable under any circumstances.

Section 1.m Interest.

(i)The Loans comprising CBFR Borrowings (including Swingline Loans) will bear interest at the CBFR, plus the Applicable Rate.

(ii)The Loans comprising each Eurodollar Borrowing will bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing, plus the Applicable Rate.

(iii)Each Protective Advance and each Overadvance will bear interest at the CBFR, plus the Applicable Rate for Revolving Loans, plus 2.00% per annum.

(iv) Notwithstanding the foregoing, during the existence of an Event of Default, the Administrative Agent or the Required Lenders may, at their option, by notice to the Borrower Representative (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 9.02 requiring the consent of "each Lender affected thereby" for reductions in interest rates), declare that (i) all Loans will bear interest at 2.00% per annum, plus the rate otherwise applicable to such Loans as provided in this Section or (ii) in the case of any other amount outstanding hereunder, such amount will accrue at 2.00% per annum, plus the rate applicable to such fee or other obligation as provided hereunder.

(v) Accrued interest on each Loan (for CBFR Loans, accrued through the last day of the prior calendar month) will be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; provided that, (i) interest accrued pursuant to Section 2.13(d) will be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a CBFR Revolving Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid will be payable on the date of such repayment or prepayment, and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan will be payable on the effective date of such conversion.

(vi) All interest hereunder will be computed on the basis of a year of 360 days, except that interest computed by reference to the CB Floating Rate will be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case will be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable CB Floating Rate, Adjusted LIBO Rate, REVLIBOR30 Rate, or LIBO Rate will be determined by the Administrative Agent, and such determination will be conclusive absent manifest error.

Section 1.n Alternate Rate of Interest; Illegality.

(i) If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(1) the Administrative Agent determines (which determination will be conclusive and binding absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable (including by means of an Interpolated Rate or because the LIBO Screen Rate is not available or published on a current basis) for such Interest Period; or

(2) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period;

then the Administrative Agent will give notice thereof to the Borrowers and the Lenders through Electronic System as provided in Section 9.01 as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrowers and the Lenders that the circumstances giving rise to such notice no longer exist, (y) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing will be ineffective and any such Eurodollar Borrowing must be repaid or converted into a CBFR Borrowing on the last day of the then current Interest Period applicable thereto and (z) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing will be made as a CBFR Borrowing.

(ii) If any Lender determines that any Requirement of Law has made it unlawful, or if any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain, fund, or continue any Eurodollar Borrowing, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, dollars in the London interbank market, then, on notice thereof by such Lender to the Borrowers through the Administrative Agent, any obligations of such Lender to make, maintain, fund, or continue Eurodollar Loans or to convert CBFR Borrowings to Eurodollar Borrowings will be suspended until such Lender notifies the Administrative Agent and the Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrowers will upon demand from such Lender (with a copy to the Administrative Agent), either convert or prepay all Eurodollar Borrowings of such Lender to CBFR Borrowings, either on the last day of the Interest Period thereof, if such Lender may lawfully continue to maintain such Eurodollar Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans. Upon any such conversion or prepayment, the Borrowers will also pay accrued interest on the amount so converted or prepaid.

(iii) If at any time the Administrative Agent determines (which determination will be conclusive absent manifest error) that (i) the circumstances set forth in Section 2.14(a)(i) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in Section 2.14(a)(i) have not arisen but the supervisor for the administrator of the LIBO Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Screen Rate will no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrowers will endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the U.S. at such time, and will enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Notwithstanding anything to the contrary in Section 9.02, such amendment will become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent has not received, within five Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Until an alternate rate of interest is determined in accordance with this Section 2.14(c) (but, in the case of the circumstances described in clause (ii) of the first sentence of this Section 2.14(c), only to the extent the LIBO Screen Rate for such Interest Period is not available or published at such time on a current basis), (y) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing will be ineffective and (z) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing will be made as a CBFR Borrowing; provided that, if such alternate rate of interest is less than zero, such rate will be deemed to be zero for the purposes of this Agreement.

Section 1.o Increased Costs.

(i) If any Change in Law:

(1) imposes, modifies, or deems applicable any reserve, special deposit, liquidity, or similar requirement (including any compulsory loan requirement, insurance charge, or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or the Issuing Bank;

(2) imposes on any Lender or the Issuing Bank or the London interbank market any other condition, cost, or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein; or

(3) subjects any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clause (b) through clause (d) of the definition of Excluded Taxes, and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities, or capital attributable thereto;

and the result of any of the foregoing is to increase the cost to such Lender or such other Recipient of making, continuing, converting into, or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender, the Issuing Bank, or such other Recipient of participating in, issuing, or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender, the Issuing Bank or such other Recipient hereunder (whether of principal, interest, or otherwise), then the Borrowers will pay to such Lender, the Issuing Bank, or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, the Issuing Bank, or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(ii) If any Lender or the Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of, or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrowers will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(iii) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in Section 2.15(a) or Section 2.15(b), will be delivered to the Borrower Representative and will be conclusive absent manifest error. The Borrowers will pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten days after receipt thereof.

(iv) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section will not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; provided that, the Borrowers will not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the Borrower Representative of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; provided, further, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above will be extended to include the period of retroactive effect thereof.

Section 1.p Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or as a result of any prepayment pursuant to Section 2.11), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue, or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.09(d) and is revoked in accordance therewith), or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower Representative pursuant to Section 2.19 or Section 9.02(d), then, in any such event, the Borrowers will compensate each Lender for the loss, cost, and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost, or expense to any Lender will be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such Eurodollar Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Eurodollar Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert, or continue, for the period that would have been the Interest Period for such Eurodollar Loan), minus (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate that such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section will be delivered to the Borrower Representative and will be conclusive absent manifest error. The Borrowers will pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.

Section 1.q Withholding of Taxes; Gross-Up.

(i)Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document will be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent will be entitled to make such deduction or withholding and will timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party will be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(ii)Payment of Other Taxes by the Loan Parties. The Loan Parties will timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for, Other Taxes.

(iii)Evidence of Payment. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party will deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment, or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(iv)Indemnification by the Loan Parties. The Loan Parties will jointly and severally indemnify each Recipient, within ten 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) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Loan Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, will be conclusive absent manifest error.

(v) Indemnification by the Lenders. Each Lender will severally indemnify the Administrative Agent, within ten days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register, and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent will be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender from any other source against any amount due to the Administrative Agent under this Section 2.17(e).

(vi) Status of Lenders.

(1) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document will deliver to the Borrower Representative and the Administrative Agent, at the time or times reasonably requested by the Borrower Representative or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower Representative or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower Representative or the Administrative Agent, will deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower Representative or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution, and submission of such documentation (other than such documentation set forth in Section 2.17(f)(ii)(A), Section 2.17(f)(ii)(B), and Section 2.17(f)(ii)(D)) will not be required if in the Lender's reasonable judgment such completion, execution, or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

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

(1) any Lender that is a U.S. Person, and the Administrative Agent if it is a U.S. Person, will deliver to the Borrower Representative and the Administrative Agent (as applicable) on or prior to the date on

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

(2) any Foreign Lender and any Person that is not a U.S. Person that becomes the Administrative Agent (each a "Foreign Credit Party") will, to the extent it is legally entitled to do so, deliver to the Borrower Representative and the Administrative Agent (if applicable) (in such number of copies as are requested by the recipient) on or prior to the date on which such Foreign Credit Party becomes a Foreign Credit Party this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), whichever of the following is applicable:

(°) in the case of a Foreign Credit Party claiming the benefits of an income tax treaty to which the United States is a party (y) with respect to payments of interest under any Loan Document, an executed copy of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (z) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(°) in the case of a Foreign Credit Party claiming that its extension of credit will generate U.S. effectively connected income, an executed copy of IRS Form W-8ECI;

(°) in the case of a Foreign Credit Party claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (y) a certificate substantially in the form of Exhibit C-1 to the effect that such Foreign Credit Party is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of a 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 (z) an executed copy of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or

(°) to the extent a Foreign Credit Party is not the beneficial owner, an executed copy of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit C-2 or Exhibit C-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that, if the Foreign Credit Party is a partnership and one or more direct or indirect partners of such Foreign Credit Party are claiming the portfolio interest exemption, such Foreign Credit Party may provide a U.S. Tax

Compliance Certificate substantially in the form of Exhibit C-4 on behalf of each such direct and indirect partner;

(3) any Foreign Credit Party will, to the extent it is legally entitled to do so, deliver to the Borrower Representative and the Administrative Agent (in such number of copies as are requested by the recipient) on or prior to the date on which such Foreign Credit Party becomes a Credit Party under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made; and

(4) if a payment made to a Credit Party any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Credit Party 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 Credit Party will deliver to the Borrower Representative and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower Representative or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower Representative or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Credit Party has complied with such Credit Party's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" will include any amendments made to FATCA after the date of this Agreement.

Each Lender and the Administrative Agent agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it will update such form or certification or promptly notify the Borrower Representative and, if applicable, the Administrative Agent in writing of its legal inability to do so.

(vii) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it will pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, will repay to such indemnified party the amount paid over pursuant to this clause (g) (plus any penalties, interest, or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this clause 2.17(g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this clause (g) the payment of which would place the indemnified party in a

less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld, or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid. This clause (g) will not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(viii)Survival. Each party's obligations under this Section will survive the resignation or replacement of the 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 Loan Document (including the Payment in Full of the Secured Obligations).

(ix)Defined Terms. For purposes of this Section 2.17, the term "Lender" includes any Issuing Bank and the term "applicable law" includes FATCA.

Section 1.a Payments Generally; Allocation of Proceeds; Sharing of Setoffs.

(i)The Borrowers will make each payment required to be made by them hereunder (whether of principal, interest, fees, or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, Section 2.16, Section 2.17, or otherwise) prior to 2:00 p.m., Chicago time, on the date when due, in immediately available funds, without setoff, recoupment, or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments will be made to the Administrative Agent at its offices at 10 South Dearborn Street, Floor L2, Chicago, Illinois, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Section 2.15, Section 2.16, Section 2.17, and Section 9.03 must be made directly to the Persons entitled thereto. The Administrative Agent will distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. Unless otherwise provided for herein, if any payment hereunder is due on a day that is not a Business Day, the date for payment will be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon will be payable for the period of such extension. All payments hereunder will be made in dollars.

(ii)Any proceeds of Collateral received by the Administrative Agent (i) not constituting either (A) a specific payment of principal, interest, fees, or other sum payable under the Loan Documents (that will be applied as specified by the Borrowers), (B) a mandatory prepayment (that will be applied in accordance with Section 2.11) or (C) amounts to be applied from the Collection Account when full cash dominion is in effect (that will be applied in accordance with Section 2.10(b)) or (ii) during the existence of an Event of Default if the Administrative Agent so elects or the Required Lenders so direct, will be applied ratably, first, to pay any fees, indemnities, or expense reimbursements then due to the Administrative Agent and the Issuing Bank from the Borrowers (other than in connection with Banking Services Obligations or Swap Agreement Obligations), second, to pay any fees, indemnities, or expense reimbursements then due to the Lenders from the Borrowers (other than in connection with Banking Services Obligations or Swap Agreement Obligations), third, to pay interest due in respect of the Overadvances and Protective Advances, fourth, to pay the principal of the Overadvances and Protective Advances, fifth, to pay interest then due and payable on the Loans (other than the Overadvances and Protective Advances) ratably, sixth, to prepay principal on the Loans (other than the Overadvances and Protective Advances)

and unreimbursed LC Disbursements and to pay any amounts owing in respect of Swap Agreement Obligations up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.22, for which Reserves have been established ratably, seventh, to pay an amount to the Administrative Agent equal to 105% of the aggregate LC Exposure, to be held as cash collateral for such Obligations, eighth, to pay any amounts owing in respect of Banking Services Obligations and Swap Agreement Obligations up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.22 and to the extent not paid pursuant to clause "sixth" above, and ninth, to pay any other Secured Obligation due to the Administrative Agent or any Lender by the Borrowers. Notwithstanding the foregoing, amounts received from any Loan Party will not be applied to any Excluded Swap Obligation of such Loan Party. Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrower Representative, or unless a Default is in existence, neither the Administrative Agent nor any Lender will apply any payment that it receives to any Eurodollar Loan of a Class, except (a) on the expiration date of the Interest Period applicable thereto or (b) in the event, and only to the extent, that there are no outstanding CBFR Loans of the same Class and, in any such event, the Borrowers will pay the break funding payment required in accordance with Section 2.16. The Administrative Agent and the Lenders will have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Secured Obligations.

(iii) At the election of the Administrative Agent, all payments of principal, interest, LC Disbursements, fees, premiums, reimbursable expenses (including all reimbursement for fees, costs, and expenses pursuant to Section 9.03), and other sums payable under the Loan Documents, may be paid from the proceeds of Borrowings made hereunder whether made following a request by the Borrower Representative pursuant to Section 2.03 or a deemed request as provided in this Section or may be deducted from any deposit account of any Borrower maintained with the Administrative Agent. The Borrowers hereby irrevocably authorize (i) the Administrative Agent to make a Borrowing for the purpose of paying each payment of principal, interest, and fees as it becomes due hereunder or any other amount due under the Loan Documents and agrees that all such amounts charged will constitute Loans (including Swingline Loans and Overadvances, but such a Borrowing may only constitute a Protective Advance if it is to reimburse costs, fees, and expenses as described in Section 9.03) and that all such Borrowings will be deemed to have been requested pursuant to Section 2.03, Section 2.04, or Section 2.05, as applicable, and (ii) the Administrative Agent to charge any deposit account of any Borrower maintained with the Administrative Agent for each payment of principal, interest, and fees as it becomes due hereunder or any other amount due under the Loan Documents.

(iv) If, except as otherwise expressly provided herein, any Lender, by exercising any right of setoff or counterclaim or otherwise, obtains payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other similarly situated Lender, then the Lender receiving such greater proportion will purchase (for cash at face value) participations in the Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments will be shared by all such Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements and Swingline Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations will be rescinded and the purchase price restored to the extent of such recovery, without interest,

and (ii) the provisions of this Section 2.18(d) will not be construed to apply to any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements or Swingline Loans to any assignee or participant, other than to the Borrowers or any Subsidiary or Affiliate thereof (as to which the provisions of this Section 2.18(d) will apply). Each 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 such Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

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

(vi) The Administrative Agent may from time to time provide the Borrowers with account statements or invoices with respect to any of the Secured Obligations (the "Statements"). The Administrative Agent is under no duty or obligation to provide Statements, that, if provided, will be solely for the Borrowers' convenience. Statements may contain estimates of the amounts owed during the relevant billing period, whether of principal, interest, fees, or other Secured Obligations. If the Borrowers pay the full amount indicated on a Statement on or before the due date indicated on such Statement, the Borrowers will not be in default of payment with respect to the billing period indicated on such Statement; provided that, acceptance by the Administrative Agent, on behalf of the Lenders, of any payment that is less than the total amount actually due at that time (including any past due amounts) will not constitute a waiver of the Administrative Agent's or the Lenders' right to receive payment in full at another time.

Section 1.b Mitigation Obligations; Replacement of Lenders.

(i) If any Lender requests compensation under Section 2.15, or if the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender will use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches, or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or Section 2.17, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(ii) If any Lender requests compensation under Section 2.15, or if the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any

Governmental Authority for the account of any Lender pursuant to Section 2.17, or if any Lender becomes a Defaulting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights (other than its existing rights to payments pursuant to Section 2.15 or Section 2.17), and obligations under this Agreement and other Loan Documents to an assignee that will assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrowers will have received the prior written consent of the Administrative Agent (and in circumstances where its consent would be required under Section 9.04, the Issuing Bank and the Swingline Lender), which consent will not unreasonably be withheld, (ii) such Lender will have received payment of an amount equal to the outstanding principal of its Loans, participations in LC Disbursements, and Swingline Loans, accrued interest thereon, accrued fees, and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal, accrued interest, and fees) or the Borrowers (in the case of all other amounts), and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. A Lender will not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply. Each party hereto agrees that (y) an assignment required pursuant to this clause may be effected pursuant to an Assignment and Assumption executed by the Borrower Representative, the Administrative Agent, and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants) and (z) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and will be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided, further, that any such documents will be without recourse to or warranty by the parties thereto.

Section 1.c Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions will apply for so long as such Lender is a Defaulting Lender:

(i) fees will cease to accrue on the unfunded portion of the Revolving Commitment of such Defaulting Lender pursuant to Section 2.12(a);

(ii) any payment of principal, interest, fees, or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 2.18(b), or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 9.08 will be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Bank or the Swingline Lender hereunder; third, to cash collateralize the Issuing Bank's LC Exposure with respect to such Defaulting Lender in accordance with this Section; fourth, as the Borrower Representative may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower Representative, to be held in a deposit account

and released pro rata in order to (i) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (ii) cash collateralize the Issuing Bank's future LC Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with this Section; sixth, to the payment of any amounts owing to the Lenders, the Issuing Bank, or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Bank, or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by any Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (y) such payment is a payment of the principal amount of any Loans or LC Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share and (z) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment will be applied solely to pay the Loans of, and LC Disbursements owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Disbursements owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in the Borrowers' obligations corresponding to such Defaulting Lender's LC Exposure and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments without giving effect to clause (d) following. Any payments, prepayments, or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section will be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto;

(iii) such Defaulting Lender will not have the right to vote on any issue on which voting is required (other than to the extent expressly provided in Section 9.02(b)) and the Commitment and Revolving Exposure of such Defaulting Lender will not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver, or other modification pursuant to Section 9.02) or under any other Loan Document; provided, that, except as otherwise provided in Section 9.02, this Section 2.20(c) will not apply to the vote of a Defaulting Lender in the case of an amendment, waiver, or other modification requiring the consent of such Lender or each Lender directly affected thereby;

(iv) if any Swingline Exposure or LC Exposure exists at the time a Lender becomes a Defaulting Lender then:

(1) all or any part of the Swingline Exposure and LC Exposure of such Defaulting Lender will be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent that such reallocation does not, as to any non-Defaulting Lender, cause such non-Defaulting Lender's Revolving Exposure to exceed its Revolving Commitment;

(2) if the reallocation described in clause (i) preceding cannot, or can only partially, be effected, the Borrowers will within one Business Day following notice by the Administrative Agent (y) first, prepay such Swingline Exposure and (z) second, cash collateralize, for the benefit of the Issuing Bank, the Borrowers' obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) preceding) in accordance

with the procedures set forth in Section 2.06(j) for so long as such LC Exposure is outstanding;

(3) if the Borrowers cash collateralize any portion of such Defaulting Lender's LC Exposure pursuant to clause (ii), preceding, the Borrowers will not be required to pay any fees to such Defaulting Lender pursuant to Section 2.12(b) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(4) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to clause (i), preceding, then the fees payable to the Lenders pursuant to Sections 2.12(a) and Section 2.12(b) will be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; and

(5) if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or clause (ii), preceding, then, without prejudice to any rights or remedies of the Issuing Bank or any other Lender hereunder, all letter of credit fees payable under Section 2.12(b) with respect to such Defaulting Lender's LC Exposure will be payable to the Issuing Bank until and to the extent that such LC Exposure is reallocated and/or cash collateralized; and

(v) so long as such Lender is a Defaulting Lender, the Issuing Bank will not be required to issue, amend, renew, extend, or increase any Letter of Credit, unless it is satisfied that such Defaulting Lender's then outstanding LC Exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrowers in accordance with Section 2.20(d), and LC Exposure related to any newly issued or increased Letter of Credit will be allocated among non-Defaulting Lenders in a manner consistent with Section 2.20(d)(i) (and such Defaulting Lender will not participate therein).

If (y) a Bankruptcy Event or a Bail-In Action with respect to the Parent of any Lender occurs following the date hereof and for so long as such event continues or (z) the Swingline Lender or the Issuing Bank has a reasonable belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, the Swingline Lender will not be required to fund any Swingline Loan and the Issuing Bank will not be required to issue, amend, or increase any Letter of Credit, unless the Swingline Lender or the Issuing Bank, as the case may be, has entered into arrangements with the Borrowers or such Lender, satisfactory to the Swingline Lender or the Issuing Bank, as the case may be, to defease any risk to it in respect of such Lender hereunder.

In the event that each of the Administrative Agent, the Borrower, the Swingline Lender, and the Issuing Bank agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Swingline Exposure and LC Exposure of the Lenders will be readjusted to reflect the inclusion of such Lender's Revolving Commitment and on the date of such readjustment such Lender will purchase at par such of the Loans of the other Lenders (other than Swingline Loans) as the Administrative Agent determines may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

Section 1.d Returned Payments. If after receipt of any payment that is applied to the payment of all or any part of the Obligations (including a payment effected through exercise of a right of setoff), the Administrative Agent or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason (including pursuant to

any settlement entered into by the Administrative Agent or such Lender in its discretion), then the Obligations or part thereof intended to be satisfied will be revived and continued and this Agreement will continue in full force as if such payment or proceeds had not been received by the Administrative Agent or such Lender. The provisions of this Section 2.21 will be and remain effective notwithstanding any contrary action that may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 2.21 will survive the termination of this Agreement.

Section 1.e Banking Services and Swap Agreements. Each Lender or Affiliate thereof providing Banking Services for, or having Swap Agreements with, any Loan Party will deliver to the Administrative Agent, promptly after entering into such Banking Services or Swap Agreements, written notice setting forth the aggregate amount of all Banking Services Obligations and Swap Agreement Obligations of such Loan Party to such Lender or Affiliate (whether matured or unmatured, absolute or contingent). In addition, each such Lender or Affiliate thereof will deliver to the Administrative Agent, following the end of each calendar month and upon a request therefor, a summary of the amounts due or to become due in respect of such Banking Services Obligations and Swap Agreement Obligations. The most recent information provided to the Administrative Agent will be used in determining the amounts to be applied in respect of such Banking Services Obligations and/or Swap Agreement Obligations pursuant to Section 2.18(b) and which tier of the waterfall, contained in Section 2.18(b), such Banking Services Obligations and/or Swap Agreement Obligations will be placed.

ARTICLE 3

Representations and Warranties

Each Loan Party represents and warrants to the Lenders that:

Section 1.0a Organization; Powers. Each Loan Party is duly organized or formed, validly existing, and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted, and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business, and is in good standing, in every jurisdiction where such qualification is required.

Section 1.0b Authorization; Enforceability. The Transactions are within each Loan Party's corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational actions and, if required, actions by equity holders. Each Loan Document to which each Loan Party is a party has been duly executed and delivered by such Loan Party and constitutes a legal, valid, and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 1.0c Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created pursuant to the Loan Documents, (b) will not violate any Requirement of Law applicable to any Loan Party, (c) will not violate or result in a default under any indenture, agreement, or other instrument binding upon any Loan Party or the assets of any Loan Party, or give rise to a right thereunder to require any payment to be made by any Loan Party, and (d) will not result in the creation or imposition of, or the requirement to create, any Lien on any asset of any Loan Party, except Liens created pursuant to the Loan Documents.

Section 1.0d Financial Condition; No Material Adverse Change.

(i) Allbirds has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity, and cash flows (i) as of and for the fiscal year ended December 31, 2017, reported on by Deloitte & Touche LLP, independent public accountants, and (ii) as of and for the fiscal month and the portion of the fiscal year ended September 30, 2018, certified by a Financial Officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of Allbirds and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to normal year-end audit adjustments (all of which, when taken as a whole, would not be materially adverse) and the absence of footnotes in the case of the statements referred to in clause (ii) preceding.

(ii) No event, change, or condition has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect, since December 31, 2017.

Section 1.0e Properties.

(i) As of the date of this Agreement, Schedule 3.05 sets forth the address of each parcel of real property that is owned or leased by any Loan Party. Each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, and, to the Loan Parties' knowledge, no default by any party to any such lease or sublease exists. Each of the Loan Parties has good and indefeasible title to, or valid leasehold interests in, all of its real and personal property, free of all Liens other than those permitted by Section 6.02.

(ii) Each Loan Party owns, or is licensed to use, all material trademarks, tradenames, copyrights, patents, and other intellectual property necessary to its business as currently conducted, a materially correct and complete list of which, as of the date of this Agreement, is set forth on Schedule 3.05, and the use thereof by each Loan Party does not infringe in any material respect upon the rights of any other Person, and each Loan Party's rights thereto are not subject to any licensing agreement or similar arrangement.

Section 1.0f Litigation and Environmental Matters.

(i) There are no actions, suits, or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Loan Party, threatened against or affecting any Loan Party (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve any Loan Document or the Transactions.

(ii) Except for the Disclosed Matters (i) no Loan Party has received notice of any claim with respect to any Environmental Liability or knows of any basis for any Environmental Liability and (ii) and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, no Loan Party (A) has failed to comply with any Environmental Law or to obtain, maintain, or comply with any permit, license, or other approval required under any Environmental Law, (B) has become subject to any Environmental Liability, (C) has received notice of any claim with respect to any Environmental Liability, or (D) knows of any basis for any Environmental Liability.

(iii) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

Section 1.0g Compliance with Laws and Agreements; No Default. Except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, each Loan Party is in compliance with (i) all Requirements of Law applicable to it or its property and (ii) all indentures, agreements, and other instruments binding upon it or its property. No Default has occurred and is continuing.

Section 1.0h Investment Company Status. No Loan Party is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

Section 1.0i Taxes.

(i) As of the Effective Date, each Loan Party has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party has set aside on its books adequate reserves or (b) to the extent that the failure to do so could not be expected to result in a Material Adverse Effect. As of the Effective Date, no tax liens have been filed and no claims are being asserted with respect to any such taxes.

(ii) Neither this Agreement nor any other agreement, certificate, document, or instrument executed or delivered in connection therewith by any Loan Party or any other Person (other than the Credit Parties), were executed or delivered in the state of Florida, no Loan Party is a Florida organization or has its executive offices or headquarters in Florida, no officer or employee of any Loan Party has engaged in any execution, delivery, negotiations, or other related activities with respect to this Agreement while in the state of Florida, and there are no stamp, documentary, mortgage, or intangibles taxes due in the state of Florida as a result of any Loan Party entering into this Agreement.

Section 1.j ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan.

Section 1.k Disclosure.

(i) The Loan Parties have disclosed to the Lenders all agreements, instruments, and corporate or other restrictions to which any Loan Party 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. None of the reports, financial statements, certificates, or other information furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document (as modified or supplemented by other information so furnished) contains any misstatement of fact or omits to state any fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading except to the extent that any such error or omission could not reasonably be expected to have a Material Adverse Effect; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time delivered and,

if such projected financial information was delivered prior to the Effective Date, as of the Effective Date.

(ii)As of the Effective Date, to the best knowledge of any Loan Party, the information included in the Beneficial Ownership Certification provided on or prior to the Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

Section 1.1 Material Agreements. No Loan Party is in default in any material respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in (a) any material agreement to which it is a party or (b) any agreement or instrument evidencing or governing Material Indebtedness.

Section 1.m Solvency.

(i)Immediately after the consummation of the Transactions to occur on the Effective Date, (i) the fair value of the assets of the Loan Parties, taken as a whole at a fair valuation, will exceed their debts and liabilities, subordinated, contingent or otherwise, (ii) the present fair saleable value of the property of the Loan Parties taken as a whole will be greater than the amount that will be required to pay the probable liability of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (iii) the Loan Parties taken as a whole will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured, and (iv) the Loan Parties taken as a whole will not have unreasonably small capital with which to conduct the business in which they are engaged as such business is now conducted and is proposed to be conducted after the Effective Date.

(ii)No Loan Party intends to, nor will it permit any other Loan Party to, and no Loan Party believes that it or any other Loan Party will, incur debts beyond its ability to pay such debts as they mature, taking into account the timing of and amounts of cash to be received by it or any such Loan Party and the timing of the amounts of cash to be payable on or in respect of its Indebtedness or the Indebtedness of any such other Loan Party.

Section 1.n Insurance. Schedule 3.14 sets forth a description of all insurance maintained by or on behalf of the Loan Parties as of the Effective Date. As of the Effective Date, all premiums in respect of such insurance have been paid. Each Loan Party maintains, with financially sound and reputable insurance companies, insurance on all their real and personal property in such amounts, subject to such deductibles and self-insurance retentions and covering such properties and risks as are adequate and customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

Section 1.o Capitalization and Subsidiaries. Schedule 3.15 sets forth, as of the Effective Date for each Loan Party, (a) such Person's name, (b) the name of each of its Subsidiaries, (c) a true and complete listing of each class of its authorized Equity Interests, all of which issued Equity Interests are validly issued, outstanding, fully paid, and non-assessable, and owned beneficially and of record by the Persons identified on Schedule 3.15, and (d) the type of entity of such Person. All of the issued and outstanding Equity Interests owned by any Loan Party have been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and are fully paid and non-assessable. There are no outstanding commitments or other obligations of any Loan Party to issue, and no options, warrants, or other rights of any Person to acquire, any shares of any class of capital stock or other equity interests of any Loan Party.

Section 1.p Security Interest in Collateral. The provisions of this Agreement and the other Loan Documents create legal and valid Liens on all of the Collateral in favor of the Administrative Agent, for the benefit of the Secured Parties, and such Liens, upon completion of any necessary registration of filing requirements, constitute perfected and continuing Liens on the Collateral, securing the Secured Obligations, enforceable against the applicable Loan Party and all third parties, and having priority over all other Liens on the Collateral except in the case of (a) Permitted Encumbrances, to the extent any such Permitted Encumbrances would have priority over the Liens in favor of the Administrative Agent pursuant to any applicable law or agreement and (b) Liens perfected only by possession (including possession of any certificate of title) to the extent the Administrative Agent has not obtained or does not maintain possession of such Collateral.

Section 1.q Employment Matters. The hours worked by and payments made to employees of the Loan Parties have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local, or foreign law dealing with such matters in any material respect. All payments due from any Loan Party, or for which any claim may be made against any Loan Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Loan Party.

Section 1.r Margin Regulations. No Loan Party is engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds of any Borrowing or Letter of Credit hereunder will be used to buy or carry any Margin Stock. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than 25.0% of the value of the assets (either of any Loan Party only or of the Loan Parties and their Subsidiaries on a consolidated basis) will be Margin Stock.

Section 1.s Use of Proceeds. The proceeds of the Loans have been used and will be used, whether directly or indirectly as set forth in [Section 5.08](#).

Section 1.t No Burdensome Restrictions. No Loan Party is subject to any Burdensome Restrictions except Burdensome Restrictions permitted under [Section 6.10](#).

Section 1.u Anti-Corruption Laws and Sanctions. Each Loan Party has implemented and maintains in effect practices and procedures designed to ensure compliance by such Loan Party, its Subsidiaries, and their respective directors, officers, employees, and agents with Anti-Corruption Laws and applicable Sanctions, and such Loan Party, its Subsidiaries, and their respective officers and directors and, to the knowledge of such Loan Party, its and its Subsidiaries' employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) any Loan Party, any Subsidiary, or any of their respective directors, officers, or, to the knowledge of any such Loan Party, employees or (b) to the knowledge of any such Loan Party, any agent of such Loan Party or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds, Transaction, or other transaction contemplated by this Agreement or the other Loan Documents will violate Anti-Corruption Laws or applicable Sanctions.

Section 1.v Affiliate Transactions. Except as set forth on [Schedule 3.22](#), as of the Effective Date, there are no existing or proposed agreements, arrangements, understandings, or transactions between any Loan Party and any of the officers, members, managers, directors, stockholders, parents, holders of other Equity Interests, employees, or Affiliates (other than Subsidiaries) of any Loan Party or any members of their respective immediate families, other than each of the Allbirds Long-Term Incentive Programs and transactions entered into that comply with the terms of [Section 6.09](#), and none of the foregoing Persons are directly or indirectly indebted to or have any direct or indirect ownership, partnership, or voting interest in

any Affiliate of any Loan Party or any Person with which any Loan Party has a business relationship or that competes with any Loan Party (except that any such Persons may own Equity Interests in (but not exceeding 2.0% of the outstanding Equity Interests of) any publicly traded company that may compete with a Loan Party).

Section 1.w Common Enterprise. The successful operation and condition of each of the Loan Parties is dependent on the continued successful performance of the functions of the group of the Loan Parties as a whole and the successful operation of each of the Loan Parties is dependent on the successful performance and operation of each other Loan Party. Each Loan Party expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from (a) successful operations of each of the other Loan Parties and (b) the credit extended by the Lenders to the Borrowers hereunder, both in their separate capacities and as members of the group of companies. Each Loan Party has determined that execution, delivery, and performance of this Agreement and any other Loan Documents to be executed by such Loan Party is within its purpose, in furtherance of its direct and/or indirect business interests, will be of direct and/or indirect benefit to such Loan Party, and is in its best interest.

Section 1.x EEA Financial Institutions. No Loan Party is an EEA Financial Institution.

Section 1.y Plan Assets; Prohibited Transactions. No Loan Party or any of its Subsidiaries is an entity deemed to hold "plan assets" (within the meaning of the Plan Asset Regulations), and neither the execution, delivery, nor performance of the transactions contemplated under this Agreement, including the making of any Loan and the issuance of any Letter of Credit hereunder, will give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.

ARTICLE 4

Conditions

Section 1.0a Effective Date. The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder will not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with [Section 9.02](#)):

(i) **Credit Agreement and Other Loan Documents.** The Administrative Agent (or its counsel) has received (i) from each party hereto either (A) a counterpart of this Agreement signed on behalf of such party or (B) written evidence satisfactory to the Administrative Agent (that may include facsimile or other electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement, (ii) either (A) a counterpart of each other Loan Document signed on behalf of each party thereto or (B) written evidence satisfactory to the Administrative Agent (that may include facsimile or other electronic transmission of a signed signature page thereof) that each such party has signed a counterpart of such Loan Document, and (iii) such other certificates, documents, instruments, and agreements as the Administrative Agent reasonably requests in connection with the transactions contemplated by this Agreement and the other Loan Documents, including any promissory notes requested by a Lender pursuant to [Section 2.10](#) payable to the order of each such requesting Lender and a written opinion of the Loan Parties' counsel, addressed to the Administrative Agent, the Issuing Bank, and the Lenders in the form of [Exhibit B](#) (together with any other real estate related opinions separately described herein), all in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

(ii)Financial Statements and Projections. The Lenders have received (i) audited consolidated financial statements of Allbirds for the fiscal years ended December 31, 2016 and December 31, 2017, (ii) unaudited interim consolidated financial statements of Allbirds for each fiscal month ended after the date of the latest applicable financial statements delivered pursuant to clause (i) preceding as to which such financial statements are available, and such financial statements do not, in the reasonable judgment of the Administrative Agent, reflect any material adverse change in the consolidated financial condition of Allbirds, as reflected in the audited, consolidated financial statements described in clause (i) preceding, and (iii) satisfactory projections through Allbirds' fiscal year ending December 31, 2021.

(iii)Closing Certificates; Certified Certificate of Incorporation; Good Standing Certificates. The Administrative Agent has received (i) a certificate of each Loan Party, dated the Effective Date and executed by its Secretary or Assistant Secretary, that (A) certifies the resolutions of its Board of Directors, members, or other body authorizing the execution, delivery, and performance of the Loan Documents to which such Loan Party is a party, (B) identifies by name and title and bears the signatures of the officers of such Loan Party authorized to sign the Loan Documents to which it is a party and, in the case of any Borrower, its Financial Officers, and (C) contains appropriate attachments, including the certificate or articles of incorporation or organization of each Loan Party certified by the relevant authority of the jurisdiction of organization of such Loan Party and a true and correct copy of its bylaws or operating, management, or partnership agreement, or other organizational or governing documents, and (ii) a good standing certificate for each Loan Party from its jurisdiction of organization or the substantive equivalent available in the jurisdiction of organization for each Loan Party from the appropriate governmental officer in such jurisdiction.

(iv)No Default Certificate. The Administrative Agent has received a certificate, signed by a Financial Officer of each Loan Party, dated as of the Effective Date (i) stating that no Default has occurred and is continuing, (ii) stating that the representations and warranties contained in the Loan Documents are true and correct as of such date, and (iii) certifying as to any other factual matters as may be reasonably requested by the Administrative Agent.

(v)Fees. The Lenders and the Administrative Agent have received all fees required to be paid, and all expenses for which invoices have been presented (including the reasonable fees and expenses of legal counsel), on or before the Effective Date. All such amounts will be paid with proceeds of Loans made on the Effective Date and will be reflected in the funding instructions given by the Borrower Representative to the Administrative Agent on or before the Effective Date.

(vi)Lien Searches. The Administrative Agent has received the results of a recent lien search in each jurisdiction where the Loan Parties are organized and where the assets of the Loan Parties are located, and such search reveals no Liens on any of the assets of the Loan Parties except for Liens permitted by Section 6.02 or discharged on or prior to the Effective Date pursuant to a pay-off letter or other documentation satisfactory to the Administrative Agent.

(vii)[reserved]

(viii)Funding Account. The Administrative Agent has received a notice setting forth the deposit account(s) of the Borrowers (the "Funding Account") to which the Administrative Agent is authorized by the Borrowers to transfer the proceeds of any Borrowings requested or authorized pursuant to this Agreement.

(ix)[reserved]

(x)Collateral Access and Control Agreements. The Administrative Agent has received (i) each Collateral Access Agreement required to be provided pursuant to Section 4.13 of the Security Agreement and (ii) each Deposit Account Control Agreement required to be provided pursuant to Section 4.14 of the Security Agreement; provided that, the parties hereto agree that such agreements may be delivered any time within 60 days of the Effective Date and the Administrative Agent may in its sole discretion extend such time period for delivery upon written notice to the Borrower Representative.

(xi)Solvency. The Administrative Agent has received a solvency certificate signed by a Financial Officer of each Loan Party dated the Effective Date.

(xii)Borrowing Base Certificate. The Administrative Agent has received a Borrowing Base Certificate that calculates the Borrowing Base as of the end of the week immediately preceding the Effective Date.

(xiii)Closing Availability. After giving effect to all Borrowings to be made on the Effective Date, the issuance of any Letters of Credit on the Effective Date, and the payment of all fees and expenses due hereunder, and with all of the Loan Parties' indebtedness, liabilities, and obligations current, the Excess Availability is not less than \$19,000,000.

(xiv)Filings, Registrations, and Recordings. Each document (including any Uniform Commercial Code financing statement) required by the Collateral Documents or under law or reasonably requested by the Administrative Agent to be filed, registered, or recorded in order to create in favor of the Administrative Agent, for the benefit of itself, the Lenders, and the other Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 6.02), must be in proper form for filing, registration, or recordation and the Administrative Agent must have received written confirmation of such filing, registration, or recordation from the applicable Governmental Authority.

(xv)Insurance. The Administrative Agent has received evidence of insurance coverage in form, scope, and substance reasonably satisfactory to the Administrative Agent and otherwise in compliance with the terms of Section 5.10 hereof and Section 4.12 of the Security Agreement.

(xvi)Letter of Credit Application. If a Letter of Credit is requested to be issued on the Effective Date, the Administrative Agent has received a properly completed letter of credit application (whether standalone or pursuant to a master agreement, as applicable) and such other documentation as the Issuing Bank may reasonably request. If requested by the Issuing Bank, the Borrowers have executed the Issuing Bank's master agreement for the issuance of commercial Letters of Credit.

(xvii)Tax Withholding. The Administrative Agent has received a properly completed and signed IRS Form W-8 or W-9, as applicable, for each Loan Party.

(xviii)[reserved]

(xix)Field Examination. The Administrative Agent or its designee has conducted a field examination of the Borrowers' Accounts, Inventory, and related working capital matters and of the Borrowers' related data processing and other systems, the results of which are satisfactory to the Administrative Agent in its sole discretion.

(xx)[reserved]

(xxi)[reserved]

(xxii)USA PATRIOT Act, Etc.

(1) The Administrative Agent must have received, at least five days prior to the Effective Date, all documentation and other information regarding the Loan Parties requested in connection with applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and

(2) to the extent any Loan Party qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, at least five days prior to the Effective Date, any Lender that has requested, in a written notice to the Loan Parties at least ten days prior to the Effective Date, a Beneficial Ownership Certification in relation to each Loan Party must have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (i) will be deemed to be satisfied).

(xxiii)Other Documents. The Administrative Agent has received such other documents as the Administrative Agent, the Issuing Bank, any Lender, or their respective counsel may have reasonably requested.

The Administrative Agent will notify the Borrowers, the Lenders, and the Issuing Bank of the Effective Date, and such notice will be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder will not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 9.02) at or prior to 2:00 p.m., Chicago time, on February 20, 2019 (and, in the event such conditions are not so satisfied or waived, the Commitments will terminate at such time).

Section 1.0b Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Bank to issue, amend, renew, or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(i)The representations and warranties of the Loan Parties set forth in the Loan Documents must be true and correct in all material respects with the same effect as though made on and as of the date of such Borrowing or the date of issuance, amendment, renewal, or extension of such Letter of Credit, as applicable (it being understood and agreed that any representation or warranty that by its terms is made as of a specified date will be required to be true and correct only as of such specified date, and that any representation or warranty that is subject to any materiality qualifier will be required to be true and correct in all respects).

(ii)At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal, or extension of such Letter of Credit, as applicable, (i) no Default may have occurred and be continuing and (ii) no Protective Advance may be outstanding.

(iii)After giving effect to any Borrowing or the issuance, amendment, renewal, or extension of any Letter of Credit, Availability is not less than zero (\$0.00).

(iv) No event may occur and no condition may exist that has or could be reasonably expected to have a Material Adverse Effect.

Each Borrowing and each issuance, amendment, renewal, or extension of a Letter of Credit will be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the matters specified in this Section.

Notwithstanding the failure to satisfy the conditions precedent set forth in Section 4.02(a) or Section 4.02(b), unless otherwise directed by the Required Lenders, the Administrative Agent may, but will have no obligation to, continue to make Loans and an Issuing Bank may, but will have no obligation to, issue, amend, renew, or extend, or cause to be issued, amended, renewed, or extended, any Letter of Credit for the ratable account and risk of the Lenders from time to time if the Administrative Agent believes that making such Loans or issuing, amending, renewing, or extending, or causing the issuance, amendment, renewal, or extension of, any such Letter of Credit is in the best interests of the Lenders.

ARTICLE 5

Affirmative Covenants

Until all of the Secured Obligations have been Paid in Full each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lenders that:

Section 1.0a Financial Statements; Borrowing Base and Other Information. The Borrower Representative will furnish to the Administrative Agent and each Lender:

(i) within 180 days after the end of each fiscal year of Allbirds, its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants of recognized national standing (without a "going concern" or like qualification, commentary, or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of Allbirds and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(ii) [reserved]

(iii) within 30 days after the end of each fiscal month of Allbirds, its consolidated (and for any fiscal month end that is also the end of a fiscal quarter, accompanied by managerial reporting on a segment-by-segment basis) balance sheet and related statement of operations, as of the end of and for such fiscal month and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Financial Officer of the Borrower Representative as presenting fairly in all material respects the financial condition and results of operations of Allbirds and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(iv) concurrently with any delivery of financial statements under Section 5.01(a) or Section 5.01(c), a certificate of a Financial Officer of the Borrower Representative in substantially the form of Exhibit D (i) certifying, in the case of the financial statements

delivered under Section 5.01(c), as presenting fairly in all material respects the financial condition and results of operations of Allbirds and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes, (ii) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (iii) setting forth reasonably detailed calculations demonstrating compliance with Section 6.12, and (iv) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(v)[reserved]

(vi) as soon as available but in any event no later than 60 days after the first day of each fiscal year of Allbirds, a copy of the plan and forecast (including a projected consolidated and consolidating balance sheet, income statement, and cash flow statement) of Allbirds for each month of the upcoming fiscal year (the "Projections") in form reasonably satisfactory to the Administrative Agent;

(vii) at each of the times specified in the following table, and at such other times as may be necessary to re-determine Availability, as of the period then ended, a Borrowing Base Certificate and supporting information in connection therewith (including, in respect of any Borrowing Base Certificate delivered for the last day of any month that is also the end of any fiscal quarter of Allbirds, a calculation of Average Quarterly Availability for such quarter then ended, and an indication of what the Applicable Rate is as a result of such Average Quarterly Availability), together with any additional reports with respect to the Borrowing Base as the Administrative Agent may reasonably request:

Trigger Date/Event	Reporting Requirement
no Credit Exposure is outstanding, a Reporting Frequency Change Period does not exist, and neither the Borrower Representative nor any Borrower has requested any Revolving Loan or issuance of any Letter of Credit	within 30 days of the end of each fiscal quarter, as of the period then ended
no Credit Exposure is outstanding, a Reporting Frequency Change Period does not exist, and the Borrower Representative or any Borrower requests any Revolving Loan or issuance of any Letter of Credit	concurrently with such request for such Revolving Loan or issuance of such Letter of Credit as of the last day of the fiscal month most recently ended at least 30 days prior to the date of such request
no Credit Exposure is outstanding, a Reporting Frequency Change Period is in existence, and the Borrower Representative or any Borrower requests any Revolving Loan or issuance of any Letter of Credit	concurrently with such request for such Revolving Loan or issuance of such Letter of Credit as of the last day of the calendar week most recently ended at least three Business Days prior to the date of such request
any Credit Exposure is outstanding and a Reporting Frequency Change Period does not exist	within 30 days of the end of each fiscal month, as of the period then ended
any Credit Exposure is outstanding and a Reporting Frequency Change Period exists	on or before the third Business Day of each calendar week, as of the calendar week then ended
during the existence of any Event of Default	promptly upon the request of the Administrative Agent and continuing thereafter as requested

(viii) concurrently with delivery of any Borrowing Base Certificate pursuant to clause (g) preceding, as of the period then ended, all delivered electronically in a text formatted file acceptable to the Administrative Agent;

(1) a detailed aging of the Borrowers' Accounts (including a listing, as of the end of the applicable period, by account debtor of all outstanding Accounts and all payments and collections thereon, and a reconciliation of sales and collections with respect thereto), prepared in a manner reasonably acceptable to

the Administrative Agent, together with a summary specifying the name and balance due for each Account Debtor of any Account, and, if requested by the Administrative Agent, the address for each such Account Debtor;

(2) a schedule detailing the Borrowers' Inventory, in form satisfactory to the Administrative Agent, (A) by location (showing Inventory in transit, any Inventory located with a third party under any consignment, bailee arrangement, or warehouse agreement), by class (raw material, work-in-process, and finished goods), by product type, and by volume on hand, which Inventory will be valued at the lower of cost (determined on a weighted average moving cost basis) or market and adjusted for Reserves as the Administrative Agent has previously indicated to the Borrower Representative are deemed by the Administrative Agent to be appropriate, and (B) including a report of any variances or other results of Inventory counts performed by the Borrowers since the last Inventory schedule (including information regarding sales or other reductions, additions, returns, credits issued by the Borrowers, and complaints and claims made against the Borrowers);

(3) a worksheet of calculations prepared by the Borrowers to determine Eligible Accounts and Eligible Inventory, such worksheets detailing the Accounts and Inventory excluded from Eligible Accounts and Eligible Inventory and the reason for such exclusion;

(4) a reconciliation of the Borrowers' Accounts and Inventory between (A) the amounts shown in the Borrowers' general ledger and financial statements and the reports delivered pursuant to clause (i) and clause (ii) of this Section 5.01(h) and (B) the amounts and dates shown in the reports delivered pursuant to clause (i) and clause (ii) of this Section 5.01(h) and the Borrowing Base Certificate delivered pursuant to Section 5.01(g) as of such date;

(5) a reconciliation of the loan balance per the Borrowers' general ledger to the loan balance under this Agreement; and

(6) a schedule, in form reasonably satisfactory to the Administrative Agent, showing a reconciliation with respect to Credit Card Accounts of payments deposited to the Borrowers' Deposit Accounts, amounts scheduled for payment by credit card processors to the Borrowers, and activity statements received from credit card processors;

(ix) concurrently with delivery of any Borrowing Base Certificate pursuant to clause (g), preceding for any period that is the last day of a fiscal month, as of the fiscal month then ended, and at such other times as may be reasonably requested by the Administrative Agent, a schedule of the Borrowers' accounts payable, delivered electronically in a text formatted file acceptable to the Administrative Agent;

(x) promptly upon the Administrative Agent's request, as frequently as may be reasonably requested, but in any event not more often than upon delivery of any Borrowing Base Certificate:

(1) copies of invoices or other similar statements issued by the Borrowers to any credit card issuer or credit card processor in connection with any Credit Card Accounts, credit memos, shipping and delivery documents, and other information related thereto;

- (2) copies of purchase orders, invoices, and shipping and delivery documents in connection with any Inventory purchased by any Loan Party; and
- (3) a schedule detailing the balance of all intercompany accounts of the Loan Parties;

(xi) promptly upon request from the Administrative Agent, as frequently as may be reasonably requested, but in any event not more often than upon delivery of any Borrowing Base Certificate, as of the period then ended, the Borrowers' sales journal, cash receipts journal (identifying trade and non-trade cash receipts) and debit memo/credit memo journal;

(xii)[reserved]

(xiii)[reserved]

(xiv)[reserved]

(xv) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements, and other materials filed by any Loan Party or any Subsidiary with the SEC, or any Governmental Authority succeeding to any or all of the functions of the SEC, or with any national securities exchange, as the case may be;

(xvi) promptly after any request therefor by the Administrative Agent or any Lender, copies of (i) any documents described in Section 101(k)(1) of ERISA that any Borrower or any ERISA Affiliate may request with respect to any Multiemployer Plan and (ii) any notices described in Section 101(l)(1) of ERISA that any Borrower or any ERISA Affiliate may request with respect to any Multiemployer Plan; provided that if a Borrower or any ERISA Affiliate has not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plan, the applicable Borrower or the applicable ERISA Affiliate will promptly make a request for such documents and notices from such administrator or sponsor and will provide copies of such documents and notices promptly after receipt thereof; and

(xvii) promptly following any request therefor, (y) such other information regarding the operations, material changes in ownership of Equity Interests, business affairs and financial condition of any Loan Party or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request and (z) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation.

Section 1.0b Notices of Material Events. The Borrower Representative will furnish to the Administrative Agent and each Lender prompt (but in any event within any time period that may be specified below) written notice of the following:

(i) the occurrence of any Default;

(ii) receipt of any notice of any investigation, litigation, or proceeding by a Governmental Authority commenced against any Loan Party that (i) seeks damages in excess of \$5,000,000, (ii) seeks injunctive relief, (iii) is asserted or instituted against any Plan, its fiduciaries or its assets, (iv) alleges criminal misconduct by any Loan Party, (v) alleges the violation of, or seeks to impose remedies under, any Environmental Law or related Requirement of Law, or seeks to impose Environmental Liability, (vi) asserts

liability on the part of any Loan Party in excess of \$5,000,000 in respect of any tax, fee, assessment, or other governmental charge, or (vii) involves any product recall;

(iii) receipt of any notice of any litigation or proceeding commenced by any Person that is not a Governmental Authority against any Loan Party that (i) seeks damages in excess of \$5,000,000, (ii) seeks injunctive relief, (iii) is asserted or instituted against any Plan, its fiduciaries or its assets, (iv) alleges the violation of, or seeks to impose remedies under, any Environmental Law or related Requirement of Law, or seeks to impose Environmental Liability, or (iv) involves any product recall and, in each case could reasonably be expected to result in a material Adverse Effect;

(iv) any Lien (other than Permitted Encumbrances) or claim made or asserted against any of the Collateral;

(v) any loss, damage, or destruction to the Collateral in the amount of \$2,000,000 or more, whether or not covered by insurance;

(vi) within two Business Days of receipt thereof, any and all default notices received under or with respect to any leased location or public warehouse where Collateral is located;

(vii) within two Business Days after the occurrence thereof, any Loan Party entering into a Swap Agreement or an amendment thereto, together with copies of all agreements evidencing such Swap Agreement or amendment;

(viii) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Loan Parties and their Subsidiaries in an aggregate amount exceeding \$1,000,000;

(ix) any material change in accounting or financial reporting practices by any Loan Party;

(x) any other development that results, or could reasonably be expected to result, in a Material Adverse Effect; and

(xi) any change in the information provided in the Beneficial Ownership Certification delivered to such Lender that would result in a change to the list of beneficial owners identified in such certification.

Each notice delivered under this Section must be accompanied by a statement of a Financial Officer or other executive officer of the Borrower Representative setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 1.0c Existence; Conduct of Business. Each Loan Party will (a) do or cause to be done all things necessary to preserve, renew, and keep in full force and effect its legal existence and the rights, qualifications, licenses, permits, franchises, governmental authorizations, and intellectual property rights material to the conduct of its business, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted, provided that, the foregoing will not prohibit any merger, consolidation, liquidation, or dissolution permitted under Section 6.03 and (b) carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted.

Section 1.0d Payment of Obligations. Each Loan Party will pay or discharge all Material Indebtedness and all other material liabilities and obligations, including Taxes, before the same become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (c) any such liabilities are not in excess of \$5,000,000 and none of the Collateral would become subject to forfeiture or loss as a result of the contest; provided that, each Loan Party will remit withholding taxes and other payroll taxes to appropriate Governmental Authorities as and when claimed to be due, notwithstanding the foregoing exceptions.

Section 1.0e Maintenance of Properties. Each Loan Party will keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

Section 1.0f Books and Records; Inspection Rights.

(i) Each Loan Party will keep proper books of record and account in which full, true, and correct entries are made of all dealings and transactions in relation to its business and activities.

(ii) Each Loan Party will permit any representatives designated by the Administrative Agent or any Lender (including employees of the Administrative Agent or any Lender), upon reasonable prior notice, during business hours, at such reasonable times, and as often as reasonably requested, to visit and discuss with such Loan Party's Financial Officers and other executive management such Loan Party's affairs, finances, and condition.

(iii) Each Loan Party will permit any representatives designated by the Administrative Agent or any Lender (including employees of the Administrative Agent, any Lender, or any consultants, accountants, lawyers, agents, and appraisers retained by the Administrative Agent), upon reasonable prior notice and during business hours, to visit and inspect such Loan Party's properties, to conduct at such Loan Party's premises, and at the times specified below, field examinations of such Loan Party's assets, liabilities, books and records, including examining and making extracts from its books and records, and to discuss its affairs, finances, and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested (all such activities described herein constituting a "field examination" for the purposes of this clause (c)). Each Loan Party acknowledges that the Administrative Agent, after exercising its rights of inspection and examination, may prepare and distribute to the Lenders certain Reports pertaining to such Loan Party's assets for internal use by the Administrative Agent and the Lenders. Notwithstanding any of the foregoing, the Administrative Agent may, in its Permitted Discretion, perform field examinations pursuant to this Section as follows:

- (1) the field examination specified in Section 4.01(s);
- (2) if any Event of Default is in existence, the Administrative Agent may conduct, at the Borrowers' expense, any field examinations requested by the Administrative Agent at such time;
- (3) so long as Availability at all times during the preceding twelve month period has remained equal to or greater than 12.5% of the Aggregate Revolving Commitment, the Administrative Agent may conduct one field examination during such twelve month period (in addition to the field examination specified in clause (a) preceding); and

(4) if Availability at any time during the preceding twelve month period has been less than 12.5% of the Aggregate Revolving Commitment the Administrative Agent may conduct two field examinations during such twelve month period (in addition to the field examination specified in clause (a), preceding).

The Loan Parties will be responsible for the costs and expenses of all field examinations conducted pursuant to this clause (c).

Section 1.0g Compliance with Laws and Material Contractual Obligations. Each Loan Party will, and will cause each Subsidiary to, (i) comply with each Requirement of Law applicable to it or its property (including Environmental Laws) and (ii) perform in all material respects its obligations under material agreements to which it is a party, except, in each case, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Each Loan Party will maintain in effect and enforce policies and procedures designed to ensure compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees, and agents with Anti-Corruption Laws and applicable Sanctions.

Section 1.0h Use of Proceeds.

(i)The proceeds of the Loans and the Letters of Credit will be used only (i) for working capital and general corporate purposes of the Borrowers and their Domestic Subsidiaries, (ii) for Investments permitted under Section 6.04, and (iii) to pay fees and expenses incurred by the Loan Parties in connection with entering into the Transactions. No part of the proceeds of any Loan and no Letter of Credit will be used, whether directly or indirectly, (y) for any purpose that entails a violation of any of the regulations of the Federal Reserve Board, including Regulation T, Regulation U, and Regulation X or (z) to make any Acquisition other than, subject to clause (y) preceding, any Permitted Acquisition.

(ii)No Borrower will request any Borrowing or Letter of Credit, and no Borrower will use, and each Borrower will provide that its Subsidiaries and its and their respective directors, officers, employees, and agents will not use, the proceeds of any Borrowing or Letter of Credit (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing, or facilitating any activities, business, or transaction of or with any Sanctioned Person, or in any Sanctioned Country, except to the extent permitted for a Person required to comply with Sanctions, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 1.0i Accuracy of Information. The Loan Parties will ensure that any information, including financial statements or other documents, furnished to the Administrative Agent or the Lenders in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder contains no material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and the furnishing of such information will be deemed to be a representation and warranty by the Borrowers on the date thereof as to the matters specified in this Section; provided that, with respect to projected financial information, the Loan Parties will only ensure that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

Section 1.j Insurance. Each Loan Party will maintain with financially sound and reputable carriers having a financial strength rating of at least A- by A.M. Best Company (a) insurance in such amounts (with no greater risk retention) and against such risks (including: loss or damage by fire and loss in transit; theft, burglary, pilferage, larceny, embezzlement, and other criminal activities; business interruption; and general liability) and such other hazards, as is customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (b) all insurance required pursuant to the Collateral Documents. The Borrowers will furnish to the Lenders information in reasonable detail as to the insurance so maintained (y) upon request of the Administrative Agent (not more frequently than annually) and (z) promptly after any material change in insurer or coverage amounts.

Section 1.k Casualty and Condemnation. The Borrowers will (a) furnish to the Administrative Agent and the Lenders prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any material portion of the Collateral or interest therein under power of eminent domain or by condemnation or similar proceeding and (b) ensure that the Net Proceeds of any such event (whether in the form of insurance proceeds, condemnation awards, or otherwise) are collected and applied in accordance with the applicable provisions of this Agreement and the Collateral Documents.

Section 1.l Appraisals. Subject to the other terms of this Section, at any time that the Administrative Agent requests, each Borrower will, and will cause each other Loan Party to, provide the Administrative Agent with appraisals or updates thereof of its Inventory from an appraiser selected and engaged by the Administrative Agent, and prepared on a basis satisfactory to the Administrative Agent, such appraisals and updates to include information required by any applicable Requirement of Law. The Administrative Agent may, in its Permitted Discretion, require an appraisal pursuant to this Section as follows:

(i) if any Event of Default is in existence, the Administrative Agent may request an appraisal of the Borrower's Inventory;

(ii) so long as Availability at all times during the preceding twelve month period has remained equal to or greater than 12.5% of the Aggregate Revolving Commitment, the Administrative Agent may request one appraisal of the Borrowers' Inventory during such twelve month period; and

(iii) if Availability at any time during the preceding twelve month period has been less than 12.5% of the Aggregate Revolving Commitment the Administrative Agent may request two appraisals of the Borrowers' Inventory during such twelve month period.

The Loan Parties will be responsible for the costs and expenses of all appraisals requested by the Administrative Agent pursuant to this Section.

Section 1.m Depository Banks. Within five months of the Effective Date, or such later date as may be agreed to by the Administrative Agent in its sole discretion, each Loan Party will maintain the Administrative Agent as its principal depository bank, including for the maintenance of operating, administrative, cash management, collection activity, and other deposit accounts for the conduct of its business (other than in the case of any jurisdiction in which the Administrative Agent or its Affiliates do not offer services reasonably convenient to any location of a Loan Party; provided that, notwithstanding anything in this Agreement or the Security Agreement to the contrary, the Loan Parties will establish and maintain (a) a Collateral Deposit Account (as defined in the Security Agreement) with the Administrative Agent and (b) require that all Credit Card Accounts paid to any Borrower by a credit card issuer, processor, or servicer are directed by the applicable credit card issuer, processor, or servicer to be directly

sent to a Collateral Deposit Account (and if such Collateral Deposit Account is not maintained with the Administrative Agent it is subject to a Deposit Account Control Agreement).

Section 1.n Additional Collateral; Further Assurances.

(i) Subject to any applicable Requirement of Law, each Loan Party will cause each Domestic Subsidiary formed or acquired after the date of this Agreement, including any limited liability company formed pursuant to any Division, to become a Loan Party by executing a Joinder Agreement. Upon execution and delivery thereof, each such Person (i) will automatically become a Loan Guarantor hereunder and thereupon will have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents and (ii) will grant Liens to the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, in any property of such Loan Party that constitutes Collateral.

(ii) Without limiting the foregoing, each Loan Party will execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements, and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, and other documents and such other actions or deliveries of the type required by Section 4.01, as applicable), that may be required by any Requirement of Law or that the Administrative Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all in form and substance reasonably satisfactory to the Administrative Agent and all at the expense of the Borrowers.

ARTICLE 6

Negative Covenants

Until all of the Secured Obligations have been Paid in Full, each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lenders that:

Section 1.0a Indebtedness. No Loan Party will create, incur, assume, or suffer to exist any Indebtedness, except:

(i) the Secured Obligations;

(ii) Indebtedness existing on the date hereof and set forth in Schedule 6.01 and any extensions, renewals, refinancings, and replacements of any such Indebtedness in accordance with clause (f) following;

(iii) Indebtedness of any Loan Party to any Subsidiary and of any Subsidiary to any Loan Party, provided that (i) Indebtedness of any Subsidiary that is not a Loan Party to any Loan Party will be subject to Section 6.04 and (ii) Indebtedness of any Loan Party to any Subsidiary that is not a Loan Party will be subordinated to the Secured Obligations on terms reasonably satisfactory to the Administrative Agent;

(iv) Guarantees by any Loan Party of Indebtedness of any Subsidiary and by any Subsidiary of Indebtedness of any Loan Party, provided that (i) the Indebtedness so Guaranteed is permitted by this Section 6.01, (ii) Guarantees by any Loan Party of Indebtedness of any Subsidiary that is not a Loan Party will be subject to Section 6.04, and (iii) Guarantees permitted under this clause (d) will be subordinated to the Secured

Obligations on the same terms as the Indebtedness so Guaranteed is subordinated to the Secured Obligations;

(v)Indebtedness of any Loan Party incurred to finance the acquisition, construction, or improvement of any fixed or capital assets (whether or not constituting purchase money Indebtedness), including Capital Lease Obligations, and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals, and replacements of any such Indebtedness in accordance with clause (f) following; provided that (i) such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this clause (e) together with any Refinance Indebtedness in respect thereof permitted by clause (f) following, does not exceed \$2,500,000 at any time outstanding;

(vi)Indebtedness that represents extensions, renewals, refinancings, or replacements (such Indebtedness being so extended, renewed, refinanced, or replaced being referred to herein as the "Refinance Indebtedness") of any of the Indebtedness described in clause (b) and clause (e) preceding and clause (i), clause (j), and clause (k) following (such Indebtedness being referred to herein as the "Original Indebtedness"); provided that (i) such Refinance Indebtedness does not increase the principal amount or interest rate of the Original Indebtedness, (ii) any Liens securing such Refinance Indebtedness are not extended to any additional property of any Loan Party, (iii) no Loan Party that is not originally obligated with respect to repayment of such Original Indebtedness is required to become obligated with respect to such Refinance Indebtedness, (iv) such Refinance Indebtedness does not result in a shortening of the average weighted maturity of such Original Indebtedness, (v) the terms of such Refinance Indebtedness are not materially less favorable to the obligor thereunder than under the original terms of such Original Indebtedness, and (vi) if such Original Indebtedness was subordinated in right of payment to the Secured Obligations, then the terms and conditions of such Refinance Indebtedness must include subordination terms and conditions that are at least as favorable to the Administrative Agent and the Lenders as those that were applicable to such Original Indebtedness;

(vii)Indebtedness owed to any Person providing workers' compensation, health, disability, or other employee benefits or property, casualty, or liability insurance, pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business;

(viii)Indebtedness of any Loan Party in respect of performance bonds, bid bonds, appeal bonds, surety bonds, and similar obligations, in each case provided in the ordinary course of business;

(ix)Indebtedness of any Person that becomes a Loan Party after the Effective Date; provided that (i) such Indebtedness exists at the time such Person becomes a Loan Party and is not created in contemplation of or in connection with such Person becoming a Loan Party and (ii) the aggregate principal amount of Indebtedness permitted by this clause (i), together with any Refinance Indebtedness in respect thereof permitted by clause (f) preceding, does not exceed \$1,000,000 at any time outstanding;

(x)other unsecured Indebtedness in an aggregate principal amount not exceeding \$2,500,000 at any time outstanding;

(xi)subject to the terms of Section 6.02(i), other secured Indebtedness in an aggregate principal amount not exceeding \$2,500,000 at any time outstanding;

(xii) unsecured Indebtedness consisting of the financing of insurance premiums; and

(xiii) Subordinated Indebtedness in an aggregate principal amount not exceeding \$2,500,000 at any time outstanding.

Section 1.0b Liens. No Loan Party will create, incur, assume, or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including Accounts) or rights in respect of any thereof, except:

(i) Liens created pursuant to any Loan Document;

(ii) Permitted Encumbrances;

(iii) any Lien on any property or asset of any Borrower or any Subsidiary existing on the date hereof and set forth in Schedule 6.02; provided that (i) such Lien does not apply to any other property or asset of such Borrower or Subsidiary or any other Borrower or Subsidiary and (ii) such Lien secures only those obligations that it secures on the Effective Date, and extensions, renewals, and replacements thereof that do not increase the outstanding principal amount thereof;

(iv) Liens on fixed or capital assets acquired, constructed, or improved by any Borrower or any Subsidiary; provided that (i) such Liens secure Indebtedness permitted by Section 6.01(e), (ii) such Liens and the Indebtedness secured thereby are incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring, constructing, or improving such fixed or capital assets, and (iv) such Liens do not apply to any other property or assets of such Borrower or Subsidiary or any other Borrower or Subsidiary;

(v) any Lien existing on any property or asset (other than Accounts and Inventory) prior to the acquisition thereof by any Borrower or any Subsidiary or existing on any property or asset (other than Accounts and Inventory) of any Person that becomes a Loan Party after the date hereof prior to the time such Person becomes a Loan Party; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Loan Party, as the case may be, (ii) such Lien does not apply to any other property or assets of the Loan Party, and (iii) such Lien secures only those obligations that it secures on the date of such acquisition or the date such Person becomes a Loan Party, as the case may be, and extensions, renewals, and replacements thereof that do not increase the outstanding principal amount thereof;

(vi) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the UCC in effect in the relevant jurisdiction covering only the items being collected upon;

(vii) Liens arising out of Sale and Leaseback Transactions permitted by Section 6.06;

(viii) Liens granted by a Subsidiary that is not a Loan Party in favor of any Borrower or another Loan Party in respect of Indebtedness owed by such Subsidiary;

(ix) Liens not otherwise permitted under clause (a) through clause (g) preceding securing obligations permitted under Section 6.01(k); provided that none of the Collateral may be subject to any Lien permitted under this clause (i) and

(x) Liens that constitute a "security interest" for the purposes of section 17(1)(b) of the PPSA which do not, in substance, secure payment or performance of an obligation.

Notwithstanding the foregoing, none of the Liens permitted pursuant to this Section 6.02 may at any time attach to any Loan Party's (y) Accounts, other than those permitted under clause (a) and clause (d)(ii) of the definition of Permitted Encumbrances and clause (a), preceding and (z) Inventory, other than those permitted under clause (a) and clause (b) of the definition of Permitted Encumbrances and clause (a), preceding.

Section 1.0c Fundamental Changes.

(i)No Loan Party will merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or otherwise Dispose of all or any substantial part of its assets, or all or any substantial part of the Equity Interests of any of its Domestic Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate, dissolve, or enter into a Division, except that, if at the time thereof and immediately after giving effect thereto no Event of Default has occurred and is continuing (i) any Subsidiary of any Borrower may merge into a Borrower in a transaction in which a Borrower is the surviving entity, (ii) any Loan Party (other than a Borrower) may merge into any other Loan Party in a transaction in which the surviving entity is a Loan Party, and (iii) any Subsidiary that is not a Loan Party may liquidate, dissolve, or enter into a Division if the Loan Party that owns such Subsidiary determines in good faith that such liquidation, dissolution, or Division is in the best interests of such Loan Party and is not materially disadvantageous to the Lenders; provided that, any such merger involving a Person that is not a wholly owned Domestic Subsidiary immediately prior to such merger will not be permitted unless also permitted by Section 6.04.

(ii)No Loan Party will engage to any material extent in any business other than businesses of the type conducted by the Loan Parties on the date hereof and businesses reasonably related or incidental thereto.

(iii)No Loan Party will change the basis of determining the last day of its fiscal year from the basis in effect on the Effective Date.

(iv)No Loan Party will change (i) its methodology for determining the cost basis of Inventory until (A) the Borrower representative has given prior written notice to the Administrative Agent of such change, (B) notwithstanding any limitation in Section 5.12, the Administrative Agent has received a new appraisal of the Borrowers' Inventory, and (C) the Borrowers and the Credit Parties have agreed to any changes reasonably necessary to the determination of the Borrowing Base arising from such change or (ii) the accounting basis upon which its financial statements are prepared.

(v)No Loan Party will change the tax filing elections it has made under the Code.

Section 1.0d Investments, Loans, Advances, Guarantees, and Acquisitions. No Loan Party will (x) purchase, hold, or acquire (including pursuant to any merger with any Person that was not a Loan Party and a wholly owned Subsidiary prior to such merger) any evidences of Indebtedness or Equity Interests or other securities (including any option, warrant, or other right to acquire any of the foregoing), (y) make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or (z) purchase or otherwise acquire (in one transaction or a series of transactions and whether through purchase of assets, merger, or otherwise) any assets of any other Person constituting a business unit (each of the activities described in clause (x) through clause (z) preceding being an "Investment"), except:

(i)Permitted Investments;

(ii)investments in existence on the date hereof and described in Schedule 6.04;

(iii) investments by the Loan Parties in Equity Interests in their respective Subsidiaries, provided that, at any time that the Payment Conditions are not met, the Loan Parties will not make any new investment under this clause (c);

(iv) loans or advances made by any Loan Party to any Subsidiary, provided that, at any time that the Payment Conditions are not met, the Loan Parties will not make any new loans or advances under this clause (d);

(v) Guarantees constituting Indebtedness permitted by Section 6.01, provided that, at any time that the Payment Conditions are not met, the Loan Parties will not make any new Guarantee of Indebtedness under this clause (e);

(vi) loans or advances made by a Loan Party to its employees, officers, or directors for travel and entertainment expenses, relocation costs, and other purposes up to a maximum of \$100,000 in the aggregate at any one time outstanding;

(vii) loans or advances made by a Loan Party to its employees, officers, or directors in connection with the granting or exercise of options and any payment of tax liabilities related thereto in connection with any employee benefit plans or stock option plans approved by the board of directors of Allbirds;

(viii) notes payable, or stock or other securities issued by Account Debtors to a Loan Party pursuant to negotiated agreements with respect to settlement of such Account Debtor's Accounts in the ordinary course of business, consistent with past practices;

(ix) investments in the form of Swap Agreements permitted by Section 6.07;

(x) investments of any Person existing at the time such Person becomes a Subsidiary of a Loan Party or consolidates or merges with a Loan Party (including in connection with a Permitted Acquisition) so long as such investments were not made in contemplation of such Person becoming a Subsidiary or of such merger;

(xi) investments received in connection with Dispositions permitted by Section 6.05;

(xii) investments constituting deposits described in clause (c) and clause (d)(i) of the definition of the term "Permitted Encumbrances";

(xiii) subject to the Payment Conditions being met, Permitted Acquisitions; and

(xiv) subject to the Payment Conditions being met, other Investments approved by the board of directors of Allbirds, subject to the Loan Parties' compliance with the USA PATRIOT Act, the Beneficial Ownership Regulations, and the terms of Section 5.01(g) and Section 5.02(k).

Section 1.0e Asset Sales. No Loan Party will Dispose of any asset, including any Equity Interest owned by it, nor will any Borrower permit any Subsidiary to issue any additional Equity Interest in such Subsidiary (other than to another Borrower or another Subsidiary in compliance with Section 6.04), except:

(i) Dispositions of (i) Inventory for fair value and in the ordinary course of business and (ii) used, obsolete, worn out, or surplus equipment or property in the ordinary course of business;

(ii) Dispositions of assets to any Borrower or any Subsidiary, provided that any such Dispositions involving a Subsidiary that is not a Loan Party must be made in compliance with Section 6.09;

(iii) Dispositions of Accounts in connection with the compromise, settlement, or collection thereof;

(iv) Dispositions of Permitted Investments and other investments, other than Equity Interests of Domestic Subsidiaries, permitted by Section 6.04;

(v) Sale and Leaseback Transactions permitted by Section 6.06;

(vi) Dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Borrower or any Subsidiary; and

(vii) Dispositions of assets (other than Equity Interests in a Domestic Subsidiary unless all Equity Interests in such Domestic Subsidiary are sold) that are not permitted by any other clause of this Section, provided that the aggregate fair market value of all assets Disposed of in reliance upon this clause (g) do not exceed \$5,000,000 during any fiscal year of Allbirds.

Section 1.0f Sale and Leaseback Transactions. No Loan Party will enter into any arrangement, directly or indirectly, whereby it sells or transfers any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred (a "Sale and Leaseback Transaction"), except for any such sale of any fixed or capital assets by any Loan Party that is made for cash consideration in an amount not less than the fair value of such fixed or capital asset and that is consummated within 90 days after such Loan Party acquires or completes the construction of such fixed or capital asset.

Section 1.0g Swap Agreements. No Loan Party will enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which any Loan Party has actual exposure (other than those in respect of Equity Interests of any Loan Party) and (b) Swap Agreements entered into in order to effectively cap, collar, or exchange interest rates (from floating to fixed rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of any Loan Party.

Section 1.0h Restricted Payments; Certain Payments of Indebtedness.

(i) No Loan Party will declare or make, or agree to declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except (i) Allbirds may declare and pay dividends with respect to its common stock payable solely in additional shares of its common stock, and, with respect to its preferred stock, payable solely in additional shares of such preferred stock or in shares of its common stock, (ii) Subsidiaries may declare and pay dividends ratably with respect to their Equity Interests, and (iii) Allbirds may make other Restricted Payments subject to the satisfaction of the Payment Conditions.

(ii) No Loan Party will make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities, or other property) of or in respect of principal of or interest on any Indebtedness, or any payment or other distribution (whether in cash, securities, or other property), including any sinking fund or

similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation, or termination of any Indebtedness, except:

- (1) payment of Indebtedness created under the Loan Documents;
- (2) payment of regularly scheduled interest and principal payments as and when due in respect of any Indebtedness permitted under Section 6.01;
- (3) refinancings of Indebtedness to the extent permitted by Section 6.01;
- (4) payment of secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness; and
- (5) subject to satisfaction of the Payment Conditions (including on a pro forma basis after giving effect thereto), payment of other Indebtedness not otherwise permitted under this Section 6.08(b).

Section 1.0i Transactions with Affiliates. No Loan Party will sell, lease, or otherwise transfer any property or assets to, or purchase, lease, or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions that (i) are in the ordinary course of business and (ii) are at prices and on terms and conditions not less favorable to such Loan Party than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among any Loan Parties not involving any other Affiliate, (c) any investment permitted by Section 6.04(c), Section 6.04(d), or Section 6.04(e), (d) any Indebtedness permitted under Section 6.01(c), (e) any Restricted Payment permitted by Section 6.08, (f) loans or advances to employees permitted under Section 6.04, (g) the payment of reasonable fees to directors of any Loan Party who are not employees of such Loan Party, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers, and employees of the Loan Parties in the ordinary course of business, and (h) any issuances of securities or other payments, awards, or grants in cash, securities, or otherwise pursuant to, or the funding of, employment agreements, stock options, and stock ownership plans approved by a Loan Party's board of directors.

Section 1.j Restrictive Agreements. No Loan Party will, nor will it permit any Subsidiary to, directly or indirectly, enter into, incur, or permit to exist any agreement or other arrangement that prohibits, restricts, or imposes any condition upon (a) the ability of such Loan Party or any Subsidiary to create, incur, or permit to exist any Lien upon any of its property or assets or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any of its Equity Interests or to make or repay loans or advances to any Loan Party or any other Subsidiary or to Guarantee Indebtedness of any Loan Party or any other Subsidiary; provided that (i) the foregoing will not apply to restrictions and conditions imposed by any Requirement of Law or by any Loan Document, (ii) the foregoing will not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.10 (but will apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing will not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided that, such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder, (iv) clause (a) preceding will not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, and (v) clause (a) preceding will not apply to customary provisions in leases and other contracts restricting the assignment thereof.

Section 1.k Amendment of Material Documents. No Loan Party will, nor will it permit any Subsidiary to, amend, modify, or waive any of its rights under its charter, articles, or certificate of incorporation or organization, by-laws, operating, management or partnership agreement, or other organizational or governing documents to the extent any such amendment, modification, or waiver would be adverse to the Lenders.

Section 1.1 Financial Covenants.

(i)[reserved]

(ii)Fixed Charge Coverage Ratio. The Loan Parties will not permit the Fixed Charge Coverage Ratio determined for the Loan Parties (excluding any Subsidiary that is not a Loan Party) on a consolidated basis, for the twelve month period ended as of the last day of any fiscal month of Allbirds during any applicable testing period, to be less than 1.00 to 1.00. As used in this Section 6.13(b), “applicable testing period” means the period (i) beginning on the last day of the fiscal month ended immediately prior to the date (A) of the occurrence of any Event of Default or (B) that Availability is less than 10.0% of the Aggregate Revolving Commitment and (ii) continuing through and including the last day of the fiscal month following the date that Availability has been greater than (or equal to) 10.0% of the Aggregate Revolving Commitment and no Event of Default has existed, in each case for a period of 30 consecutive days.

ARTICLE 7

Events of Default

If any of the following events (“Events of Default”) occur:

(i)the Borrowers fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same becomes due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(ii)the Borrowers fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement or any other Loan Document, when and as the same becomes due and payable, and such failure continues unremedied for a period of five Business Days;

(iii)any representation or warranty made or deemed made by or on behalf of any Loan Party in, or in connection with, this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement, or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, proves to have been materially incorrect when made or deemed made;

(iv)any Loan Party fails to observe or perform any covenant, condition, or agreement contained in Section 5.02(a), Section 5.03 (with respect to a Loan Party’s existence), or Section 5.08 or in Article 6;

(v)any Loan Party fails to observe or perform any covenant, condition, or agreement contained in this Agreement (other than those that constitute a default under another Section of this Article), and such failure continues unremedied for a period of (i) five days after the earlier of any Loan Party’s knowledge of such breach or notice thereof from the Administrative Agent (which notice will be given at the request of any Lender)

if such breach relates to terms or provisions of Section 5.01, Section 5.02 (other than Section 5.02(a)), Section 5.03 through Section 5.07, Section 5.10, Section 5.11, or Section 5.13 or (ii) fifteen days after the earlier of any Loan Party's knowledge of such breach or notice thereof from the Administrative Agent (which notice will be given at the request of any Lender) if such breach relates to terms or provisions of any other Section of this Agreement;

(vi) any Loan Party fails to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same becomes due and payable;

(vii) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption, or defeasance thereof, prior to its scheduled maturity; provided that, this clause (g) will not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness to the extent such sale or transfer is permitted by Section 6.05;

(viii) an involuntary proceeding is commenced or an involuntary petition is filed seeking (i) liquidation, reorganization, or other relief in respect of a Loan Party or its debts, or of a substantial part of its assets, under any federal, state, or foreign bankruptcy, insolvency, receivership, or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator, or similar official for any Loan Party or for a substantial part of its assets, and, in any such case, such proceeding or petition continues undismissed for 60 days or an order or decree approving or ordering any of the foregoing is entered;

(ix) any Loan Party (i) voluntarily commences any proceeding or files any petition seeking liquidation, reorganization, or other relief under any Federal, state, or foreign bankruptcy, insolvency, receivership, or similar law now or hereafter in effect, (ii) consents to the institution of, or fails to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) applies for or consents to the appointment of a receiver, trustee, custodian, sequestrator, conservator, or similar official for such Loan Party or for a substantial part of its assets, (iv) files an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) makes a general assignment for the benefit of creditors, or (vi) takes any action for the purpose of effecting any of the foregoing;

(x) any Loan Party becomes unable, admits in writing its inability, or publicly declares its intention not to, or fails generally to pay its debts as they become due;

(xi) (i) one or more judgments for the payment of money, to the extent not covered by insurance or that the applicable insurance carrier has denied coverage or liability, in an aggregate amount in excess of \$10,000,000 are rendered against any Loan Party and the same remain undischarged for a period of 30 consecutive days during which execution is not effectively stayed, or any action is legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party to enforce any such judgment or (ii) any Loan Party fails within 30 days to discharge one or more non-monetary judgments or orders that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, which judgments or orders, in any such case, are not stayed on appeal or otherwise being appropriately contested in good faith by proper proceedings diligently pursued;

(xii)an ERISA Event occurs that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect or liability of the Loan Parties in an aggregate amount exceeding \$1,000,000;

(xiii)a Change in Control occurs;

(xiv)the occurrence of any default or event of default, as specified in any Loan Document (other than this Agreement) or the breach of any of the terms or provisions of any Loan Document (other than this Agreement), which default, event of default, or breach continues beyond any period of grace therein provided;

(xv)the Loan Guaranty fails to remain in full force or effect or any action is taken to discontinue or to assert the invalidity or unenforceability of the Loan Guaranty, or any Guarantor fails to comply with any of the terms or provisions of the Loan Guaranty to which it is a party, or any Guarantor denies that it has any further liability under the Loan Guaranty to which it is a party, or gives notice to such effect, including notice of termination delivered pursuant to Section 10.08;

(xvi)except as permitted by the terms of any Collateral Document, (i) any Collateral Document for any reason fails to create a valid security interest in any Collateral purported to be covered thereby or (ii) any Lien securing any Secured Obligation ceases to be a perfected, first priority (subject to the terms of this Agreement and the Security Agreement) Lien;

(xvii)this Agreement or any Collateral Document fails to remain in full force or effect or any action is taken to discontinue or to assert the invalidity or unenforceability of this Agreement or any Collateral Document; or

(xviii)any material provision of any Loan Document for any reason ceases to be valid, binding, and enforceable in accordance with its terms (or any Loan Party challenges the enforceability of any Loan Document or asserts in writing, or engages in any action or inaction that evidences its assertion, that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding, and enforceable in accordance with its terms);

then, and in every such event (other than an event with respect to any Loan Party described in clause (h) or clause (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders will, by notice to the Borrower Representative, take any or all of the following actions, at the same or different times: (i) terminate the Commitments (including the Swingline Commitment), whereupon the Commitments will terminate immediately; (ii) declare the Loans then outstanding to be due and payable in whole (or in part, but ratably as among the Classes of Loans and the Loans of each Class at the time outstanding, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Loan Parties accrued hereunder, will become due and payable immediately, in each case without presentment, demand, protest, or other notice of any kind, all of which are hereby waived by the Loan Parties; and (iii) require cash collateral for the LC Exposure in accordance with Section 2.06(j); and in the case of any event with respect to any Loan Party in clause (h) or clause (i) of this Article, the Commitments (including the Swingline Commitment) will automatically terminate and the principal of the Loans then outstanding and the cash collateral for the LC Exposure, together with accrued interest thereon and all fees and other obligations of the Loan Parties accrued hereunder, will automatically become due and payable, in each case without presentment, demand, protest, or other notice of any kind, all of which are

hereby waived by the Loan Parties. During the existence of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders will, increase the rate of interest applicable to the Loans and other Obligations as set forth in this Agreement and exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

ARTICLE 8

The Administrative Agent

Section 1.0a Authorization and Action.

(i) Each Lender, on behalf of itself and any of its Affiliates that are Secured Parties, and the Issuing Bank hereby irrevocably appoints the entity named as the Administrative Agent in the heading of this Agreement and its successors and assigns to serve as the administrative agent and collateral agent under the Loan Documents and each Lender and the Issuing Bank authorizes the Administrative Agent to take such actions as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent under such agreements and to exercise such powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than within the U.S., each Lender and the Issuing Bank hereby grants to the Administrative Agent any required powers of attorney to execute and enforce any Collateral Document governed by the laws of such jurisdiction on such Lender's or such Issuing Bank's behalf. Without limiting the foregoing, each Lender and the Issuing Bank hereby authorizes the Administrative Agent to execute and deliver, and to perform its obligations under, each of the Loan Documents to which the Administrative Agent is a party, to exercise all rights, powers, and remedies that the Administrative Agent may have under such Loan Documents.

(ii) As to any matters not expressly provided for herein and in the other Loan Documents (including enforcement or collection), the Administrative Agent will not be required to exercise any discretion or take any action, but will be required to act or to refrain from acting (and will be fully protected in so acting or refraining from acting) upon the written instructions of the Required Lenders (or such other number or percentage of the Lenders as may be necessary, pursuant to the terms in the Loan Documents), and, unless and until revoked in writing, such instructions will be binding upon each Lender and the Issuing Bank; provided that the Administrative Agent will not be required to take any action that (i) the Administrative Agent reasonably believes exposes it to liability unless the Administrative Agent receives an indemnification satisfactory to it from the Lenders and the Issuing Bank with respect to such action or (ii) is contrary to this Agreement or any other Loan Document or applicable law, including any action that may be in violation of the automatic stay under any requirement of law relating to bankruptcy, insolvency or reorganization, or relief of debtors or that may effect a forfeiture, modification, or termination of property of a Defaulting Lender in violation of any requirement of law relating to bankruptcy, insolvency or reorganization, or relief of debtors; provided, further, that the Administrative Agent may seek clarification or direction from the Required Lenders prior to the exercise of any such instructed action and may refrain from acting until such clarification or direction has been provided. Except as expressly set forth in the Loan Documents, the Administrative Agent will not have any duty to disclose, and will not be liable for the failure to disclose, any information relating to any Loan Party or any Affiliate of any Loan Party that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity. Nothing in this Agreement will require the Administrative Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers

if it has reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(iii) In performing its functions and duties hereunder and under the other Loan Documents, the Administrative Agent is acting solely on behalf of the Lenders and the Issuing Bank (except in limited circumstances expressly provided for herein relating to the maintenance of the Register), and the Administrative Agent's duties are entirely mechanical and administrative in nature. Without limiting the generality of the foregoing:

(1) the Administrative Agent does not assume and will not be deemed to have assumed any obligation or duty or any other relationship as the agent, fiduciary, or trustee of or for any Lender, Issuing Bank, or Secured Party or holder of any other obligation other than as expressly set forth herein and in the other Loan Documents, regardless of whether a Default or an Event of Default has occurred and is continuing (and it is understood and agreed that the use of the term "agent" (or any similar term) herein or in any other Loan Document with reference to the Administrative Agent is not intended to connote any fiduciary duty or other implied (or express) obligations arising under agency doctrine of any applicable law, and that such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties); additionally, each Lender agrees that it will not assert any claim against the Administrative Agent based on an alleged breach of fiduciary duty by the Administrative Agent in connection with this Agreement and the transactions contemplated hereby; and

(2) nothing in this Agreement or any Loan Document will require the Administrative Agent to account to any Lender for any sum or the profit element of any sum received by the Administrative Agent for its own account.

(iv) The Administrative Agent may perform any of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any of their respective duties and exercise their respective rights and powers through their respective Related Parties. The exculpatory provisions of this Article will apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and will apply to their respective activities pursuant to this Agreement. The Administrative Agent will not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

(v) Other than the Administrative Agent, no other "syndication agent", "documentation agent", or any "arranger" (or any other similar title granted to any Lender) will have obligations or duties whatsoever in such capacity under this Agreement or any other Loan Document and will incur no liability hereunder or thereunder in such capacity, but all such persons will have the benefit of the indemnities provided for hereunder.

(vi) In case of the pendency of any proceeding with respect to any Loan Party under any federal, state, or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, the Administrative Agent (irrespective of whether the principal of any Loan or any reimbursement obligation in respect of any LC Disbursement is then due and payable as herein expressed or by declaration or otherwise and irrespective of whether the

Administrative Agent has made any demand on any Borrower) will be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

- (1) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Disbursements, and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Bank, and the Administrative Agent (including any claim under Section 2.12, Section 2.13, Section 2.15, Section 2.17, and Section 9.03) allowed in such judicial proceeding; and
- (2) 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 proceeding is hereby authorized by each Lender, the Issuing Bank, and each other Secured Party to make such payments to the Administrative Agent and, in the event that the Administrative Agent consents to the making of such payments directly to the Lenders, the Issuing Bank, or the other Secured Parties, to pay to the Administrative Agent any amount due to it, in its capacity as the Administrative Agent, under the Loan Documents (including under Section 9.03). Nothing contained herein will be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment, or composition affecting the Obligations or the rights of any Lender or Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Bank in any such proceeding.

The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders, and the Issuing Bank, and, except solely to the extent of the Loan Parties' right to consent pursuant to and subject to the conditions set forth in this Article, no Loan Party nor any of their respective Affiliates, will have any rights as a third party beneficiary under any such provisions. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Secured Obligations provided under the Loan Documents, to have agreed to the provisions of this Article.

Section 1.0b Administrative Agent's Reliance, Indemnification, Etc.

(i) Neither the Administrative Agent nor any of its Related Parties will be (i) liable for any action taken or omitted to be taken by it under or in connection with this Agreement or the other Loan Documents (y) with the consent of or at the request of the Required Lenders (or such other number or percentage of the Lenders as may be necessary, or as the Administrative Agent may reasonably believe to be necessary, under the circumstances as provided in the Loan Documents) or (z) in the absence of its own gross negligence or willful misconduct (such absence to be presumed unless otherwise determined by a court of competent jurisdiction by a final and nonappealable judgment) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations, or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement, or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability, or sufficiency of this Agreement or any other Loan Document or for any failure of any Loan Party to perform its obligations hereunder or thereunder.

(ii) The Administrative Agent will be deemed not to have knowledge of any Default unless and until written notice thereof (stating that it is a “notice of default”) is given to the Administrative Agent by the Borrower Representative, a Lender, or the Issuing Bank, and the Administrative Agent will not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty, or representation made in or in connection with any Loan Document, (ii) the contents of any certificate, report, or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements, or other terms or conditions set forth in any Loan Document or the occurrence of any Default, (iv) the sufficiency, validity, enforceability, effectiveness, or genuineness of any Loan Document or any other agreement, instrument, or document, (v) the satisfaction of any condition set forth in Article 4 or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent, or (vi) the creation, perfection, or priority of Liens on the Collateral.

(iii) Without limiting the foregoing, the Administrative Agent (i) may treat the payee of any promissory note as its holder until such promissory note has been assigned in accordance with Section 9.04, (ii) may rely on the Register to the extent set forth in Section 9.04(b), (iii) may consult with legal counsel (including counsel to the Borrowers), independent public accountants and other experts selected by it, and will not be liable for any action taken or omitted to be taken reasonably by it in accordance with the advice of such counsel, accountants, or experts, (iv) makes no warranty or representation to any Lender or Issuing Bank and will not be responsible to any Lender or Issuing Bank for any statements, warranties, or representations made by or on behalf of any Loan Party in connection with this Agreement or any other Loan Document, (v) in determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent has received notice to the contrary from such Lender or Issuing Bank sufficiently in advance of the making of such Loan or the issuance of such Letter of Credit, and (vi) will be entitled to rely on, and will incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any notice, consent, certificate, or other instrument or writing (which writing may be a fax, any electronic message, Internet or intranet website posting, or other distribution) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated by the proper party or parties (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

Section 1.0c Posting of Communications.

(i) The Loan Parties agree that the Administrative Agent may, but will not be obligated to, make any Communications available to the Lenders and the Issuing Bank by posting the Communications on IntraLinks™, DebtDomain, SyndTrak, ClearPar, or any other electronic system chosen by the Administrative Agent to be its electronic transmission system (the “Approved Electronic Platform”).

(ii) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Effective Date, a user ID/password authorization system) and the Approved Electronic Platform is secured through a per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, the

Issuing Bank, and each Loan Party acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure, that the Administrative Agent is not responsible for approving or vetting the representatives or contacts of any Lender that are added to the Approved Electronic Platform, and that there are confidentiality and other risks associated with such distribution. Each of the Lenders, the Issuing Bank, and each Loan Party hereby approves distribution of the Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(iii) THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS ARE PROVIDED “AS IS” AND “AS AVAILABLE”. THE APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT WILL THE ADMINISTRATIVE AGENT, ANY ARRANGER, ANY DOCUMENTATION AGENT, SYNDICATION AGENT, OR ANY OF THEIR RESPECTIVE RELATED PARTIES (INCLUDING ANY OTHER TITLE THAT MAY BE GIVEN TO ANY SECURED PARTY HERETO, COLLECTIVELY, THE “APPLICABLE PARTIES”) HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER, ANY ISSUING BANK, OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, LOSSES, OR EXPENSES (WHETHER IN TORT, CONTRACT, OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY’S OR THE ADMINISTRATIVE AGENT’S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET OR THE APPROVED ELECTRONIC PLATFORM.

“Communications” means, collectively, any notice, demand, communication, information, document, or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein that is distributed by the Administrative Agent, any Lender, or Issuing Bank by means of electronic communications pursuant to this Section, including through an Approved Electronic Platform.

(iv) Each Lender and Issuing Bank agrees that notice to it (as provided in the next sentence) specifying that Communications have been posted to the Approved Electronic Platform will constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender and Issuing Bank agrees (i) to notify the Administrative Agent in writing (which could be in the form of electronic communication) from time to time of such Lender’s or Issuing Bank’s (as applicable) email address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such email address.

(v) Each of the Lenders, Issuing Bank, and each Loan Party agrees that the Administrative Agent may, but (except as may be required by applicable law) will not be obligated to, store the Communications on the Approved Electronic Platform in accordance with the Administrative Agent’s generally applicable document retention procedures and policies.

(vi) Nothing herein will prejudice the right of the Administrative Agent, any Lender, or Issuing Bank to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

Section 1.0d The Administrative Agent Individually; Reliance. With respect to its Commitment, Loans, and Letters of Credit, the Person serving as the Administrative Agent will have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or Issuing Bank, as the case may be. The terms "Issuing Bank", "Lenders", "Required Lenders", and any similar terms will, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity as a Lender, Issuing Bank, or as one of the Required Lenders, as applicable. The Person serving as the Administrative Agent and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust, or other business with, any Loan Party, any Subsidiary, or any Affiliate of any of the foregoing as if such Person was not acting as the Administrative Agent and without any duty to account therefor to the Lenders or the Issuing Bank.

Section 1.0e Successor Administrative Agent.

(i) The Administrative Agent may resign at any time by giving 30 days prior written notice thereof to the Lenders, the Issuing Bank, and the Borrower Representative, whether or not a successor Administrative Agent has been appointed. Upon any such resignation, the Required Lenders will have the right, to appoint a successor Administrative Agent. If no successor Administrative Agent has been so appointed by the Required Lenders and has accepted such appointment within 30 days after the retiring Administrative Agent's giving of notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent that must be a bank with an office in New York, New York or an Affiliate of any such bank. In either case, such appointment will be subject to the prior written approval of the Borrower Representative (which approval may not be unreasonably withheld and will not be required while an Event of Default has occurred and is continuing). Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent, such successor Administrative Agent will succeed to and become vested with, all the rights, powers, privileges, and duties of the retiring Administrative Agent. Upon the acceptance of appointment as Administrative Agent by a successor Administrative Agent, the retiring Administrative Agent will be discharged from its duties and obligations under this Agreement and the other Loan Documents. Prior to any retiring Administrative Agent's resignation hereunder as Administrative Agent, the retiring Administrative Agent will take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Loan Documents.

(ii) Notwithstanding clause (a) preceding, in the event no successor Administrative Agent has been so appointed and has accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the effectiveness of its resignation to the Lenders, the Issuing Bank, and the Borrowers, whereupon, on the date of effectiveness of such resignation stated in such notice, (i) the retiring Administrative Agent will be discharged from its duties and obligations hereunder and under the other Loan Documents; provided that, solely for purposes of maintaining any security interest granted to the Administrative Agent under any Collateral Document for the benefit of the Secured Parties, the retiring Administrative Agent will continue to be vested with such security interest as collateral agent for the benefit of the Secured Parties and continue to be entitled to the rights set forth in such Collateral Document and Loan Document, and,

in the case of any Collateral in the possession of the Administrative Agent, will continue to hold such Collateral, in each case until such time as a successor Administrative Agent is appointed and accepts such appointment in accordance with this Section (it being understood and agreed that the retiring Administrative Agent will have no duty or obligation to take any further action under any Collateral Document, including any action required to maintain the perfection of any such security interest), and (ii) the Required Lenders will succeed to and become vested with all the rights, powers, privileges, and duties of the retiring Administrative Agent; provided that (A) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent must be made directly to such Person and (B) all notices and other communications required or contemplated to be given or made to the Administrative Agent must be given or made directly to each Lender and Issuing Bank. Following the effectiveness of the Administrative Agent's resignation from its capacity as such, the provisions of this Article, Section 2.17(d), and Section 9.03, as well as any exculpatory, reimbursement, and indemnification provisions set forth in any other Loan Document, will continue in effect for the benefit of such retiring Administrative Agent, its sub agents, and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent and in respect of the matters referred to in the proviso under clause (a) preceding.

Section 1.0f Acknowledgements of the Lenders and Issuing Bank.

(i) Each Lender represents that it is engaged in making, acquiring, or holding commercial loans in the ordinary course of its business and that it has, independently and without reliance upon the Administrative Agent, any Arranger, or any other Lender, or any of the Related Parties of any of the foregoing, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire, or hold Loans hereunder. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Arranger, or any other Lender, or any of the Related Parties of any of the foregoing, and based on such documents and information (which may contain material, non-public information within the meaning of the U.S. securities laws concerning the Loan Parties and their Affiliates) as it may from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document, or any related agreement or any document furnished hereunder or thereunder.

(ii) Each Lender, by delivering its signature page to this Agreement on the Effective Date, or delivering its signature page to an Assignment and Assumption or any other Loan Document pursuant to which it becomes a Lender hereunder, will be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Effective Date or the effective date of any such Assignment and Assumption or any other Loan Document pursuant to which it may have become a Lender hereunder.

(iii) Each Lender hereby agrees that: (i) it has requested a copy of each Report prepared by or on behalf of the Administrative Agent; (ii) the Administrative Agent (A) makes no representation or warranty, express or implied, as to the completeness or accuracy of any Report or any of the information contained therein or any inaccuracy or omission contained in or relating to a Report and (B) will not be liable for any information contained in any Report; (iii) the Reports are not comprehensive audits or examinations, and that any Person performing any field examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan

Parties' books and records, as well as on representations of the Loan Parties' personnel and that the Administrative Agent undertakes no obligation to update, correct, or supplement the Reports; (iv) it will keep all Reports confidential and strictly for its internal use, not share the Report with any Loan Party or any other Person except as otherwise permitted pursuant to this Agreement; and (v) without limiting the generality of any other indemnification provision contained in this Agreement, (A) it will hold the Administrative Agent and any such other Person preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any extension of credit that the indemnifying Lender has made or may make to the Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (B) it will pay and protect, and indemnify, defend, and hold the Administrative Agent and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorneys' fees) incurred by the Administrative Agent or any such other Person as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

Section 1.0g Collateral Matters.

(i) Except with respect to the exercise of setoff rights in accordance with Section 9.08 or with respect to a Secured Party's right to file a proof of claim in an insolvency proceeding, no Secured Party will have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Secured Obligations, it being understood and agreed that all powers, rights, and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms thereof. In its capacity, the Administrative Agent is a "representative" of the Secured Parties within the meaning of the term "secured party" as defined in the UCC. In the event that any Collateral is hereafter pledged by any Person as collateral security for the Secured Obligations, the Administrative Agent is hereby authorized, and hereby granted a power of attorney, to execute and deliver on behalf of the Secured Parties any Loan Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of the Administrative Agent on behalf of the Secured Parties.

(ii) In furtherance of the foregoing and not in limitation thereof, no arrangements in respect of Banking Services the obligations under which constitute Secured Obligations and no Swap Agreement the obligations under which constitute Secured Obligations, will create (or be deemed to create) in favor of any Secured Party that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Loan Party under any Loan Document. By accepting the benefits of the Collateral, each Secured Party that is a party to any such arrangement in respect of Banking Services or Swap Agreement, as applicable, will be deemed to have appointed the Administrative Agent to serve as administrative agent and collateral agent under the Loan Documents and agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this clause (b).

(iii) The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion, to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(b). The Administrative Agent will not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value, or collectability of the Collateral, the existence, priority, or perfection of the Administrative Agent's Lien thereon or any certificate prepared by any Loan Party in connection therewith, nor will the Administrative Agent be responsible or

liable to the Lenders or any other Secured Party for any failure to monitor or maintain any portion of the Collateral.

Section 1.0h Credit Bidding. The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including by accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar laws in any other jurisdictions to which a Loan Party is subject, or (b) at any other sale, foreclosure, or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties will be entitled to be, and will be, credit bid by the Administrative Agent at the direction of the Required Lenders on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that will vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid (i) the Administrative Agent will be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles, (ii) each of the Secured Parties' ratable interests in the Obligations that were credit bid will be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (iii) the Administrative Agent will be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or equity interests thereof, will be governed, directly or indirectly, by, and the governing documents will provide for, control by the vote of the Required Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 9.02 of this Agreement), (iv) the Administrative Agent on behalf of such acquisition vehicle or vehicles will be authorized to issue to each of the Secured Parties, ratably on account of the relevant Obligations which were credit bid, interests, whether as equity, partnership, limited partnership interests, or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured Party or acquisition vehicle to take any further action, and (v) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of Obligations credit bid by the acquisition vehicle or otherwise), such Obligations will automatically be reassigned to the Secured Parties pro rata with their original interest in such Obligations and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations will automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Obligations of each Secured Party are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (ii) preceding, each Secured Party will execute such documents and provide such information regarding the Secured Party (and/or any designee of the Secured Party that will receive interests in or debt instruments issued by such acquisition vehicle) as the Administrative Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid, or the consummation of the transactions contemplated by such credit bid.

Section 1.0i Certain ERISA Matters.

(i) Each Lender (y) represents and warrants, as of the date such Person became a Lender party hereto, to, and (z) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger, and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that at least one of the following is and will be true:

(1) such Lender is not using “plan assets” (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments;

(2) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds), or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of, and performance of the Loans, the Letters of Credit, the Commitments, and this Agreement, and the conditions for exemptive relief thereunder are and will continue to be satisfied in connection therewith;

(3) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer, and perform the Loans, the Letters of Credit, the Commitments, and this Agreement, (C) the entrance into, participation in, administration of, and performance of the Loans, the Letters of Credit, the Commitments, and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14, and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of, and performance of the Loans, the Letters of Credit, the Commitments, and this Agreement; or

(4) such other representation, warranty, and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(ii) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty, and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (y) represents and warrants, as of the date such Person became a Lender party hereto, to, and (z) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger, and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that:

(1) none of the Administrative Agent, or any Arranger, or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender

(including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto);

(2) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of, and performance of the Loans, the Letters of Credit, the Commitments, and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21, as amended from time to time) and is a bank, an insurance carrier, an investment adviser, a broker-dealer, or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR §2510.3-21(c)(1)(i)(A)-(E);

(3) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of, and performance of the Loans, the Letters of Credit, the Commitments, and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations);

(4) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of, and performance of the Loans, the Letters of Credit, the Commitments, and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Letters of Credit, the Commitments, and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder; and

(5) no fee or other compensation is being paid directly to the Administrative Agent, or any Arranger, or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Letters of Credit, the Commitments, or this Agreement.

(iii)The Administrative Agent, and each Arranger, hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments, and this Agreement, (ii) may recognize a gain if it extended the Loans, the Letters of Credit, or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit, or the Commitments by such Lender, or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents, or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees, or fees similar to the foregoing.

Section 1.j Flood Laws. JPMCB has adopted internal policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and related legislation (the "Flood Laws"). JPMCB, as administrative agent or collateral agent on a syndicated facility, will post on the applicable electronic platform (or otherwise distribute to each Lender in the syndicate) documents that it receives in connection

with the Flood Laws. However, JPMCB reminds each Lender and Participant in the facility that, pursuant to the Flood Laws, each federally regulated Lender (whether acting as a Lender or Participant in the facility) is responsible for assuring its own compliance with the flood insurance requirements.

ARTICLE 9

Miscellaneous

Section 1.0a Notices.

(i) Except in the case of notices and other communications expressly permitted to be given by telephone or Electronic Systems (and subject in each case to clause (b) following), all notices and other communications provided for herein must be in writing and be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

- if to any Loan Party, to the Borrower Representative at:

Allbirds, Inc.
730 Montgomery Street
San Francisco, California 94111
Attention: Joey Zwilling
Email: joey@allbirds.com

- if to the Administrative Agent, JPMCB in its capacity as an Issuing Bank, or the Swingline Lender, to JPMorgan Chase Bank, N.A. at:

JPMorgan Chase Bank, N.A.
3 Park Plaza, Suite 900
Irvine, California 92614
Attention: Portfolio Manager – Allbirds
Facsimile No: (949) 833-4524

- if to any other Lender or Issuing Bank, to it at its address or facsimile number set forth in its Administrative Questionnaire.

All such notices and other communications (i) sent by hand or overnight courier service, or mailed by certified or registered mail, will be deemed to have been given when received, (ii) sent by facsimile will be deemed to have been given when sent, provided that, if not given during normal business hours of the recipient, such notice or communication will be deemed to have been given at the opening of business on the next Business Day of the recipient, or (iii) delivered through Electronic Systems or Approved Electronic Platforms, as applicable, to the extent provided in clause (b) following will be effective as provided in such clause.

(ii) Notices and other communications to the Lenders hereunder may be delivered or furnished by using Electronic Systems or Approved Electronic Platforms, as applicable, or pursuant to procedures approved by the Administrative Agent; provided that the foregoing will not apply to notices pursuant to Article 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent and the Borrower Representative (on behalf of the Loan Parties) may, in its discretion, agree to accept notices and other communications to it hereunder by Electronic Systems or Approved Electronic Platforms, as applicable, pursuant to procedures approved by it; provided that, approval of such procedures may be limited to particular notices or

communications. Unless the Administrative Agent otherwise proscribes, all such notices and other communications (i) sent to an e-mail address will 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 not given during the normal business hours of the recipient, such notice or communication will be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) posted to an Internet or intranet website will be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clause (i) and clause (ii) preceding, if such notice, e-mail, or other communication is not sent during the normal business hours of the recipient, such notice or communication will be deemed to have been sent at the opening of business on the next Business Day of the recipient.

(iii) Any party hereto may change its address, facsimile number, or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

Section 1.0b Waivers; Amendments.

(i) No failure or delay by the Administrative Agent, the Issuing Bank, or any Lender in exercising any right or power hereunder or under any other Loan Document will operate as a waiver thereof, nor will any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank, and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom will in any event be effective unless the same is permitted by Section 9.02(b), and then such waiver or consent will be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit will not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender, or the Issuing Bank may have had notice or knowledge of such Default at the time.

(ii) Except as provided in the first sentence of Section 2.09(f) (with respect to any commitment increase) and subject to Section 2.14(c) and Section 9.02(e), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended, or modified except (x) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders or (y) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, with the consent of the Required Lenders; provided that, no such agreement will (i) increase the Commitment of any Lender without the written consent of such Lender (including any such Lender that is a Defaulting Lender), (ii) reduce or forgive the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce or forgive any interest or fees payable hereunder, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby (provided that any amendment or modification of the financial covenants in this Agreement (or any defined term used therein) will not constitute a reduction in the rate of interest or fees for purposes of this clause (ii)), (iii) postpone any scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any date for the payment of any interest, fees, or other Obligations payable hereunder, or reduce the amount of, waive, or excuse any such

payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby, (iv) change [Section 2.09\(d\)](#), [Section 2.18\(b\)](#), or [Section 2.18\(d\)](#) in a manner that would alter the ratable reduction of Commitments or the manner in which payments are shared, without the written consent of each Lender (other than any Defaulting Lender), (v) increase the advance rates set forth in the definition of Borrowing Base or add new categories of eligible assets, without the written consent of each Lender (other than any Defaulting Lender), (vi) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend, or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (other than any Defaulting Lender) directly affected thereby, (vii) change [Section 2.20](#) without the consent of each Lender (other than any Defaulting Lender), (viii) release any Loan Guarantor from its obligation under its Loan Guaranty or any other guarantor (if any) under any Obligation Guaranty (except as otherwise permitted herein or in the other Loan Documents), without the written consent of each Lender (other than any Defaulting Lender), or (ix) except as provided in [clause \(c\)](#) of this Section or in any Collateral Document, release all or substantially all of the Collateral, without the written consent of each Lender (other than any Defaulting Lender); provided, further, that no such agreement will amend, modify, or otherwise affect the rights or duties of the Administrative Agent, the Issuing Bank, or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, the Issuing Bank, or the Swingline Lender, as the case may be (it being understood that any amendment to [Section 2.20](#) will require the consent of the Administrative Agent, the Issuing Bank, and the Swingline Lender); provided, further, that no such agreement will amend or modify the provisions of [Section 2.07](#) or any letter of credit application and any bilateral agreement between the Borrower Representative and the Issuing Bank regarding the Issuing Bank's Issuing Bank Sublimit or the respective rights and obligations between the Borrower and the Issuing Bank in connection with the issuance of Letters of Credit without the prior written consent of the Administrative Agent and the Issuing Bank, respectively. The Administrative Agent may also amend the Commitment Schedule to reflect assignments entered into pursuant to [Section 9.04](#). Any amendment, waiver, or other modification of this Agreement or any other Loan Document that by its terms affects the rights or duties under this Agreement of the Lenders of one or more Classes (but not the Lenders of any other Class), may be effected by an agreement or agreements in writing entered into by the Borrowers and the requisite number or percentage in interest of each affected Class of Lenders that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time.

(iii) The Lenders and the Issuing Bank hereby irrevocably authorize the Administrative Agent, at its option and in its sole discretion, to release any Liens granted to the Administrative Agent by the Loan Parties on any Collateral (i) upon Payment in Full of all Secured Obligations and cash collateralization of all Unliquidated Obligations in a manner satisfactory to each affected Lender, (ii) constituting property being Disposed of if the Loan Party Disposing of such property certifies to the Administrative Agent that the Disposition is made in compliance with the terms of this Agreement (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry), and to the extent that the property being Disposed of constitutes 100% of the Equity Interests of a Subsidiary, the Administrative Agent is authorized to release any Loan Guaranty provided by such Subsidiary, (iii) constituting property leased to a Loan Party under a lease that has expired or been terminated in a transaction permitted under this Agreement, or (iv) as required to effect any Disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to [Article 7](#). Except as provided in the preceding sentence, the Administrative

Agent will not release any Liens on Collateral without the prior written authorization of the Required Lenders; provided that, the Administrative Agent may in its discretion, release its Liens on Collateral valued in the aggregate not in excess of 10.0% of the Revolving Commitment during any calendar year without the prior written authorization of the Required Lenders (it being agreed that the Administrative Agent may rely conclusively on one or more certificates of the Borrowers as to the value of any Collateral to be so released, without further inquiry). Any such release will not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any Disposition, all of which will continue to constitute part of the Collateral. Any execution and delivery by the Administrative Agent of documents in connection with any such release will be without recourse to or warranty by the Administrative Agent.

(iv) If, in connection with any proposed amendment, waiver, or consent requiring the consent of "each Lender" or "each Lender affected thereby," the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but has not been obtained being referred to herein as a "Non-Consenting Lender"), then the Borrowers may elect to replace a Non-Consenting Lender as a Lender party to this Agreement, provided that, concurrently with such replacement, (i) another bank or other entity that is reasonably satisfactory to the Borrowers, the Administrative Agent, and the Issuing Bank agrees, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 9.04, and (ii) the Borrowers will pay to such Non-Consenting Lender in same day funds on the day of such replacement (A) all interest, fees, and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrowers hereunder and including the date of termination, including payments due to such Non-Consenting Lender under Section 2.15 and Section 2.17, and (B) an amount, if any, equal to the payment that would have been due to such Lender on the day of such replacement under Section 2.16 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender. Each party hereto agrees that (y) an assignment required pursuant to this clause may be effected pursuant to an Assignment and Assumption executed by the Borrower Representative, the Administrative Agent, and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants) and (z) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and will be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided, further, that any such documents will be without recourse to or warranty by the parties thereto.

(v) Notwithstanding anything to the contrary herein the Administrative Agent may, with the consent of the Borrower Representative only, amend, modify, or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect, or inconsistency.

Section 1.0c Expenses; Indemnity; Damage Waiver.

(i) The Loan Parties will, jointly and severally, pay all (x) reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the

reasonable fees, charges, and disbursements of counsel for the Administrative Agent, in connection with the syndication and distribution (including via the internet or through any Electronic System or Approved Electronic Platform) of the credit facilities provided for herein, the preparation and administration of the Loan Documents and any amendments, modifications, or waivers of the provisions of the Loan Documents (whether or not the transactions contemplated hereby or thereby are consummated), (y) reasonable out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal, or extension of any Letter of Credit or any demand for payment thereunder, and (z) out-of-pocket expenses incurred by the Administrative Agent, the Issuing Bank, or any Lender, including the fees, charges, and disbursements of any counsel or other advisors or other professionals for the Administrative Agent, the Issuing Bank, or any Lender, in connection with the enforcement, collection, or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring, or negotiations in respect of such Loans or Letters of Credit. Expenses being reimbursed by the Loan Parties under this Section include, without limiting the generality of the foregoing, fees, costs, and expenses incurred in connection with:

- (1) appraisals and insurance reviews;
- (2) field examinations and the preparation of Reports based on the fees charged by a third party retained by the Administrative Agent or the internally allocated fees for each Person employed by the Administrative Agent with respect to each field examination;
- (3) background checks regarding senior management and/or key investors, as deemed necessary or appropriate in the sole discretion of the Administrative Agent;
- (4) Taxes, fees, and other charges for (A) lien and title searches, (B) title insurance, (C) recording the Mortgages, (D) filing financing statements and continuations, and (E) other actions to perfect, protect, and continue the Administrative Agent's Liens;
- (5) sums paid or incurred to take any action required of any Loan Party under the Loan Documents that such Loan Party fails to pay or take; and
- (6) forwarding loan proceeds, collecting checks and other items of payment, and establishing and maintaining the accounts and lock boxes, and costs and expenses of preserving and protecting the Collateral.

All of the foregoing fees, costs, and expenses may be charged to the Borrowers as Revolving Loans or to another deposit account, all as described in [Section 2.18\(c\)](#).

(ii) The Loan Parties will, jointly and severally, indemnify the Administrative Agent, each Arranger, the Issuing Bank, and 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, penalties, incremental taxes, liabilities, and related expenses, including the fees, charges, and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any

Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by a Loan Party or a Subsidiary, or any Environmental Liability related in any way to a Loan Party or a Subsidiary, (iv) the failure of a Loan Party to deliver to the Administrative Agent the required receipts or other required documentary evidence with respect to a payment made by a Loan Party for Taxes pursuant to Section 2.17, or (v) any actual or prospective claim, litigation, investigation, arbitration, or proceeding relating to any of the foregoing, whether or not such claim, litigation, investigation, arbitration, or proceeding is brought by any Loan Party or their respective equity holders, Affiliates, creditors, or any other third Person and whether based on contract, tort, or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity will not, as to any Indemnitee, be available to the extent that such losses, claims, damages, penalties, liabilities, or related expenses 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. This Section 9.03(b) will not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim.

(iii) Each Lender severally agrees to pay any amount required to be paid by any Loan Party under clause (a) or clause (b) of this Section 9.03 to the Administrative Agent, each Issuing Bank, and the Swingline Lender, and each Related Party of any of the foregoing Persons (each, an "Agent Indemnitee") (to the extent not reimbursed by a Loan Party and without limiting the obligation of any Loan Party to do so), ratably according to their respective Applicable Percentage in effect on the date on which indemnification is sought under this Section (or, if indemnification is sought after the date upon which the Commitments have terminated and the Loans have been paid in full, ratably in accordance with such Applicable Percentage immediately prior to such date), from and against any and all losses, claims, damages, liabilities, and related expenses, including the fees, charges, and disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent Indemnitee in any way relating to or arising out of the Commitments, this Agreement, any of the other Loan Documents, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent Indemnitee under or in connection with any of the foregoing; 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 Indemnitee in its capacity as such; provided, further, that no Lender will be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent Indemnitee's gross negligence or willful misconduct. The agreements in this Section will survive the termination of this Agreement and the Payment in Full of the Secured Obligations.

(iv) To the extent permitted by applicable law, no Loan Party will assert, and each Loan Party hereby waives, any claim against any Indemnitee (i) for any damages arising from the use by others of information or other materials obtained through telecommunications, electronic or other information transmission systems (including the Internet) or (ii) on any theory of liability, for special, indirect, consequential, or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit, or the use

of the proceeds thereof; provided that, nothing in this Section 9.03(d) will relieve any Loan Party of any obligation it may have to indemnify an Indemnitee against special, indirect, consequential, or punitive damages asserted against such Indemnitee by a third party.

(v) All amounts due under this Section will be payable not later than five Business Days after written demand therefor.

Section 1.0d Successors and Assigns.

(i) The provisions of this Agreement are binding upon and inure to the benefit of the parties hereto and their respective successors and assigns (including any Affiliate of the Issuing Bank that issues any Letter of Credit), except that (i) no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by any Borrower without such consent will be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, will be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of the Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in Section 9.03(c)) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Bank, and the Lenders) any legal or equitable right, remedy, or claim under or by reason of this Agreement.

(ii)

(1) Subject to the conditions set forth in Section 9.04(b)(ii), any Lender may assign to one or more Persons (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment, participations in Letters of Credit, and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

(1) the Borrower Representative, provided that the Borrower Representative will be deemed to have consented to any such assignment of all or a portion of the Revolving Loans and Commitments unless it objects thereto by written notice to the Administrative Agent within ten Business Days after having received notice thereof and provided, further, that no consent of the Borrower Representative will be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee;

(2) the Administrative Agent;

(3) the Issuing Bank; and

(4) the Swingline Lender.

(2) Assignments will be subject to the following additional conditions:

(1) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender

subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) will not be less than \$5,000,000 unless each of the Borrower Representative and the Administrative Agent otherwise consents, provided that no such consent of the Borrower Representative will be required if an Event of Default exists;

- (2) each partial assignment will be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;
- (3) the parties to each assignment will execute and deliver to the Administrative Agent (y) an Assignment and Assumption or (z) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, together with a processing and recordation fee of \$3,500; and
- (4) the assignee, if it is not a Lender, will deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (that may contain material non-public information about the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

For the purposes of this Section 9.04(b), the terms "Approved Fund" and "Ineligible Institution" have the following meanings:

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding, or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (x) a Lender, (y) an Affiliate of a Lender, or (z) an entity or an Affiliate of an entity that administers or manages a Lender.

"Ineligible Institution" means a (w) natural person, (x) a Defaulting Lender or its Parent, (y) company, investment vehicle, or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof; provided that, with respect to clause (y) preceding, such company, investment vehicle, or trust will not constitute an Ineligible Institution if it (1) has not been established for the primary purpose of acquiring any Loans or Commitments, (2) is managed by a professional advisor, who is not such natural person or a relative thereof, having significant experience in the business of making or purchasing commercial loans, and (3) has assets greater than \$25,000,000 and a significant part of its activities consist of making or purchasing commercial loans and similar extensions of credit in the ordinary course of its business; provided that upon the occurrence and during the continuance of an Event of Default, any Person (other than a Lender) will be an Ineligible Institution if after giving effect to any proposed assignment to such Person, such Person would hold more than 25.0% of the then outstanding Aggregate Credit Exposure or Commitments, as the case may be, or (z) a Loan Party or a Subsidiary or other Affiliate of a Loan Party.

(3) Subject to acceptance and recording thereof pursuant to Section 9.04(b)(iv), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder will be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder will, 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 will cease to be a party hereto but will continue to be entitled to the benefits of Section 2.15, Section 2.16, Section 2.17, and Section 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section will be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 9.04(c).

(4) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrowers, will maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register will be conclusive, and the Borrowers, the Administrative Agent, the Issuing Bank, and the Lenders will treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register will be available for inspection by the Borrowers, the Issuing Bank, and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(5) Upon its receipt of (y) a duly completed Assignment and Assumption executed by an assigning Lender and an assignee or (z) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, the assignee's completed Administrative Questionnaire (unless the assignee is already a Lender hereunder), the processing and recordation fee referred to in Section 9.04(b) and any written consent to such assignment required by Section 9.04(b), the Administrative Agent will accept such Assignment and Assumption and record the information contained therein in the Register; provided that, if either the assigning Lender or the assignee fails to make any payment required to be made by it pursuant to Section 2.05, Section 2.06(d), Section 2.06(e), Section 2.07(b), Section 2.18(d), or Section 9.03(c), the Administrative Agent will have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment has been made in full, together with all accrued interest thereon. No assignment will be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this clause (v).

(iii) Any Lender may, without the consent of, or notice to, the Borrowers, the Administrative Agent, the Issuing Bank, or the Swingline Lender, sell participations to one or more banks or other entities (a "Participant") other than an Ineligible Institution in all or a portion of such Lender's rights and 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 will remain unchanged, (ii) such Lender will remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrowers, the Administrative Agent, the Issuing Bank, and the

other Lenders will continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation will provide that such Lender will 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, modification, or waiver described in the first proviso to Section 9.02(b) that affects such Participant. The Borrowers agree that each Participant will be entitled to the benefits of Section 2.15, Section 2.16, and Section 2.17 (subject to the requirements and limitations therein, including the requirements under Section 2.17(f) and Section 2.17(g) (it being understood that the documentation required under Section 2.17(f) will be delivered to the participating Lender and the information and documentation required under Section 2.17(g) will be delivered to the Borrowers and the Administrative Agent) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 9.04(b); provided that, such Participant (y) agrees to be subject to the provisions of Section 2.18 and Section 2.19 as if it were an assignee under Section 9.04(b), and (z) will not be entitled to receive any greater payment under Section 2.15 or Section 2.17, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 2.19(b) with respect to any Participant. To the extent permitted by law, each Participant also will be entitled to the benefits of Section 9.08 as though it were a Lender, provided that such Participant agrees to be subject to Section 2.18(c) as though it were a Lender. Each Lender that sells a participation will, acting solely for this purpose as a non-fiduciary agent of the Borrowers, 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 this Agreement or any other Loan Document (the "Participant Register"); provided that no Lender will have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit, or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit, or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register will be conclusive absent manifest error, and such Lender will treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) will have no responsibility for maintaining a Participant Register.

(iv) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section will not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest will release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 1.0e Survival.

(i) All covenants, agreements, representations, and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document will be considered to have been relied upon by the other parties hereto and will survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank, or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and will continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Section 2.15, Section 2.16, Section 2.17, and Section 9.03 and Article 8 will survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments, or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

(ii) If at any time any payment of any portion of the Secured Obligations (including a payment effected through exercise of a right of setoff) is rescinded, or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of any Loan Party or otherwise (including pursuant to any settlement entered into by a Secured Party in its discretion), each Loan Party's obligations under this Agreement with respect to that payment will be reinstated at such time as though the payment had not been made and all of the terms and conditions of this Agreement and the other Loan Documents will be reinstated in full until such time as any Secured Obligations rescinded or otherwise restored have been Paid in Full.

Section 1.0f Counterparts; Integration; Effectiveness; Electronic Execution.

(i) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which will constitute an original, but all of which when taken together will constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to (i) fees payable to the Administrative Agent and (ii) increases or reductions of the Issuing Bank Sublimit of the Issuing Bank constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement will become effective when it has been executed by the Administrative Agent and when the Administrative Agent has received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(ii) Delivery of an executed counterpart of a signature page of this Agreement by telecopy, emailed pdf., or any other electronic means that reproduces an image of the actual executed signature page will be effective as delivery of a manually executed counterpart of this Agreement. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby or thereby will be deemed to include Electronic Signatures, deliveries, or the keeping of records in electronic form, each of which will be of the same legal effect, validity, or enforceability as a manually executed signature, physical delivery thereof, or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the

New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that nothing herein will require the Administrative Agent to accept electronic signatures in any form or format without its prior written consent.

Section 1.0g Severability. Any provision of any Loan Document held to be invalid, illegal, or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality, or unenforceability without affecting the validity, legality, and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction will not invalidate such provision in any other jurisdiction.

Section 1.0h Right of Setoff. If an Event of Default has occurred and is continuing, each Lender, the Issuing Bank, and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held, and other obligations at any time owing, by such Lender, the Issuing Bank, or any such Affiliate, to or for the credit or the account of any Loan Party against any and all of the Secured Obligations held by such Lender, the Issuing Bank, or their respective Affiliates, irrespective of whether or not such Lender, the Issuing Bank, or their respective Affiliates have made any demand under the Loan Documents and although such obligations may be contingent or unmatured or are owed to a branch office or Affiliate of such Lender or the Issuing Bank different from the branch office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender exercises any such right of setoff, (y) all amounts so set off must be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.20 and, pending such payment, will be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Bank, and the Lenders and (z) the Defaulting Lender must provide promptly to the Administrative Agent a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The applicable Lender, the Issuing Bank, or such Affiliate will notify the Borrower Representative and the Administrative Agent of such setoff or application, provided that any failure to give or any delay in giving such notice will not affect the validity of any such setoff or application under this Section. The rights of each Lender, the Issuing Bank, and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Issuing Bank, or their respective Affiliates may have.

Section 1.0i Governing Law; Jurisdiction; Consent to Service of Process.

(i)The Loan Documents (other than those containing a contrary express choice of law provision) will be governed by and construed in accordance with the internal laws of the State of California, but giving effect to federal laws applicable to national banks.

(ii)Each of the Lenders and the Administrative Agent hereby irrevocably and unconditionally agrees that, notwithstanding the governing law provisions of any applicable Loan Document, any claims brought against the Administrative Agent by any Secured Party relating to this Agreement, any other Loan Document, the Collateral, or the consummation or administration of the transactions contemplated hereby or thereby will be construed in accordance with and governed by the law of the State of California.

(iii)Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any U.S. federal or California state court sitting in Orange County, California, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Documents, the transactions relating hereto or thereto, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all

claims in respect of any such action or proceeding may (and any such claims, cross-claims, or third party claims brought against the Administrative Agent or any of its Related Parties may only) be heard and determined in such California state or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document will affect any right that the Administrative Agent, the Issuing Bank, or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(iv) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action, or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in [Section 9.09\(c\)](#). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(v) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in [Section 9.01](#). Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

j. Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE OR OTHER AGENT (INCLUDING ANY ATTORNEY) OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

k. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and will not affect the construction of, or be taken into consideration in interpreting, this Agreement.

l. Confidentiality. Each of the Administrative Agent, the Issuing Bank, and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees, and agents, including accountants, legal counsel, and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any Governmental Authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by any Requirement of Law or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under this Agreement or any other Loan Document or any suit, action, or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any

prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and their obligations, (g) with the consent of the Borrower Representative, (h) to holders of Equity Interests in any Loan Party, (i) to any Person providing a Guarantee of all or any portion of the Secured Obligations, or (j) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, the Issuing Bank, or any Lender on a non-confidential basis from a source other than the Loan Parties. For the purposes of this Section, “Information” means all information received from the Borrowers relating to the Borrowers or their business, other than any such information that is available to the Administrative Agent, the Issuing Bank, or any Lender on a non-confidential basis prior to disclosure by the Borrowers and other than information pertaining to this Agreement provided by arrangers to data service providers, including league table providers, that serve the lending industry; provided that, in the case of information received from the Borrowers 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 will 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.

m. **Several Obligations; Nonreliance; Violation of Law.** The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder will not relieve any other Lender from any of its obligations hereunder. Each Lender hereby represents that it is not relying on or looking to any margin stock (as defined in Regulation U of the Board) for the repayment of the Borrowings provided for herein. Anything contained in this Agreement to the contrary notwithstanding, neither the Issuing Bank nor any Lender will be obligated to extend credit to the Borrowers in violation of any Requirement of Law.

n. **USA PATRIOT Act.** Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies each Loan Party that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify, and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the USA PATRIOT Act.

o. **Disclosure.** Each Loan Party, each Lender, and the Issuing Bank hereby acknowledges and agrees that the Administrative Agent and/or its Affiliates from time to time may hold investments in, make other loans to, or have other relationships with any of the Loan Parties and their respective Affiliates.

p. **Appointment for Perfection.** Each Lender hereby appoints each other Lender as its agent for the purpose of perfecting Liens, for the benefit of the Administrative Agent and the other Secured Parties, in assets that, in accordance with Article 9 of the UCC or any other applicable law can be perfected only by possession or control. Should any Lender (other than the Administrative Agent) obtain possession or control of any such Collateral, such Lender will notify the Administrative Agent thereof, and, promptly upon the Administrative Agent’s request therefor will deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent’s instructions.

q. **Interest Rate Limitation.** Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges, and other amounts that are treated as interest on such Loan under applicable law (collectively the “Charges”), exceed the maximum lawful rate (the “Maximum Rate”) that may be contracted for, charged, taken, received, or reserved by the Lender holding such Loan in accordance with

applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, will be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section will be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods will be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the NYFRB Rate to the date of repayment, will have been received by such Lender.

r. Reserved.

s. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(i) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder that may be payable to it by any party hereto that is an EEA Financial Institution; and

(ii) the effects of any Bail-In Action on any such liability, including, if applicable:

(1) a reduction in full or in part or cancellation of any such liability;

(2) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(3) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

t. No Fiduciary Duty, Etc.. Each Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that no Credit Party will have any obligations except those obligations expressly set forth herein and in the other Loan Documents and each Credit Party is acting solely in the capacity of an arm's length contractual counterparty to each Borrower with respect to the Loan Documents and the transaction contemplated therein and not as a financial advisor or a fiduciary to, or an agent of, any Borrower or any other Person. Each Borrower agrees that it will not assert any claim against any Credit Party based on an alleged breach of fiduciary duty by such Credit Party in connection with this Agreement and the transactions contemplated hereby. Additionally, each Borrower acknowledges and agrees that no Credit Party is advising any Borrower as to any legal, tax, investment, accounting, regulatory, or any other matters in any jurisdiction. Each Borrower will consult with its own advisors concerning such matters and will be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and the Credit Parties will have no responsibility or liability to any Borrower with respect thereto. Each Borrower further acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party, together with its Affiliates, is a full service securities or banking firm engaged in securities trading and brokerage activities as well as providing investment banking and other financial services. In the ordinary course of business, any Credit Party may provide investment banking and other financial services to, and/or acquire, hold, or sell, for its own accounts and the accounts

of customers, equity, debt, and other securities and financial instruments (including bank loans and other obligations) of, any Borrower and other companies with which any Borrower may have commercial or other relationships. With respect to any securities and/or financial instruments so held by any Credit Party or any of its customers, all rights in respect of such securities and financial instruments, including any voting rights, will be exercised by the holder of the rights, in its sole discretion. In addition, each Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party and its Affiliates may be providing debt financing, equity capital, or other services (including financial advisory services) to other companies in respect of which a Borrower may have conflicting interests regarding the transactions described herein and otherwise. No Credit Party will use confidential information obtained from any Borrower by virtue of the transactions contemplated by the Loan Documents or its other relationships with such Borrower in connection with the performance by such Credit Party of services for other companies, and no Credit Party will furnish any such information to other companies. Each Borrower also acknowledges that no Credit Party has any obligation to use in connection with the transactions contemplated by the Loan Documents, or to furnish to any Borrower, confidential information obtained from other companies.

u. Ranking – NZ. Except for Permitted Encumbrances and Liens described in Section 6.02(j), the NZ Security Agreement has or will have the ranking in priority that it is expressed to have in the NZ Security Agreement and it is not subject to any prior ranking or pari passu ranking Liens.

v. PPSA Provisions.

(i) Where the Administrative Agent has a security interest (as defined in the PPSA) under any Loan Document, to the extent the law permits each Loan Party (as applicable):

- (1) has no rights under, or by reference to, sections 114(1)(a), 133 and 134 of the PPSA; and
- (2) waives its rights to:
 - (1) not have goods damaged if the Administrative Agent removes an accession under section 125 of the PPSA;
 - (2) receive notice of the removal of an accession under section 129 of the PPSA;
 - (3) apply to the applicable court for an order concerning the removal of an accession under section 131 of the PPSA;
 - (4) receive a statement of account under section 116 of the PPSA;
 - (5) receive notice of any proposal of the Administrative Agent to retain collateral under section 120(2) of the PPSA; and
 - (6) object to any proposal of the Administrative Agent to retain collateral under section 121 of the PPSA;
- (3) waives its right under section 148 of the PPSA to receive a copy of a verification statement in respect of any financing statement or financing change statement registered by the Administrative Agent.

(ii) If the Administrative Agent exercises a right, power, or remedy in connection with it, that exercise is taken not to be an exercise of a right, power, or remedy under the PPSA unless the Administrative Agent states otherwise at the time of exercise. However, this clause does not apply to a right, power, or remedy that can only be exercised under the PPSA.

(iii) This Section does not affect any rights a Person has or would have other than by reason of the PPSA and applies despite any other clause in any Loan Document.

Section 1.a Appointment of Administrative Agent as NZ Security Trustee. For the purposes of any Liens or Collateral created under the NZ Security Agreement, the following additional provisions will apply.

(i) In this Section, the following terms have the following meanings:

“Appointee” means any receiver, receiver and manager, voluntary administrator, or other insolvency officer appointed in respect of any Loan Party or its assets.

“Charged Property” means the assets of the Loan Parties subject to a security interest under the NZ Security Agreement.

“Delegate” means any delegate, agent, attorney, or co-trustee appointed by the Administrative Agent (in its capacity as security trustee).

(ii) The Secured Parties appoint the Administrative Agent to hold the security interests constituted by the NZ Security Agreement on trust for the Secured Parties on the terms of the Loan Documents and the Administrative Agent accepts that appointment.

(iii) The Administrative Agent and its subsidiaries and associated companies may each retain for its own account and benefit any fee, remuneration, and profits paid to it in connection with (i) its activities under the Loan Documents and (ii) its engagement in any kind of banking or other business with any Loan Party.

(iv) Nothing in this Agreement constitutes the Administrative Agent as a trustee or fiduciary of, nor will the Administrative Agent have any duty or responsibility to, any Loan Party.

(v) The Administrative Agent will have no duties or obligations to any other Person except for those that are expressly specified in the Loan Documents or mandatorily required by applicable law.

(vi) The Administrative Agent may appoint one or more Delegates on such terms (that may include the power to sub-delegate) and subject to such conditions as the Administrative Agent thinks fit, to exercise and perform all or any of the duties, rights, powers, and discretions vested in it by the NZ Security Agreements and will not be obliged to supervise any Delegate or be responsible to any Person for any loss incurred by reason of any act, omission, misconduct, or default on the part of any Delegate, except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such Delegate.

(vii) The Administrative Agent may (whether for the purpose of complying with any law or regulation of any overseas jurisdiction, or for any other reason) appoint (and subsequently remove) any Person to act jointly with the Administrative Agent either as a

separate trustee or as a co-trustee on such terms and subject to such conditions as the Administrative Agent thinks fit and with such of the duties, rights, powers, and discretions vested in the Administrative Agent by the NZ Security Agreement as may be conferred by the instrument of appointment of that Person.

(viii)The Administrative Agent will notify the Lenders of the appointment of each Appointee (other than a Delegate).

(ix)The Administrative Agent may pay reasonable remuneration to any Delegate or Appointee, together with any costs and expenses (including legal fees) reasonably incurred by the Delegate or Appointee in connection with its appointment. All such remuneration, costs, and expenses will be treated, for the purposes of this Agreement, as paid or incurred by the Administrative Agent.

(x)Each Delegate and each Appointee will have every benefit, right, power, and discretion and the benefit of every exculpation (together "Rights") of the Administrative Agent (in its capacity as security trustee) under the NZ Security Agreement, and each reference to the Administrative Agent (where the context requires that such reference is to the Administrative Agent in its capacity as security trustee) in the provisions of the NZ Security Agreement which confer Rights will be deemed to include a reference to each Delegate and each Appointee.

(xi)Each Secured Party confirms its approval of the NZ Security Agreement and authorizes and instructs the Administrative Agent: (i) to execute and deliver the NZ Security Agreement; (ii) to exercise the rights, powers, and discretions given to the Administrative Agent (in its capacity as security trustee) under or in connection with the NZ Security Agreement together with any other incidental rights, powers, and discretions; and (iii) to give any authorizations and confirmations to be given by the Administrative Agent (in its capacity as security trustee) on behalf of the Secured Parties under the NZ Security Agreement.

(xii)The Administrative Agent may accept without inquiry the title (if any) which any Person may have to the Charged Property.

(xiii)Each other Secured Party confirms that it does not wish to be registered as a joint proprietor of any security interest constituted by the NZ Security Agreement and accordingly authorizes: (i) the Administrative Agent to hold such security interest in its sole name (or in the name of any Delegate) as trustee for the Secured Parties; and (ii) Land Information NZ (or other relevant registry) to register the Administrative Agent (or any Delegate or Appointee) as a sole proprietor of such security interest.

(xiv)Except to the extent that the NZ Security Agreement otherwise requires, any moneys that the Administrative Agent receives under or pursuant to the NZ Security Agreement may be: (i) invested in any investments that the Administrative Agent selects and that are authorized by applicable law; or (ii) placed on deposit at any bank or institution (including the Administrative Agent) on terms that the Administrative Agent thinks fit, in each case in the name or under the control of the Administrative Agent, and the Administrative Agent will hold those moneys, together with any accrued income (net of any applicable Tax) to the order of the Lenders, and will pay them to the Lenders on demand.

(xv)On a disposal of any of the Charged Property that is permitted under the Loan Documents, the Administrative Agent will (at the cost of the Loan Parties) execute any release of the NZ Security Agreement or other claim over that Charged Property that may be required or take any other action that the Administrative Agent considers desirable.

(xvi)The Administrative Agent will not be liable for:

- (1) any defect in or failure of the title (if any) that any Person may have to any assets over which security is intended to be created by the NZ Security Agreement;
- (2) any loss resulting from the investment or deposit at any bank of moneys which it invests or deposits in a manner permitted by a NZ Security Agreement;
- (3) the exercise of, or the failure to exercise, any right, power, or discretion given to it by or in connection with any Loan Document or any other agreement, arrangement, or document entered into, or executed in anticipation of, under or in connection with, any Loan Document; or
- (4) any shortfall that arises upon enforcing the NZ Security Agreement.

(xvii)The Administrative Agent will not be obligated to:

- (1) obtain any authorization or environmental permit in respect of any of the Charged Property or the NZ Security Agreement;
- (2) hold in its own possession the NZ Security Agreement, title deed or other document relating to the Charged Property or the NZ Security Agreement;
- (3) perfect, protect, register, make any filing, or give any notice in respect of a NZ Security Agreement (or the order of ranking of the NZ Security Agreement), unless that failure arises directly from its own gross negligence or willful misconduct; or
- (4) require any further assurances in relation to the NZ Security Agreement.

(xviii)In respect of the NZ Security Agreement, the Administrative Agent will not be obligated to: (i) insure, or require any other Person to insure, the Charged Property; or (ii) make any enquiry or conduct any investigation into the legality, validity, effectiveness, adequacy, or enforceability of any insurance existing over such Charged Property.

(xix)In respect of the NZ Security Agreement, the Administrative Agent will not have any obligation or duty to any Person for any loss suffered as a result of: (i) the lack or inadequacy of any insurance; or (ii) the failure of the Administrative Agent to notify the insurers of any material fact relating to the risk assumed by them, or of any other information of any kind, unless the Required Lenders have requested the Administrative Agent do so in writing and the Administrative Agent has failed to do so within fourteen days after receipt of that request.

(xx)Every appointment of a successor Administrative Agent under the NZ Security Agreement will be by deed.

(xxi)In the case of any conflict between the provisions of this Agreement and those of the Trustee Act 1956 (NZ), the provisions of this Agreement will prevail to the extent allowed by law.

(xxii)The perpetuity period under the rule against perpetuities if applicable to this Agreement and the NZ Security Agreement will be 80 years from the Effective Date.

ARTICLE 10

Loan Guaranty

Section 1.0a Guaranty. Each Loan Guarantor (other than those that have delivered a separate Guaranty) hereby agrees that it is jointly and severally liable for, and, as a primary obligor and not merely as surety, absolutely, unconditionally, and irrevocably guarantees to the Secured Parties, the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Secured Obligations and all costs and expenses, including all court costs and attorneys' and paralegals' fees (including allocated costs of in-house counsel and paralegals) and expenses paid or incurred by the Administrative Agent, the Issuing Bank, and the Lenders in endeavoring to collect all or any part of the Secured Obligations from, or in prosecuting any action against, any Borrower, any Loan Guarantor, or any other guarantor of all or any part of the Secured Obligations (such costs and expenses, together with the Secured Obligations, collectively the "Guaranteed Obligations"; provided that, the definition of "Guaranteed Obligations" does not create any guarantee by any Loan Guarantor of (or grant of security interest by any Loan Guarantor to support, as applicable) any Excluded Swap Obligations of such Loan Guarantor for purposes of determining any obligations of any Loan Guarantor). Each Loan Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any domestic or foreign branch or Affiliate of any Lender that extended any portion of the Guaranteed Obligations.

Section 1.0b Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Loan Guarantor waives any right to require the Administrative Agent, the Issuing Bank, or any Lender to sue any Borrower, any Loan Guarantor, any other guarantor of, or any other Person obligated for, all or any part of the Guaranteed Obligations (each, an "Obligated Party"), or otherwise to enforce its payment against any collateral securing all or any part of the Guaranteed Obligations.

Section 1.0c No Discharge or Diminishment of Loan Guaranty.

(i)Except as otherwise provided for herein, the obligations of each Loan Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment, or termination for any reason (other than Payment in Full of the Guaranteed Obligations), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration, or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure, or ownership of any Borrower or any other Obligated Party liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization, or other similar proceeding affecting any Obligated Party or their assets or any resulting release or discharge of any obligation of any Obligated Party; or (iv) the existence of any claim, setoff, or other rights that any Loan Guarantor may have at any time against any Obligated Party, the Administrative Agent, the Issuing Bank, any Lender, or any other Person, whether in connection herewith or in any unrelated transactions.

(ii)The obligations of each Loan Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(iii) Further, the obligations of any Loan Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Administrative Agent, the Issuing Bank, or any Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations; (iii) any release, non-perfection, or invalidity of any indirect or direct security for the obligations of any Borrower for all or any part of the Guaranteed Obligations or any obligations of any other Obligated Party liable for any of the Guaranteed Obligations; (iv) any action or failure to act by the Administrative Agent, the Issuing Bank, or any Lender with respect to any collateral securing any part of the Guaranteed Obligations; or (v) any default, failure, or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission, or delay that might in any manner or to any extent vary the risk of such Loan Guarantor or that would otherwise operate as a discharge of any Loan Guarantor as a matter of law or equity (other than Payment in Full of the Guaranteed Obligations).

Section 1.0d Defenses Waived. To the fullest extent permitted by applicable law, each Loan Guarantor hereby waives any defense based on or arising out of any defense of any Borrower or any Loan Guarantor or the unenforceability of all or any part of the Guaranteed Obligations from any cause, or the cessation from any cause of the liability of any Borrower, any Loan Guarantor, or any other Obligated Party, other than Payment in Full of the Guaranteed Obligations. Without limiting the generality of the foregoing, each Loan Guarantor irrevocably waives acceptance hereof, presentment, demand, protest, and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Obligated Party or any other Person. Each Loan Guarantor confirms that it is not a surety under any state law and will not raise any such law as a defense to its obligations hereunder. The Administrative Agent may, at its election, foreclose on any Collateral held by it by one or more judicial or nonjudicial sales, accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any collateral securing all or a part of the Guaranteed Obligations, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, without affecting or impairing in any way the liability of such Loan Guarantor under this Loan Guaranty except to the extent the Guaranteed Obligations have been Paid in Full. To the fullest extent permitted by applicable law, each Loan Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Loan Guarantor against any Obligated Party or any security.

Section 1.0e Rights of Subrogation. No Loan Guarantor will assert any right, claim, or cause of action, including a claim of subrogation, contribution, or indemnification, that it has against any Obligated Party or any collateral, until the Loan Parties and the Loan Guarantors have fully performed all their obligations to the Administrative Agent, the Issuing Bank, and the Lenders.

Section 1.0f Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations (including a payment effected through exercise of a right of setoff) is rescinded, or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of any Borrower or otherwise (including pursuant to any settlement entered into by a Secured Party in its discretion), each Loan Guarantor's obligations under this Loan Guaranty with respect to that payment will be reinstated at such time as though the payment had not been made and whether or not the Administrative Agent, the Issuing Bank, and the Lenders are in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy, or reorganization of any Borrower, all such amounts otherwise subject to acceleration under the

terms of any agreement relating to the Guaranteed Obligations will nonetheless be payable by the Loan Guarantors forthwith on demand by the Administrative Agent.

Section 1.0g Information. Each Loan Guarantor assumes all responsibility for being and keeping itself informed of the Borrowers' financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope, and extent of the risks that each Loan Guarantor assumes and incurs under this Loan Guaranty, and agrees that none of the Administrative Agent, the Issuing Bank, or any Lender will have any duty to advise any Loan Guarantor of information known to it regarding those circumstances or risks.

Section 1.0h Termination. Each of the Lenders and the Issuing Bank may continue to make loans or extend credit to the Borrowers based on this Loan Guaranty until five days after such Lender or Issuing Bank receives written notice of termination from any Loan Guarantor. Notwithstanding receipt of any such notice, each Loan Guarantor will continue to be liable to the Lenders for any Guaranteed Obligations created, assumed, or committed to prior to the fifth day after receipt of the notice, and all subsequent renewals, extensions, modifications, and amendments with respect to, or substitutions for, all or any part of such Guaranteed Obligations. Nothing in this Section 10.08 will be deemed to constitute a waiver of, or eliminate, limit, reduce, or otherwise impair any rights or remedies the Administrative Agent or any Lender may have in respect of, any Default or Event of Default that exists under clause (g) of Article 7 as a result of any such notice of termination.

Section 1.0i Taxes. Each payment of the Guaranteed Obligations will be made by each Loan Guarantor without withholding for any Taxes, unless such withholding is required by law. If any Loan Guarantor determines, in its sole discretion exercised in good faith, that it is so required to withhold Taxes, then such Loan Guarantor may so withhold and will timely pay the full amount of withheld Taxes to the relevant Governmental Authority in accordance with applicable law. If such Taxes are Indemnified Taxes, then the amount payable by such Loan Guarantor will be increased as necessary so that, net of such withholding (including such withholding applicable to additional amounts payable under this Section), the Administrative Agent, Lender, or Issuing Bank (as the case may be) receives the amount it would have received had no such withholding been made.

Section 1.j Maximum Liability. Notwithstanding any other provision of this Loan Guaranty, the amount guaranteed by each Loan Guarantor hereunder will be limited to the extent, if any, required so that its obligations hereunder will not be subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transactions Act, or similar statute or common law. In determining the limitations, if any, on the amount of any Loan Guarantor's obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification, or contribution that such Loan Guarantor may have under this Loan Guaranty, any other agreement, or applicable law will be taken into account.

Section 1.k Contribution.

(i) To the extent that any Loan Guarantor makes a payment under this Loan Guaranty (a "Guarantor Payment") that, taking into account all other Guarantor Payments then previously or concurrently made by any other Loan Guarantor, exceeds the amount that otherwise would have been paid by or attributable to such Loan Guarantor if each Loan Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Loan Guarantor's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Loan Guarantors as determined immediately

prior to the making of such Guarantor Payment, then, following indefeasible payment in full in cash of the Guarantor Payment and Payment in Full of the Guaranteed Obligations and the termination of this Agreement, such Loan Guarantor will be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Loan Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(ii)As of any date of determination, the "Allocable Amount" of any Loan Guarantor will be equal to the excess of the fair saleable value of the property of such Loan Guarantor over the total liabilities of such Loan Guarantor (including the maximum amount reasonably expected to become due in respect of contingent liabilities, calculated, without duplication, assuming each other Loan Guarantor that is also liable for such contingent liability pays its ratable share thereof), giving effect to all payments made by other Loan Guarantors as of such date in a manner to maximize the amount of such contributions.

(iii)This Section 10.11 is intended only to define the relative rights of the Loan Guarantors, and nothing set forth in this Section 10.11 is intended to or will impair the obligations of the Loan Guarantors, jointly and severally, to pay any amounts as and when the same become due and payable in accordance with the terms of this Loan Guaranty.

(iv)The parties hereto acknowledge that the rights of contribution and indemnification hereunder constitute assets of the Loan Guarantor or Loan Guarantors to which such contribution and indemnification is owing.

(v)The rights of the indemnifying Loan Guarantors against other Loan Guarantors under this Section 10.11 will be exercisable upon Payment in Full and the termination of this Agreement.

Section 1.1 Liability Cumulative. The liability of each Loan Party as a Loan Guarantor under this Article 10 is in addition to, and is cumulative with, all liabilities of each Loan Party to the Administrative Agent, the Issuing Bank, and the Lenders under this Agreement and the other Loan Documents to which such Loan Party is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

Section 1.m Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally, and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guarantee in respect of a Swap Obligation (provided that, each Qualified ECP Guarantor will only be liable under this Section 10.13 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 10.13 or otherwise under this Loan Guaranty voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). Except as otherwise provided herein, the obligations of each Qualified ECP Guarantor under this Section 10.13 will remain in full force and effect until the termination of all Swap Obligations. Each Qualified ECP Guarantor intends that this Section 10.13 constitute, and this Section 10.13 will be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

ARTICLE 11

The Borrower Representative

Section 1.0a Appointment; Nature of Relationship. Allbirds is hereby appointed by each of the Borrowers as its contractual representative (herein referred to as the “Borrower Representative”) hereunder and under each other Loan Document, and each of the Borrowers irrevocably authorizes the Borrower Representative to act as the contractual representative of such Borrower with the rights and duties expressly set forth herein and in the other Loan Documents. The Borrower Representative agrees to act as such contractual representative upon the express conditions contained in this Article 11. Additionally, the Borrowers hereby appoint the Borrower Representative as their agent to receive all of the proceeds of the Loans in the Funding Account(s), at which time the Borrower Representative will promptly disburse such Loans to the appropriate Borrower(s), provided that, in the case of a Revolving Loan, such amount will not exceed Availability. The Administrative Agent and the Lenders, and their respective officers, directors, agents, and employees, will not be liable to the Borrower Representative or any Borrower for any action taken or omitted to be taken by the Borrower Representative or the Borrowers pursuant to this Section 11.01.

Section 1.0b Powers. The Borrower Representative will have and may exercise such powers under the Loan Documents as are specifically delegated to the Borrower Representative by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Borrower Representative will have no implied duties to the Borrowers, or any obligation to the Lenders to take any action thereunder except any action specifically provided by the Loan Documents to be taken by the Borrower Representative.

Section 1.0c Employment of Agents. The Borrower Representative may execute any of its duties as the Borrower Representative hereunder and under any other Loan Document by or through authorized officers.

Section 1.0d Notices. Each Borrower will immediately notify the Borrower Representative of the occurrence of any Default hereunder referring to this Agreement describing such Default and stating that such notice is a “notice of default”. In the event that the Borrower Representative receives such a notice, the Borrower Representative will give prompt notice thereof to the Administrative Agent and the Lenders. Any notice provided to the Borrower Representative hereunder will constitute notice to each Borrower on the date received by the Borrower Representative.

Section 1.0e Successor Borrower Representative. Upon the prior written consent of the Administrative Agent, the Borrower Representative may resign at any time, such resignation to be effective upon the appointment of a successor Borrower Representative. The Administrative Agent will give prompt written notice of such resignation to the Lenders.

Section 1.0f Execution of Loan Documents; Borrowing Base Certificate. The Borrowers hereby empower and authorize the Borrower Representative, on behalf of the Borrowers, to execute and deliver to the Administrative Agent and the Lenders the Loan Documents and all related agreements, certificates, documents, or instruments as are necessary or appropriate to effect the purposes of the Loan Documents, including the Borrowing Base Certificates and the Compliance Certificates. Each Borrower agrees that any action taken by the Borrower Representative or the Borrowers in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by the Borrower Representative of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, will be binding upon all of the Borrowers.

Section 1.0g Reporting. Each Borrower hereby agrees that such Borrower will furnish promptly after each fiscal month to the Borrower Representative a copy of its Borrowing Base Certificate and any other certificate or report required hereunder or requested by the Borrower Representative on which the Borrower Representative will rely to prepare the Borrowing Base Certificates and Compliance Certificate required pursuant to the provisions of this Agreement.

(Signature Pages Follow)

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

LOAN PARTIES:

ALLBIRDS, INC.

By: /s/ Joseph Zwillinger
Joseph Zwillinger
Co-Chief Executive Officer

JPMORGAN CHASE BANK, N.A.,
as the Administrative Agent, the Issuing Bank, the Swingline Lender, and a Lender

By: /s/ Suzanne S. Johnson
Name: Suzanne S. Johnson
Title: Authorized Officer

COMMITMENT SCHEDULE

<u>Lender</u>	<u>Revolving Commitment</u>	<u>Commitment</u>
JPMorgan Chase Bank, N.A.	\$40,000,000	\$40,000,000
Total	\$40,000,000	\$40,000,000

EXHIBIT A

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the "Assignor") and [*Insert name of Assignee*] (the "Assignee"). Capitalized terms used but not defined herein have the meanings given to them in the Credit Agreement identified below (as amended, supplemented, or otherwise modified from time to time, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Assignment Effective Date inserted by the Administrative Agent as contemplated below, (a) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any letters of credit, guarantees, and swingline loans included in such facilities) and (b) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action, and other rights of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims, and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (a) preceding (the rights and obligations sold and assigned pursuant to clause (a) and clause (b) preceding being referred to herein collectively as the "Assigned Interest"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____
2. Assignee: _____
[and is an Affiliate/Approved Fund of [*identify Lender*]¹]
3. Borrowers: Allbirds, Inc. and [_____]
4. Administrative Agent: JPMorgan Chase Bank, N.A., as the administrative agent under the Credit Agreement
5. Credit Agreement: That certain Credit Agreement, dated as of February 20, 2019, among the Borrowers, the other Loan Parties party thereto, the Lenders parties thereto, and the Administrative Agent
6. Assigned Interest: _____

¹ Select as applicable.

Facility Assigned ²	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans ³
	\$	\$	%
	\$	\$	%
	\$	\$	%

Assignment Effective Date: [_____, 20__] [TO BE INSERTED BY THE ADMINISTRATIVE AGENT AND THAT WILL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The Assignee agrees to deliver to the Administrative Agent a completed Administrative Questionnaire in which the Assignee designates one or more Credit Contacts to whom all syndicate-level information (that may contain material non-public information about the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the Assignee's compliance procedures and applicable laws, including Federal and state securities laws.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR:

[NAME OF ASSIGNOR]

By: _____
Name: _____
Title: _____

ASSIGNEE:

[NAME OF ASSIGNEE]

By: _____
Name: _____
Title: _____

[Consented to and]⁴ Accepted:

JPMORGAN CHASE BANK, N.A., as
Administrative Agent, Issuing Bank, and Swingline Lender

² Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g. "Revolving Commitment," "Term Loan Commitment," etc.)
³ Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.
⁴ To be added only if the consent of the Administrative Agent, Issuing Bank and/or Swingline Lender, as applicable, is required by the terms of the Credit Agreement.

By: _____
Name: _____
Title: _____

[Consented to:]⁵

[NAME OF RELEVANT PARTY]

By: _____
Name: _____
Title: _____

ANNEX 1
ASSIGNMENT AND ASSUMPTION
STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.a Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance, or other adverse claim, and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (b) assumes no responsibility with respect to (i) any statements, warranties, or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency, or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of any Borrower, any of its Subsidiaries or Affiliates, or any other Person obligated in respect of any Loan Document, (iv) any requirements under applicable law for the Assignee to become a lender under the Credit Agreement or to charge interest at the rate set forth therein from time to time, or (v) the performance or observance by any Borrower, any of its Subsidiaries or Affiliates, or any other Person of any of their respective obligations under any Loan Document.

1.b Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement and under applicable law that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Assignment Effective Date, it will be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, will have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent, any Arranger, or any other Lender and their respective Related Parties, and (v) attached to the Assignment and Assumption is any documentation required to be

⁵ To be added only if the consent of the Borrower and/or other parties (e.g. Swingline Lender, Issuing Bank) is required by the terms of the Credit Agreement.

delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, any Arranger, the Assignor, or any other Lender or their respective Related Parties, and based on such documents and information as it deems appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents and (ii) it will perform in accordance with their terms all of the obligations that by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent will make all payments in respect of the Assigned Interest (including payments of principal, interest, fees, and other amounts) to the Assignor for amounts that have accrued to but excluding the Effective Date and to the Assignee for amounts that have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption is binding upon, and inures to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, that together constitute one instrument. Acceptance and adoption of the terms of this Assignment and Assumption by the Assignee and the Assignor by Electronic Signature or delivery of an executed counterpart of a signature page of this Assignment and Assumption by any Approved Electronic Platform is effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption is governed by, and construed in accordance with, the law of the State of California [*confirm that choice of law provision parallels the Credit Agreement*].

EXHIBIT B
OPINION OF COUNSEL FOR THE LOAN PARTIES

See Attached.

EXHIBIT C
BORROWING BASE CERTIFICATE

See Attached.

Exhibit B – Cover Page 1
75450854v1

EXHIBIT D
COMPLIANCE CERTIFICATE

To: The Lenders parties to the
Credit Agreement Described Below

This Compliance Certificate is furnished pursuant to that certain Credit Agreement, dated as of February 20, 2019, (as amended, modified, renewed, or extended from time to time, the "Agreement") among Allbirds, Inc., the other Loan Parties party thereto, the Lenders party thereto, and JPMorgan Chase Bank, N.A., as Administrative Agent for the Lenders. Unless otherwise defined herein, capitalized terms used in this Compliance Certificate have the meanings ascribed thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES, ON ITS BEHALF AND ON BEHALF OF THE BORROWERS, THAT:

1. I am the duly elected [_____] of the Borrower Representative;
2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of Allbirds and its Subsidiaries during the accounting period covered by the attached financial statements [for quarterly or monthly financial statements add: and such financial statements present fairly in all material respects the financial condition and results of operations of Allbirds and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes];
3. The examinations described in paragraph 2 did not disclose, except as set forth below, and I have no knowledge of (a) the existence of any condition or event that constitutes a Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate or (b) any change in GAAP or in the application thereof that has occurred since the date of the audited financial statements referred to in Section 3.04 of the Agreement;
4. I hereby certify that no Loan Party has changed (a) its name, (b) its chief executive office, (c) principal place of business, (d) the type of entity it is, or (e) its state of incorporation or organization without having given the Administrative Agent the notice required by Section 4.15 of the Security Agreement;
5. Schedule I hereto sets forth financial data and computations evidencing the Borrowers' compliance with certain covenants of the Agreement, all of which data and computations are true, complete, and correct;⁶ and
6. Schedule II hereto sets forth the computations necessary to determine the Applicable Rate commencing on the Business Day this certificate is delivered.

Described below are the exceptions, if any, to paragraph 3 by listing, in detail, the (a) nature of the condition or event, the period during which it has existed and the action that the Borrowers have taken, are taking, or propose to take with respect to each such condition or event or (b) the change in GAAP or the application thereof and the effect of such change on the attached financial statements:

⁶ Schedule I must include detailed calculation tables for all components of the financial covenant calculations.

The foregoing certifications, together with the computations set forth in Schedule I and Schedule II hereto and the financial statements delivered with this Certificate in support hereof, are made and delivered this day of , .

ALLBIRDS, INC.,
as Borrower Representative

By: _____
Name: _____
Title: _____

SCHEDULE I

Compliance as of _____, 20__ with
provisions of and of the Agreement

[Schedule I must include detailed calculation tables for all components of the financial covenant calculations.]

SCHEDULE II

Borrowers' Applicable Rate Calculation

(1) Computation: _____

(2) Category from Grid in Definition of Applicable Rate: _____

EXHIBIT E
JOINDER AGREEMENT

THIS JOINDER AGREEMENT (this "Agreement"), dated as of [_____, ____, 20__], is entered into between [_____, a _____] (the "New Subsidiary") and JPMorgan Chase Bank, N.A., in its capacity as the Administrative Agent under that certain Credit Agreement, dated as of February 20, 2019 (as the same may be amended, extended, restated, or otherwise modified from time to time, the "Credit Agreement"), among Allbirds, Inc., the other Loan Parties party thereto, the Lenders party thereto, and JPMorgan Chase Bank, N.A. (as the Administrative Agent, the Issuing Bank, the Swingline Lender, and a Lender). All capitalized terms used herein and not otherwise defined herein will have the meanings set forth in the Credit Agreement.

The New Subsidiary and the Administrative Agent, for the benefit of the Lenders, hereby agree as follows:

1. The New Subsidiary hereby acknowledges, agrees, and confirms that, by its execution of this Agreement, the New Subsidiary will be deemed to be a Loan Party under the Credit Agreement and a "Loan Guarantor" for all purposes of the Credit Agreement and will have all of the obligations of a Loan Party and a Loan Guarantor thereunder as if it had executed the Credit Agreement. The New Subsidiary hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions, and conditions contained in the Credit Agreement, including (a) all of the representations and warranties of the Loan Parties set forth in Article 3 of the Credit Agreement, (b) all of the covenants set forth in Article 5 and Article 6 of the Credit Agreement, and (c) all of the guaranty obligations set forth in Article 10 of the Credit Agreement. Without limiting the generality of the foregoing terms of this paragraph 1, the New Subsidiary, subject to the limitations set forth in Section 10.10 and Section 10.13 of the Credit Agreement, hereby guarantees, jointly and severally with the other Loan Guarantors, to the Administrative Agent and the Lenders, as provided in Article 10 of the Credit Agreement, the prompt payment and performance of the Guaranteed Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, or otherwise) strictly in accordance with the terms thereof and agrees that if any of the Guaranteed Obligations are not paid or performed in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, or otherwise), the New Subsidiary will, jointly and severally together with the other Loan Guarantors, promptly pay and perform the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, or otherwise) in accordance with the terms of such extension or renewal.

2. If required, the New Subsidiary is, simultaneously with the execution of this Agreement, executing and delivering such Collateral Documents (and such other documents and instruments) as requested by the Administrative Agent in accordance with the Credit Agreement.

3. The address of the New Subsidiary for purposes of Section 9.01 of the Credit Agreement is as follows:

Attention: _____
Telecopy: _____

4. The New Subsidiary hereby waives acceptance by the Administrative Agent and the Lenders of the guaranty by the New Subsidiary upon the execution of this Agreement by the New Subsidiary.

5. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be an original, but all of which constitute one and the same instrument.

6. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER WILL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the New Subsidiary has caused this Agreement to be duly executed by its authorized officer, and the Administrative Agent, for the benefit of the Lenders, has caused the same to be accepted by its authorized officer, as of the day and year first above written.

NEW SUBSIDIARY:

[NEW SUBSIDIARY]

By: _____
Name: _____
Title: _____

Acknowledged and accepted:

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

By: _____
Name: _____
Title: _____

EXHIBIT F-1

[FORM OF]
U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of February 20, 2019 (as amended, supplemented, or otherwise modified from time to time, the "Credit Agreement"), among Allbirds, Inc., the other Loan Parties party thereto, the Lenders party thereto, and JPMorgan Chase Bank, N.A., in its capacity as the Administrative Agent for the Lenders.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (b) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (d) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower Representative with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable. By executing this certificate, the undersigned agrees that (a) if the information provided on this certificate changes, the undersigned will promptly so inform the Borrower Representative and the Administrative Agent and (b) the undersigned will have at all times furnished the Borrower Representative and the Administrative Agent with a properly completed and currently effective certificate prior to the first payment to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name: _____
Title: _____
Date: [_____, 20__]

EXHIBIT F-2

[FORM OF]
U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of February 20, 2019 (as amended, supplemented, or otherwise modified from time to time, the "Credit Agreement"), among Allbirds, Inc., the other Loan Parties party thereto, the Lenders party thereto, and JPMorgan Chase Bank, N.A., in its capacity as the Administrative Agent for the Lenders.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (b) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (d) it is not a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable. By executing this certificate, the undersigned agrees that (a) if the information provided on this certificate changes, the undersigned will promptly so inform such Lender in writing and (b) the undersigned will have at all times furnished such Lender with a properly completed and currently effective certificate prior to the first payment to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein will have the meanings given to them in the Credit Agreement.

PARTICIPANT:

[NAME OF PARTICIPANT]

By: _____
Name: _____
Title: _____
Date: [_____, 20__]

EXHIBIT F-3

[FORM OF]
U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of February 20, 2019 (as amended, supplemented, or otherwise modified from time to time, the "Credit Agreement"), among Allbirds, Inc., the other Loan Parties party thereto, the Lenders party thereto, and JPMorgan Chase Bank, N.A., in its capacity as the Administrative Agent for the Lenders.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the participation in respect of which it is providing this certificate, (b) its direct or indirect partners/members are the sole beneficial owners of such participation, (c) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) none of its direct or indirect partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (e) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (a) an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, or (b) an IRS Form W-8IMY accompanied by a withholding statement together with an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned will promptly so inform such Lender and (ii) the undersigned will have at all times furnished such Lender with a properly completed and currently effective certificate prior to the first payment to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein will have the meanings given to them in the Credit Agreement.

PARTICIPANT:

[NAME OF PARTICIPANT]

By: _____
Name: _____
Title: _____
Date: [_____, 20__]

EXHIBIT F-4

[FORM OF]
U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of February 20, 2019 (as amended, supplemented, or otherwise modified from time to time, the "Credit Agreement"), among Allbirds, Inc., the other Loan Parties party thereto, the Lenders party thereto, and JPMorgan Chase Bank, N.A., in its capacity as the Administrative Agent for the Lenders.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (b) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any promissory note(s) evidencing such Loan(s)), (c) with respect to the extension of credit pursuant to the Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) none of its direct or indirect partners/members is a ten percent shareholder of any Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (e) none of its direct or indirect partners/members is a controlled foreign corporation related to any Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower Representative with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (a) an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, or (b) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned will promptly so inform the Borrower Representative and the Administrative Agent and (ii) the undersigned will have at all times furnished the Borrower Representative and the Administrative Agent with a properly completed and currently effective certificate prior to the first payment to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein will have the meanings given to them in the Credit Agreement.

LENDER:

[NAME OF LENDER]

By: _____
Name: _____
Title: _____
Date: [_____, 20__]

EXHIBIT G

CREDIT CARD NOTICE

PREPARE ON LOAN PARTY LETTERHEAD - ONE FOR EACH PROCESSOR

_____, 20__

To: _____ (the "Processor")

Attn: _____

Re: _____
Merchant Account Number: _____

Dear Sir/Madam:

_____, a _____ (the "Company"), has entered into various financing agreements with JPMorgan Chase Bank, N.A., as administrative agent and collateral agent (collectively, in such capacities, the "Agent"), for its own benefit and the benefit of certain other secured parties (the "Secured Parties"), pursuant to which the Agent and the other Secured Parties may from time to time make loans or furnish certain other financial accommodations to the Company and its affiliates. The Company's obligations on account of such loans and financial accommodations are secured by, among other things, all credit card charges submitted by the Company to the Processor for processing and the amounts which the Processor owes to the Company on account thereof (the "Credit Card Proceeds").

Until the Processor receives written notification from the Agent that the interest of the Agent and the other Secured Parties in the Credit Card Proceeds has been terminated, all amounts as may become due from time to time from the Processor to the Company (including, without limitation, Credit Card Proceeds, payments from any reserve account or the like, or other payments) shall be transferred only as follows:

- (a) By ACH, Depository Transfer Check, or Electronic Depository Transfer to:

ABA: _____
Account No: _____
Account Name: _____

or

- (b) As the Processor may be otherwise instructed from time to time in writing by an officer of the Agent.

Upon the written request of the Agent, a copy of each periodic statement issued by the Processor to the Company should be provided to the Agent at the following address (which address may be changed upon seven days written notice given to the Processor by the Agent):

JPMorgan Chase Bank, N.A.
3 Park Plaza, Suite 900
Irvine, California 92614

Attn: Portfolio Manager – Allbirds

The Processor shall be fully protected in acting on any order or direction by the Agent respecting the Credit Card Proceeds and other amounts without making any inquiry whatsoever as to the Agent's right or authority to give such order or direction or as to the application of any payment made pursuant thereto, provided that the Processor does not act with gross negligence, bad faith, or willful misconduct. Nothing contained herein is intended to, nor shall it be deemed to, modify the rights and obligations of the Company and the Agent under the terms of the loan arrangement and the loan documents executed in connection therewith between, among others, the Company and the Agent.

This letter may be amended only by the written agreement of the Processor, the Company, and the Agent and may be terminated solely by written notice signed by an officer of the Agent. The Company shall not have any right to terminate this letter or, except as provided in this letter, amend it.

Very truly yours,

_____, as Company

By: _____
Name: _____
Title: _____

cc: JPMorgan Chase Bank, N.A., as Agent

FIRST AMENDMENT TO CREDIT AGREEMENT

THIS FIRST AMENDMENT TO CREDIT AGREEMENT (“Amendment”), dated as of March 8, 2023 (the “Amendment Date”), is entered into by and among Allbirds, Inc. the other Loan Parties party hereto (if any), the lending institutions party hereto as the Lenders, and JPMorgan Chase Bank, N.A., as the Administrative Agent.

WITNESSETH:

- A. The Loan Parties, the Lenders, and the Administrative Agent are party to that certain Credit Agreement, dated as of February 20, 2019 (the “Credit Agreement”).
- B. The Loan Parties and the Lenders have agreed to amend the Credit Agreement in certain respects, as more specifically provided herein below.
- C. Subject to satisfaction of the conditions set forth herein, the Loan Parties, the Lenders, and the Administrative Agent are willing to amend the Credit Agreement as specifically provided herein below.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants herein contained and other good and valuable consideration, the existence and sufficiency of which is expressly recognized by all of the parties hereto, the parties hereto agree as follows:

ARTICLE 1

Recitals; Definitions

Section 1.1 Recitals; Definitions. The recitals set forth above are incorporated herein by reference. All capitalized terms contained herein have the meaning set forth in the Credit Agreement, unless otherwise specified herein.

ARTICLE 2

Amendments to the Credit Agreement

Section 2.1 Amendments to the Credit Agreement. Effective as of the Amendment Date, the Credit Agreement, from the cover page through and including Section 11.07 thereof, is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Credit Agreement attached as Exhibit A hereto. The parties hereto agree that the effect of the amendments set forth in Exhibit A will have the result that, as of the Amendment Date, the Credit Agreement, from the cover page through and including Section 11.07 thereof, as so amended, will read as set forth in Exhibit B attached hereto.

ARTICLE 3

Miscellaneous

Section 3.1 Conditions. The effectiveness of this Amendment is subject to the satisfaction of each of the following conditions:

- a. the Administrative Agent must have received this Amendment duly executed by each of the parties hereto;
- b. after giving effect to this Amendment, as of the Amendment Date, no Event of Default may have occurred and be continuing;
- c. the representations and warranties of the Loan Parties contained herein must be true and correct as of the date hereof;
- d. the representations and warranties of the Loan Parties contained in each other Loan Document must be true and correct in all material respects as of the date hereof as if made on the date hereof, except for such representations that are limited by their terms to a specific date; and
- e. the Loan Parties must have paid to the Administrative Agent all fees, costs, and expenses owed to or incurred by the Administrative Agent arising in connection with the Credit Agreement or this Amendment for which an invoice has been delivered to the Borrower Representative for payment.

Section 3.2 Ratifications. The terms and provisions set forth in this Amendment modify and supersede all inconsistent terms and provisions set forth in the Loan Documents and, except as expressly modified and superseded by this Amendment, the terms and provisions of the Loan Documents are ratified and confirmed and continue in full force and effect. The Loan Parties agree that the Loan Documents, as amended hereby, continue to be legal, valid, binding, and enforceable in accordance with their respective terms.

Section 3.3 The Loan Parties' Representations and Warranties. The Loan Parties hereby represent and warrant to the Credit Parties that:

- a. After giving effect to this Amendment, the representations and warranties of the Loan Parties contained in the Loan Documents are true and correct in all material respects with the same effect as though made on and as of the date hereof (except to the extent that such representations and warranties were expressly made only in reference to a specific date).
- b. After giving effect to this Amendment, no Event of Default has occurred and is continuing.
- c. The execution, delivery, and performance of this Amendment has been duly authorized by all necessary action on the part of the Loan Parties and does not and will not: (i) violate any Requirement of Law applicable to any Loan Party; (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any

material contractual obligation of any Loan Party; or (iii) result in or require the creation or imposition of any Lien upon any assets of any Loan Party.

- d. Neither this Amendment nor any other agreement, certificate, document, or instrument executed or delivered in connection herewith by any Loan Party or any other Person (other than the Lenders), were executed or delivered in the state of Florida, no Loan Party is a Florida organization and no Loan Party has its executive offices or headquarters in Florida, no officer or employee of any Loan Party has engaged in any execution, delivery, negotiations, or other related activities with respect to this Amendment while in the state of Florida, and there are no stamp, documentary, mortgage, or intangibles taxes due in the state of Florida as a result of any Loan Party entering into this Amendment.

Section 3.4 Survival of Representations and Warranties. All representations and warranties made in this Amendment or any other Loan Document furnished in connection with this Amendment, survive the execution and delivery of this Amendment, and no investigation by any Credit Party will affect the representations and warranties or the right of the Credit Parties to rely upon them.

Section 3.5 Reference to Credit Agreement. Each of the Loan Documents, including the Credit Agreement and any and all other agreements, documents, or instruments now or hereafter executed and delivered pursuant to the terms hereof or pursuant to the terms of the Credit Agreement and the other Loan Documents, as amended hereby, are hereby amended so that any reference in such Loan Documents to the Credit Agreement will mean a reference to the Credit Agreement, as amended hereby.

Section 3.6 Severability. Any provision in this Amendment that is held to be inoperative, unenforceable, or invalid in any jurisdiction will, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of this Amendment are declared to be severable.

Section 3.7 Applicable Law. THIS AMENDMENT WILL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAWS PRINCIPLES (BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS).

Section 3.8 Successors and Assigns. This Amendment is binding upon and inures to the benefit of the Loan Parties and the Credit Parties and their respective successors and assigns, except the Loan Parties may not assign or transfer any of their rights or obligations hereunder or under the Credit Agreement and the other Loan Documents without the prior written consent of the Lenders as provided in the Credit Agreement.

Section 3.9 Counterparts. This Amendment may be executed in any number of counterparts, all of which taken together constitute one agreement, and any of the parties hereto may execute this Amendment by signing any such counterpart and a telecopy or other electronic transmission of any such executed signature page is valid as an original. This Amendment is effective upon execution by the Loan Parties and the Lenders.

Section 3.10 Effect of Amendment. No consent or waiver, express or implied, by the Lenders to or for any breach of or deviation from any covenant, condition, or duty by any Loan Party may be deemed a consent or waiver to or of any other breach of the same or any other covenant, condition, or duty. Each Loan Party hereby (a) agrees that this Amendment does not limit or diminish the obligations of such Loan Party under the Loan Documents delivered in connection with the Credit Agreement, executed or joined in by such Loan Party and delivered to the Credit Parties, (b) reaffirms such Loan Party's obligations under each of such Loan Documents, and (c) agrees that each of such Loan Documents to which such Loan Party is a party remains in full force and effect and is hereby ratified and confirmed.

Section 3.11 Release. TO INDUCE THE LENDERS TO AGREE TO THE TERMS OF THIS AMENDMENT, EACH LOAN PARTY REPRESENTS AND WARRANTS THAT AS OF THE DATE OF THIS AMENDMENT THERE ARE NO CLAIMS OR OFFSETS AGAINST OR DEFENSES OR COUNTERCLAIMS TO THE LOAN PARTIES' OBLIGATIONS UNDER THE LOAN DOCUMENTS, AND WAIVES ANY AND ALL SUCH CLAIMS, OFFSETS, DEFENSES, OR COUNTERCLAIMS, WHETHER KNOWN OR UNKNOWN, ARISING PRIOR TO THE AMENDMENT DATE AND RELEASES AND DISCHARGES EACH CREDIT PARTY, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SHAREHOLDERS, AFFILIATES, AND ATTORNEYS (COLLECTIVELY THE "RELEASED PARTIES") FROM ANY AND ALL OBLIGATIONS, INDEBTEDNESS, LIABILITIES, CLAIMS, RIGHTS, CAUSES OF ACTION, OR DEMANDS WHATSOEVER, WHETHER KNOWN OR UNKNOWN, SUSPECTED OR UNSUSPECTED, IN LAW OR EQUITY, THAT ANY LOAN PARTY NOW HAS OR MAY HAVE AGAINST ANY OF THE RELEASED PARTIES ARISING PRIOR TO THE DATE HEREOF AND FROM OR IN CONNECTION WITH THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY.

Section 3.12 Further Assurances. The Loan Parties will execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents and agreements, and will take or cause to be taken such actions as the Administrative Agent may, from time to time, reasonably request to carry out the terms of this Amendment and the other Loan Documents.

Section 3.13 Headings. The headings, captions, and arrangements used in this Amendment are for convenience only and do not affect the interpretation of this Amendment.

Section 3.14 Entire Agreement. THIS AMENDMENT AND ALL OTHER INSTRUMENTS, DOCUMENTS, AND AGREEMENTS EXECUTED AND DELIVERED IN CONNECTION WITH THIS AMENDMENT EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THIS AMENDMENT, AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES HERETO.

Section 3.15 Amendment as a Loan Document. This Amendment constitutes a Loan Document and any failure of the Borrower to comply with the terms and conditions of this Amendment will result in an Event of Default under the Credit Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their duly authorized officers in several counterparts effective as of the Amendment Date specified in the introductory paragraph hereof.

BORROWER:

ALLBIRDS, INC.

By: /s/ Joseph Zwillinger
Joseph Zwillinger
Co-Chief Executive Officer

LENDER:

JPMORGAN CHASE BANK, N.A.

By: /s/ George Burnett
George Burnett
Authorized Officer

Exhibit A
to
First Amendment to Credit Agreement

See Attached.

J.P.Morgan

CREDIT AGREEMENT

dated as of February 20, 2019 among ALLBIRDS, INC.

and its Affiliates Party Hereto

the Lenders Party Hereto and

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

JPMORGAN CHASE BANK, N.A.,
as Sole Bookrunner and Sole Lead Arranger

ASSET BASED LENDING

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Exhibit E-4 – U.S. Tax Certificate (For Foreign that are Partnerships for U.S. Federal Income Tax Purposes)

Exhibit G – Form of Credit Card Notice

CREDIT AGREEMENT

This Credit Agreement, dated as of February 20, 2019 (as it may be amended or otherwise modified from time to time, together with all Exhibits and Schedules annexed hereto from time to time, each of which is incorporated herein and made a part hereof, this "Agreement"), is by and among Allbirds, Inc., and each other Person at any time party hereto as a Borrower, the other Loan Parties party hereto, the lending institutions party hereto as the Lenders, and JPMorgan Chase Bank, N.A., as the Administrative Agent.

The parties hereto agree as follows:

ARTICLE 1

Definitions

Section 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"Account" has the meaning assigned to such term in the Security Agreement and includes any Credit Card Accounts.

"Account Debtor" means any Person obligated on an Account.

"Acquisition" means any transaction, or any series of related transactions, consummated on or after the Effective Date, by which any Loan Party (a) acquires any going business or all or substantially all of the assets of any Person, whether through purchase of assets, merger, or otherwise or (b) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the Equity Interests of a Person that have ordinary voting power for the election of directors or other similar management personnel of a Person (other than Equity Interests having such power only by reason of the happening of a contingency) or a majority of the outstanding Equity Interests of a Person.

~~"Adjusted LIBO Rate" means, with respect to any Eurodollar Borrowing for any Interest Period or for any CDFR Borrowing, rounded upwards, if necessary, to the next 1/16 of 1% equal to (a) the LIBO Rate for such Interest Period, multiplied by (b) the Statutory Reserve Rate.~~ Daily Simple SOFR" means an interest rate per annum equal to (a) the LIBO Rate for such Interest Period, multiplied by (b) the Statutory Reserve Rate, plus (b) 0.10%; provided that if the Adjusted Daily Simple SOFR as so determined would be less than the Floor, such rate will be deemed to be equal to the Floor for the purposes of this Agreement.

"Adjusted REVSOFR30 Rate" (a) means an interest rate per annum equal to (i) the REVSOFR30 Rate plus (ii) 0.00%; provided that (y) if the Adjusted REVSOFR30 Rate as so determined would be less than the Floor, such rate will be deemed to be equal to the Floor for the purposes of this Agreement and (z) if the REVSOFR30 Rate is not available, then the Adjusted REVSOFR30 Rate will be equal to the CB Floating Rate (unless an alternate rate is established in accordance with Section 2.14) and (b) when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted REVSOFR30 Rate.

“Adjusted Term SOFR Rate” means, for any Interest Period, an interest rate per annum equal to (a) the Term SOFR Rate for such Interest Period, plus (b) 0.10%; provided that if the Adjusted Term SOFR Rate as so determined would be less than the Floor, such rate will be deemed to be equal to the Floor for the purposes of this Agreement.

~~“Adjusted One Month LIBOR Rate” means, for any day, an interest rate per annum equal to the sum of (a) 2.50% plus (b) the Adjusted LIBO Rate for a one month interest period on such day (or if such day is not a Business Day, the immediately preceding Business Day); provided that, for the avoidance of doubt, the Adjusted LIBO Rate for any day will be based on the LIBO Screen Rate at approximately 11:00 a.m. London time on such day; provided, further, that, if the LIBO Screen Rate at such time is less than zero, such rate will be deemed to be zero for purposes of this Agreement.~~

“Administrative Agent” means JPMorgan Chase Bank, N.A. (including its successors and assigns), in its capacity as administrative agent for the Lenders hereunder.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the specified Person.

“Agent Indemnitee” has the meaning assigned to such term in Section 9.03(c). “Aggregate Credit Exposure” means, at any time, the aggregate Credit Exposure of all of the Lenders at such time.

“Aggregate Revolving Commitment” means, at any time, the aggregate of the Revolving Commitments of all of the Lenders, as increased or reduced from time to time pursuant to the terms and conditions hereof. As of the Effective Date, the Aggregate Revolving Commitment is \$40,000,000.

“Aggregate Revolving Exposure” means, at any time, the aggregate Revolving Exposure of all of the Lenders at such time (with the Swingline Exposure of each Lender calculated assuming that all of the Lenders have funded their participations in all Swingline Loans outstanding at such time).

“Agreement” has the meaning assigned to such term in the introductory paragraph of this Credit Agreement.

“Allbirds” means Allbirds, Inc., a Delaware corporation, and its successors and assigns. “Ancillary Document” has the meaning assigned to it in Section 9.06(b).

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to any Loan Party or any of their Subsidiaries from time to time concerning or relating to bribery or corruption.

“Applicable Parties” has the meaning assigned to it in Section 8.03(c).

“Applicable Percentage” means, with respect to any Lender, (a) with respect to Revolving Loans, LC Exposure, Overadvances, or Swingline Loans, a percentage equal to a fraction the numerator of which is such Lender’s Revolving Commitment and the denominator of which is the Aggregate Revolving Commitment, provided that, if the Revolving Commitments have terminated or expired, the Applicable Percentages will be determined based upon such Lender’s share of the Aggregate Revolving Exposure at that time and (b) with respect to Protective Advances or with respect to the Aggregate Credit Exposure, a percentage based upon such Lender’s share of the Aggregate Credit Exposure and the unused Commitments; provided that, in accordance with Section 2.20, so long as any Lender is a Defaulting Lender, such Defaulting Lender’s Commitment will be disregarded in the calculations under clause (a) and clause (b) preceding.

“Applicable Rate” means, for any day, with respect to any Loan, or with respect to the commitment fees payable hereunder, as the case may be, the applicable rate per annum set forth below under the caption “Revolver CBFR /REVSOFR30 Spread”, “Revolver ~~Eurodollar~~ CBFR/CB Floating Rate Spread”, “Revolver Term Benchmark/RFR Spread”, or “Commitment Fee Rate”, as the case may be, based upon the Average Quarterly Availability during the most recently ended fiscal quarter of Allbirds; provided that the “Applicable Rate” will be the applicable rates per annum set forth below in Category 1 during the period from the Effective Date to, and including, the last day of the fiscal quarter of Allbirds ending on or about March 31, 2019:

<u>Average Quarterly Availability</u>	<u>Revolver Eurodollar Term Benchmark/ RFR Spread</u>	Revolver CBFR/ <u>REVLIBOR30 REVSOFR30</u> Spread	Revolver CBFR CBFR/CB Floating Rate Spread	<u>Commitment Fee Rate</u>
<u>Category 1 Greater than 20.0% of the Aggregate Revolving Commitment</u>	1.25%	1.25%	0.00%	0.20%
<u>Category 2 Less than or equal to 20.0% of the Aggregate Revolving Commitment</u>	1.50%	1.50%	0.00%	0.20%

For purposes of the foregoing, each change in the Applicable Rate resulting from a change in Average Quarterly Availability will be effective during the period commencing on and including

the first day of each fiscal quarter of Allbirds and ending on the last day of such fiscal quarter, it being understood and agreed that, for purposes of determining the Applicable Rate on the first day of any fiscal quarter of Allbirds, the Average Quarterly Availability during the most recently ended fiscal quarter of Allbirds will be used. Notwithstanding the foregoing, the Average Quarterly

Availability will be deemed to be in Category 2 if the Borrowers fail to deliver any Borrowing Base Certificate or related information required to be delivered by them pursuant to [Section 5.01](#), during the period from the expiration of the time for delivery thereof until five days after each such Borrowing Base Certificate and related information is so delivered.

“[Approved Electronic Platform](#)” has the meaning assigned to such term in [Section 8.03\(a\)](#). “[Approved Fund](#)” has the meaning assigned to such term in [Section 9.04](#).

“[Arranger](#)” means JPMorgan Chase Bank, N.A. in its capacity as sole bookrunner and sole lead arranger hereunder.

“[Assignment and Assumption](#)” means an assignment and assumption agreement entered into by a Lender and an assignee (with the consent of any party whose consent is required by [Section 9.04](#)), and accepted by the Administrative Agent, in the form of [Exhibit A](#) or any other form (including electronic records generated by the use of an electronic platform) approved by the Administrative Agent.

“[Availability](#)” means, at any time, an amount equal to (a) the lesser of (i) the Aggregate Revolving Commitment or (ii) the Borrowing Base, minus (b) the Aggregate Revolving Exposure.

“[Availability Period](#)” means the period from and including the Effective Date to but excluding the earlier of the Maturity Date or the date of termination of the Commitments.

“[Available Revolving Commitment](#)” means, at any time, the Aggregate Revolving Commitment, minus the Aggregate Revolving Exposure.

“[Available Tenor](#)” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments of interest calculated pursuant to this Agreement as of such date and not including any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (e) of [Section 2.14](#).

“[Average Quarterly Availability](#)” means, for any fiscal quarter of Allbirds, an amount equal to the average daily Availability during such fiscal quarter, as determined by the Administrative Agent’s system of records; provided that, in order to determine Availability on any day for purposes of this definition, Borrowing Base for such day will be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to [Section 5.01](#) as of such day.

“[Bail-In Action](#)” means the exercise of any Write-Down and Conversion Powers by the applicable ~~EEA~~ Resolution Authority in respect of any liability of an ~~EEA~~ [Affected](#) Financial Institution.

“[Bail-In Legislation](#)” means: (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule, or requirement for such EEA Member Country

from time to time ~~that~~ which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation, or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration, or other insolvency proceedings).

“Banking Services” means each and any of the following bank services provided to any Loan Party or its Subsidiaries by JPMCB or any of its Affiliates: (a) credit cards for commercial customers (including, without limitation, “commercial credit cards” and purchasing cards), (b) stored value cards, (c) merchant processing services, and (d) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, any direct debit scheme or arrangement, overdrafts, cash pooling services, and interstate depository network services).

“Banking Services Obligations” means any and all obligations of the Loan Parties and their Subsidiaries, whether absolute or contingent and howsoever and whensoever created, arising, evidenced, or acquired (including all renewals, extensions, and modifications thereof and substitutions therefor) in connection with Banking Services.

“Banking Services Reserves” means all Reserves that the Administrative Agent from time to time establishes in its Permitted Discretion for Banking Services then provided or outstanding.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy”, as now and hereafter in effect, or any successor statute.

“Bankruptcy Event” means, with respect to any Person, when such Person becomes the subject of a voluntary or involuntary bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors, or similar Person charged with the reorganization or liquidation of its business, appointed for it, or, in the determination of the Administrative Agent in its Permitted Discretion, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment or has had any order for relief in such proceeding entered in respect thereof, provided that a Bankruptcy Event will not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides such Person with immunity from the jurisdiction of courts within the U.S. or any other applicable jurisdiction or from the enforcement of judgments or writs of attachment on such Person’s assets or permits such Person (or such Governmental Authority or instrumentality), to reject, repudiate, disavow, or disaffirm any contracts or agreements made by such Person.

“Benchmark” means, initially, with respect to any (i) RFR Loan, the Daily Simple SOFR, (2) Adjusted REVSOFER30 Rate Loan, the REVSOFER30 Rate, or (iii) Term Benchmark Loan, the Term SOFR Rate; provided that if a Benchmark Transition Event and the related Benchmark Replacement Date have occurred with respect to the Daily Simple SOFR, REVSOFER30 Rate, or Term SOFR Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) of Section 2.14.

“Benchmark Replacement” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(a) the Adjusted Daily Simple SOFR;

(b) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower Representative as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to

(i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for dollar-denominated syndicated credit facilities at such time in the U.S. and (b) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (1) or clause (2) preceding would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower Representative for the applicable Corresponding Tenor giving due consideration to

(i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement and/or any Term Benchmark Loan or Adjusted REVSOF30 Rate Loan, any technical, administrative, or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative, or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date” means, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(i) _____ in the case of clause (1) or clause (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(ii) _____ in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or clause (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(1) _____ a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) _____ a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, the CME Term SOFR Administrator, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component), or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, that states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such

statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means, with respect to any Benchmark, the period (if any), (x) beginning at the time that a Benchmark Replacement Date pursuant to clause (1) or clause (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code to which Section 4975 of the Code applies, and (c) any Person whose assets include (for purposes of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Borrower” or “Borrowers” means, individually or collectively, Allbirds and any other Person at any time a party hereto as a Borrower. As of the Effective Date, Allbirds is the only Borrower.

“Borrower Representative” has the meaning assigned to such term in Section 11.01. “Borrowing” means (a) ~~Revolving Loans of the same Type, made, converted, or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect, (b) Loans of the same Type, made, converted, or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect~~ a Revolving Borrowing, (b) a Swingline Loan, (c) a Swingline Loan, (d) a Protective Advance, and (ec) an Overadvance.

“Borrowing Base” means, at any time, the sum of (a) up to 90.0% of the face amount of the Borrowers’ Eligible Credit Card Accounts at such time, plus (b) up to 85.0% of the face amount of the Borrowers’ Eligible Trade Accounts at such time, plus (c) the lesser of up to (i) 90.0% of the Borrowers’ Eligible Inventory, at such time, valued at the lower of cost or market value, determined on a weighted average moving cost basis and (ii) the product of 90.0%, multiplied by the Net Orderly Liquidation Value percentage identified in the most recent inventory appraisal ordered by the Administrative Agent multiplied by the Borrowers’ Eligible Inventory, valued at the lower of cost or market value, determined on a weighted average moving cost basis, plus (d) 100% of the Borrowers’ Qualified Cash Balances, minus (e) Reserves.

“Borrowing Base Certificate” means a certificate, signed and certified as accurate and complete by a Financial Officer of the Borrower Representative, in substantially the form of Exhibit C or another form that is acceptable to the Administrative Agent in its sole discretion.

“Borrowing Request” means a request by the Borrower Representative for a Revolving Borrowing in accordance with Section 2.03.

“Burdensome Restrictions” means any consensual encumbrance or restriction of the type described in Section 6.10(a) or Section 6.10(b).

~~“Business Day” means any day that is not a Saturday, Sunday, or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that, when used in connection with a Eurodollar Loan or a Loan accruing interest at REVLIBOR30 Rate without giving effect to the proviso contained in the definition for “REVLIBOR30 Rate”, the term “Business Day” excludes any day on which banks are not open for general business in London.~~

“Business Day” means any day (other than a Saturday or a Sunday) on which banks are open for business in New York, New York; provided that, in addition to the foregoing, a Business Day will be (a) in relation to RFR Loans and any interest rate settings, fundings, disbursements, settlements, or payments of any such RFR Loan, or any other dealings of such RFR Loan, and (b) in relation to Loans referencing the Adjusted Term SOFR Rate and any interest rate settings, fundings, disbursements, settlements, or payments of any such Loans referencing the Adjusted Term SOFR Rate or any other dealings of such Loans referencing the Adjusted Term SOFR Rate, any such day that is only a U.S. Government Securities Business Day.

“Capital Expenditures” means, without duplication, any expenditure or commitment to expend money for any purchase or other acquisition of any asset that would be classified as a fixed or capital asset on a consolidated balance sheet prepared in accordance with GAAP, minus, in the case of the Loan Parties and their subsidiaries, (a) any software development costs to the extent deducted under the definition of EBITDA for any applicable period, (b) expenditures of insurance proceeds to rebuild or replace any asset after a casualty loss, and (c) leasehold improvement expenditures to the extent a Loan Party is reimbursed by the lessor within 180 days of such expenditures.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and

accounted for as capital leases or financing leases on a balance sheet of such Person under GAAP, and the amount of such obligations will be the capitalized amount thereof determined in accordance with GAAP.

“**CB Floating Rate**” means the ~~Prime Rate; provided that the CB Floating Rate will never be less than the Adjusted One Month LIBOR Rate on such day (or if such day is not a Business Day, the immediately preceding Business Day)~~ **greater of the Prime Rate or 2.50%**. Any change in the CB Floating Rate due to a change in the ~~Prime Rate or the Adjusted One Month LIBOR Rate~~ will be effective from and including the effective date of such change in the ~~Prime Rate or the Adjusted One Month LIBOR Rate, respectively.~~

“**CBFR**”, when used in reference to: (a) a rate of interest, refers to the ~~REVLIBOR30~~ **Adjusted REVSOFR30** Rate and (b) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the ~~REVLIBOR30~~ **Adjusted REVSOFR30** Rate.

“**CFC**” means a “controlled foreign corporation” as defined in Section 957 of the Code. “**Change in Control**” means (a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than the Permitted Holders, become, or obtain rights (whether by means of warrants, options, or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of at least 50.1% of the outstanding voting Equity Interests of Allbirds on a fully diluted basis, (b) occupation at any time of a majority of the seats (other than vacant seats) on the board of directors of Allbirds by Persons who were not (i) directors of Allbirds on the Effective Date or nominated, appointed or approved for consideration by shareholders for election by the board of directors of Allbirds, (ii) approved by the board of directors of Allbirds as director candidates prior to their election, nor (iii) appointed by directors so nominated, appointed, or approved; or (c) except for transactions permitted under this Agreement, Allbirds ceases to own (directly or indirectly), free and clear of all Liens or other encumbrances (other than Permitted Encumbrances), 100% of the outstanding voting Equity Interests of the other Borrowers on a fully diluted basis.

“**Change in Law**” means the occurrence after the date of this Agreement (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement) of any of the following: (a) the adoption of or taking effect of any law, rule, regulation, or treaty; (b) any change in any law, rule, regulation, or treaty or in the administration, interpretation, implementation, or application thereof by any Governmental Authority; or (c) compliance by any Lender or ~~the~~ Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender’s or ~~the~~ Issuing Bank’s holding company, if any) with any request, guideline, requirement, or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that notwithstanding anything herein to the contrary, (y) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements, or directives thereunder or issued in connection therewith or in the implementation thereof and (z) all requests, rules, guidelines, requirements, or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority), or the U.S. or foreign regulatory authorities, in each case pursuant to Basel III, in each case will be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued, or implemented.

“Charges” has the meaning assigned to such term in [Section 9.17](#).

“Class”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Swingline Loans, or Protective Advances, or Overadvances.

“CME Term SOFR Administrator” means [CME Group Benchmark Administration Limited as administrator of the forward-looking term SOFR \(or a successor administrator\)](#).

“Code” means the Internal Revenue Code of 1986, as amended from time to time. “Collateral” means any and all property owned, leased, or operated by a Person covered by the Collateral Documents and any and all other property of any Loan Party, now existing or hereafter acquired, that may at any time be, become, or be intended to be, subject to a Lien in favor of the Administrative Agent, on behalf of itself, the Lenders, and the other Secured Parties, to secure the Secured Obligations.

“Collateral Access Agreement” has the meaning assigned to such term in the Security Agreement.

“Collateral Documents” means, collectively, the Security Agreement, the NZ Security Agreement, and any other agreements, instruments, and documents executed in connection with this Agreement that are intended to create, perfect, or evidence Liens to secure the Secured Obligations, including, without limitation, all other security agreements, pledge agreements, mortgages, deeds of trust, loan agreements, notes, guarantees, subordination agreements, pledges, powers of attorney, consents, assignments, contracts, fee letters, notices, leases, financing statements, and all other written matter whether heretofore, now, or hereafter executed by any Loan Party and delivered to the Administrative Agent.

“Collection Account” has the meaning assigned to such term in the Security Agreement. “Commercial LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding commercial Letters of Credit, plus (b) the aggregate amount of all LC Disbursements relating to commercial Letters of Credit that have not yet been reimbursed by or on behalf of the Borrowers. The Commercial LC Exposure of any Revolving Lender at any time will be its Applicable Percentage of the aggregate Commercial LC Exposure at such time.

“Commitment” means, with respect to each Lender, such Lender’s Revolving Commitment, together with the commitment of such Lender to acquire participations in Protective Advances hereunder. The initial amount of each Lender’s Commitment is set forth on the Commitment Schedule, or in the Assignment and Assumption or other documentation or record (as such term is defined in Section 9-102(a)(70) of the New York Uniform Commercial Code) as provided in Section 9.04(b)(ii)(C), pursuant to which such Lender has assumed its Commitment, as applicable.

“Commitment Schedule” means the Schedule attached hereto identified as such. “Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Communications” has the meaning assigned to such term in [Section 8.03\(c\)](#).

“Compliance Certificate” means a certificate of a Financial Officer of the Borrower [Representative in substantially the form of Exhibit D](#).

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Control” means 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.

“Controlled Disbursement Account” means any deposit account of the Borrowers maintained with the Administrative Agent as a ~~zero-balance~~ cash management account [with a unique ABA routing number that effectively limits the number and frequency of daily check presentments](#) pursuant to and under any agreement between a Borrower and the Administrative Agent, as modified and amended from time to time, and through which all [, or substantially all, check disbursements of a Borrower, any other Loan Party, and any designated Subsidiary of a Borrower](#) are made and settled on a daily basis with no uninvested balance remaining overnight.

“Corresponding Tenor” [with respect to any Available Tenor means, as applicable, either a tenor \(including overnight\) or an interest payment period having approximately the same length \(disregarding business day adjustment\) as such Available Tenor.](#)

“Covered Entity” means any of the following:

(1) _____ a “covered entity” as that term is defined in, and interpreted in accordance [with, 12 C.F.R. § 252.82\(b\)](#);

(2) _____ a “covered bank” as that term is defined in, and interpreted in accordance [with, 12 C.F.R. § 47.3\(b\); or](#)

(3) _____ a “covered FSI” as that term is defined in, and interpreted in accordance [with, 12 C.F.R. § 382.2\(b\)](#).

“Covered Party” has the meaning assigned to such term in [Section 9.24](#).

“Credit Card Account” means an Account or any “payment intangible” (as defined in the UCC) together with all income, payments, and proceeds thereof, owed by a major credit or debit card issuer (including Visa, MasterCard, American Express, Discover, and such other issuers approved by the Administrative Agent) or any credit card processor or merchant bank providing credit card processing services to a Borrower resulting from charges by a customer of such Borrower on credit or debit cards issued by such issuer or processed by such processor or merchant bank in connection with the sale of goods by such Borrower, or services performed by such Borrower, in each case in the ordinary course of its business.

“**Credit Card Notice**” means a notice by a Borrower to a credit card issuer or credit card processor that (i) includes a directive to such credit card issuer or credit card processor to remit payments directly to the Collection Account, (ii) includes a requirement that the credit card issuer or credit card processor will not make any payments except as specified in such Credit Card Notice or as specified by the Administrative Agent in writing, and (iii) substantially in the form of Exhibit (G) or is otherwise in form and substance acceptable to the Administrative Agent.

“**Credit Exposure**” means, as to any Lender at any time, such Lender’s Revolving Exposure at such time.

“**Credit Party**” means the Administrative Agent, ~~the~~ any Issuing Bank, the Swingline Lender, or any other Lender.

“**Daily Simple SOFR**” means, for any day (a “SOFR Rate Day”), a rate per annum equal to SOFR for the day (such day, a “SOFR Determination Date”) that is five U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website. Any change in Daily Simple SOFR due to a change in SOFR will be effective from and including the effective date of such change in SOFR without notice to the Borrowers.

“**DDA Access Product**” means the bank service provided to any Loan Party by JPMCB in its sole discretion consisting of direct access to schedule payments from the Funding Account by electronic, internet, or other access mechanisms that may be agreed upon from time to time by JPMCB and the funding of such payments under the Loan Borrowing Option in the DDA Access Product Agreement.

“**DDA Access Product Agreement**” means JPMCB’s Treasury Services End of Day Investment & Loan Sweep Service Terms, as in effect on the date of this Agreement, as the same may be amended or otherwise modified from time to time.

“**Default**” means any event or condition that constitutes an Event of Default or that upon notice, lapse of time, or both would, unless cured or waived, become an Event of Default.

“**Default Right**” has the meaning assigned to such term in, and will be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“**Defaulting Lender**” means any Lender that (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in Letters of Credit or Swingline Loans, or (iii) pay over to any Credit Party any other amount required to be paid by such Lender hereunder, unless, in the case of clause (i) preceding, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular Default, if any) has not been satisfied, (b) has notified any Borrower or any Credit Party in writing, or has made a public statement, to the effect that such Lender does not intend or expect to comply with any of its funding obligations under this

Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including the particular Default, if any) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by a Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations as of the date of certification) to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans under this Agreement, provided that such Lender will cease to be a Defaulting Lender pursuant to this clause (c) upon such Credit Party's receipt of such certification in form and substance satisfactory to it and the Administrative Agent, or (d) has become the subject of (i) a Bankruptcy Event or (ii) a Bail-In Action.

"Deficiency Funding Date" has the meaning assigned to such term in Section 2.05(a).

"Disclosed Matters" means the actions, suits, proceedings, and environmental matters disclosed in Schedule 3.06.

"Disposition" or "Dispose" means the sale, transfer, license, lease, or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) of any property by any Person (including any sale and leaseback transaction and any issuance of Equity Interests by a Subsidiary of such Person), including any sale, assignment, transfer, or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

"Dividing Person" has the meaning assigned to it in the definition of "Division". "Division" means the division of the assets, liabilities, and/or obligations of a Person (the "Dividing Person") among two or more Persons (whether pursuant to a "plan of division", "divisive merger", or similar arrangement), that may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

"Division Successor" means any Person that, upon the consummation of a Division of a Dividing Person, holds all or any portion of the assets, liabilities, and/or obligations previously held by such Dividing Person immediately prior to the consummation of such Division. A Dividing Person that retains any of its assets, liabilities, and/or obligations after a Division will be deemed a Division Successor upon the occurrence of such Division.

"Document" has the meaning assigned to such term in the Security Agreement. "Dollars", "dollars", and "\$" refer to lawful money of the U.S.

"Domestic Subsidiary" means a Subsidiary organized under the laws of a jurisdiction located in the U.S., but excluding any such Subsidiary that is a FSHCO.

"Dominion Event Date" means (a) the date of the occurrence of any Event of Default resulting from non-compliance by the Loan Parties with the terms of Section 5.01(g), Section 5.01(h), or Section 6.12 (provided that any such Event of Default resulting from a failure

to comply with the terms of Section 5.01(g) or Section 5.01(h) will not result in a Dominion Event Date if the Loan Parties deliver the reporting information required by Section 5.01(g) or Section 5.01(h), as the case may be, within five Business Days of notice from the Administrative Agent of the Loan Parties' failure to comply with Section 5.01(g) or Section 5.01(h)), (b) the date of the occurrence of any Event of Default under clause (a), clause (b), clause (h), clause (i), or clause (j) of Article 7, or (c) any date on which Availability is less than 10.0% of the Aggregate Revolving Commitment.

"Dominion Period" means any period of time beginning on a Dominion Event Date and continuing through a Dominion Termination Date, if any.

"Dominion Termination Date" means, the first day after any period of 30 consecutive days occurring after a Dominion Event Date, during which none of the conditions specified in the definition of Dominion Event Date exist.

"EBITDA" means, for any period, Net Income for such period, plus (a) without duplication and to the extent deducted in determining Net Income for such period, the sum of (i) Interest Expense for such period, (ii) expense for income taxes paid or accrued, (iii) all amounts attributable to depreciation and amortization expense for such period, (iv) any non-cash charges attributable to impairment of goodwill or other intangible assets, impairment of long-lived assets and any extraordinary, unusual, or non-recurring non-cash expenses or losses, (v) non-cash compensation expense arising from the sale or issuance of stock or the granting of stock options, (vi) fees and expenses directly incurred or paid in connection with (A) the Transactions, (B) any Permitted Acquisition or any other acquisition not prohibited by this Agreement, and (C) to the extent permitted hereunder, issuances or incurrence of Indebtedness, issuances of Equity Interests, or refinancing transactions and modifications of instruments of Indebtedness; provided that the aggregate amount of fees and expenses added back pursuant to this clause (vi) will not exceed 15.0% of EBITDA for any applicable period (prior to giving effect to the addback of such items pursuant to this clause (vi)), (vii) any non-recurring charges, costs, losses, fees, and expenses directly incurred or paid directly as a result of discontinued operations or any sale or disposition of any asset of any Loan Party; provided that amounts added back to this clause (vii) will be actual and not projected and will be without duplication of amounts added back pursuant to clause (viii) following, (viii) restructuring charges or reserves, including write-downs and write-offs, including any one-time costs incurred in connection with Permitted Acquisitions or any other acquisitions not prohibited by this Agreement and costs related to the closure, consolidation, and integration of facilities, information technology infrastructure and legal entities, and severance and retention bonuses; provided that amounts added back pursuant to this clause (viii) are actual and not projected, and do not exceed 15.0% of EBITDA for any applicable period (prior to giving effect to the addback of such items pursuant to this clause (viii)), (ix) adjustments relating to purchase price allocation accounting, and (x) net losses (including all fees, expenses, and charges related thereto) on the retirement or extinguishment of indebtedness, (xi) non-cash exchange, translation, or performance losses relating to any hedging transactions or foreign currency fluctuations, (xii) any extraordinary non-cash charges for such period, and (xiii) any other non-cash charges for such period (but excluding any non-cash charge in respect of an item that was included in Net Income in a prior period, and any non-cash charge that relates to the write-down or write-off of inventory), minus (b) without duplication and to the extent included in Net Income, (i) any cash payments made during such period in respect of non-cash charges described in clause (a)(xiii) preceding taken in a prior period, (ii) any software development costs to the extent capitalized

during such period, (iii) interest income, (iv) exchange, translation, or performance gains relating to any hedging transactions or foreign currency fluctuations, and (v) any extraordinary gains and any non-cash items of income for such period, all calculated on a consolidated basis in accordance with GAAP.

“ECP” means an “eligible contract participant” as defined in Section 1(a)(18) of the Commodity Exchange Act or any regulations promulgated thereunder and the applicable rules issued by the Commodity Futures Trading Commission and/or the SEC.

“EEA Financial Institution” means (a) any [credit institution](#) or [investment firm](#) established in any EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country that is a parent of an institution described in [clause \(a\)](#) preceding, or (c) any [financial institution](#) established in an EEA Member Country that is a subsidiary of an institution described in [clause \(a\)](#) or [clause \(b\)](#) preceding and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means the date on which the conditions specified in [Section 4.01](#) are satisfied (or waived in accordance with [Section 9.02](#)).

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate, or accept such contract or record.

“Electronic System” means any electronic system, including e-mail, e-fax, web portal access for such Borrower, and any other Internet or extranet-based site, whether such electronic system is owned, operated, or hosted by the Administrative Agent or any Issuing Bank and any of their respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

“Eligible Accounts” means Eligible Credit Card Accounts and Eligible Trade Accounts. “Eligible Credit Card Account” means at the time of any determination thereof, any Credit Card Account that satisfies the following criteria at the time of creation and continues to meet such criteria at the time of such determination: such Credit Card Account (i) is owned by a Borrower; (ii) has been earned by performance and represents the bona fide amount due to the applicable Borrower from a credit card issuer or credit card processor, and in each case originated in the ordinary course of business of the applicable Borrower; (iii) unless owed by Visa, MasterCard, American Express Company, Discover, or any credit card processor or merchant bank providing credit card processing services to a Borrower acceptable to the Administrative Agent in its Permitted Discretion; and (iv) is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of [clause \(a\)](#) through [clause \(m\)](#) following. Without limiting the foregoing,

to qualify as an Eligible Credit Card Account, a Credit Card Account must indicate no Person other than a Borrower as payee or remittance party. In determining the amount to be so included, the face amount of a Credit Card Account will be reduced by, without duplication, to the extent not reflected in such face amount or otherwise excluded below, (y) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges, or other allowances (including any amount that the applicable Borrower may be obligated to rebate to a customer, a credit card issuer or a credit card processor pursuant to the terms of any agreement or understanding (written or oral)) and (z) the aggregate amount of all cash received in respect of such Credit Card Account but not yet applied by the applicable Borrower to reduce the amount of such Credit Card Account. Except as otherwise agreed by the Administrative Agent in its Permitted Discretion, a Credit Card Account will not be an Eligible Credit Card Account if:

- (1) such Credit Card Account does not constitute an “account” (as defined in the UCC) or “payment intangible” (as defined in the UCC);
- (2) such Credit Card Account has been outstanding for more than seven Business Days from the date of the applicable sale to a customer of a Borrower;
- (3) a Borrower does not have good, valid, and marketable title, free and clear of any Lien to such Credit Card Account, excluding any rights of offset of a credit card issuer or processor in the ordinary course of business;
- (4) such Credit Card Account is not subject to a first priority perfected Lien (excluding any rights of offset of a credit card issuer or processor in the ordinary course of business) in favor of the Administrative Agent, for the benefit of the Lenders (it being the intent that chargebacks in the ordinary course by such processors will not be deemed a violation of this clause (d));
- (5) such Credit Card Account is disputed, is with recourse, or is subject to a claim, counterclaim, offset, or chargeback that has been asserted (to the extent of such claim, counterclaim, offset, or chargeback);
- (6) the credit card issuer or the credit card processor with respect to such Credit Card Account has the right under certain circumstances to require the applicable Borrower to repurchase such Credit Card Account from such credit card issuer or credit card processor;
- (7) such Credit Card Account is due from a credit card issuer or credit card processor that has (i) applied for, suffered, or consented to the appointment of any receiver, custodian, trustee, or liquidator of its assets, (ii) had possession of all or a material part of its property taken by any receiver, custodian, trustee, or liquidator, (iii) filed, or had filed against it, any request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, winding-up, or voluntary or involuntary case under any state or federal bankruptcy laws, (iv) admitted in writing its inability, or is generally unable to, pay its debts as they become due, (v) become insolvent, (vi) ceased operation of its business, or (vii) taken any corporate action, legal proceedings, or other procedure or step is taken in relation to (A) the suspension of payments, a moratorium of any indebtedness,

winding up, dissolution, administration, or reorganization (by way of voluntary arrangements, scheme of arrangement, or otherwise), (B) a composition, compromise, assignment, or arrangement with any creditor, (C) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager, or other similar officer in respect of such Account Debtor or any of their assets, or (D) enforcement of any Lien over any assets of such Account Debtor, or any analogous procedure or step is taken in any jurisdiction;

(8) such Credit Card Account is not a valid, legally enforceable obligation of the applicable credit card issuer or credit card processor with respect thereto;

(9) such Credit Card Account does not conform to in all material respects all representations, warranties, or other provisions in the Loan Documents relating to Credit Card Accounts;

(10) such Credit Card Account is due from a credit card issuer or credit card processor that is not located in the U.S. unless the applicable credit card issuer or credit card processor remits payment directly to the Collection Account (as defined in the Security Agreement);

(11) is owed in any currency other than U.S. dollars, unless such Credit Card Account is reported in the applicable Borrowing Base Certificate in a U.S. dollar equivalent amount at the time of submission of the applicable Borrowing Base Certificate;

(12) such Credit Card Account is evidenced by "chattel paper" (as defined in the UCC) or an "instrument" (as defined in the UCC) of any kind unless such chattel paper or instrument is in the possession of the Administrative Agent, and to the extent necessary or appropriate, endorsed to the Administrative Agent; or

(13) any Credit Card Account due from a credit card issuer or credit card processor that:

(a) the Administrative Agent has not received a copy of a Credit Card Notice sent by the Borrower to the applicable credit card issuer or credit card processor; or

(b) the Administrative Agent has received a copy of a Credit Card Notice sent to the applicable credit card issuer or credit card processor, but either the Administrative Agent or the Borrower has determined that, notwithstanding the instructions in the applicable Credit Card Notice, such credit card issuer or credit card processor is not following the instructions given in such Credit Card Notice.

The Administrative Agent retains the right, from time to time in its Permitted Discretion, to establish additional standards of eligibility for Credit Card Accounts.

"Eligible Inventory," means, at any time, the Inventory of a Borrower that the Administrative Agent determines in its Permitted Discretion is eligible as the basis for the extension of Revolving Loans and Swingline Loans and the issuance of Letters of Credit. Without

limiting the Administrative Agent's discretion provided herein, Eligible Inventory of a Borrower will not include any Inventory:

- (1) that is not subject to a first priority perfected Lien in favor of the Administrative Agent;
- (2) that is subject to any Lien other than (i) a Lien in favor of the Administrative Agent and (ii) a Permitted Encumbrance that does not have priority over the Lien in favor of the Administrative Agent;
- (3) that is, in the Administrative Agent's opinion, slow moving, obsolete, unmerchantable, defective, used, unfit for sale, not salable at prices approximating at least the cost of such Inventory in the ordinary course of business, or unacceptable due to age, type, category, and/or quantity;
- (4) with respect to which any covenant, representation, or warranty contained in this Agreement or in the Security Agreement has been breached or is not true and that does not conform to all standards imposed by any Governmental Authority;
- (5) in which any Person other than such Borrower (i) has any direct or indirect ownership, interest, or title or (ii) is indicated on any purchase order or invoice with respect to such Inventory as having or purporting to have an interest therein;
- (6) that is not finished goods or that constitutes work-in-process, raw materials, spare or replacement parts, subassemblies, packaging and shipping material, manufacturing supplies, samples, prototypes, displays or display items, bill-and-hold or ship-in-place goods, goods that are returned or marked for return, repossessed goods, defective or damaged goods, goods held on consignment, or goods that are not of a type held for sale in the ordinary course of business;
- (7) that is not located in the U.S. or New Zealand or is in transit with a common carrier from vendors and suppliers, provided that, up to the greater of \$10,000,000 or 25.0% of the Aggregate Revolving Commitment of Inventory in transit from vendors and suppliers may be included as Eligible Inventory despite the foregoing provision of this clause (g) if:
 - (x) the Administrative Agent has received (A) a true and correct copy of the bill of lading and other shipping documents for such Inventory and (B) evidence of satisfactory casualty insurance naming the Administrative Agent as lender loss payee and otherwise covering such risks as the Administrative Agent may reasonably request;
 - (y) for inventory that is in transit within the U.S. or New Zealand, the bill of lading is non-negotiable and the Administrative Agent has received, if requested, a duly executed Collateral Access Agreement, in form and substance satisfactory to the Administrative Agent, from the applicable customs broker, freight forwarder, or carrier for such Inventory;

(z) for inventory that is in transit to a Borrower in the U.S. or New Zealand from outside the U.S. or New Zealand, either

(i) the bill of lading is negotiable and the Administrative Agent has received (x) confirmation that the bill is issued in the name of such Borrower and consigned to the order of the Administrative Agent or a third party acceptable to the Administrative Agent (which may be Flexport International LLC or another customs broker acceptable to the Administrative Agent; such third party being referred to hereinafter as a "transit agent"), and an acceptable agreement among the Borrowers, the Administrative Agent, and the transit agent has been executed and delivered, in which the transit agent agrees, in part, that it holds the negotiable bill of lading and other shipping documents and all Inventory represented thereby as agent for the Administrative Agent and has granted the Administrative Agent access to such Inventory, (y) confirmation that such Borrower has paid for the goods, and (z) an estimate from such Borrower of the customs duties, customs fees and all other amounts due to the transit agent associated with the Inventory in order to establish an appropriate Reserve; or

(ii) the bill of lading is non-negotiable and, the Administrative Agent has received (x) confirmation that the bill is issued in the name of such Borrower or a transit agent, and an acceptable agreement among the Borrowers, the Administrative Agent, and the transit agent has been executed and delivered, in which the transit agent agrees, in part, that it holds the non-negotiable bill of lading and other shipping documents and all Inventory represented thereby as agent for the Administrative Agent and has granted the Administrative Agent access to such Inventory,

(aa) confirmation that such Borrower has paid for the goods, and (z) an estimate from such Borrower of the customs duties, customs fees and all other amounts due to the transit agent associated with the Inventory in order to establish an appropriate Reserve,

(4) the common carrier is not an Affiliate of the applicable vendor or supplier or any Loan Party, and

(5) the transit agent (as described in clause (iii) preceding) is not an Affiliate of any Loan Party;

(8) that is located in any location leased by such Borrower (i) unless (A) the lessor has delivered to the Administrative Agent a Collateral Access Agreement or (B) a Reserve for rent, charges, and other amounts due or to become due with respect to such facility has been established by the Administrative Agent in its Permitted Discretion or (2) where less than \$100,000 of Inventory of the Borrowers is located at such location;

(a) that is located in any third party warehouse or is in the possession of a bailee (other than a third party processor) and is not evidenced by a Document (other than bills of lading to the extent permitted pursuant to clause (g) preceding) (i) unless (A) such

warehouseman or bailee has delivered to the Administrative Agent a Collateral Access Agreement and such other documentation as the Administrative Agent may require or (B) an appropriate Reserve has been established by the Administrative Agent in its Permitted Discretion or (ii) where less than \$100,000 of Inventory of the Borrowers is located;

(10) [reserved]

(11) that is a discontinued product or component thereof;

(12) that is the subject of a consignment by such Borrower as consignor;

(13) that is perishable;

(14) that contains or bears any intellectual property rights licensed to such Borrower unless the Administrative Agent is satisfied that it may sell or otherwise dispose of such Inventory without (i) infringing the rights of such licensor, (ii) violating any contract with such licensor, or (iii) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such Inventory under the current licensing agreement;

(15) that is not reflected in a current perpetual inventory report of such Borrower (unless such Inventory is reflected in a report to the Administrative Agent as "in transit" Inventory);

(16) for which reclamation rights have been asserted by the seller; or

(17) that has been acquired from a Sanctioned Person.

The Administrative Agent retains the right, from time to time in its Permitted Discretion, to establish additional standards of eligibility for Inventory.

"Eligible Trade Accounts" means, at any time, the Accounts, excluding any Credit Card Accounts, of a Borrower that the Administrative Agent determines in its Permitted Discretion are eligible as the basis for the extension of Revolving Loans and Swingline Loans and the issuance of Letters of Credit. Without limiting the Administrative Agent's discretion provided herein, Eligible Trade Accounts will not include any Account of a Borrower:

(1) that is not subject to a first priority perfected security interest in favor of the Administrative Agent;

(2) that is subject to any Lien other than (i) a Lien in favor of the Administrative Agent and (ii) a Permitted Encumbrance that does not have priority over the Lien in favor of the Administrative Agent;

(3) (i) that is unpaid more than 90 days after the date of the original invoice therefor or more than 60 days after the original due date therefor, or (ii) that has been written off the books of such Borrower or otherwise designated as uncollectible;

(4) that is owing by an Account Debtor for which more than 50.0% of the Accounts owing from such Account Debtor and its Affiliates are ineligible pursuant to clause (c) preceding;

(5) [reserved]

(6) with respect to which any covenant, representation, or warranty contained in this Agreement or in the Security Agreement has been breached or is not true;

(7) that (i) does not arise from the sale of goods or performance of services in the ordinary course of business, (ii) is not evidenced by an invoice or other documentation satisfactory to the Administrative Agent that has been sent to the Account Debtor,

(3) represents a progress billing or is contingent upon such Borrower's completion of any further performance; provided that such Accounts will not be ineligible solely as a result of the customer having a right to return goods purchased in the ordinary course of business (whether contractual or common law), (iv) represents a sale on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment, cash-on-delivery, or any other repurchase or return basis, or (v) relates to payments of interest;

(8) for which the goods giving rise to such Account have not been shipped to the Account Debtor or for which the services giving rise to such Account have not been performed by such Borrower or if such Account was invoiced more than once (excluding "reminder notices" and other normal follow-up correspondence and billing matters with respect to previous invoices);

(9) with respect to which any check or other instrument of payment has been returned uncollected for any reason;

(10) that is owed by an Account Debtor that has (i) applied for, suffered, or consented to the appointment of any receiver, custodian, trustee, or liquidator of its assets, (ii) had possession of all or a material part of its property taken by any receiver, custodian, trustee, or liquidator, (iii) filed, or had filed against it, any request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, winding-up, or voluntary or involuntary case under any state or federal bankruptcy laws,

(4) admitted in writing its inability, or is generally unable to, pay its debts as they become due, (v) become insolvent, or (vi) ceased operation of its business;

(11) that is owed by any Account Debtor that has sold all or substantially all of its assets;

(12) that, unless otherwise agreed to in writing by the Administrative Agent in its Permitted Discretion, is owed by an Account Debtor that (i) does not maintain its chief executive office in the U.S., Canada, or New Zealand or (ii) is not organized under applicable law of the U.S., any state of the U.S., or the District of Columbia, Canada, or any province of Canada, or New Zealand unless, in any such case, such Account is backed by a Letter of Credit acceptable to the Administrative Agent that is in the possession of, and is directly drawable by, the Administrative Agent;

- (13) that is owed in any currency other than U.S. dollars or any other currency agreed to in writing by the Administrative Agent in its Permitted Discretion;
- (14) that is owed by (i) any government (or any department, agency, public corporation, or instrumentality thereof) of any country other than the U.S. unless such Account is backed by a Letter of Credit acceptable to the Administrative Agent that is in the possession of, and is directly drawable by, the Administrative Agent or (ii) any government of the U.S., or any department, agency, public corporation, or instrumentality thereof, unless the Federal Assignment of Claims Act of 1940, as amended (31 U.S.C. § 3727 et seq. and 41 U.S.C. § 15 et seq.), and any other steps necessary to perfect the Lien of the Administrative Agent in such Account have been complied with to the Administrative Agent's satisfaction;
- (15) that is owed by any Affiliate of any Loan Party or any employee, officer, director, agent, or stockholder of any Loan Party or any of its Affiliates;
- (16) [reserved]
- (17) that is owed by an Account Debtor or any Affiliate of such Account Debtor to which any Loan Party is indebted, but only to the extent of such indebtedness, or is subject to any security, deposit, progress payment, retainage, or other similar advance made by or for the benefit of an Account Debtor, in each case to the extent thereof;
- (18) that is subject to any counterclaim, deduction, defense, setoff, or dispute but only to the extent of any such counterclaim, deduction, defense, setoff, or dispute;
- (19) that is evidenced by any promissory note, chattel paper, or instrument;
- (20) that is owed by an Account Debtor that is a Sanctioned Person;
- (21) with respect to which such Borrower has made any agreement with the Account Debtor for any reduction thereof, other than discounts and adjustments given in the ordinary course of business but only to the extent of any such reduction, or any Account that was partially paid and such Borrower created a new receivable for the unpaid portion of such Account;
- (22) that does not comply in all material respects with the requirements of all applicable laws and regulations, whether Federal, state, or local, including the Federal Consumer Credit Protection Act, the Federal Truth in Lending Act, and Regulation Z ~~of the Board~~;
- (23) that is for goods that have been sold under a purchase order or pursuant to the terms of a contract or other agreement or understanding (written or oral) that indicates or purports that any Person other than such Borrower has or has had an ownership interest in such goods, or that indicates any party other than such Borrower as payee or remittance party; or
- (24) that was created on cash on delivery terms.

In determining the amount of an Eligible Trade Account of a Borrower, the face amount of an Account may, in the Administrative Agent's Permitted Discretion, be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits, or credits pending, promotional program allowances, price adjustments, finance charges, or other allowances (including any amount that such Borrower may be obligated to rebate to an Account Debtor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by such Borrower to reduce the amount of such Account. The Administrative Agent retains the right, from time to time in its Permitted Discretion, to establish additional standards of eligibility for Accounts.

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to (a) the environment, (b) preservation or reclamation of natural resources, (c) the management, Release, or threatened Release of any Hazardous Material, or (d) health and safety matters.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties, or indemnities), of any Borrower or Subsidiary directly or indirectly resulting from or based upon (a) any violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment, or disposal of any Hazardous Materials, (c) any exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment, or (e) any contract, agreement, or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust, or other equity ownership interests in a Person, and any warrants, options, or other rights entitling the holder thereof to purchase or acquire any of the foregoing, but excluding any debt securities convertible into any of the foregoing.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with a Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or Section 4001(14) of ERISA or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived), (b) the failure to satisfy the "minimum funding standard" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived, (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, (d) the incurrence by any Borrower or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan, (e) the receipt by any Borrower or any ERISA Affiliate from the PBGC or a plan

administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, (f) the incurrence by any Borrower or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal of any Borrower or any ERISA Affiliate from any Plan or Multiemployer Plan, or (g) the receipt by any Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Borrower or any ERISA Affiliate of any notice, concerning the imposition upon any Borrower or any ERISA Affiliate of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, in critical status, or in reorganization, within the meaning of Title IV of ERISA.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

~~“Eurodollar”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bears interest at a rate determined by reference to the Adjusted LIBO Rate.~~

“Event of Default” has the meaning assigned to such term in Article 7.

“Excess Availability” means, at any time, an amount equal to the result of (a) Availability, minus (b) the aggregate amount of all outstanding accounts payable that have been unpaid for more than 60 days after the due date therefor (other than accounts payable being contested or disputed in good faith).

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation, or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an ECP at the time the Guarantee of such Guarantor or the grant of such security interest becomes or would become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion will apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“Excluded Taxes” 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, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes; (b) in the case of a Lender, withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan, Letter of Credit, or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan, Letter of Credit, or Commitment (other than pursuant to an assignment request by the Borrowers under Section 2.19(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender acquired the applicable

interest in a Loan, Letter of Credit, or Commitment or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Recipient's failure to comply with [Section 2.17\(f\)](#); and (d) any withholding Taxes imposed under FATCA.

"[Extenuating Circumstance](#)" means any period during which the Administrative Agent has determined in its sole discretion (a) that due to unforeseen and/or nonrecurring circumstances, it is impractical and/or not feasible to submit or receive a Borrowing Request or Interest Election Request by email or fax or through Electronic System and (b) to accept a Borrowing Request or Interest Election Request telephonically.

"[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 agreement entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules, or practices adopted pursuant to any intergovernmental agreement, treaty, or convention among Governmental Authorities and implementing such Sections of the Code.

"[Federal Funds Effective Rate](#)" means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depository institutions ~~6~~, as determined in such manner as [set forth on](#) the NYFRB ~~sets forth on its public website's Website~~ from time to time), and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate, [provided](#) that, if the Federal Funds Effective Rate as so determined would be less than ~~zero~~ [0.00%](#), such rate will be deemed to be ~~zero~~ [0.00%](#) for the purposes of this Agreement.

"[Federal Reserve Board](#)" means the Board of Governors of the Federal Reserve System of the U.S.

~~"[FHSCO](#)" means a Subsidiary that owns no assets other than Equity Interests of, and Indebtedness from, one or more CFCs.~~

"[Financial Officer](#)" means the chief financial officer, vice president of finance, head of finance, principal accounting officer, treasurer, or controller of a Borrower.

"[Fixed Charge Coverage Ratio](#)" means, as of any date, the ratio of (a) EBITDA, [minus](#) Unfinanced Capital Expenditures, [divided by](#) (b) Fixed Charges.

"[Fixed Charges](#)" means, for any period, without duplication, cash Interest Expense, [plus](#) scheduled principal payments on Indebtedness (excluding with respect to the Loan Parties the Revolving Loans) actually made, [plus](#) expenses for taxes paid in cash, [plus](#) Restricted Payments paid in cash, [plus](#) Capital Lease Obligation payments.

"[Flood Laws](#)" has the meaning assigned to such term in [Section 8.10](#).

"[Floor](#)" means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment, or renewal of this Agreement or otherwise) with respect to the Adjusted Term SOFR Rate, Adjusted REVSOFR30 Rate, or the Adjusted Daily Simple SOFR, as applicable. For the avoidance of doubt, the initial Floor for each

[of the Adjusted Term SOFR Rate, Adjusted REVSOF30 Rate, or the Adjusted Daily Simple SOFR will be 0.00%.](#)

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

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

“FSHCO” means a Subsidiary that owns no assets other than Equity Interests of, and Indebtedness from, one or more CFCs.

“Funding Account” has the meaning assigned to such term in [Section 4.01\(h\)](#). “GAAP” means generally accepted accounting principles in the U.S.

“Governmental Authority” means the government of the U.S., any other nation, or 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.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities, or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital, or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee does not include endorsements for collection or deposit in the ordinary course of business.

“Guaranteed Obligations” has the meaning assigned to such term in [Section 10.01](#). “Guarantors” means all Loan Guarantors and any non-Loan Parties (if any) that have delivered an Obligation Guaranty, and the term “Guarantor” means each or any one of them individually.

“Hazardous Materials” means: (a) any substance, material, or waste that is included within the definitions of “hazardous substances,” “hazardous materials,” “hazardous waste,” “toxic substances,” “toxic materials,” “toxic waste,” or words of similar import in any Environmental Law; (b) those substances listed as hazardous substances by the U.S. Department of Transportation (or any successor agency) (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) (40 C.F.R. Part 302 and amendments thereto); and

(c) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by- product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical.

~~“IBA” has the meaning assigned to such term in Section 1.05.~~

“IFRS” means the body of pronouncements issued by the International Accounting Standards Board (IASB), including International Financial Reporting Standards and interpretations approved by the IASB, International Accounting Standards and Standing Interpretations Committee interpretations approved by the predecessor International Accounting Standards Committee and adapted for use in the European Union.

~~“Impacted Interest Period” has the meaning assigned to such term in the definition of “LIBO Rate”.~~

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes, or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (k) obligations under any earn-out (which for all purposes of this Agreement will be valued at the maximum potential amount payable with respect to such earn-out), (l) any other Off- Balance Sheet Liability and (m) obligations, whether absolute or contingent and howsoever created, arising, evidenced, or acquired (including all renewals, extensions, and modifications thereof and substitutions therefor), under (i) any and all Swap Agreements and (ii) any and all cancellations, buy backs, reversals, terminations, or assignments of any Swap Agreement transaction. The Indebtedness of any Person includes the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by, or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), preceding, Other Taxes.

“Indemnitee” has the meaning assigned to such term in Section 9.03(b). “Ineligible Institution” has the meaning assigned to such term in Section 9.04(b).

“Information” has the meaning assigned to such term in Section 9.12.

“Interest Election Request” means a request by the Borrower Representative to convert or continue a Revolving Borrowing in accordance with Section 2.08.

“Interest Expense” means, for any period, total interest expense (including that attributable to Capital Lease Obligations) for such period with respect to all outstanding Indebtedness (including all commissions, discounts, and other fees and charges owed with respect to letters of credit and bankers’ acceptances and net costs under Swap Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP), calculated on a consolidated basis for such period in accordance with GAAP.

“Interest Payment Date” means (a) with respect to any CBFR Loan (~~other than a Swingline Loan~~), the first Business Day of each calendar month and the Maturity Date ~~and (b) with respect to any Eurodollar~~ (b) with respect to any RFR Loan, (i) each date that is on the numerically corresponding day in each calendar month that is one month after the Borrowing of such Loan (or, if there is no such numerically corresponding day in such month, then the last day of such month) ~~(ii) the Maturity Date, and (c) with respect to any Term Benchmark~~ Loan, the last day of each Interest Period applicable to the Borrowing of which such Loan is a part (and, in the case of a ~~Eurodollar Term Benchmark~~ Borrowing with an Interest Period of more than three months duration, each day prior to the last day of such Interest Period that occurs at intervals of three months duration after the first day of such Interest Period) and the Maturity Date.

“Interest Period” means, with respect to any ~~Eurodollar~~ Term Benchmark Borrowing, the period commencing on the date of such ~~Eurodollar~~ Borrowing and ending on the numerically corresponding day in the calendar month that is one, ~~two~~, three, or six months ~~(or thereafter, or with the consent of each Lender, twelve months)~~ thereafter (in each case, subject to the availability for the Benchmark applicable to the relevant Loan or Commitment), as the Borrower Representative may elect; provided that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period will be extended to the next succeeding Business Day unless, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period will end on the next preceding Business Day and (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) will end on the last Business Day of the last calendar month of such Interest Period, and (c) no tenor that has been removed from this definition pursuant to Section 2.14(e) will be available for specification in such Borrowing Request or Interest Election Request. For purposes hereof, the date of a Borrowing initially will be the date on which such Borrowing is made and , in the case of a Revolving Borrowing, thereafter will be the effective date of the most recent conversion or continuation of such Borrowing.

“Interpolated Rate” means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent (which determination will be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period (for which the LIBO Screen Rate is available) that is shorter than the Impacted Interest Period and (b) the LIBO Screen Rate for the shortest period (for which the LIBO Screen Rate is available) that exceeds the Impacted Interest Period, in each case, at such time; provided;

~~that if any Interpolated rate is less than zero, such rate will be deemed to be zero for purposes of this Agreement.~~

“Inventory” has the meaning assigned to such term in the Security Agreement. “Investment” has the meaning assigned to such term in Section 6.04.

“IRS” means the United States Internal Revenue Service.

“Issuing Bank” means, individually and collectively, each of JPMCB ~~in its capacity as the issuer of Letters of Credit hereunder~~, and any other Revolving Lender from time to time designated by the Borrower Representative as an Issuing Bank ~~(in each case, through itself or through one of its designated affiliates or branch offices)~~, with the consent of such Revolving Lender and the Administrative Agent, ~~and their~~ each in its capacity as the issuer of Letters of Credit hereunder, and its respective successors in such capacity as provided in Section 2.06(i). Any Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by its Affiliates, in which case the term “Issuing Bank” will include any such Affiliate with respect to Letters of Credit issued by such Affiliate (it being agreed that such Issuing Bank will, or will cause such Affiliate to, comply with the requirements of Section 2.06 with respect to such Letters of Credit). At any time there is more than one Issuing Bank, all singular references to the Issuing Bank will mean any Issuing Bank, either Issuing Bank, each Issuing Bank, the Issuing Bank that has issued the applicable Letter of Credit, or both (or all) Issuing Banks, as the context may require.

“Issuing Bank Sublimit” means, as of the Effective Date, (i) \$20,000,000, in the case of JPMCB and (ii) such amount as is designated to the Administrative Agent and the Borrower Representative in writing by an Issuing Bank; provided that any Issuing Bank will be permitted at any time to increase or reduce its Issuing Bank Sublimit upon providing five Business Days prior written notice thereof to the Administrative Agent and the Borrower Representative.

“Joinder Agreement” means a Joinder Agreement in substantially the form of Exhibit E. “JPMCB” means JPMorgan Chase Bank, N.A., a national banking association, in its individual capacity, and its successors.

“LC Collateral Account” has the meaning assigned to such term in Section 2.06(j).

“LC Disbursement” means any payment made by an Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of the Commercial LC Exposure and the Standby LC Exposure at such time. The LC Exposure of any Revolving Lender at any time will be its Applicable Percentage of the aggregate LC Exposure at such time.

“Lenders” means the Persons listed on the Commitment Schedule and any other Person that has become a Lender hereunder pursuant to Section 2.09 or an Assignment and Assumption or otherwise, other than any such Person that ceases to be a Lender hereunder pursuant to an Assignment and Assumption or otherwise. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender and ~~the~~ each Issuing Bank.

“Letter of Credit Agreement” has the meaning assigned to such term in Section 2.06(b).

“Letters of Credit” means the letters of credit issued pursuant to this Agreement, and the term “Letter of Credit” means any one of them or each of them singularly, as the context may require.

~~“LIBO Rate” means, with respect to any Eurodollar Borrowing for any applicable Interest Period or for any CBFR Borrowing, LIBO Screen Rate at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that, if the LIBO Screen Rate is not available at such time for such Interest Period (an “Impacted Interest Period”), then the LIBO Rate will be the Interpolated Rate, subject to Section 2.14 in the event that the Administrative Agent concludes that it is not possible to determine such Interpolated Rate (which conclusion will be conclusive and binding absent manifest error). Notwithstanding the above, to the extent that “LIBO Rate” or “Adjusted LIBO Rate” is used in connection with a CBFR Borrowing, such rate will be determined as modified by the definition of Adjusted One Month LIBOR Rate.~~

~~“LIBO Screen Rate” means, for any day and time, with respect to any Eurodollar Borrowing for any Interest Period or for any CBFR Borrowing, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars) for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, 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 from time to time as selected by the Administrative Agent in its reasonable discretion); provided that if the LIBO Screen Rate as so determined would be less than zero, such rate will be deemed to be zero for the purposes of this Agreement.~~

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge, or security interest (including a security interest as defined in section 17(1)(a) of the PPSA) in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease, or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset, and (c) in the case of securities, any purchase option, call, or similar right of a third party with respect to such securities.

“Loan Borrowing Option” has the meaning assigned to such term in the DDA Access Product Agreement.

“Loan Documents” means, collectively, this Agreement, any promissory notes issued pursuant to this Agreement, any Letter of Credit Agreement, the Collateral Documents, the Loan Guaranty, any Obligation Guaranty, and all other agreements, instruments, documents, and certificates identified in Section 4.01 executed and delivered to, or in favor of, the Administrative Agent or any Lender and including all other pledges, powers of attorney, consents, assignments, contracts, notices, letter of credit agreements, letter of credit applications, and any agreements between the Borrower Representative and ~~the an~~ Issuing Bank regarding ~~the such~~ Issuing Bank’s Issuing Bank Sublimit or the respective rights and obligations between the applicable Borrower and ~~the an~~ Issuing Bank in connection with the issuance by ~~the such~~ Issuing Bank of Letters of

Credit, and all other written matter whether heretofore, now, or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Administrative Agent or any Lender in connection with this Agreement or the transactions contemplated hereby. Any reference in this Agreement or any other Loan Document to a Loan Document will include all appendices, exhibits, or schedules thereto, and all amendments, restatements, supplements, or other modifications thereto, and will refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

“Loan Guarantor” means (a) each Borrower at any time party hereto with respect to the Secured Obligations of the other Borrowers and (b) any other Loan Party at any time party hereto that is not a Borrower.

“Loan Guaranty” means Article 10 of this Agreement.

“Loan Parties” means, collectively, the Borrowers, the Loan Guarantors, any other Person that becomes a party to this Agreement pursuant to a Joinder Agreement, and their respective successors and assigns, and the term “Loan Party” means any one of them or all of them individually, as the context may require.

“Loans” means the loans and advances made by the Lenders pursuant to this Agreement, including Swingline Loans, Overadvances, and Protective Advances.

“Margin Stock” means margin stock within the meaning of Regulation T, Regulation U, and Regulation X, as applicable.

“Material Adverse Effect” means a material adverse effect on (a) the business, operations, or financial condition, of the Loan Parties taken as a whole, (b) the ability of any Loan Party to perform any of its Obligations, (c) the Collateral, or the Administrative Agent’s Liens (on behalf of itself and other Secured Parties) on the Collateral, or the priority of such Liens, or (d) the rights of, or benefits available to, the Administrative Agent, the Issuing ~~Bank~~Banks, or the Lenders under any of the Loan Documents.

“Material Indebtedness” means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, of any one or more of the Loan Parties in an outstanding principal amount exceeding \$10,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Loan Parties in respect of any Swap Agreement at any time will be the maximum aggregate amount (giving effect to any netting agreements) that such Loan Party would be required to pay if such Swap Agreement were terminated at such time.

“Maturity Date” means February 20, 2024 or any earlier date on which the Commitments are reduced to zero or otherwise terminated pursuant to the terms hereof.

“Maximum Rate” has the meaning assigned to such term in Section 9.17. “Moody’s” means Moody’s Investors Service, Inc.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Income” means, for any Person (the “subject Person”) for any period, the consolidated net income (or loss), determined on a consolidated basis for the subject Person in accordance with GAAP; provided that the following will be excluded from the determination of Net Income (a) the income (or deficit) of any Person accrued prior to the date it becomes a subsidiary of the subject Person or is merged into or consolidated with the subject Person, (b) the income (or deficit) of any Person (other than a subsidiary of the subject Person) in which the subject Person has an ownership interest, except to the extent that any such income is actually received by the subject Person in the form of dividends or similar distributions, and (c) the undistributed earnings of any subsidiary of the subject Person to the extent that the declaration or payment of dividends or similar distributions by such subsidiary is not at the time permitted by the terms of any contractual obligation (other than under any Loan Document) or Requirement of Law applicable to such Subsidiary.

“Net Orderly Liquidation Value” means, with respect to Inventory of any Person, the orderly liquidation value thereof as determined in a manner acceptable to the Administrative Agent by an appraiser acceptable to the Administrative Agent, net of all costs of liquidation thereof.

“Net Proceeds” means, with respect to any event, (a) the cash proceeds received in respect of such event including (i) any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds, and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, minus (b) the sum of (i) all reasonable fees and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such event, (ii) in the case of a sale, transfer, or other disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event, and (iii) the amount of all taxes paid (or reasonably estimated to be payable) and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by a Financial Officer of the Borrower Representative).

“Non-Consenting Lender” has the meaning assigned to such term in Section 9.02(d). “NYFRB” means the Federal Reserve Bank of New York.

“NYFRB Rate” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by the Administrative Agent; provided, further, that if any of the aforesaid rates as so determined would be less than ~~zero~~ 0.00%, such rate will be deemed to be ~~zero~~ 0.00% for purposes of this Agreement.

“NYFRB’s Website” means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

“NZ Security Agreement” means that certain General Security Deed, dated on or about the Effective Date, as such agreement may be amended, restated, or otherwise modified from time to time.

“Obligated Party” has the meaning assigned to such term in Section 10.02.

“Obligation Guaranty” means any Guarantee of all or any portion of the Secured Obligations executed and delivered to the Administrative Agent for the benefit of the Secured Parties by a guarantor that is not a Loan Party.

“Obligations” means all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities, and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership, or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of any of the Loan Parties to any of the Lenders, the Administrative Agent, ~~the~~ any Issuing Bank, or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law, or otherwise, arising or incurred under this Agreement or any of the other Loan Documents or in respect of any of the Loans made or reimbursement or other obligations incurred or any of the Letters of Credit or other instruments at any time evidencing any thereof.

~~“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.~~

“Off-Balance Sheet Liability” of a Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any indebtedness, liability, or obligation under any so-called “synthetic lease” transaction entered into by such Person, and (c) any indebtedness, liability, or obligation arising with respect to any other transaction that is the functional equivalent of or takes the place of borrowing but that does not constitute a liability on the balance sheet of such Person (other than operating leases).

“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 Taxes (other than a connection arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to, or enforced, any Loan Document, or sold or assigned an interest in any Loan, Letter of Credit, or any Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing, or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement, or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19).

“Overadvance” has the meaning assigned to such term in Section 2.05(b).

“Overnight Bank Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight ~~Eurodollar borrowings~~ eurodollar transactions denominated in Dollars by U.S.-managed banking offices of depository institutions (as such composite rate ~~are~~ is determined by the NYFRB as set forth on ~~its public website~~ the NYFRB’s Website from time to time) and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Paid in Full” or “Payment in Full” means, (a) the payment in full in cash of all outstanding Loans and LC Disbursements, together with accrued and unpaid interest thereon, (b) the termination, expiration, or cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Administrative Agent of a cash deposit, or at the discretion of the Administrative Agent a backup standby letter of credit satisfactory to the Administrative Agent and the applicable Issuing Bank, in an amount equal to 105% of the LC Exposure as of the date of such payment), (c) the payment in full in cash of the accrued and unpaid fees, including the applicable Prepayment Fee, if any, (d) the payment in full in cash of all reimbursable expenses and other Secured Obligations (other than Unliquidated Obligations for which no claim has been made and other obligations expressly stated to survive such payment and termination of this Agreement), together with accrued and unpaid interest thereon, (e) the termination of all Commitments, and (f) the termination of the Swap Agreement Obligations and the Banking Services Obligations or entering into other arrangements satisfactory to the Secured Parties counterparties thereto.

“Parent” means, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

“Participant” has the meaning assigned to such term in Section 9.04(c). “Participant Register” has the meaning assigned to such term in Section 9.04(c).

“Payment Condition” is deemed to be satisfied in connection with a Restricted Payment or Investment if:

- (1) no Event of Default has occurred and is continuing or would result immediately after giving effect to such Restricted Payment or Investment; and
- (2) any one of the following circumstances then exist:
 - (a) no Credit Exposure is outstanding;
 - (b) if any Credit Exposure is outstanding, immediately after giving effect to such Restricted Payment or Investment, the Borrowers have Excess Availability calculated on a pro forma basis after giving effect to such Restricted Payment or Investment of not less than the greater of (A) 15.0% of the Aggregate Revolving Commitment or (B) \$6,000,000; or
 - (c) if any Credit Exposure is outstanding, (A) immediately after giving effect to such Restricted Payment or Investment, the Borrowers have Excess Availability calculated on a pro forma basis after giving effect to such Restricted

Payment or Investment of not less than the greater of (y) 10.0% of the Aggregate Revolving Commitment or (z) \$4,000,000 and (B) the Fixed Charge Coverage Ratio of the Loan Parties calculated on a pro forma and consolidated basis for the immediately preceding twelve calendar months is not less than 1.10 to 1.00; and

with respect to [clause \(ii\)](#) and [clause \(iii\)](#) preceding, the Borrower Representative has delivered to the Administrative Agent a written certification with respect thereto and attaching calculations therefor, as applicable.

[“Payment Notice”](#) has the meaning assigned to such term in [Section 8.06\(d\)\(ii\)](#).

[“PBGIC”](#) means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

[“Permitted Acquisition”](#) means any Acquisition by any Loan Party in a transaction that satisfies each of the following requirements:

- (1) no Event of Default has occurred and is continuing or would result immediately after giving effect to such Restricted Payment or Investment;
- (2) such Acquisition is not a hostile or contested acquisition;
- (3) the business acquired in connection with such Acquisition is (i) located in the U.S., (ii) organized under applicable U.S. and state laws, and (iii) not engaged, directly or indirectly, in any line of business other than the businesses in which the Loan Parties are engaged on the Effective Date and any business activities that are substantially similar, related, or incidental thereto;
- (4) [reserved]
- (5) as soon as available, but not less than 30 days prior to such Acquisition, the Borrower Representative has provided the Administrative Agent (i) notice of such Acquisition and (ii) a copy of all business and financial information reasonably requested by the Administrative Agent, including pro forma financial statements, statements of cash flow, and Availability projections;
- (6) if the Accounts and Inventory acquired in connection with such Acquisition are proposed to be included in the determination of the Borrowing Base, the Administrative Agent has conducted an audit and field examination of such Accounts and Inventory, the results of which must be satisfactory to the Administrative Agent in its Permitted Discretion;
- (7) the total cash consideration and Indebtedness assumed or incurred in connection with such Acquisition does not exceed \$10,000,000;
- (8) if such Acquisition is an acquisition of the Equity Interests of a Person, such Acquisition is structured so that the acquired Person becomes a Wholly-Owned Subsidiary of a Borrower and a Loan Party pursuant to the terms of this Agreement;

- (9) if such Acquisition is an acquisition of assets, such Acquisition is structured so that a Loan Party acquires such assets;
- (10) if such Acquisition is an acquisition of Equity Interests, such Acquisition will not result in any violation of Regulation U;
- (11) if such Acquisition involves a merger or a consolidation involving a Loan Party, such Loan Party is the surviving entity;
- (12) no Loan Party, as a result of or in connection with any such Acquisition, assumes or incurs any direct or contingent liabilities (whether relating to environmental, tax, litigation, or other matters) that could have a Material Adverse Effect;
- (13) in connection with an Acquisition of the Equity Interests of any Person, all Liens on property of such Person that constitute Collateral are terminated unless the Administrative Agent and the Lenders in their sole discretion consent otherwise, and in connection with an Acquisition of the assets of any Person, all Liens on such assets are terminated;
- (14) [reserved]
- (15) [reserved]
- (16) [reserved]
- (17) all actions required to be taken with respect to any newly acquired or formed Wholly-Owned Subsidiary of a Loan Party required under Section 5.14 have been taken; and
- (18) the Borrower Representative has delivered to the Administrative Agent the final executed material documentation relating to such Acquisition within 15 days following the consummation thereof.

“Permitted Discretion” means a determination made in good faith in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

“Permitted Encumbrances” means:

- (1) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 5.04;
- (2) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s, and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in compliance with Section 5.04;
- (3) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance, and other social security laws or regulations;

(4) (i) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds, and other obligations of a like nature, in each case in the ordinary course of business and (ii) rights of offset of a credit card issuer or processor in the ordinary course of business;

(5) judgment Liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article 7; and

(6) easements, zoning restrictions, rights-of-way, and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of any Borrower or any Subsidiary;

provided that the term "Permitted Encumbrances" does not include any Lien securing Indebtedness, except with respect to clause (d)(i) preceding.

"Permitted Holders" means any combination of one or more of (a) Tiger Global Investment Partners X, L.P., (b) Timothy Oliver Brown, and (c) Maveron Equity Partners V, L.P.

"Permitted Investments" means:

(1) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the U.S. (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the U.S.), in each case maturing within one year from the date of acquisition thereof;

(2) investments in commercial paper maturing within one year from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;

(3) investments in certificates of deposit, bankers' acceptances, and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the U.S. or any state thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000;

(4) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) preceding and entered into with a financial institution satisfying the criteria described in clause (c) preceding;

(5) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's, and (iii) have portfolio assets of at least \$500,000,000; and

(6) any other investments in cash, cash equivalents, or for which there is a ready and liquid marketplace (including, mutual funds and marketable securities) for buying and

selling such investments and that are permitted pursuant to an investment policy approved by the board of directors of Allbirds and provided to the Administrative Agent.

“Permitted Liens” means Permitted Encumbrances and Liens permitted under Section 6.02.

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

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which any Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Plan Asset Regulations” means 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time.

“PPSA” means the New Zealand Personal Property Securities Act 1999. “Prepayment Event” means:

- (1) during any Dominion Period, Disposition of any Collateral;
- (2) during any Dominion Period, any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any Collateral; and
- (3) the incurrence by any Loan Party of any Indebtedness, other than Indebtedness permitted under Section 6.01.

“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate will be effective from and including the date such change is publicly announced or quoted as being effective.

“Projections” has the meaning assigned to such term in Section 5.01(f). “Protective Advance” has the meaning assigned to such term in Section 2.04.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and will be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“QFC Credit Support” has the meaning assigned to such term in Section 9.24.

“Qualified Cash Balance” means, at any time, the aggregate collected balance in deposit accounts (as defined in the UCC) and securities accounts (as defined in Section 8-501 of the UCC) of the Borrowers maintained with the Administrative Agent that are designated by the Borrowers and the Administrative Agent to hold “qualified cash” and that are subject to a Deposit Account Control Agreement (as defined in the Security Agreement); provided that any such securities accounts only hold investments of cash and other Permitted Investments included in clause (a) through clause (e) of the definition thereof with maturities of less than 90 days from the date of acquisition.

“Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding \$10,000,000 at the time the relevant Loan Guaranty or grant of the relevant security interest becomes or would become effective with respect to such Swap Obligation or such other Person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Recipient” means, as applicable, (a) the Administrative Agent, (b) any Lender, and (4) any Issuing Bank, or any combination thereof (as the context requires).

“Reference Time” with respect to any setting of the then-current Benchmark means (a) if such Benchmark is the Term SOFR Rate, 5:00 a.m. (Chicago, Illinois time) on the day that is two U.S. Government Securities Business Days preceding the date of such setting, (b) if the RFR for such Benchmark is Daily Simple SOFR, then four Business Days prior to such setting, or (c) if such Benchmark is not the Term SOFR Rate or Daily Simple SOFR, the time determined by the Administrative Agent in its reasonable discretion.

“Reference Time” with respect to any setting of the then-current Benchmark means (a) if such Benchmark is the Term SOFR Rate or REVSOFR30 Rate, 5:00 a.m. (Chicago, Illinois time) on the day that is two U.S. Government Securities Business Days preceding the date of such setting or (b) if such Benchmark is not the Term SOFR Rate or REVSOFR30 Rate, the time determined by the Administrative Agent in its reasonable discretion.

“Refinance Indebtedness” has the meaning assigned to such term in Section 6.01(f). “Register” has the meaning assigned to such term in Section 9.04(b).

“Regulation D” means Regulation D of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation T” means Regulation T of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation U” means Regulation U of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation X” means Regulation X of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation Z” means Regulation Z of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, partners, members, trustees, employees, agents, administrators, managers, representatives, and advisors of such Person and such Person’s Affiliates.

“Release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing, or dumping of any substance into the environment.

“Relevant Governmental Body” means the Federal Reserve Board, the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board or the NYFRB or, in each case, any successor thereto.

“Relevant Rate” means (a) with respect to any Term Benchmark Borrowing, the Adjusted Term SOFR Rate, (b) with respect to any Adjusted REVSOFR30 Rate Borrowing, the Adjusted REVSOFR30 Rate, or (c) with respect to any RFR Borrowing, the Adjusted Daily Simple SOFR, as applicable.

“Report” means reports prepared by the Administrative Agent or another Person showing the results of appraisals, field examinations, or audits pertaining to the assets of the Loan Parties from information furnished by or on behalf of the Borrowers, after the Administrative Agent has exercised its rights of inspection pursuant to this Agreement, which Reports may be distributed to the Lenders by the Administrative Agent.

“Reporting Frequency Change Period” means any period occurring between (a) the date three Business Days after the earlier to occur of (i) any Event of Default or (ii) Availability being less than 12.5% of the Aggregate Revolving Commitment and (b) the date that for a period of 30 consecutive days Availability has been equal to or greater than 12.5% of the Aggregate Revolving Commitment and no Event of Default has been in existence.

“Required Lenders” means, subject to Section 2.20, at any time, Lenders having Credit Exposure and unused Commitments representing at least 51.0% of the sum of the Aggregate Credit Exposure and unused Commitments at such time; provided that, as long as there are only two Lenders, Required Lenders will mean both Lenders.

“Requirement of Law” means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation, and bylaws or operating, management, or partnership agreement, or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction, or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Reserves” means any and all reserves that the Administrative Agent deems necessary, in its Permitted Discretion, to maintain (including reserves for accrued and unpaid interest on the Secured Obligations, Banking Services Reserves, volatility reserves, reserves for rent at locations leased by any Loan Party and for consignee’s, warehousemen’s, and bailee’s charges, reserves for dilution of Accounts (including Credit Card Accounts), reserves for Inventory shrinkage, reserves for customs charges and shipping charges related to any Inventory in transit, reserves for Swap Agreement Obligations, reserves for uninsured losses of any Loan Party, reserves for uninsured, underinsured, un-indemnified or under-indemnified liabilities or potential liabilities with respect to any litigation, and reserves for taxes, fees, assessments, and other governmental charges) with respect to the Collateral or any Loan Party.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means, with respect to any Loan Party, the president, Financial Officer, or other executive officer of such Loan Party.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities, or other property) with respect to any Equity Interests of Allbirds or any Subsidiary, or any payment (whether in cash, securities, or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation, or termination of any such Equity Interests or any option, warrant, or other right to acquire any such Equity Interests.

“REVLIBOR30 Rate” means the London interbank offered rate administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars) for a one month period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, 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 from time to time as selected “Revolving Borrowing” means by the Administrative Agent in its reasonable discretion; in each case the “REVLIBOR30 Screen Rate”) at approximately 11:00 a.m., London time, two Business Days prior to the first Business Day of each month, adjusted monthly on the first Business Day of each month; provided that, (x) if the REVLIBOR30 Screen Rate is less than zero, such rate will be deemed to be zero for purposes of this Agreement and (y) if the REVLIBOR30 Screen Rate is not available at such time for such a period, then the REVLIBOR30 Rate will be equal to the CB Floating Rate Revolving Loans of the same Type, made, converted, or continued on the same date and, in the case of Term Benchmark Loans, as to which a single Interest Period is in effect.

“Revolving Commitment” means, with respect to each Lender, the ~~commitment, if any, of~~ such Lender to make Revolving Loans and to acquire participations in Letters of Credit, Overadvances, and Swingline Loans hereunder, expressed as an amount representing the maximum aggregate permitted amount of such Lender’s Revolving Exposure hereunder, as such ~~commitment~~ amount set forth on the Commitment Schedule opposite such Lender’s name, or in the Assignment and Assumption or other documentation or record (as such term is defined in Section 9-102(a)(70) of the New York Uniform Commercial Code) as provided in Section 9.04(b)(ii) (C) pursuant to which such Lender has assumed its Revolving Commitment, as applicable, as such Revolving Commitment may be reduced or increased from time to time

pursuant to (a) [Section 2.09](#) and (b) assignments by or to such Lender pursuant to [Section 9.04](#). ~~The initial amount of each Lender's Revolving Commitment is set forth on the Commitment Schedule, or in the Assignment and Assumption pursuant to which such Lender has assumed its Revolving Commitment or assigned a portion of its Revolving Commitment, as applicable; provided that at no time will the Revolving Exposure of any Lender exceed its Revolving Commitment. The initial aggregate amount of the Lenders' Revolving Commitments is \$40,000,000.~~

"[Revolving Exposure](#)" means, with respect to any Lender at any time, the sum of (a) the outstanding principal amount of such Lender's Revolving Loans, its LC Exposure, and its Swingline Exposure at such time, plus (b) an amount equal to its Applicable Percentage of the aggregate principal amount of Protective Advances outstanding at such time, plus (c) an amount equal to its Applicable Percentage of the aggregate principal amount of Overadvances outstanding at such time.

"[Revolving Lender](#)" means, as of any date of determination, a Lender with a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Exposure.

"[Revolving Loan](#)" means a Loan made pursuant to [Section 2.01\(a\)](#).

"[REVSOFER30 Rate](#)" means the Term SOFR Reference Rate for a one month period, as such rate is published by the CME Term SOFR Administrator, at approximately 5:00 a.m., Chicago, Illinois time, two U.S. Government Securities Business Days prior to the first Business Day of each month, adjusted monthly on the first Business Day of each month. Any change in the REVSOFER30 Rate will be effective from and include the effective date of such change.

"[RFR Borrowing](#)" means, as to any Borrowing, the RFR Loans comprising such Borrowing.

"[RFR Loan](#)" means a Loan that bears interest at a rate based on the Adjusted Daily Simple SOFR.

"[S&P](#)" means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business.

"[Sale and Leaseback Transaction](#)" has the meaning assigned to such term in [Section 6.06](#).

"[Sanctioned Country](#)," means, at any time, a country, region, or territory that is itself the subject or target of any Sanctions (at the time of this Agreement, ~~Crimea~~ [the so-called Donetsk People's Republic, the so-called Luhansk People's Republic, the Crimea Region of Ukraine](#), Cuba, Iran, North Korea, and Syria).

"[Sanctioned Person](#)" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the United Nations Security Council, the European Union or any European Union member state, ~~Her~~ [His](#) Majesty's Treasury of the United Kingdom, or other relevant sanctions authority, (b) any Person operating, organized, or resident in a

Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in clause (a) or clause (b) preceding, or (d) any Person otherwise the subject of any Sanctions.

“Sanctions” means all economic or financial sanctions or trade embargoes imposed, administered, or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or (b) the United Nations Security Council, the European Union, any European Union member state, ~~Her~~ His Majesty’s Treasury of the United Kingdom, or other relevant sanctions authority.

“SEC” means the Securities and Exchange Commission of the U.S.

“Secured Obligations” means all Obligations, together with all (a) Banking Services Obligations and (b) Swap Agreement Obligations owing to one or more Lenders or their respective Affiliates; provided that the definition of “Secured Obligations” will not create any guarantee by any Guarantor of (or grant of security interest by any Guarantor to support, as applicable) any Excluded Swap Obligations of such Guarantor for purposes of determining any obligations of any Guarantor.

“Secured Parties” means (a) the Administrative Agent, (b) the Lenders, (c) each Issuing Bank, (d) each provider of Banking Services, to the extent the Banking Services Obligations in respect thereof constitute Secured Obligations, (e) each counterparty to any Swap Agreement, to the extent the obligations thereunder constitute Secured Obligations, (f) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document, and (g) the successors and assigns of each of the foregoing.

“Security Agreement” means that certain Pledge and Security Agreement (including any and all supplements thereto), dated as of the date hereof, among the Loan Parties and the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, and any other pledge or security agreement entered into, after the date of this Agreement by any other Loan Party (as required by this Agreement or any other Loan Document) or any other Person for the benefit of the Administrative Agent and the other Secured Parties, as the same may be amended, restated, supplemented, or otherwise modified from time to time.

“Settlement” has the meaning assigned to such term in Section 2.05(d). “Settlement Date” has the meaning assigned to such term in Section 2.05(d).

“SOFR” means a rate per annum equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the NYFRB’s website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

~~“SOFR Determination Date” has the meaning specified in the definition of “Daily Simple SOFR”.~~

“SOFR Rate Day” has the meaning specified in the definition of “Daily Simple SOFR”. “Standby LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all standby Letters of Credit outstanding at such time, plus (b) the aggregate amount of all LC Disbursements relating to standby Letters of Credit that have not yet been reimbursed by or on behalf of the Borrowers at such time. The Standby LC Exposure of any Revolving Lender at any time will be its Applicable Percentage of the aggregate Standby LC Exposure at such time.

“Statements” has the meaning assigned to such term in [Section 2.18\(f\)](#).

~~“Statutory Reserve Rate” means a fraction (expressed as a decimal), (a) the numerator of which is the number one and (b) the denominator of which is the number one, minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency, or supplemental reserves) established by the Federal Reserve Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency liabilities” in Regulation D). Such reserve percentages include those imposed pursuant to Regulation D. Eurodollar Loans will be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions, or offsets that may be available from time to time to any Lender under Regulation D or any comparable regulation. The Statutory Reserve Rate will be adjusted automatically on and as of the effective date of any change in any reserve percentage.~~

“Subordinated Indebtedness” of a Person means any Indebtedness of such Person the payment of which is subordinated to payment of the Secured Obligations to the written satisfaction of the Administrative Agent.

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association, or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association, or other entity (a) of which securities or other ownership interests representing more than 50.0% of the equity or more than 50.0% of the ordinary voting power or, in the case of a partnership, more than 50.0% of the general partnership interests are, as of such date, owned, controlled, or held or (b) that is, as of such date, otherwise Controlled, by the parent and/or one or more subsidiaries of the parent.

“Subsidiary” means any direct or indirect subsidiary of Allbirds or another Loan Party, as applicable.

“Supported QFC” has the meaning assigned to such term in [Section 9.24](#).

“Swap Agreement” means any agreement with respect to any swap, forward, spot, future, credit default, or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or

value, or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees, or consultants of the Loan Parties or the Subsidiaries will be a Swap Agreement.

“Swap Agreement Obligations” means any and all obligations of the Loan Parties, whether absolute or contingent and howsoever and whensoever created, arising, evidenced, or acquired (including all renewals, extensions, and modifications thereof and substitutions therefor), under (a) any and all Swap Agreements permitted hereunder with a Lender or an Affiliate of a Lender and (b) any and all cancellations, buy backs, reversals, terminations, or assignments of any Swap Agreement transaction permitted hereunder with a Lender or an Affiliate of a Lender.

“Swap Obligation” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract, or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act or any rules or regulations promulgated thereunder.

“Swingline Exposure” means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Revolving Lender at any time will be its Applicable Percentage of the total Swingline Exposure at such time.

“Swingline Lender” means JPMCB, in its capacity as lender of Swingline Loans hereunder. Any consent required of the Administrative Agent or ~~the~~ an Issuing Bank will be deemed to be required of the Swingline Lender and any consent given by JPMCB in its capacity as the Administrative Agent or ~~the~~ Issuing Bank will be deemed given by JPMCB in its capacity as the Swingline Lender.

“Swingline Loan” has the meaning assigned to such term in Section 2.05(a).

“Target Balance” has the meaning assigned to such term in the DDA Access Product Agreement.

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

“Term Benchmark” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted Term SOFR Rate.

“Term SOFR Determination Day” has the meaning assigned to such term in the definition of Term SOFR Reference Rate.

“Term SOFR Rate” means, with respect to any Term Benchmark Borrowing and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Chicago, Illinois time, two U.S. Government Securities Business Days

[prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.](#)

[“Term SOFR Reference Rate” means, for any day and time \(such day, the “Term SOFR Determination Day”\), and for any tenor comparable to the applicable Interest Period, the rate per annum published by the CME Term SOFR Administrator and identified by the Administrative Agent as the forward-looking term rate based on SOFR. If by 5:00 p.m. \(New York, New York time\) on such Term SOFR Determination Day, the “Term SOFR Reference Rate” for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then, so long as such day is otherwise a U.S. Government Securities Business Day, the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator, so long as such first preceding U.S. Government Securities Business Day is not more than five U.S. Government Securities Business Days prior to such Term SOFR Determination Day.](#)

[“Transactions”](#) means the execution, delivery, and performance by the Loan Parties of this Agreement and the other Loan Documents, the borrowing of Loans and other credit extensions, the use of the proceeds thereof, and the issuance of Letters of Credit hereunder.

[“Type”](#), when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted ~~LBO~~ [Term SOFR](#) Rate, [the Adjusted Daily Simple SOFR](#), or the CBFR.

[“UCC”](#) means the Uniform Commercial Code as in effect from time to time in the State of California or in any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

[“UK Financial Institutions”](#) means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

[“UK Resolution Authority”](#) means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

[“Unadjusted Benchmark Replacement”](#) means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

[“Unfinanced Capital Expenditures”](#) means, for any period, Capital Expenditures made during such period that are not financed from the proceeds of any Indebtedness (other than the Revolving Loans; it being understood and agreed that, to the extent any Capital Expenditures are financed with Revolving Loans, such Capital Expenditures will be deemed Unfinanced Capital Expenditures); provided that, with respect to the Loan Parties, Unfinanced Capital Expenditures will not include any Capital Expenditures made prior to January 1, 2020.

“Unliquidated Obligations” means, at any time, any Secured Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Secured Obligation that is (a) an obligation to reimburse a bank for drawings not yet made under a letter of credit issued by it, (b) any other obligation (including any guarantee) that is contingent in nature at such time, or (c) an obligation to provide collateral to secure any of the foregoing types of obligations.

“U.S.” means the United States of America.

“U.S. Government Securities Business Day” means any day except for (a) a Saturday, (b) a Sunday, or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in U.S. government securities.

“U.S. Person” means a “United States person” within the meaning of Section 7701(a)(30) of the Code.

“U.S. Special Resolution Regime” has the meaning assigned to such term in Section 9.24. “U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 2.17(f)(ii)(B)(3).

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify, or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities, or obligations of that Person or any other Person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”); or by Type (e.g., a “~~Eurodollar Loan~~”, “Term Benchmark Loan”, an “RFR Loan” or “an Adjusted REVSOF30 Rate Loan”) or by Class and Type (e.g., a “~~Eurodollar Term Benchmark Revolving Loan~~”, an “RFR Revolving Loan” or “an Adjusted REVSOF30 Rate Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”); or by Type (e.g., a “~~Eurodollar Term Benchmark Borrowing~~”, an “RFR Borrowing” or “an Adjusted REVSOF30 Rate

Borrowing) or by Class and Type (e.g., a ~~“Eurodollar Term Benchmark Revolving Borrowing”~~, an “RFR Revolving Borrowing” or “an Adjusted REVSOFR30 Rate Revolving Borrowing”).

Section 1.03 Terms Generally. The definitions of terms herein will apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun includes the corresponding masculine, feminine, and neuter forms. The words “include”, “includes” and “including” will be deemed to be followed by the phrase “without limitation”. The word “law” will be construed as referring to all statutes, rules, regulations, codes, and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply) and all judgments, orders, and decrees of all Governmental Authorities. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein will be construed as referring to such agreement, instrument, or other document as from time to time amended, restated, supplemented, or otherwise modified (subject to any restrictions on such amendments, restatements, supplements, or modifications set forth herein), (b) any definition of or reference to any statute, rule, or regulation will be construed as referring thereto as from time to time amended, supplemented, or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person will be construed to include such Person’s successors and assigns (subject to any restrictions on assignments set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that has succeeded to any or all functions thereof, (d) the words “herein”, “hereof”, and “hereunder”, and words of similar import, will be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits, and Schedules will be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (f) any reference in any definition to the phrase “at any time” or “for any period” will refer to the same time or period for all calculations or determinations within such definition, and (g) the words “asset” and “property” will 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.

Section 1.04 Accounting Terms; GAAP.

(1) Except as otherwise expressly provided herein, all terms of an accounting or financial nature will be construed in accordance with GAAP, as in effect from time to time; provided that, if after the date hereof the Loan Parties migrate to IFRS or there occurs any change in GAAP or in the application thereof on the operation of any provision hereof and the Borrower Representative notifies the Administrative Agent that the Borrowers request an amendment to any provision hereof to eliminate the effect of such migration to IFRS or change in GAAP or in the application thereof (or if the Administrative Agent notifies the Borrower Representative that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such migration to IFRS or change in GAAP or in the application thereof, then such provision will be interpreted on the basis of GAAP as in effect and applied immediately before such migration or change has become effective until such notice has been withdrawn or such provision amended in accordance herewith.

(2) Notwithstanding anything to the contrary contained in Section 1.04(a) or in the definition of “Capital Lease Obligations,” in the event of an accounting change requiring all leases to be capitalized, only those leases (assuming for purposes hereof that

such leases were in existence on the date hereof) that would constitute capital leases in conformity with GAAP on the date hereof will be considered capital leases, and all calculations and deliverables under this Agreement or any other Loan Document will be made or delivered, as applicable, in accordance therewith.

~~–Section 1.05 Interest Rates; LIBOR Benchmark Notifications. The interest rate on Eurodollar Loans is determined by reference to the LIBO Rate, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the “IBA”) for purposes of the IBA setting the London interbank offered rate. As a result, it is possible that commencing in 2022, the London interbank offered rate may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on Eurodollar Loans. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of the London interbank offered rate. In the event that the London interbank offered rate is no longer available or in certain other circumstances as set forth in Section 2.14(c), such Section 2.14(c) a Loan denominated in dollars may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 2.14(b) provides a mechanism for determining an alternative rate of interest. The Administrative Agent will notify the Borrower Representative, pursuant to Section 2.14, in advance of any change to the reference rate upon which the interest rate on Eurodollar Loans is based. However, the Administrative Agent does not warrant or accept any responsibility for, and will not have any liability with respect to, the administration, submission, performance, or any other matter related to the London interbank offered rate or other rates in the definition of “LIBO Rate” any interest rate used in this Agreement, or with respect to any alternative or successor rate thereto, or replacement rate thereof, including, without limitation, whether the composition or characteristics of any such alternative, successor, or replacement reference rate, as it may or may not be adjusted pursuant to Section 2.14(c), will be similar to, or produce the same value or economic equivalence of, the LIBO Rate existing interest rate being replaced or have the same volume or liquidity as did the London interbank offered any existing interest rate prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate used in this Agreement or any alternative, successor, or replacement rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrowers. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and will have no liability to the Borrowers, any Lender, or any other Person for damages of any kind, including direct or indirect, special, punitive, incidental, or consequential damages, costs, losses, or expenses (whether in tort, contract, or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.~~

Section 1.06 Status of Obligations. In the event that any Loan Party at any time issues or has outstanding any Subordinated Indebtedness, such Loan Party will take, and will cause each other Loan Party to take, all such actions as are necessary to cause the Secured Obligations to constitute senior indebtedness (however denominated) in respect of such Subordinated Indebtedness and to enable the Administrative Agent and the Lenders to have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness. Without limiting the foregoing, the Secured Obligations are hereby designated as “senior indebtedness” and as “designated senior indebtedness” and words of similar import under and in respect of any indenture or other agreement or instrument under which such Subordinated Indebtedness is outstanding and are further given all such other designations as are required under the terms of any such Subordinated Indebtedness in order that the Lenders may have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness.

Section 1.07 Reserved.

Section 1.08 Letters of Credit. Unless otherwise specified herein, the amount of a Letter of Credit at any time will be deemed to be the stated amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit will be deemed to be the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Article 29(a) of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time) or Rule 3.13 or Rule 3.14 of the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time) or similar terms in the governing rules or law or of the Letter of Credit itself, or if compliant documents have been presented but not yet honored, such Letter of Credit will be deemed to be “outstanding” and “undrawn” in the amount so remaining available to be paid, and the obligations of the Borrowers and each Lender will remain in full force and effect until the Issuing Banks and the Lenders have no further obligations to make any payments or disbursements under any circumstances with respect to any Letter of Credit.

Section 1.09 Divisions. For all purposes under the Loan Documents, in connection with any Division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws): (a) if any asset, right, obligation, or liability of any Person becomes the asset, right, obligation, or liability of a different Person, then it will be deemed to have been transferred from the original Person to the subsequent Person and (b) if any new Person comes into existence, such new Person will be deemed to have been organized and acquired on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE 2

The Credits

Section 2.01 Commitments. Subject to the terms and conditions set forth herein, each Lender severally (and not jointly) agrees to make Revolving Loans in dollars to the Borrowers from time to time during the Availability Period in an aggregate principal amount that will not result in (a) such Lender's Revolving Exposure exceeding such Lender's Revolving Commitment or (b) the Aggregate Revolving Exposure exceeding the lesser of (i) the Aggregate Revolving Commitment, minus Reserves or (ii) the Borrowing Base, subject to the Administrative Agent's authority, in its sole discretion, to make Protective Advances and Overadvances pursuant to the terms of Section 2.04 and Section 2.05. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay, and reborrow Revolving Loans.

Section 2.02 Loans and Borrowings.

(1) Each Loan (other than a Swingline Loan) will be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. The failure of any Lender to make any Loan required to be made by it will not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender will be responsible for any other Lender's failure to make Loans as required. Any Protective Advance, any Overadvance, and any Swingline Loan will be made in accordance with the procedures set forth in Section 2.04 and Section 2.05.

(2) Subject to Section 2.14, each Revolving Borrowing will be comprised entirely of CBFR Loans or Eurodollar Term Benchmark Loans as the Borrower Representative may request in accordance herewith, provided that all Borrowings made on the Effective Date must be made as CBFR Borrowings but may be converted into Eurodollar Term Benchmark Borrowings in accordance with Section 2.08. Each Swingline Loan will be a CBFR Loan. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan (and in the case of an Affiliate, the provisions of Section 2.14, Section 2.15, Section 2.16, and Section 2.17 will apply to such Affiliate to the same extent as to such Lender); provided that any exercise of such option will not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement.

(3) At the commencement of each Interest Period for any Eurodollar Term Benchmark Revolving Borrowing, such Borrowing must be in an aggregate amount that is an integral multiple of \$500,000 and not less than \$1,000,000. CBFR Revolving Borrowings may be in any amount. Revolving Borrowings of more than one Type and Class may be outstanding at the same time; provided that there will not at any time be more than a total of five Eurodollar Term Benchmark Borrowings outstanding.

(4) Notwithstanding any other provision of this Agreement, the Borrower Representative will not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

Section 2.03 Requests for Revolving Borrowings. To request a Revolving Borrowing, the Borrower Representative must notify the Administrative Agent of such request either in writing (delivered by hand or fax) by delivering a Borrowing Request signed by a Responsible Officer of

the Borrower Representative or through Electronic System if arrangements for doing so have been approved by the Administrative Agent (or if an Extenuating Circumstance exists, by telephone) not later than (y) in the case of a ~~Eurodollar~~ Term Benchmark Borrowing, 10:00 a.m., Chicago, Illinois time, three U.S. Government Securities Business Days before the date of the proposed Borrowing or (z) in the case of a CBFR Borrowing, 12:00 noon, Chicago, Illinois time, on the date of the proposed Borrowing; provided that any such notice of a CBFR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e) may be given not later than 9:00 a.m., Chicago, Illinois time, on the date of such proposed Borrowing. Each such Borrowing Request will be irrevocable and each such telephonic Borrowing Request, if permitted, must be confirmed immediately upon the cessation of the Extenuating Circumstance by hand delivery, facsimile, or a communication through Electronic System to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by a Responsible Officer of the Borrower Representative. Each such written (or if permitted, telephonic) Borrowing Request must specify the following information:

- (1) the name of the applicable Borrower(s);
- (2) the aggregate amount of the requested Revolving Borrowing and a breakdown of the separate wires comprising such Borrowing;
- (3) the date of such Revolving Borrowing, which must be a Business Day;
- (4) whether such Revolving Borrowing is to be a CBFR Borrowing or a ~~Eurodollar~~ Term Benchmark Borrowing; and
- (5) in the case of a ~~Eurodollar~~ Term Benchmark Borrowing, the initial Interest Period to be applicable thereto, which must be a period contemplated by the definition of the term "Interest Period."

If no election as to the Type of Revolving Borrowing is specified, then the requested Revolving Borrowing will be a CBFR Borrowing. If no Interest Period is specified with respect to any requested ~~Eurodollar~~ Term Benchmark Revolving Borrowing, then the applicable Borrower(s) will be deemed to have selected an Interest Period of one month duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent will advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

Section 2.04 Protective Advances.

(1) Subject to the limitations set forth below, the Administrative Agent is authorized by the Borrowers and the Lenders, from time to time in the Administrative Agent's sole discretion (but will have absolutely no obligation to), to make Loans to the Borrowers, on behalf of all Lenders, that the Administrative Agent, in its Permitted Discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations, or (iii) to pay any other amount chargeable to or required to be paid by the Borrowers pursuant to the terms of this Agreement, including payments of reimbursable expenses (including costs, fees, and expenses as described in Section 9.03)

and other sums payable under the Loan Documents (any of such Loans are herein referred to as “Protective Advances”); provided that the aggregate amount of Protective Advances outstanding at any time will not at any time exceed 10.0% of the Revolving Commitment; provided, further, that the Aggregate Revolving Exposure after giving effect to the Protective Advances being made will not exceed the Aggregate Revolving Commitment. Protective Advances may be made even if the conditions precedent set forth in Section 4.02 have not been satisfied. The Protective Advances will be secured by the Liens in favor of the Administrative Agent in and to the Collateral and will constitute Obligations hereunder. All Protective Advances will be CBFR Borrowings. The making of a Protective Advance on any one occasion will not obligate the Administrative Agent to make any Protective Advance on any other occasion. The Administrative Agent’s authorization to make Protective Advances may be revoked at any time by the Required Lenders. Any such revocation must be in writing and will become effective prospectively upon the Administrative Agent’s receipt thereof. At any time that there is sufficient Availability and the conditions precedent set forth in Section 4.02 have been satisfied, the Administrative Agent may request the Revolving Lenders to make a Revolving Loan to repay a Protective Advance. At any other time the Administrative Agent may require the Lenders to fund their risk participations described in Section 2.04(b).

(2) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default), each Lender will be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent, without recourse or warranty, an undivided interest and participation in such Protective Advance in proportion to such Lender’s Applicable Percentage. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Advance purchased hereunder, the Administrative Agent will promptly distribute to such Lender, such Lender’s Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Protective Advance.

Section 2.05 Swingline Loans and Overadvances.

(1) The Administrative Agent, the Swingline Lender, and the Revolving Lenders agree that in order to facilitate the administration of this Agreement and the other Loan Documents, promptly after the Borrower Representative requests a CBFR Borrowing, at any time there are two or more Revolving Lenders, the Swingline Lender may elect to have the terms of this Section 2.05(a) apply to such Borrowing Request by advancing, on behalf of the Revolving Lenders and in the amount requested, same day funds to the Borrowers, on the date of the applicable Borrowing to the Funding Account~~(s)~~ (each such Loan made solely by the Swingline Lender pursuant to this Section 2.05(a) is referred to in this Agreement as a “Swingline Loan”), with settlement among them as to the Swingline Loans to take place on a periodic basis as set forth in Section 2.05(d). Each Swingline Loan will be subject to all the terms and conditions applicable to other CBFR Loans funded by the Revolving Lenders, except that all payments thereon will be payable to the Swingline Lender solely for its own account. In addition, the Borrowers hereby authorize the Swingline Lender to, and the Swingline Lender may, subject to the terms and conditions set forth herein (but without any further written notice required), not later than 1:00 p.m., Chicago, Illinois time, on each Business Day, make available to the Borrowers

by means of a credit to the Funding Account(s), the proceeds of a Swingline Loan to the extent necessary to pay items to be drawn on any Controlled Disbursement Account that Business Day subject to the Administrative Agent's standard procedures for calculating clearing totals each morning; provided that, if on any Business Day there is insufficient borrowing capacity to permit the Swingline Lender to make available to the Borrowers a Swingline Loan in the amount necessary to pay all items to be so drawn on any such Controlled Disbursement Account on such Business Day, then the Borrowers will be deemed to have requested a CBFR Borrowing pursuant to Section 2.03 in the amount of such deficiency to be made on such Business Day. In addition, the Borrowers hereby authorize the Swingline Lender to, and the Swingline Lender will, subject to the terms and conditions set forth herein (but without any further written notice required), to the extent that from time to time on any Business Day funds are required under the DDA Access Product to reach the Target Balance (a "Deficiency Funding Date"), make available to the applicable Borrower the proceeds of a Swingline Loan in the amount of such deficiency up to the Target Balance, by means of a credit to the applicable Funding Account on or before the start of business on the next succeeding Business Day, and such Swingline Loan will be deemed made on such Deficiency Funding Date. The aggregate amount of Swingline Loans outstanding at any time will not exceed 10.0% of the Revolving Commitment. The Swingline Lender will not make any Swingline Loan if the requested Swingline Loan exceeds Availability (before or after giving effect to such Swingline Loan). All Swingline Loans will be CBFR Borrowings.

(2) Any provision of this Agreement to the contrary notwithstanding, at the request of the Borrower Representative, the Administrative Agent may in its sole discretion (but with absolutely no obligation) on behalf of the Revolving Lenders, (y) make Revolving Loans to the Borrowers in amounts that exceed Availability (any such excess Revolving Loans are herein referred to collectively as "Overadvances") or (z) deem the amount of Revolving Loans outstanding to the Borrowers that are in excess of Availability to be Overadvances; provided that no Overadvance will result in a Default due to the Borrowers' failure to comply with Section 2.01 for so long as such Overadvance remains outstanding in accordance with the terms of this clause (b), but solely with respect to the amount of such Overadvance. In addition, Overadvances may be made even if the condition precedent set forth in Section 4.02(c) has not been satisfied. All Overadvances will constitute CBFR Borrowings. The making of an Overadvance on any one occasion will not obligate the Administrative Agent to make any Overadvance on any other occasion. The authority of the Administrative Agent to make Overadvances is limited to an aggregate amount not to exceed 10.0% of the Revolving Commitment at any time, no Overadvance may remain outstanding for more than 30 days, and no Overadvance will cause any Revolving Lender's Revolving Exposure to exceed its Revolving Commitment; provided that, the Required Lenders may at any time revoke the Administrative Agent's authorization to make Overadvances. Any such revocation must be in writing and will become effective prospectively upon the Administrative Agent's receipt thereof.

(3) Upon the making of a Swingline Loan or an Overadvance (whether before or after the occurrence of a Default and regardless of whether a Settlement has been requested with respect to such Swingline Loan or Overadvance), each Revolving Lender will be deemed, without further action by any party hereto, to have unconditionally and

irrevocably purchased from the Swingline Lender or the Administrative Agent, as the case may be, without recourse or warranty, an undivided interest and participation in such Swingline Loan or Overadvance in proportion to its Applicable Percentage of the Aggregate Revolving Commitment. The Swingline Lender or the Administrative Agent may, at any time, require the Revolving Lenders to fund their participations. From and after the date, if any, on which any Revolving Lender is required to fund its participation in any Swingline Loan or Overadvance purchased hereunder, the Administrative Agent will promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Swingline Loan or Overadvance.

(4) The Administrative Agent, on behalf of the Swingline Lender, will request settlement (a "Settlement") with the Revolving Lenders on at least a weekly basis or on any date that the Administrative Agent elects, by notifying the Revolving Lenders of such requested Settlement by facsimile, telephone, or e-mail no later than 12:00 noon Chicago, Illinois time on the date of such requested Settlement (the "Settlement Date"). Each Revolving Lender (other than the Swingline Lender, in the case of the Swingline Loans) will transfer the amount of such Revolving Lender's Applicable Percentage of the outstanding principal amount of the applicable Loan with respect to which Settlement is requested to the Administrative Agent, to such account of the Administrative Agent as the Administrative Agent may designate, not later than 2:00 p.m., Chicago, Illinois time, on such Settlement Date. Settlements may occur during the existence of a Default and whether or not the applicable conditions precedent set forth in Section 4.02 have then been satisfied. Such amounts transferred to the Administrative Agent will be applied against the amounts of the Swingline Lender's Swingline Loans and, together with the Swingline Lender's Applicable Percentage of such Swingline Loan, will constitute Revolving Loans of such Revolving Lenders, respectively. If any such amount is not transferred to the Administrative Agent by any Revolving Lender on such Settlement Date, the Swingline Lender will be entitled to recover from such Lender on demand such amount, together with interest thereon, as specified in Section 2.07.

Section 2.06 Letters of Credit.

(1) General. Subject to the terms and conditions set forth herein, the Borrower Representative may request ~~the issuance of any Issuing Bank to issue~~ Letters of Credit for ~~its~~ the Borrower Representative's own account or for the account of another Loan Party denominated in dollars as the applicant thereof for the support of its or its Subsidiaries' obligations, in a form reasonably acceptable to ~~the Administrative Agent and the~~ such Issuing Bank, at any time and from time to time during the Availability Period. In the event of any ~~inconsistency conflict~~ between the terms and conditions of this Agreement and the terms and conditions of any Letter of Credit Agreement, the terms and conditions of this Agreement will control. Notwithstanding anything herein to the contrary, ~~the~~ such Issuing Bank will have no obligation hereunder to issue, and will not issue, any Letter of Credit (i) the proceeds of which would be made available to any Person (A) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is the subject of any Sanctions or (B) in any manner that would result in a violation of any Sanctions by any party to this Agreement, (ii) if any order, judgment, or decree of any Governmental Authority or arbitrator by its terms purports to

enjoin or restrain ~~the such~~ Issuing Bank from issuing ~~, amending, or extending such Letter of Credit, or requests that such Issuing Bank refrain from issuing, amending, or extending~~ such Letter of Credit, or any Requirement of Law relating to ~~the such~~ Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over ~~the such~~ Issuing Bank prohibits ~~, or requests that the Issuing Bank refrain from,~~ the issuance ~~, amendment, or extension~~ of letters of credit generally or such Letter of Credit in particular or ~~any such order, judgment or decree, or law~~ imposes upon ~~the such~~ Issuing Bank with respect to such Letter of Credit any restriction, reserve, or capital ~~or liquidity~~ requirement (for which ~~the such~~ Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or imposes upon ~~the such~~ Issuing Bank any unreimbursed loss, cost, or expense that was not applicable on the Effective Date and that ~~the such~~ Issuing Bank in good faith deems material to it, or (iii) if the issuance ~~, amendment, or extension~~ of such Letter of Credit would violate one or more policies of ~~the such~~ Issuing Bank applicable to letters of credit generally; ~~provided~~ that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements, or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements, or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the U.S. or foreign regulatory authorities, in each case pursuant to Basel III, will in each case be deemed not to be in effect on the Effective Date for purposes of ~~clause (i)~~ preceding, regardless of the date enacted, adopted, issued, or implemented.

(2)= ~~Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions.~~ To request the issuance of a Letter of Credit (or the amendment, ~~renewal,~~ or extension of an outstanding Letter of Credit), the Borrower Representative must deliver by hand or facsimile (or transmit through Electronic System, if arrangements for doing so have been approved by the ~~respective~~ Issuing Bank) to ~~the an~~ Issuing Bank ~~and selected by the Borrower Representative and to~~ the Administrative Agent (reasonably in advance of, but in any event no less than three Business Days prior to the requested date of issuance, amendment, ~~renewal,~~ or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, ~~renewed,~~ or extended, and specifying the date of issuance, amendment, ~~renewal,~~ or extension (that must be a Business Day), the date on which such Letter of Credit is to expire (that must comply with Section 2.06(c)), the amount of such Letter of Credit, the name and address of the beneficiary thereof, and such other information as is necessary to prepare, amend, ~~renew,~~ or extend such Letter of Credit. In addition, as a condition to any such Letter of Credit issuance, the applicable Borrower must have entered into a continuing agreement (or other letter of credit agreement) for the issuance of letters of credit and/or must submit a letter of credit application, in each case, as required by the ~~respective~~ Issuing Bank and using such ~~bank's~~ Issuing Bank's standard form (each, a "Letter of Credit Agreement"). A Letter of Credit will be issued, amended, ~~renewed,~~ or extended only if (and upon issuance, amendment, ~~renewal,~~ or extension of each Letter of Credit the Borrowers will be deemed to represent and warrant that), after giving effect to such issuance, amendment, ~~renewal,~~ or extension

(i) the aggregate LC Exposure ~~does will~~ not exceed \$20,000,000, (ii) the aggregate Standby LC Exposure ~~does will~~ not exceed \$20,000,000, (iii) the aggregate Commercial LC

_____ Exposure ~~does will~~ not exceed \$20,000,000, (iv) no Revolving Lender's Revolving Exposure ~~exceeds-will exceed~~ its Revolving Commitment, and (v) the Aggregate Revolving Exposure ~~does will~~ not exceed the lesser of (A) the Aggregate Revolving Commitment, ~~minus~~ Reserves or (B) the Borrowing Base. Notwithstanding the foregoing or anything to the contrary contained herein, no Issuing Bank will be obligated to issue or modify any Letter of Credit if, immediately after giving effect thereto, the outstanding LC Exposure in respect of all Letters of Credit issued by such Person and its Affiliates would exceed such Issuing Bank's Issuing Bank Sublimit. Without limiting the foregoing and without affecting the limitations contained herein, it is understood and agreed that the Borrower Representative may from time to time request that an Issuing Bank issue Letters of Credit in excess of its individual Issuing Bank Sublimit in effect at the time of such request, and each Issuing Bank agrees to consider any such request in good faith. Any Letter of Credit so issued by an Issuing Bank in excess of its individual Issuing Bank Sublimit then in effect will nonetheless constitute a Letter of Credit for all purposes of this Agreement, and will not affect the Issuing Bank Sublimit of any other Issuing Bank, subject to the limitations on the aggregate LC Exposure set forth in clause (i) of this Section 2.06(b).

(3)_____ Expiration Date. Each Letter of Credit will expire (or be subject to termination or non-renewal by notice from the applicable Issuing Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any ~~renewal or~~ extension of the expiration thereof, including, without limitation, any automatic renewal provision, one year after such ~~renewal or~~ extension) ~~or~~ and (ii) the date that is five Business Days prior to the Maturity Date.

(4) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount or extending the term thereof) and without any further action on the part of the applicable Issuing Bank or the Revolving Lenders, ~~the such~~ Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from ~~the such~~ Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the respective Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by ~~the such~~ Issuing Bank and not reimbursed by the Borrowers on the date due as provided in Section 2.06(e), or of any reimbursement payment required to be refunded to the Borrowers for any reason, including after the Maturity Date. Each such payment must be made without any offset, abatement, withholding, or reduction whatsoever. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this clause (d) in respect of Letters of Credit is absolute and unconditional and will not be affected by any circumstance whatsoever, including any amendment, ~~renewal~~, or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments; ~~and that each such payment will be made without any offset, abatement, withholding, or reduction whatsoever.~~

(5) Reimbursement. If the Issuing Bank makes any LC Disbursement in respect of a Letter of Credit, the Borrowers will reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 11:00 a.m., Chicago, Illinois time, on (i) the Business Day that the Borrower Representative receives notice of such LC Disbursement, if such notice is received prior to 9:00 a.m., Chicago, Illinois time, on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower Representative receives such notice, if such notice is received after 9:00 a.m., Chicago, Illinois time, on the day of receipt; provided that the Borrowers may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or Section 2.05 that such payment be financed with a CBFR Revolving Borrowing or a Swingline Loan in an equivalent amount and, to the extent so financed, the Borrowers' obligation to make such payment will be discharged and replaced by the resulting CBFR Revolving Borrowing or Swingline Loan. If the Borrowers fail to make such payment when due, the Administrative Agent will notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the Borrowers in respect thereof, and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Revolving Lender will pay to the Administrative Agent such Lender's Applicable Percentage of the payment then due from the Borrowers, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 will apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent will promptly pay to the respective Issuing Bank the amounts so received by the Administrative Agent from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrowers pursuant to this clause (e), the Administrative Agent will distribute such payment to the respective Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this clause (e) to reimburse ~~the~~ such Issuing Bank, then to such Lenders and ~~the~~ such Issuing Bank as their interests may appear. Any payment made by a Revolving Lender pursuant to this clause (e) to reimburse ~~the~~ an Issuing Bank for any LC Disbursement (other than the funding of CBFR Revolving Loans or a Swingline Loan as contemplated above) will not constitute a Loan and will not relieve the Borrowers of their obligation to reimburse such LC Disbursement.

(6) Obligations Absolute. The Borrowers' joint and several obligation to reimburse LC Disbursements as provided in Section 2.06(e) will be absolute, unconditional, and irrevocable, and will be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, any Letter of Credit Agreement, or this Agreement, or any term or provision therein or herein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent, or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) any payment by the respective Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrowers' obligations hereunder. None of the Administrative Agent, the Revolving Lenders, ~~the~~ any Issuing Bank, or any of their Related Parties, will have any liability or responsibility by reason of or in connection

with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss, or delay in transmission or delivery of any draft, document, notice, or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation, or any consequence arising from causes beyond the control of ~~the an~~ Issuing Bank; provided that, the foregoing will not be construed to excuse ~~the an~~ Issuing Bank from liability to the Borrowers to the extent of any direct damages (as opposed to special, indirect, consequential, or punitive damages, claims in respect of which are hereby waived by the Borrowers to the extent permitted by applicable law) suffered by any Borrower that are caused by ~~the such~~ Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of ~~the an~~ Issuing Bank (as finally determined by a court of competent jurisdiction), ~~the such~~ Issuing Bank will be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented that appear on their face to be in substantial compliance with the terms of a Letter of Credit, ~~the an~~ Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(7) Disbursement Procedures. The Issuing Bank ~~will promptly for any Letter of Credit will, within the time allowed by applicable law or the specific terms of the Letter of Credit~~, following its receipt thereof, examine all documents purporting to represent a demand for payment under ~~a such~~ Letter of Credit. ~~The Such~~ Issuing Bank will promptly after such examination notify the Administrative Agent and the applicable Borrower by telephone (confirmed by fax or through Electronic Systems) of such demand for payment ~~and whether the if such~~ Issuing Bank has made or will make an LC Disbursement thereunder; provided that such notice need not be given prior to payment by the Issuing Bank and any failure to give or delay in giving such notice will not relieve the Borrowers of their obligation to reimburse ~~the such~~ Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement.

(8) Interim Interest. If the Issuing Bank for any Letter of Credit makes any LC Disbursement, then, unless the Borrowers reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof will bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrowers reimburse such LC Disbursement, at the rate per annum then applicable to CBFR Revolving Loans and such interest will be due and payable on the date when such reimbursement is ~~due payable~~; provided that, if the Borrowers fail to reimburse such LC Disbursement when due pursuant to Section 2.06(e), then Section 2.13(d) will apply. Interest accrued pursuant to this clause (h) will be for the account of ~~the such~~ Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender

pursuant to Section 2.06(e) to reimburse ~~the such~~ Issuing Bank for such LC Disbursement will be for the account of such Lender to the extent of such payment.

(9) Replacement ~~of the~~ and Resignation of an Issuing Bank.

(a) ~~The An~~ Issuing Bank may be replaced at any time by written agreement among the Borrower Representative, the Administrative Agent, the replaced Issuing Bank, and the successor Issuing Bank. The Administrative Agent will notify the Revolving Lenders of any such replacement of ~~the an~~ Issuing Bank. At the time any such replacement becomes effective, the Borrowers will pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (iA) the successor Issuing Bank will have all the rights and obligations of ~~the an~~ Issuing Bank under this Agreement with respect to Letters of Credit to be issued by it thereafter and (~~#B~~) references herein to the term "Issuing Bank" will be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context requires. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank will remain a party hereto and will continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit then outstanding and issued by it prior to such replacement, but will not be required to issue additional Letters of Credit or extend or otherwise amend any existing Letter of Credit.

(b) Subject to the appointment and acceptance of a successor Issuing Bank, ~~the any~~ Issuing Bank may resign as an Issuing Bank at any time upon 30 days prior written notice to the Administrative Agent, the Borrower Representative, and the Lenders, in which case, such resigning Issuing Bank will be replaced in accordance with ~~this~~ Section 2.06(i)(i).

(10) Cash Collateralization. If any Event of Default occurs and is continuing, on the Business Day that the Borrower Representative receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Lenders with LC Exposure representing greater than 50.0% of the aggregate LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Borrowers must deposit in an account or accounts with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders (the "LC Collateral Account"), an amount in cash equal to 105% of the amount of the LC Exposure as of such date, plus accrued and unpaid interest thereon; provided that, the obligation to deposit such cash collateral will become effective immediately, and such deposit will become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to any Borrower described in clause (h) or clause (i) of Article 7. Such Borrower also will deposit cash collateral in accordance with this clause as and to the extent required by Section 2.10(b), Section 2.11(b), or Section 2.20. Each such deposit will be held by the Administrative Agent as collateral for the payment and performance of the Secured Obligations. The Administrative Agent will have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and the Borrowers hereby grant the Administrative Agent a security interest in the LC Collateral Account and all money or other assets on deposit therein or

credited thereto. Other than any interest earned on the investment of such deposits, which investments will be made at the option and sole discretion of the Administrative Agent and at the Borrowers' risk and expense, such deposits will not bear interest. Interest or profits, if any, on such investments will accumulate in the LC Collateral Account. Moneys in the LC Collateral Account will be applied by the Administrative Agent to reimburse ~~the~~ each Issuing Bank for LC Disbursements for which it has not been reimbursed ~~together with related fees, costs, and customary processing charges~~, and, to the extent not so applied, will be held for the satisfaction of the reimbursement obligations of the Borrowers for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Lenders with LC Exposure representing greater than 50.0% of the aggregate LC Exposure), be applied to satisfy other Secured Obligations. If the Borrowers are required to provide an amount of cash collateral hereunder as a result of the occurrence of one or more Events of Default, such amount (to the extent not applied as aforesaid) will be returned to the Borrowers within three Business Days after all such Events of Default have been waived (as confirmed in writing by the Administrative Agent).

(11) Issuing Bank Reports to the Administrative Agent. Unless otherwise agreed by the Administrative Agent, each Issuing Bank will, in addition to its notification obligations set forth elsewhere in this Section, report in writing to the Administrative Agent

(i) periodic activity (for such period or recurrent periods as may be requested by the Administrative Agent) in respect of Letters of Credit issued by such Issuing Bank, including all issuances, extensions, and amendments, ~~and renewals~~, all expirations and cancellations and all disbursements and reimbursements, (ii) reasonably prior to the time that such Issuing Bank issues, amends, ~~renews~~, or extends any Letter of Credit, the date of such issuance, amendment, ~~renewal~~, or extension, and the stated amount of the Letters of Credit issued, amended, ~~renewed~~, or extended by it and outstanding after giving effect to such issuance, amendment, ~~renewal~~, or extension (and whether the amounts thereof have changed), (iii) on each Business Day on which such Issuing Bank makes any LC Disbursement, the date and amount of such LC Disbursement, (iv) on any Business Day on which any Borrower fails to reimburse an LC Disbursement required to be reimbursed to such Issuing Bank on such day, the date of such failure and the amount of such LC Disbursement, and (v) on any other Business Day, such other information as the Administrative Agent may reasonably request as to the Letters of Credit issued by such Issuing Bank.

~~(12) LC Exposure Determination. For all purposes of this Agreement, the amount of a Letter of Credit that, by its terms or the terms of any document related thereto, provides for one or more automatic increases in the stated amount thereof will be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at the time of determination.~~

(l) ~~(m)~~ Letters of Credit Issued for Account of Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder supports any obligations of, or is for the account of, a Subsidiary, or states that a Subsidiary is the "account party," "applicant," "customer," "instructing party", or the like of or for such Letter of Credit, and without derogating from any rights of the Issuing Bank (whether arising by contract, at law, in equity, or otherwise) against such Subsidiary in respect of such Letter of Credit, the Borrowers (i) will reimburse, indemnify, and compensate the Issuing Bank hereunder for

such Letter of Credit (including to reimburse any and all drawings thereunder) as if such Letter of Credit had been issued solely for the account of a Borrower and (ii) irrevocably waive any and all defenses that might otherwise be available to any of them as a guarantor or surety of any or all of the obligations of such Subsidiary in respect of such Letter of Credit. Each Borrower hereby acknowledges that the issuance of such Letters of Credit for any of their Subsidiaries inures to the benefit of the Borrowers, and that each Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

Section 2.07 Funding of Borrowings.

(1) Each Lender will make each Loan to be made by such Lender hereunder on the proposed date thereof solely by wire transfer of immediately available funds by 2:00 p.m., Chicago ~~Illinois~~ time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender's Applicable Percentage; provided that, Swingline Loans will be made as provided in Section 2.05. The Administrative Agent will make such Loans available to the Borrower Representative by promptly crediting the funds so received in the aforesaid account of the Administrative Agent to the Funding Account(s); provided that CBFR Revolving Loans made to finance the reimbursement of (i) an LC Disbursement as provided in Section 2.06(e) will be remitted by the Administrative Agent to the applicable Issuing Bank and (ii) a Protective Advance or an Overadvance will be retained by the Administrative Agent.

(2) Unless the Administrative Agent has received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.07(a) and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers each severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the applicable Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrowers, the interest rate applicable to CBFR Loans. If such Lender pays such amount to the Administrative Agent, then such amount will constitute such Lender's Loan included in such Borrowing, provided that any interest received from a Borrower by the Administrative Agent during the period beginning when the Administrative Agent funded the Borrowing until such Lender pays such amount will be solely for the account of the Administrative Agent.

Section 2.08 Interest Elections.

(1) Each Borrowing initially will be of the Type specified in the applicable Borrowing Request and, in the case of a ~~Eurodollar~~ Term Benchmark Borrowing, will have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower

Representative may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a ~~Eurodollar~~ Term Benchmark Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower Representative may elect different options with respect to different portions of the affected Borrowing, in which case each such portion will be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion will be considered a separate Borrowing. This Section will not apply to Swingline Borrowings, Overadvances, or Protective Advances, which may not be converted or continued.

(2) To make an election pursuant to this Section, the Borrower Representative must notify the Administrative Agent of such election either in writing (delivered by hand or fax) by delivering an Interest Election Request signed by a Responsible Officer of the Borrower Representative or through Electronic System if arrangements for doing so have been approved by the Administrative Agent (or if an Extenuating Circumstance exists, by telephone) by the time that a Borrowing Request would be required under Section 2.03 if the Borrowers were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request will be irrevocable and each such telephonic Interest Election Request, if permitted, must be confirmed immediately upon the cessation of the Extenuating Circumstance by hand delivery, Electronic System, or fax to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by a Responsible Officer of the Borrower Representative.

(3) Each written (or if permitted, telephonic) Interest Election Request (including requests submitted through Electronic System) will specify the following information in compliance with Section 2.02:

(a) the name of the applicable Borrower and the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clause (iii) and clause (iv) following will be specified for each resulting Borrowing);

(b) the effective date of the election made pursuant to such Interest Election Request, which must be a Business Day;

(c) whether the resulting Borrowing is to be a CBR Borrowing or a ~~Eurodollar~~ Term Benchmark Borrowing; and

(d) if the resulting Borrowing is a ~~Eurodollar~~ Term Benchmark Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which must be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a ~~Eurodollar~~ Term Benchmark Borrowing but does not specify an Interest Period, then the Borrowers will be deemed to have selected an Interest Period of one month duration.

(4) Promptly following receipt of an Interest Election Request, the Administrative Agent will advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(5) If the Borrower Representative fails to deliver a timely Interest Election Request with respect to a ~~Eurodollar~~ Term Benchmark Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing will be converted to a CBRF Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower Representative, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a ~~Eurodollar~~ Term Benchmark Borrowing or an RFR Borrowing and (ii) unless repaid, each ~~Eurodollar~~ Term Benchmark Borrowing and each RFR Borrowing will be converted to a CBRF Borrowing at the end of the Interest Period or Interest Payment Date applicable thereto.

Section 2.09 Termination and Reduction of Commitments; Increase in Revolving Commitments.

(1) Unless previously terminated, the Revolving Commitments will terminate on the Maturity Date.

(2) The Borrowers may at any time terminate the Revolving Commitments upon Payment in Full of the Secured Obligations.

(3) The Borrowers may from time to time reduce the Revolving Commitments; provided that (i) each reduction of the Revolving Commitments will be in an amount that is an integral multiple of \$500,000 and not less than \$5,000,000 and (ii) the Borrowers will not terminate or reduce the Revolving Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.11, the Aggregate Revolving Exposure would exceed the lesser of (A) the Aggregate Revolving Commitment or (B) the Borrowing Base.

(4) The Borrower Representative will notify the Administrative Agent of any election to terminate or reduce the Commitments under Section 2.09(b) or Section 2.09(c) at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent will advise the Lenders of the contents thereof. Each notice delivered by the Borrower Representative pursuant to this Section will be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower Representative may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower Representative (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments will be permanent. Each reduction of the Commitments will be made ratably among the Lenders in accordance with their respective Commitments.

(5) The Borrowers will have the right to increase the Aggregate Revolving Commitment by obtaining additional Revolving Commitments, either from one or more of the Lenders or another lending institution provided that (i) any such request for an increase must be in a minimum amount of \$5,000,000, (ii) the Borrower Representative, on behalf of the Borrowers, may make a maximum of three such requests, (iii) after giving effect thereto, the sum of the total of the additional Commitments will not exceed \$35,000,000, (iv) the Administrative Agent and the each Issuing Bank have approved the identity of any such new Lender, such approvals not to be unreasonably withheld, (v) any such new Lender assumes all of the rights and obligations of a "Lender" hereunder, and (vi) the procedures described in Section 2.09(f) have been satisfied. Nothing contained in this Section 2.09 constitutes, or may otherwise be deemed to be, a commitment on the part of any Lender to increase its Commitment hereunder at any time.

(6) Any amendment hereto for such an increase or addition must be in form and substance satisfactory to the Administrative Agent and will only require the written signatures of the Administrative Agent, the Borrowers, and each Lender being added or increasing its Commitment, subject only to the approval of all Lenders if any such increase or addition would cause the Aggregate Revolving Commitment to exceed \$75,000,000. As a condition precedent to such an increase or addition, the Borrowers must deliver to the Administrative Agent (i) a certificate of each Loan Party signed by an authorized officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase and (B) in the case of the Borrowers, certifying that, before and after giving effect to such increase or addition, (1) the representations and warranties contained in Article 3 and the other Loan Documents are true and correct, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date and (2) no Default exists and (ii) legal opinions and documents consistent with those delivered on the Effective Date, to the extent requested by the Administrative Agent.

(7) On the effective date of any such increase or addition, (i) any Lender increasing (or, in the case of any newly added Lender, extending) its Revolving Commitment will make available to the Administrative Agent such amounts in immediately available funds as the Administrative Agent determines, for the benefit of the other Lenders, as being required in order to cause, after giving effect to such increase or addition and the use of such amounts to make payments to such other Lenders, each Lender's portion of the outstanding Revolving Loans of all the Lenders to equal its revised Applicable Percentage of such outstanding Revolving Loans, and the Administrative Agent will make such other adjustments among the Lenders with respect to the Revolving Loans then outstanding and amounts of principal, interest, commitment fees, and other amounts paid or payable with respect thereto as are necessary, in the opinion of the Administrative Agent, in order to effect such reallocation and (ii) the Borrowers will be deemed to have repaid and reborrowed all outstanding Revolving Loans as of the date of any increase (or addition) in the Aggregate Revolving Commitment (with such reborrowing to consist of the Types of Revolving Loans, with related Interest Periods if applicable, specified in a notice delivered by the Borrower Representative, in accordance with the requirements of Section 2.03). The deemed payments made pursuant to clause (ii) of the immediately preceding sentence must be accompanied by payment of all accrued interest on the amount

prepaid and, in respect of each ~~Eurodollar~~ Term Benchmark Loan, will be subject to indemnification by the Borrowers pursuant to the provisions of Section 2.16 if the deemed payment occurs other than on the last day of the related Interest Periods. Within a reasonable time after the effective date of any increase or addition, the Administrative Agent will, and is hereby authorized and directed to, revise the Commitment Schedule to reflect such increase or addition and will distribute such revised Commitment Schedule to each of the Lenders and the Borrower Representative, whereupon such revised Commitment Schedule will replace the previous Commitment Schedule and become part of this Agreement.

Section 2.10 Repayment of Loans; Evidence of Debt.

(1) The Borrowers hereby unconditionally promise to pay (i) to the Administrative Agent for the account of each Revolving Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date, (ii) to the Administrative Agent the then unpaid amount of each Protective Advance on the earlier of the Maturity Date or demand by the Administrative Agent, and (iii) to the Administrative Agent the then unpaid principal amount of each Overadvance on the earlier of the Maturity Date or demand by the Administrative Agent.

(2) At all times during a Dominion Period, on each Business Day, the Administrative Agent will apply all funds credited to the Collection Account on the immediately preceding Business Day (at the discretion of the Administrative Agent, whether or not immediately available), first to prepay any Protective Advances and Overadvances that may be outstanding, pro rata, and second to prepay the Revolving Loans (including Swingline Loans) and to cash collateralize outstanding LC Exposure. Notwithstanding the foregoing, to the extent any funds credited to the Collection Account constitute Net Proceeds, the application of such Net Proceeds will be subject to Section 2.11(c). If no Dominion Period is in effect, upon request of the Borrower Representative, any collected funds in the Collection Account will be transferred to the Funding Account.

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

(4) The Administrative Agent will maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Class and Type thereof, and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder, and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(5) The entries made in the accounts maintained pursuant to Section 2.10(c) or Section 2.10(d) will be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that, the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein will not in any manner affect the

obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement.

(6) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrowers will prepare, execute, and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon will at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form.

Section 2.11 Prepayment of Loans.

(1) The Borrowers will have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with Section 2.11(f) of this Section and, if applicable, payment of any break funding expenses under Section 2.16.

(2) Except for Overadvances permitted under Section 2.05, in the event and on such occasion that the Aggregate Revolving Exposure exceeds the lesser of (i) the Aggregate Revolving Commitment or (ii) the Borrowing Base, the Borrowers will prepay the Revolving Loans, LC Exposure, and/or Swingline Loans or cash collateralize LC Exposure in an account with the Administrative Agent pursuant to Section 2.06(j), as applicable, in an aggregate amount equal to such excess. In addition, except for Overadvances permitted under Section 2.05.

(3) In the event and on each occasion that any Net Proceeds are received by or on behalf of any Loan Party in respect of any Prepayment Event, if such Prepayment Event occurs during the existence of a Dominion Period, the Borrowers will, immediately after such Net Proceeds are received by such Loan Party, prepay the Obligations and cash collateralize the LC Exposure as set forth in Section 2.11(e) below in an aggregate amount equal to 100% of such Net Proceeds.

(4) [reserved]

(5) All amounts required to be prepaid pursuant to Section 2.11(c) will be applied, first to prepay any Protective Advances and Overadvances that may be outstanding, pro rata, and second to prepay the Revolving Loans (including Swingline Loans) without a corresponding reduction in the Revolving Commitments and to cash collateralize outstanding LC Exposure.

(6) The Borrower Representative must notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by fax) or through Electronic System, if arrangements for doing so have been approved by the Administrative Agent, of any prepayment hereunder not later than (i) 10:00 a.m., Chicago Illinois time, (A) in the case of prepayment of a ~~Eurodollar~~ Term Benchmark Revolving Borrowing, three Business Days before the date of prepayment or (B) in the case of prepayment of a CBR Revolving Borrowing, on the date of prepayment.

Each such notice will be irrevocable and must specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Revolving Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Revolving Borrowing, the Administrative Agent will advise the Lenders of the contents thereof. Each partial prepayment of any Revolving Borrowing must be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Revolving Borrowing will be applied ratably to the Revolving Loans included in the prepaid Borrowing. Prepayments must be accompanied by (i) accrued interest to the extent required by Section 2.13 and (ii) break funding payments pursuant to Section 2.16.

Section 2.12 Fees.

(1) The Borrowers agree to pay to the Administrative Agent for the account of each Lender a commitment fee, that will accrue at the Applicable Rate on the average daily amount of the Available Revolving Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which the Revolving Commitments terminate. Accrued commitment fees will be payable in arrears on the first Business Day of each calendar month and on the date on which the Revolving Commitments terminate, commencing on the first such date to occur after the Effective Date. All commitment fees will be computed on the basis of a year of 360 days and will be payable for the actual number of days elapsed, (including the first day but excluding the last day).

(2) The Borrowers agree to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee with respect to its participations in ~~Letters each~~ outstanding Letter of Credit, that will accrue at the same Applicable Rate used to determine the interest rate applicable to ~~Eurodollar~~ Term Benchmark Revolving Loans on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure and (ii) to ~~the~~ each Issuing Bank for its own account a fronting fee with respect to each Letter of Credit issued by such Issuing Bank, that will accrue at the rate of 0.125% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) attributable to Letters of Credit issued by ~~the~~ such Issuing Bank during the period from and including the Effective Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure with respect to Letters of Credit issued by such Issuing Bank, as well as ~~the~~ such Issuing Bank's standard fees and commissions with respect to the issuance, amendment, ~~cancellation, negotiation, transfer, presentment, renewal,~~ or extension of any Letter of Credit ~~or processing of drawings thereunder~~ and other processing fees and other standard costs and charges, of such Issuing Bank relating to Letters of Credit as from time to time in effect. Participation fees and fronting fees accrued through and including the last day of each calendar month will be payable on the first

Business Day of each calendar month following such last day, commencing on the first such date to occur after the Effective Date; provided that all such fees will be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate will be payable on demand. Any other fees payable to ~~the~~ an Issuing Bank pursuant to this Section 2.12(b) will be payable within ten days after demand. All participation fees and fronting fees will be computed on the basis of a year of 360 days and will be payable for the actual number of days elapsed (including the first day but excluding the last day).

(3) The Borrowers agree to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrowers and the Administrative Agent.

(4) [reserved]

(5) All fees payable hereunder must be paid on the dates due, in dollars in immediately available funds, to the Administrative Agent (or to ~~the~~ an Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders. Fees paid will not be refundable under any circumstances.

Section 2.13 Interest.

(1) The Loans comprising CBFR Borrowings (including Swingline Loans) will bear interest at the CBFR, plus the Applicable Rate.

(2) The Loans comprising each ~~Eurodollar~~ Term Benchmark Borrowing will bear interest at the Adjusted ~~LIBOR~~ Term SOFR Rate for the Interest Period in effect for such Borrowing, plus the Applicable Rate. Each RFR Loan will bear interest at a rate per annum equal to the Adjusted Daily Simple SOFR, plus the Applicable Rate.

(3) Each Protective Advance and each Overadvance will bear interest at the CBFR, plus the Applicable Rate for Revolving Loans, plus 2.00% per annum.

(4) Notwithstanding the foregoing, during the existence of an Event of Default, the Administrative Agent or the Required Lenders may, at their option, by notice to the Borrower Representative (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 9.02 requiring the consent of "each Lender affected thereby" for reductions in interest rates), declare that (i) all Loans will bear interest at 2.00% per annum, plus the rate otherwise applicable to such Loans as provided in this Section or (ii) in the case of any other amount outstanding hereunder, such amount will accrue at 2.00% per annum, plus the rate applicable to such fee or other obligation as provided hereunder.

(5) Accrued interest on each Loan (for CBFR Loans, accrued through the last day of the prior calendar month) will be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; provided that, (i) interest accrued pursuant to Section 2.13(d) will be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a CBFR Revolving Loan prior to

the end of the Availability Period), accrued interest on the principal amount repaid or prepaid will be payable on the date of such repayment or prepayment, and (iii) in the event of any conversion of any ~~Eurodollar~~ Term Benchmark Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan will be payable on the effective date of such conversion.

(6) ~~All interest hereunder~~ Interest computed by reference to the Term SOFR Rate, Daily Simple SOFR or REVSOFR30 Rate will be computed on the basis of a year of 360 days; ~~except that interest~~ Interest computed by reference to the CB Floating Rate will be computed on the basis of a year of 365 days (or 366 days in a leap year); ~~and in~~ In each case interest will be payable for the actual number of days elapsed (including the first day but excluding the last day). ~~The All interest hereunder on any Loan will be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination. A determination of the applicable CB Floating Rate, Adjusted LIBO Rate, REVLIBOR30 Daily Simple SOFR, Daily Simple SOFR, Adjusted REVSOFR30 Rate, REVSOFR30 Rate, Adjusted Term SOFR Rate, or LIBO Term SOFR Rate will be determined by the Administrative Agent, and such determination will be conclusive absent manifest error.~~

Section 2.14 Alternate Rate of Interest; Illegality.

~~(1) If prior to the commencement of any Interest Period for a Eurodollar Borrowing:~~

(1) Subject to clause (b), clause (c), clause (d), clause (e), and clause (f) of this Section 2.14, if:

(a) the Administrative Agent determines (which determination will be conclusive and binding absent manifest error) (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Term SOFR Rate ~~or the LIBO Rate, as applicable~~ (including ~~by means of an Interpolated Rate~~ or because the LIBO Screen Term SOFR Reference Rate is not available or published on a current basis), for such Interest Period or (B) at any time, that adequate and reasonable means do not exist for ascertaining the Adjusted REVSOFR30 Rate (including because the Term SOFR Reference Rate is not available or published on a current basis); or

(b) the Administrative Agent is advised by the Required Lenders that (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, the Adjusted LIBO Term SOFR Rate ~~or the LIBO Rate, as applicable~~; for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period or (B) at any time the Adjusted REVSOFR30 Rate will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing;

then the Administrative Agent will give notice thereof to the ~~Borrowers~~ Borrower Representative and the Lenders through Electronic System as provided in Section 9.01 as promptly as practicable thereafter and, until (y) the Administrative Agent notifies the ~~Borrowers~~ Borrower Representative and the Lenders that the circumstances giving rise to such notice no longer exist, ~~(y) with respect to the relevant Benchmark and (z) the Borrowers deliver a new Interest Election Request in accordance with the terms of Section 2.08 or a new Borrowing Request in accordance with the terms of Section 2.03.~~

~~(1) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing will be ineffective and any such Eurodollar Borrowing must be repaid or converted into a CBFR Borrowing on the last day of the then current Interest Period applicable thereto and (z) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing will be made as a CBFR Borrowing. Term Benchmark Borrowing and any Borrowing Request that requests a Term Benchmark Borrowing will instead be deemed to be an Interest Election Request or a Borrowing Request, as applicable, for (y) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 2.14(a)(i) or Section 2.14(a)(ii) or (z) a CBFR Borrowing if the Adjusted Daily Simple SOFR also is the subject of Section 2.14(a)(i) or Section 2.14(a)(ii) and (2) any Borrowing Request that requests an RFR Borrowing will instead be deemed to be a Borrowing Request, as applicable, for a CBFR Borrowing; provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then all other Types of Borrowings shall be permitted. Furthermore, if any Term Benchmark Loan or RFR Loan is outstanding on the date of the Borrower Representative's receipt of the notice from the Administrative Agent referred to in this Section 2.14(a) with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until (y) the Administrative Agent notifies the Borrower Representative and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (z) the Borrowers deliver a new Interest Election Request in accordance with the terms of Section 2.08 or a new Borrowing Request in accordance with the terms of Section 2.03, (1) any Term Benchmark Loan will on the last day of the Interest Period applicable to such Loan, be converted by the Administrative Agent to, and will constitute, (y) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 2.14(a)(i) or Section 2.14(a)(ii) on such day, or (z) a CBFR Loan if the Adjusted Daily Simple SOFR also is the subject of Section 2.14(a)(i) or Section 2.14(a)(ii), on such day, and (2) any RFR Loan will on and from such day be converted by the Administrative Agent to, and will constitute a CBFR Loan.~~

(2) ~~Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (y) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (z) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of "Benchmark~~

Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York, New York time) on the fifth Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(3) Notwithstanding anything to the contrary herein or in any other Loan Document, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(4) The Administrative Agent will promptly notify the Borrower Representative and the Lenders of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) following, and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision, or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.14, including any determination with respect to a tenor, rate, or adjustment or of the occurrence or non-occurrence of an event, circumstance, or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.14.

(5) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Rate or REVSOF30 Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of “Interest Period” for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) preceding either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(6) Upon the Borrower Representative's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrowers may revoke any request for a Term Benchmark Borrowing or RFR Borrowing of, conversion to or continuation of Term Benchmark Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrowers will be deemed to have converted (1) any such request for a Term Benchmark Borrowing into a request for a Borrowing of or conversion to (A) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (B) a CBFR Borrowing if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event or (2) any such request for an RFR Borrowing into a request for a CBFR Borrowing. Furthermore, if any Term Benchmark Loan or RFR Loan is outstanding on the date of the Borrower Representative's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until such time as a Benchmark Replacement is implemented pursuant to this Section 2.14, (1) any Term Benchmark Loan will on the last day of the Interest Period applicable to such Loan, be converted by the Administrative Agent to, and will constitute, (x) an RFR Loan so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event, on such day or (y) a CBFR Loan if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event, on such day and (2) any RFR Loan will on and from such day be converted by the Administrative Agent to, and shall constitute a CBFR Loan.

(7) ~~If any Lender determines that any Requirement of Law has made it unlawful, or if any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain, fund, or continue any Eurodollar Borrowing, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, dollars in the London interbank market, then, on notice thereof by such Lender to the Borrowers through the Administrative Agent, any obligations of such Lender to make, maintain, fund, or continue Eurodollar Loans or to convert CBFR Borrowings to Eurodollar Borrowings will be suspended until such Lender notifies the Administrative Agent and the Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrowers will upon demand from such Lender (with a copy to the Administrative Agent), either convert or prepay all Eurodollar Borrowings of such Lender to CBFR Borrowings, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans. Upon any such conversion or prepayment, the Borrowers will also pay accrued interest on the amount so converted or prepaid.~~

(8) ~~If at any time the Administrative Agent determines (which determination will be conclusive absent manifest error) that (i) the circumstances set forth in Section 2.14(a)(i) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in Section 2.14(a)(i) have not arisen but the supervisor for the administrator of the LIBO Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Screen Rate will no longer be used for determining interest rates for loans, then~~

the Administrative Agent and the Borrowers will endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the U.S. at such time, and will enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Notwithstanding anything to the contrary in Section 9.02, such amendment will become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent has not received, within five Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. Until an alternate rate of interest is determined in accordance with this Section 2.14(c) (but, in the case of the circumstances described in clause (ii) of the first sentence of this Section 2.14(c), only to the extent the LIBO Screen Rate for such Interest Period is not available or published at such time on a current basis), (y) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing will be ineffective and (z) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing will be made as a CBFBR Borrowing; provided that, if such alternate rate of interest is less than zero, such rate will be deemed to be zero for the purposes of this Agreement.

Section 2.15 Increased Costs.

(1) If any Change in Law:

(a) imposes, modifies, or deems applicable any reserve, special deposit, liquidity, or similar requirement (including any compulsory loan requirement, insurance charge, or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender (~~except any such reserve requirement reflected in the Adjusted LIBO Rate~~) or the or Issuing Bank;

(b) imposes on any Lender or ~~the~~ Issuing Bank or the ~~London~~ applicable offshore interbank market any other condition, cost, or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein; or

(c) subjects any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clause (b) through clause (d) of the definition of Excluded Taxes, and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities, or capital attributable thereto;

and the result of any of the foregoing is to increase the cost to such Lender ~~or such~~, Issuing Bank, or other Recipient of making, continuing, converting into, or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender, ~~the~~ Issuing Bank, or ~~such~~ other Recipient of participating in, issuing, or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender, ~~the~~ Issuing Bank ~~or such~~, or other Recipient hereunder (whether of principal, interest, or otherwise), then the Borrowers will pay to such Lender, ~~the~~ Issuing

Bank, or ~~such~~ other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, ~~the~~ Issuing Bank, or ~~such~~ other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(2) If any Lender or ~~the~~ Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or ~~the~~ Issuing Bank's capital or on the capital of such Lender's or ~~the~~ Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of, or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by ~~the such~~ Issuing Bank, to a level below that which such Lender or ~~the~~ Issuing Bank or such Lender's or ~~the~~ Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or ~~the~~ Issuing Bank's policies and the policies of such Lender's or ~~the~~ Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrowers will pay to such Lender or ~~the~~ Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or ~~the~~ Issuing Bank or such Lender's or ~~the~~ Issuing Bank's holding company for any such reduction suffered.

(3) A certificate of a Lender or ~~the~~ Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or ~~the~~ Issuing Bank or its holding company, as the case may be, as specified in Section 2.15(a) or Section 2.15(b) will be delivered to the Borrower Representative and will be conclusive absent manifest error. The Borrowers will pay such Lender or ~~the~~ Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten days after receipt thereof.

(4) Failure or delay on the part of any Lender or ~~the~~ Issuing Bank to demand compensation pursuant to this Section will not constitute a waiver of such Lender's or ~~the~~ Issuing Bank's right to demand such compensation; provided that, the Borrowers will not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or ~~the~~ Issuing Bank, as the case may be, notifies the Borrower Representative of the Change in Law giving rise to such increased costs or reductions and of such Lender's or ~~the~~ Issuing Bank's intention to claim compensation therefor; provided, further, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above will be extended to include the period of retroactive effect thereof.

Section 2.16 Break Funding Payments.

~~Section 2.16 Break Funding Payments. In~~ With respect to Loans that are not RFR Loans, in the event of (ei) the payment of any principal of any Eurodollar Term Benchmark Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default ~~or as a result of any an optional or mandatory~~ prepayment pursuant to ~~Section 2.11 of Loans~~), (eii) the conversion of any Eurodollar Term Benchmark Loan other than on the last day of the Interest Period applicable thereto, (eiii) the failure to borrow, convert, continue, or prepay any Eurodollar Term Benchmark Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under ~~Section 2.09(d) 2.11(f)~~ and is revoked in accordance therewith), or (eiv) the assignment of any Eurodollar Term Benchmark Loan other than on the last

day of the Interest Period applicable thereto as a result of a request by the Borrower Representative pursuant to Section 2.19 or Section 9.02(d), then, in any such event, the Borrowers will compensate each Lender for the loss, cost, and expense attributable to such event. ~~In the case of a Eurodollar Loan, such loss, cost, or expense to any Lender will be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such Eurodollar Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Eurodollar Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert, or continue, for the period that would have been the Interest Period for such Eurodollar Loan), minus (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate that such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section will be delivered to the Borrower Representative and will be conclusive absent manifest error. The Borrowers will pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.~~ A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section will be delivered to the Borrower Representative and will be conclusive absent manifest error. The Borrowers will pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.

(b) With respect to RFR Loans, in the event of (i) the payment of any principal of any RFR Loan other than on the Interest Payment Date applicable thereto (including as a result of an Event of Default or an optional or mandatory prepayment of Loans), (ii) the failure to borrow or prepay any RFR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11 and is revoked in accordance therewith), or (iii) the assignment of any RFR Loan other than on the Interest Payment Date applicable thereto as a result of a request by the Borrowers pursuant to Section 2.18 or Section 9.02(d), then, in any such event, the Borrowers will compensate each Lender for the loss, cost, and expense attributable to such event. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section will be delivered to the Borrower Representative and will be conclusive absent manifest error. The Borrowers will pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.

Section 2.17 Withholding of Taxes; Gross-Up.

(1) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document will be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent will be entitled to make such deduction or withholding and will timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party will be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Recipient

receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(2) Payment of Other Taxes by the Loan Parties. The Loan Parties will timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for, Other Taxes.

(3) Evidence of Payment. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party will deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment, or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(4) Indemnification by the Loan Parties. The Loan Parties will jointly and severally indemnify each Recipient, within ten 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) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Loan Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, will be conclusive absent manifest error.

(5) Indemnification by the Lenders. Each Lender will severally indemnify the Administrative Agent, within ten days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register, and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent will be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender from any other source against any amount due to the Administrative Agent under this Section 2.17(e).

(6) Status of Lenders.

(a) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document will deliver to the Borrower Representative and the Administrative Agent, at the time or times reasonably requested by the Borrower Representative or the

Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower Representative or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower Representative or the Administrative Agent, will deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower Representative or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution, and submission of such documentation (other than such documentation set forth in Section 2.17(f)(ii)(A), Section 2.17(f)(ii)(B), and Section 2.17(f)(ii)(D)) will not be required if in the Lender's reasonable judgment such completion, execution, or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

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

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

(ii) any Foreign Lender and any Person that is not a U.S. Person that becomes the Administrative Agent (each a "Foreign Credit Party") will, to the extent it is legally entitled to do so, deliver to the Borrower Representative and the Administrative Agent ~~(if applicable)~~ (in such number of copies as are requested by the recipient) on or prior to the date on which such Foreign Credit Party becomes a Foreign Credit Party under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Credit Party claiming the benefits of an income tax treaty to which the United States is a party
(y) with respect to payments of interest under any Loan Document, an executed copy of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (z) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S.

Federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) in the case of a Foreign Credit Party claiming that its extension of credit will generate U.S. effectively connected income, an executed copy of IRS Form W-8ECI;

(3) in the case of a Foreign Credit Party claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (y) a certificate substantially in the form of Exhibit C-1 to the effect that such Foreign Credit Party is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of a 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 (z) an executed copy of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or

(4) to the extent a Foreign Credit Party is not the beneficial owner, an executed copy of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit C-2 or Exhibit C-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that, if the Foreign Credit Party is a partnership and one or more direct or indirect partners of such Foreign Credit Party are claiming the portfolio interest exemption, such Foreign Credit Party may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit C-4 on behalf of each such direct and indirect partner;

(iii) any Foreign Credit Party will, to the extent it is legally entitled to do so, deliver to the Borrower Representative and the Administrative Agent (in such number of copies as are requested by the recipient) on or prior to the date on which such Foreign Credit Party becomes a Credit Party under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made; and

(iv) if a payment made to a Credit Party any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Credit Party 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 Credit Party will deliver to the Borrower Representative and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower Representative or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower Representative or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Credit Party has complied with such Credit Party's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" will include any amendments made to FATCA after the date of this Agreement.

Each Lender and the Administrative Agent agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it will update such form or certification or promptly notify the Borrower Representative and, if applicable, the Administrative Agent in writing of its legal inability to do so.

(7) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it will pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, will repay to such indemnified party the amount paid over pursuant to this clause (g) (plus any penalties, interest, or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this clause 2.17(g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this clause (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld, or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid. This clause (g) will not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(8) Survival. Each party's obligations under this Section will survive the resignation or replacement of the 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 Loan Document (including the Payment in Full of the Secured Obligations).

(9) Defined Terms. For purposes of this Section 2.17, the term “Lender” includes any Issuing Bank and the term “applicable law” includes FATCA.

Section 2.18 Payments Generally; Allocation of Proceeds; Sharing of Setoffs.

(1) The Borrowers will make each payment required to be made by them hereunder (whether of principal, interest, fees, or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, Section 2.16, Section 2.17, or otherwise) prior to 2:00 p.m., Chicago, Illinois time, on the date when due, in immediately available funds, without setoff, recoupment, or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments will be made to the Administrative Agent at its offices at 10 South Dearborn Street, Floor L2, Chicago, Illinois, except payments to be made directly to ~~the an~~ Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Section 2.15, Section 2.16, Section 2.17, and Section 9.03 must be made directly to the Persons entitled thereto. The Administrative Agent will distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. Unless otherwise provided for herein, if any payment hereunder is due on a day that is not a Business Day, the date for payment will be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon will be payable for the period of such extension. All payments hereunder will be made in dollars.

(2) Any proceeds of Collateral received by the Administrative Agent (i) not constituting either (A) a specific payment of principal, interest, fees, or other sum payable under the Loan Documents (that will be applied as specified by the Borrowers), (B) a mandatory prepayment (that will be applied in accordance with Section 2.11) or (C) amounts to be applied from the Collection Account when full cash dominion is in effect (that will be applied in accordance with Section 2.10(b)) or (ii) during the existence of an Event of Default if the Administrative Agent so elects or the Required Lenders so direct, will be applied ratably, first, to pay any fees, indemnities, or expense reimbursements then due to the Administrative Agent and the Issuing ~~Bank Banks~~ from the Borrowers (other than in connection with Banking Services Obligations or Swap Agreement Obligations), second, to pay any fees, indemnities, or expense reimbursements then due to the Lenders from the Borrowers (other than in connection with Banking Services Obligations or Swap Agreement Obligations), third, to pay interest due in respect of the Overadvances and Protective Advances, fourth, to pay the principal of the Overadvances and Protective Advances, fifth, to pay interest then due and payable on the Loans (other than the Overadvances and Protective Advances) ratably, sixth, to prepay principal on the Loans (other than the Overadvances and Protective Advances) and unreimbursed LC Disbursements and to pay any amounts owing in respect of Swap Agreement Obligations up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.22, for which Reserves have been established ratably, seventh, to pay an amount to the Administrative Agent equal to 105% of the aggregate LC Exposure, to be held as cash collateral for such Obligations, eighth, to pay any amounts owing in respect of Banking Services Obligations and Swap Agreement Obligations up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.22 and

to the extent not paid pursuant to clause "sixth" above, and ninth, to pay any other Secured Obligation due to the Administrative Agent or any Lender by the Borrowers. Notwithstanding the foregoing, amounts received from any Loan Party will not be applied to any Excluded Swap Obligation of such Loan Party. Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrower Representative, or unless a Default is in existence, neither the Administrative Agent nor any Lender will apply any payment that it receives to any ~~Fixed Rate~~ Term Benchmark Loan of a Class, except ~~(a)~~ on the expiration date of the Interest Period applicable thereto or ~~(b)~~ in the event, and only to the extent, that there are no outstanding CBFR Loans of the same Class and, in any such event, the Borrowers will pay the break funding payment required in accordance with Section 2.16. The Administrative Agent and the Lenders will have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Secured Obligations.

(3) At the election of the Administrative Agent, all payments of principal, interest, LC Disbursements, fees, premiums, reimbursable expenses (including all reimbursement for fees, costs, and expenses pursuant to Section 9.03), and other sums payable under the Loan Documents, may be paid from the proceeds of Borrowings made hereunder whether made following a request by the Borrower Representative pursuant to Section 2.03 or a deemed request as provided in this Section or may be deducted from any deposit account of any Borrower maintained with the Administrative Agent. The Borrowers hereby irrevocably authorize (i) the Administrative Agent to make a Borrowing for the purpose of paying each payment of principal, interest, and fees as it becomes due hereunder or any other amount due under the Loan Documents and agrees that all such amounts charged will constitute Loans (including Swingline Loans and Overadvances, but such a Borrowing may only constitute a Protective Advance if it is to reimburse costs, fees, and expenses as described in Section 9.03) and that all such Borrowings will be deemed to have been requested pursuant to Section 2.03, Section 2.04, or Section 2.05, as applicable, and (ii) the Administrative Agent to charge any deposit account of any Borrower maintained with the Administrative Agent for each payment of principal, interest, and fees as it becomes due hereunder or any other amount due under the Loan Documents.

(4) If, except as otherwise expressly provided herein, any Lender, by exercising any right of setoff or counterclaim or otherwise, obtains payment in respect of any principal or interest on any of its Loans or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other similarly situated Lender, then the Lender receiving such greater proportion will purchase (for cash at face value) participations in the Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments will be shared by all such Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements and Swingline Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations will be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this Section 2.18(d) will not be construed to apply to any payment made by the Borrowers

pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements or Swingline Loans to any assignee or participant, other than to the Borrowers or any Subsidiary or Affiliate thereof (as to which the provisions of this [Section 2.18\(d\)](#) will apply). Each 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 such Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

(5) Unless the Administrative Agent has received ~~notice from the Borrower Representative~~ prior to ~~the any~~ date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing ~~Bank hereunder~~ [Banks pursuant to the terms hereof or any other Loan Document \(including any date that is fixed for prepayment by notice from the Borrower Representative to the Administrative Agent pursuant to Section 2.11\(f\)\)](#), ~~notice from the Borrower Representative~~ that the Borrowers will not make such payment ~~or prepayment~~, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing ~~Bank~~[Banks](#), as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders or the Issuing ~~Bank~~[Banks](#), as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the ~~greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation~~[NYFRB Rate](#).

(6) The Administrative Agent may from time to time provide the Borrowers with account statements or invoices with respect to any of the Secured Obligations (the "Statements"). The Administrative Agent is under no duty or obligation to provide Statements, that, if provided, will be solely for the Borrowers' convenience. Statements may contain estimates of the amounts owed during the relevant billing period, whether of principal, interest, fees, or other Secured Obligations. If the Borrowers pay the full amount indicated on a Statement on or before the due date indicated on such Statement, the Borrowers will not be in default of payment with respect to the billing period indicated on such Statement; ~~provided~~ that, acceptance by the Administrative Agent, on behalf of the Lenders, of any payment that is less than the total amount actually due at that time (including any past due amounts) will not constitute a waiver of the Administrative Agent's or the Lenders' right to receive payment in full at another time.

Section 2.19 Mitigation Obligations: Replacement of Lenders.

(1) If any Lender requests compensation under [Section 2.15](#), or if the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to [Section 2.17](#), then such Lender will use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to

another of its offices, branches, or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to [Section 2.15](#) or [Section 2.17](#), as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(2) If any Lender requests compensation under [Section 2.15](#), or if the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to [Section 2.17](#), or if any Lender becomes a Defaulting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in [Section 9.04](#)), all its interests, rights (other than its existing rights to payments pursuant to [Section 2.15](#) or [Section 2.17](#)), and obligations under this Agreement and other Loan Documents to an assignee that will assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrowers will have received the prior written consent of the Administrative Agent (and in circumstances where its consent would be required under [Section 9.04](#), the Issuing ~~Bank~~ Banks and the Swingline Lender), which consent will not unreasonably be withheld, (ii) such Lender will have received payment of an amount equal to the outstanding principal of its Loans, participations in L.C Disbursements, and Swingline Loans, accrued interest thereon, accrued fees, and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal, accrued interest, and fees) or the Borrowers (in the case of all other amounts), and (iii) in the case of any such assignment resulting from a claim for compensation under [Section 2.15](#) or payments required to be made pursuant to [Section 2.17](#), such assignment will result in a reduction in such compensation or payments. A Lender will not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply. Each party hereto agrees that (y) an assignment required pursuant to this clause may be effected pursuant to an Assignment and Assumption executed by the Borrower Representative, the Administrative Agent, and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants) and (z) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and will be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided, further, that any such documents will be without recourse to or warranty by the parties thereto.

[Section 2.20 Defaulting Lenders](#). Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions will apply for so long as such Lender is a Defaulting Lender:

(1) fees will cease to accrue on the unfunded portion of the Revolving Commitment of such Defaulting Lender pursuant to Section 2.12(a);

(2) any payment of principal, interest, fees, or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 2.18(b), or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 9.08 will be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Bank or the Swingline Lender hereunder; third, to cash collateralize the Issuing Bank's Banks' LC Exposure with respect to such Defaulting Lender in accordance with this Section; fourth, as the Borrower Representative may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower Representative, to be held in a deposit account and released pro rata in order to (i) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (ii) cash collateralize the Issuing Bank's Banks' future LC Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with this Section; sixth, to the payment of any amounts owing to the Lenders, the Issuing BankBanks, or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing BankBanks, or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by any Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (y) such payment is a payment of the principal amount of any Loans or LC Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share and (z) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment will be applied solely to pay the Loans of, and LC Disbursements owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Disbursements owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in the Borrowers' obligations corresponding to such Defaulting Lender's LC Exposure and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments without giving effect to clause (d) following. Any payments, prepayments, or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section will be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto;

(3) such Defaulting Lender will not have the right to vote on any issue on which voting is required (other than to the extent expressly provided in Section 9.02(b)) and the Commitment and Revolving Exposure of such Defaulting Lender will not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver, or other modification pursuant to Section 9.02) or under any other Loan Document; provided, that, except as otherwise provided in Section 9.02, this Section 2.20(c) will not apply to the vote of a Defaulting Lender in the case of an amendment, waiver, or other modification requiring the consent of such Lender or each Lender directly affected thereby;

(4) if any Swingline Exposure or LC Exposure exists at the time a Lender becomes a Defaulting Lender then:

(a) all or any part of the Swingline Exposure and LC Exposure of such Defaulting Lender will be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent that such reallocation does not, as to any non-Defaulting Lender, cause such non-Defaulting Lender's Revolving Exposure to exceed its Revolving Commitment;

(b) if the reallocation described in clause (i) preceding cannot, or can only partially, be effected, the Borrowers will within one Business Day following notice by the Administrative Agent (y) first, prepay such Swingline Exposure and (z) second, cash collateralize, for the benefit of the Issuing ~~Bank~~ Banks, the Borrowers' obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) preceding) in accordance with the procedures set forth in Section 2.06(j) for so long as such LC Exposure is outstanding;

(c) if the Borrowers cash collateralize any portion of such Defaulting Lender's LC Exposure pursuant to clause (ii) preceding, the Borrowers will not be required to pay any fees to such Defaulting Lender pursuant to Section 2.12(b) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(d) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to clause (i) preceding, then the fees payable to the Lenders pursuant to Sections 2.12(a) and Section 2.12(b), will be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; and

(e) if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or clause (ii) preceding, then, without prejudice to any rights or remedies of ~~the any~~ Issuing Bank or any other Lender hereunder, all letter of credit fees payable under Section 2.12(b) with respect to such Defaulting Lender's LC Exposure will be payable to the Issuing ~~Bank~~ Banks until and to the extent that such LC Exposure is reallocated and/or cash collateralized; and

(5) so long as such Lender is a Defaulting Lender, ~~the no~~ Issuing Bank will ~~not~~ be required to issue, amend, renew, extend, or increase any Letter of Credit, unless it is satisfied that such Defaulting Lender's then outstanding LC Exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrowers in accordance with Section 2.20(d), and LC Exposure related to any newly issued or increased Letter of Credit will be allocated among non-Defaulting Lenders in a manner consistent with Section 2.20(d)(i) (and such Defaulting Lender will not participate therein).

If (y) a Bankruptcy Event or a Bail-In Action with respect to the Parent of any Lender occurs following the date hereof and for so long as such event continues or (z) the Swingline Lender or ~~the any~~ Issuing Bank has a reasonable belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, the Swingline Lender will not be required to fund any Swingline Loan and ~~the no~~ Issuing Bank will ~~not~~ be required to issue, amend, or increase any Letter of Credit, unless the Swingline Lender or ~~the such~~ Issuing Bank, as the case may be, has entered into arrangements with the Borrowers or such Lender, satisfactory to the Swingline Lender or ~~the such~~ Issuing Bank, as the case may be, to defease any risk to it in respect of such Lender hereunder.

In the event that each of the Administrative Agent, the Borrower, the Swingline Lender, and ~~the each~~ Issuing Bank agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Swingline Exposure and LC Exposure of the Lenders will be readjusted to reflect the inclusion of such Lender's Revolving Commitment and on the date of such readjustment such Lender will purchase at par such of the Loans of the other Lenders (other than Swingline Loans) as the Administrative Agent determines may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

Section 2.21 Returned Payments. If after receipt of any payment that is applied to the payment of all or any part of the Obligations (including a payment effected through exercise of a right of setoff), the Administrative Agent or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion), then the Obligations or part thereof intended to be satisfied will be revived and continued and this Agreement will continue in full force as if such payment or proceeds had not been received by the Administrative Agent or such Lender. The provisions of this Section 2.21 will be and remain effective notwithstanding any contrary action that may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 2.21 will survive the termination of this Agreement.

Section 2.22 Banking Services and Swap Agreements. Each Lender or Affiliate thereof providing Banking Services for, or having Swap Agreements with, any Loan Party will deliver to the Administrative Agent, promptly after entering into such Banking Services or Swap Agreements, written notice setting forth the aggregate amount of all Banking Services Obligations and Swap Agreement Obligations of such Loan Party to such Lender or Affiliate (whether matured or unmatured, absolute or contingent). In addition, each such Lender or Affiliate thereof will deliver to the Administrative Agent, following the end of each calendar month and upon a request

therefor, a summary of the amounts due or to become due in respect of such Banking Services Obligations and Swap Agreement Obligations. The most recent information provided to the Administrative Agent will be used in determining the amounts to be applied in respect of such Banking Services Obligations and/or Swap Agreement Obligations pursuant to Section 2.18(b), and which tier of the waterfall, contained in Section 2.18(b), such Banking Services Obligations and/or Swap Agreement Obligations will be placed.

ARTICLE 3

Representations and Warranties

Each Loan Party represents and warrants to the Lenders that:

Section 3.01 Organization; Powers. Each Loan Party is duly organized or formed, validly existing, and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted, and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business, and is in good standing, in every jurisdiction where such qualification is required.

Section 3.02 Authorization; Enforceability. The Transactions are within each Loan Party's corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational actions and, if required, actions by equity holders. Each Loan Document to which each Loan Party is a party has been duly executed and delivered by such Loan Party and constitutes a legal, valid, and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 3.03 Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created pursuant to the Loan Documents, (b) will not violate any Requirement of Law applicable to any Loan Party, (c) will not violate or result in a default under any indenture, agreement, or other instrument binding upon any Loan Party or the assets of any Loan Party, or give rise to a right thereunder to require any payment to be made by any Loan Party, and (d) will not result in the creation or imposition of, or the requirement to create, any Lien on any asset of any Loan Party, except Liens created pursuant to the Loan Documents.

Section 3.04 Financial Condition; No Material Adverse Change.

(1) Allbirds has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity, and cash flows (i) as of and for the fiscal year ended December 31, 2017, reported on by Deloitte & Touche LLP, independent public accountants, and (ii) as of and for the fiscal month and the portion of the fiscal year ended September 30, 2018, certified by a Financial Officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and

cash flows of Allbirds and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to normal year-end audit adjustments (all of which, when taken as a whole, would not be materially adverse) and the absence of footnotes in the case of the statements referred to in clause (ii) preceding.

- (2) No event, change, or condition has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect, since December 31, 2017.

Section 3.05 Properties.

(1) As of the date of this Agreement, Schedule 3.05 sets forth the address of each parcel of real property that is owned or leased by any Loan Party. Each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, and, to the Loan Parties' knowledge, no default by any party to any such lease or sublease exists. Each of the Loan Parties has good and indefeasible title to, or valid leasehold interests in, all of its real and personal property, free of all Liens other than those permitted by Section 6.02.

(2) Each Loan Party owns, or is licensed to use, all material trademarks, tradenames, copyrights, patents, and other intellectual property necessary to its business as currently conducted, a materially correct and complete list of which, as of the date of this Agreement, is set forth on Schedule 3.05, and the use thereof by each Loan Party does not infringe in any material respect upon the rights of any other Person, and each Loan Party's rights thereto are not subject to any licensing agreement or similar arrangement.

Section 3.06 Litigation and Environmental Matters.

(1) There are no actions, suits, or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Loan Party, threatened against or affecting any Loan Party (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve any Loan Document or the Transactions.

(2) Except for the Disclosed Matters (i) no Loan Party has received notice of any claim with respect to any Environmental Liability or knows of any basis for any Environmental Liability and (ii) and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, no Loan Party (A) has failed to comply with any Environmental Law or to obtain, maintain, or comply with any permit, license, or other approval required under any Environmental Law, (B) has become subject to any Environmental Liability, (C) has received notice of any claim with respect to any Environmental Liability, or (D) knows of any basis for any Environmental Liability.

(3) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

Section 3.07 Compliance with Laws and Agreements; No Default. Except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, each Loan Party is in compliance with (i) all Requirements of Law applicable to it or its property and (ii) all indentures, agreements, and other instruments binding upon it or its property. No Default has occurred and is continuing.

Section 3.08 Investment Company Status. No Loan Party is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

Section 3.09 Taxes.

(1) As of the Effective Date, each Loan Party has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party has set aside on its books adequate reserves or (b) to the extent that the failure to do so could not be expected to result in a Material Adverse Effect. As of the Effective Date, no tax liens have been filed and no claims are being asserted with respect to any such taxes.

(2) Neither this Agreement nor any other agreement, certificate, document, or instrument executed or delivered in connection therewith by any Loan Party or any other Person (other than the Credit Parties), were executed or delivered in the state of Florida, no Loan Party is a Florida organization or has its executive offices or headquarters in Florida, no officer or employee of any Loan Party has engaged in any execution, delivery, negotiations, or other related activities with respect to this Agreement while in the state of Florida, and there are no stamp, documentary, mortgage, or intangibles taxes due in the state of Florida as a result of any Loan Party entering into this Agreement.

Section 3.10 ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan.

Section 3.11 Disclosure.

(1) The Loan Parties have disclosed to the Lenders all agreements, instruments, and corporate or other restrictions to which any Loan Party 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. None of the reports, financial statements, certificates, or other information furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document (as modified or supplemented by other information so furnished) contains any misstatement of fact or omits to state any fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading except to the extent that any such error or omission could not reasonably be expected to have a Material

Adverse Effect; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Effective Date, as of the Effective Date.

(2) As of the Effective Date, to the best knowledge of any Loan Party, the information included in the Beneficial Ownership Certification provided on or prior to the Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

Section 3.12 Material Agreements. No Loan Party is in default in any material respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in (a) any material agreement to which it is a party or (b) any agreement or instrument evidencing or governing Material Indebtedness.

Section 3.13 Solvency.

(1) Immediately after the consummation of the Transactions to occur on the Effective Date, (i) the fair value of the assets of the Loan Parties, taken as a whole at a fair valuation, will exceed their debts and liabilities, subordinated, contingent or otherwise, (ii) the present fair saleable value of the property of the Loan Parties taken as a whole will be greater than the amount that will be required to pay the probable liability of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured, (iii) the Loan Parties taken as a whole will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured, and (iv) the Loan Parties taken as a whole will not have unreasonably small capital with which to conduct the business in which they are engaged as such business is now conducted and is proposed to be conducted after the Effective Date.

(2) No Loan Party intends to, nor will it permit any other Loan Party to, and no Loan Party believes that it or any other Loan Party will, incur debts beyond its ability to pay such debts as they mature, taking into account the timing of and amounts of cash to be received by it or any such Loan Party and the timing of the amounts of cash to be payable on or in respect of its Indebtedness or the Indebtedness of any such other Loan Party.

Section 3.14 Insurance. Schedule 3.14 sets forth a description of all insurance maintained by or on behalf of the Loan Parties as of the Effective Date. As of the Effective Date, all premiums in respect of such insurance have been paid. Each Loan Party maintains, with financially sound and reputable insurance companies, insurance on all their real and personal property in such amounts, subject to such deductibles and self-insurance retentions and covering such properties and risks as are adequate and customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

Section 3.15 Capitalization and Subsidiaries. Schedule 3.15 sets forth, as of the Effective Date for each Loan Party, (a) such Person's name, (b) the name of each of its Subsidiaries, (c) a true and complete listing of each class of its authorized Equity Interests, all of which issued Equity Interests are validly issued, outstanding, fully paid, and non-assessable, and owned beneficially

and of record by the Persons identified on [Schedule 3.15](#), and (d) the type of entity of such Person. All of the issued and outstanding Equity Interests owned by any Loan Party have been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and are fully paid and non-assessable. There are no outstanding commitments or other obligations of any Loan Party to issue, and no options, warrants, or other rights of any Person to acquire, any shares of any class of capital stock or other equity interests of any Loan Party.

Section 3.16 [Security Interest in Collateral](#). The provisions of this Agreement and the other Loan Documents create legal and valid Liens on all of the Collateral in favor of the Administrative Agent, for the benefit of the Secured Parties, and such Liens, upon completion of any necessary registration of filing requirements, constitute perfected and continuing Liens on the Collateral, securing the Secured Obligations, enforceable against the applicable Loan Party and all third parties, and having priority over all other Liens on the Collateral except in the case of (a) Permitted Encumbrances, to the extent any such Permitted Encumbrances would have priority over the Liens in favor of the Administrative Agent pursuant to any applicable law or agreement and (b) Liens perfected only by possession (including possession of any certificate of title) to the extent the Administrative Agent has not obtained or does not maintain possession of such Collateral.

Section 3.17 [Employment Matters](#). The hours worked by and payments made to employees of the Loan Parties have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local, or foreign law dealing with such matters in any material respect. All payments due from any Loan Party, or for which any claim may be made against any Loan Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Loan Party.

Section 3.18 [Margin Regulations](#). No Loan Party is engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds of any Borrowing or Letter of Credit hereunder will be used to buy or carry any Margin Stock. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than 25.0% of the value of the assets (either of any Loan Party only or of the Loan Parties and their Subsidiaries on a consolidated basis) will be Margin Stock.

Section 3.19 [Use of Proceeds](#). The proceeds of the Loans have been used and will be used, whether directly or indirectly as set forth in [Section 5.08](#).

Section 3.20 [No Burdensome Restrictions](#). No Loan Party is subject to any Burdensome Restrictions except Burdensome Restrictions permitted under [Section 6.10](#).

Section 3.21 [Anti-Corruption Laws and Sanctions](#). Each Loan Party has implemented and maintains in effect practices and procedures designed to ensure compliance by such Loan Party, its Subsidiaries, and their respective directors, officers, employees, and agents with Anti-Corruption Laws and applicable Sanctions, and such Loan Party, its Subsidiaries, and their respective officers and directors and, to the knowledge of such Loan Party, its and its Subsidiaries' employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) any Loan Party, any Subsidiary, or any of their respective directors, officers, or, to the knowledge of any such Loan Party, employees or (b) to the knowledge

of any such Loan Party, any agent of such Loan Party or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds, Transaction, or other transaction contemplated by this Agreement or the other Loan Documents will violate Anti-Corruption Laws or applicable Sanctions.

Section 3.22 Affiliate Transactions. Except as set forth on Schedule 3.22, as of the Effective Date, there are no existing or proposed agreements, arrangements, understandings, or transactions between any Loan Party and any of the officers, members, managers, directors, stockholders, parents, holders of other Equity Interests, employees, or Affiliates (other than Subsidiaries) of any Loan Party or any members of their respective immediate families, other than each of the Allbirds Long-Term Incentive Programs and transactions entered into that comply with the terms of Section 6.09, and none of the foregoing Persons are directly or indirectly indebted to or have any direct or indirect ownership, partnership, or voting interest in any Affiliate of any Loan Party or any Person with which any Loan Party has a business relationship or that competes with any Loan Party (except that any such Persons may own Equity Interests in (but not exceeding 2.0% of the outstanding Equity Interests of) any publicly traded company that may compete with a Loan Party).

Section 3.23 Common Enterprise. The successful operation and condition of each of the Loan Parties is dependent on the continued successful performance of the functions of the group of the Loan Parties as a whole and the successful operation of each of the Loan Parties is dependent on the successful performance and operation of each other Loan Party. Each Loan Party expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from (a) successful operations of each of the other Loan Parties and (b) the credit extended by the Lenders to the Borrowers hereunder, both in their separate capacities and as members of the group of companies. Each Loan Party has determined that execution, delivery, and performance of this Agreement and any other Loan Documents to be executed by such Loan Party is within its purpose, in furtherance of its direct and/or indirect business interests, will be of direct and/or indirect benefit to such Loan Party, and is in its best interest.

Section 3.24 ~~EEA~~ Affected Financial Institutions. No Loan Party is an ~~EEA~~ Affected Financial Institution.

Section 3.25 Plan Assets; Prohibited Transactions. No Loan Party or any of its Subsidiaries is an entity deemed to hold "plan assets" (within the meaning of the Plan Asset Regulations), and neither the execution, delivery, nor performance of the transactions contemplated under this Agreement, including the making of any Loan and the issuance of any Letter of Credit hereunder, will give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.

ARTICLE 4

Conditions

Section 4.01 Effective Date. The obligations of the Lenders to make Loans and of the Issuing ~~Bank~~ Banks to issue Letters of Credit hereunder will not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(1) Credit Agreement and Other Loan Documents. The Administrative Agent (or its counsel) has received (i) from each party hereto either (A) a counterpart of this Agreement signed on behalf of such party or (B) written evidence satisfactory to the Administrative Agent (that may include facsimile or other electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement, (ii) either (A) a counterpart of each other Loan Document signed on behalf of each party thereto or (B) written evidence satisfactory to the Administrative Agent (that may include facsimile or other electronic transmission of a signed signature page thereof) that each such party has signed a counterpart of such Loan Document, and (iii) such other certificates, documents, instruments, and agreements as the Administrative Agent reasonably requests in connection with the transactions contemplated by this Agreement and the other Loan Documents, including any promissory notes requested by a Lender pursuant to Section 2.10 payable to the order of each such requesting Lender and a written opinion of the Loan Parties' counsel, addressed to the Administrative Agent, the Issuing ~~Bank~~ Banks, and the Lenders in the form of Exhibit B (together with any other real estate related opinions separately described herein), all in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

(2) Financial Statements and Projections. The Lenders have received (i) audited consolidated financial statements of Allbirds for the fiscal years ended December 31, 2016 and December 31, 2017, (ii) unaudited interim consolidated financial statements of Allbirds for each fiscal month ended after the date of the latest applicable financial statements delivered pursuant to clause (i) preceding as to which such financial statements are available, and such financial statements do not, in the reasonable judgment of the Administrative Agent, reflect any material adverse change in the consolidated financial condition of Allbirds, as reflected in the audited, consolidated financial statements described in clause (i) preceding, and (iii) satisfactory projections through Allbirds' fiscal year ending December 31, 2021.

(3) Closing Certificates; Certified Certificate of Incorporation; Good Standing Certificates. The Administrative Agent has received (i) a certificate of each Loan Party, dated the Effective Date and executed by its Secretary or Assistant Secretary, that (A) certifies the resolutions of its Board of Directors, members, or other body authorizing the execution, delivery, and performance of the Loan Documents to which such Loan Party is a party, (B) identifies by name and title and bears the signatures of the officers of such Loan Party authorized to sign the Loan Documents to which it is a party and, in the case of any Borrower, its Financial Officers, and (C) contains appropriate attachments, including the certificate or articles of incorporation or organization of each Loan Party certified by the relevant authority of the jurisdiction of organization of such Loan Party and a true and correct copy of its bylaws or operating, management, or partnership agreement, or other

organizational or governing documents, and (ii) a good standing certificate for each Loan Party from its jurisdiction of organization or the substantive equivalent available in the jurisdiction of organization for each Loan Party from the appropriate governmental officer in such jurisdiction.

(4) No Default Certificate. The Administrative Agent has received a certificate, signed by a Financial Officer of each Loan Party, dated as of the Effective Date (i) stating that no Default has occurred and is continuing, (ii) stating that the representations and warranties contained in the Loan Documents are true and correct as of such date, and (iii) certifying as to any other factual matters as may be reasonably requested by the Administrative Agent.

(5) Fees. The Lenders and the Administrative Agent have received all fees required to be paid, and all expenses for which invoices have been presented (including the reasonable fees and expenses of legal counsel), on or before the Effective Date. All such amounts will be paid with proceeds of Loans made on the Effective Date and will be reflected in the funding instructions given by the Borrower Representative to the Administrative Agent on or before the Effective Date.

(6) Lien Searches. The Administrative Agent has received the results of a recent lien search in each jurisdiction where the Loan Parties are organized and where the assets of the Loan Parties are located, and such search reveals no Liens on any of the assets of the Loan Parties except for Liens permitted by Section 6.02 or discharged on or prior to the Effective Date pursuant to a pay-off letter or other documentation satisfactory to the Administrative Agent.

(7) [reserved]

(8) Funding Account. The Administrative Agent has received a notice setting forth the deposit account(s) of the Borrowers (the "Funding Account") to which the Administrative Agent is authorized by the Borrowers to transfer the proceeds of any Borrowings requested or authorized pursuant to this Agreement.

(9) [reserved]

(10) Collateral Access and Control Agreements. The Administrative Agent has received (i) each Collateral Access Agreement required to be provided pursuant to Section 4.13 of the Security Agreement and (ii) each Deposit Account Control Agreement required to be provided pursuant to Section 4.14 of the Security Agreement; provided that, the parties hereto agree that such agreements may be delivered any time within 60 days of the Effective Date and the Administrative Agent may in its sole discretion extend such time period for delivery upon written notice to the Borrower Representative.

(11) Solvency. The Administrative Agent has received a solvency certificate signed by a Financial Officer of each Loan Party dated the Effective Date.

(12) Borrowing Base Certificate. The Administrative Agent has received a Borrowing Base Certificate that calculates the Borrowing Base as of the end of the week immediately preceding the Effective Date.

(13) Closing Availability. After giving effect to all Borrowings to be made on the Effective Date, the issuance of any Letters of Credit on the Effective Date, and the payment of all fees and expenses due hereunder, and with all of the Loan Parties' indebtedness, liabilities, and obligations current, the Excess Availability is not less than \$19,000,000.

(14) Filings, Registrations, and Recordings. Each document (including any Uniform Commercial Code financing statement) required by the Collateral Documents or under law or reasonably requested by the Administrative Agent to be filed, registered, or recorded in order to create in favor of the Administrative Agent, for the benefit of itself, the Lenders, and the other Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 6.02), must be in proper form for filing, registration, or recordation and the Administrative Agent must have received written confirmation of such filing, registration, or recordation from the applicable Governmental Authority.

(15) Insurance. The Administrative Agent has received evidence of insurance coverage in form, scope, and substance reasonably satisfactory to the Administrative Agent and otherwise in compliance with the terms of Section 5.10 hereof and Section 4.12 of the Security Agreement.

(16) Letter of Credit Application. If a Letter of Credit is requested to be issued on the Effective Date, the Administrative Agent has received a properly completed letter of credit application (whether standalone or pursuant to a master agreement, as applicable) and such other documentation as the Issuing Bank may reasonably request. If requested by the Issuing Bank, the Borrowers have executed the applicable Issuing Bank's master agreement for the issuance of commercial Letters of Credit.

(17) Tax Withholding. The Administrative Agent has received a properly completed and signed IRS Form W-8 or W-9, as applicable, for each Loan Party.

(18) [reserved]

(19) Field Examination. The Administrative Agent or its designee has conducted a field examination of the Borrowers' Accounts, Inventory, and related working capital matters and of the Borrowers' related data processing and other systems, the results of which are satisfactory to the Administrative Agent in its sole discretion.

(20) [reserved]

(21) [reserved]

(22) USA PATRIOT Act, Etc.

(a) The Administrative Agent must have received, at least five days prior to the Effective Date, all documentation and other information regarding the Loan Parties requested in connection with applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and

(b) to the extent any Loan Party qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, at least five days prior to the Effective Date, any Lender that has requested, in a written notice to the Loan Parties at least ten days prior to the Effective Date, a Beneficial Ownership Certification in relation to each Loan Party must have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii) will be deemed to be satisfied).

(23) Other Documents. The Administrative Agent has received such other documents as the Administrative Agent, ~~the~~ any Issuing Bank, any Lender, or their respective counsel may have reasonably requested.

The Administrative Agent will notify the Borrowers, the Lenders, and the Issuing ~~Bank Banks~~ of the Effective Date, and such notice will be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of the Issuing ~~Bank Banks~~ to issue Letters of Credit hereunder will not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 9.02) at or prior to 2:00 p.m., Chicago time, on February 20, 2019 (and, in the event such conditions are not so satisfied or waived, the Commitments will terminate at such time).

Section 4.02 Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of ~~the~~ each Issuing Bank to issue, amend, ~~renew~~, or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(1) The representations and warranties of the Loan Parties set forth in the Loan Documents must be true and correct in all material respects with the same effect as though made on and as of the date of such Borrowing or the date of issuance, amendment, ~~renewal~~, or extension of such Letter of Credit, as applicable (it being understood and agreed that any representation or warranty that by its terms is made as of a specified date will be required to be true and correct only as of such specified date, and that any representation or warranty that is subject to any materiality qualifier will be required to be true and correct in all respects).

(2) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, ~~renewal~~, or extension of such Letter of Credit, as applicable, (i) no Default may have occurred and be continuing and (ii) no Protective Advance may be outstanding.

(3) After giving effect to any Borrowing or the issuance, amendment, ~~renewal~~, or extension of any Letter of Credit, Availability is not less than zero (\$0.00).

- (4) No event may occurred and no condition may exist that has or could be reasonably expected to have a Material Adverse Effect.

Each Borrowing and each issuance, amendment, ~~renewal~~, or extension of a Letter of Credit will be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the matters specified in this Section.

Notwithstanding the failure to satisfy the conditions precedent set forth in Section 4.02(a) or Section 4.02(b), unless otherwise directed by the Required Lenders, the Administrative Agent may, but will have no obligation to, continue to make Loans and an Issuing Bank may, but will have no obligation to, issue, amend, ~~renew~~, or extend, or cause to be issued, amended, ~~renewed~~, or extended, any Letter of Credit for the ratable account and risk of the Lenders from time to time if the Administrative Agent believes that making such Loans or issuing, amending, ~~renewing~~, or extending, or causing the issuance, amendment, ~~renewal~~, or extension of, any such Letter of Credit is in the best interests of the Lenders.

ARTICLE 5

Affirmative Covenants

Until all of the Secured Obligations have been Paid in Full each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lenders that:

Section 5.01 Financial Statements; Borrowing Base and Other Information. The Borrower Representative will furnish to the Administrative Agent and each Lender:

(1) within 180 days after the end of each fiscal year of Allbirds, its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants of recognized national standing (without a "going concern" or like qualification, commentary, or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of Allbirds and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(2) [reserved]

(3) within 30 days after the end of each fiscal month of Allbirds, its consolidated (and for any fiscal month end that is also the end of a fiscal quarter, accompanied by managerial reporting on a segment-by-segment basis) balance sheet and related statement of operations, as of the end of and for such fiscal month and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Financial Officer of the Borrower Representative as presenting fairly in all material respects the financial condition and

results of operations of Allbirds and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(4) concurrently with any delivery of financial statements under Section 5.01(a) or Section 5.01(c), a certificate of a Financial Officer of the Borrower Representative in substantially the form of Exhibit D (i) certifying, in the case of the financial statements delivered under Section 5.01(c), as presenting fairly in all material respects the financial condition and results of operations of Allbirds and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes, (ii) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (iii) setting forth reasonably detailed calculations demonstrating compliance with Section 6.12, and (iv) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(5) [reserved]

(6) as soon as available but in any event no later than 60 days after the first day of each fiscal year of Allbirds, a copy of the plan and forecast (including a projected consolidated and consolidating balance sheet, income statement, and cash flow statement) of Allbirds for each month of the upcoming fiscal year (the "Projections") in form reasonably satisfactory to the Administrative Agent;

(7) at each of the times specified in the following table, and at such other times as may be necessary to re-determine Availability, as of the period then ended, a Borrowing Base Certificate and supporting information in connection therewith (including, in respect of any Borrowing Base Certificate delivered for the last day of any month that is also the end of any fiscal quarter of Allbirds, a calculation of Average Quarterly Availability for such quarter then ended, and an indication of what the Applicable Rate is as a result of such Average Quarterly Availability), together with any additional reports with respect to the Borrowing Base as the Administrative Agent may reasonably request:

Trigger Date/Event	Reporting Requirement
no Credit Exposure is outstanding, a Reporting Frequency Change Period does not exist, and neither the Borrower Representative nor any Borrower has requested any Revolving Loan or issuance of any Letter of Credit	within 30 days of the end of each fiscal quarter, as of the period then ended

Trigger Date/Event	Reporting Requirement
no Credit Exposure is outstanding, a Reporting Frequency Change Period does not exist, and the Borrower Representative or any Borrower requests any Revolving Loan or issuance of any Letter of Credit	concurrently with such request for such Revolving Loan or issuance of such Letter of Credit as of the last day of the fiscal month most recently ended at least 30 days prior to the date of such request
no Credit Exposure is outstanding, a Reporting Frequency Change Period is in existence, and the Borrower Representative or any Borrower requests any Revolving Loan or issuance of any Letter of Credit	concurrently with such request for such Revolving Loan or issuance of such Letter of Credit as of the last day of the calendar week most recently ended at least three Business Days prior to the date of such request
any Credit Exposure is outstanding and a Reporting Frequency Change Period does not exist	within 30 days of the end of each fiscal month, as of the period then ended
any Credit Exposure is outstanding and a Reporting Frequency Change Period exists	on or before the third Business Day of each calendar week, as of the calendar week then ended
during the existence of any Event of Default	promptly upon the request of the Administrative Agent and continuing thereafter as requested

(8) concurrently with delivery of any Borrowing Base Certificate pursuant to clause (g) preceding, as of the period then ended, all delivered electronically in a text formatted file acceptable to the Administrative Agent;

(9) a detailed aging of the Borrowers' Accounts (including a listing, as of the end of the applicable period, by account debtor of all outstanding Accounts and all payments and collections thereon, and a reconciliation of sales and collections with respect thereto), prepared in a manner reasonably acceptable to the Administrative Agent, together with a summary specifying the name and balance due for each Account Debtor of any Account, and, if requested by the Administrative Agent, the address for each such Account Debtor;

(2) a schedule detailing the Borrowers' Inventory, in form satisfactory to the Administrative Agent, (A) by location (showing Inventory in transit, any Inventory located with a third party under any consignment, bailee arrangement, or warehouse agreement), by class (raw material, work-in-process, and finished goods), by product type, and by volume on hand, which Inventory will be valued at the lower of cost (determined on a weighted average moving cost basis) or

market and adjusted for Reserves as the Administrative Agent has previously indicated to the Borrower Representative are deemed by the Administrative Agent to be appropriate, and (B) including a report of any variances or other results of Inventory

counts performed by the Borrowers since the last Inventory schedule (including information regarding sales or other reductions, additions, returns, credits issued by the Borrowers, and complaints and claims made against the Borrowers);

(3) a worksheet of calculations prepared by the Borrowers to determine Eligible Accounts and Eligible Inventory, such worksheets detailing the Accounts and Inventory excluded from Eligible Accounts and Eligible Inventory and the reason for such exclusion;

(4) a reconciliation of the Borrowers' Accounts and Inventory between (A) the amounts shown in the Borrowers' general ledger and financial statements and the reports delivered pursuant to clause (i) and clause (ii) of this Section 5.01(h) and (B) the amounts and dates shown in the reports delivered pursuant to clause (i) and clause (ii) of this Section 5.01(h) and the Borrowing Base Certificate delivered pursuant to Section 5.01(g) as of such date;

(5) a reconciliation of the loan balance per the Borrowers' general ledger to the loan balance under this Agreement; and

(6) a schedule, in form reasonably satisfactory to the Administrative Agent, showing a reconciliation with respect to Credit Card Accounts of payments deposited to the Borrowers' Deposit Accounts, amounts scheduled for payment by credit card processors to the Borrowers, and activity statements received from credit card processors;

i. concurrently with delivery of any Borrowing Base Certificate pursuant to clause (g) preceding for any period that is the last day of a fiscal month, as of the fiscal month then ended, and at such other times as may be reasonably requested by the Administrative Agent, a schedule of the Borrowers' accounts payable, delivered electronically in a text formatted file acceptable to the Administrative Agent;

j. promptly upon the Administrative Agent's request, as frequently as may be reasonably requested, but in any event not more often than upon delivery of any Borrowing Base Certificate:

i. copies of invoices or other similar statements issued by the Borrowers to any credit card issuer or credit card processor in connection with any Credit Card Accounts, credit memos, shipping and delivery documents, and other information related thereto;

ii. copies of purchase orders, invoices, and shipping and delivery documents in connection with any Inventory purchased by any Loan Party; and

iii. a schedule detailing the balance of all intercompany accounts of the Loan Parties;

k. promptly upon request from the Administrative Agent, as frequently as may be reasonably requested, but in any event not more often than upon delivery of any

Borrowing Base Certificate, as of the period then ended, the Borrowers' sales journal, cash receipts journal (identifying trade and non-trade cash receipts) and debit memo/credit memo journal;

l. [reserved]

m. [reserved]

n. [reserved]

o. promptly after the same become publicly available, copies of all periodic and other reports, proxy statements, and other materials filed by any Loan Party or any Subsidiary with the SEC, or any Governmental Authority succeeding to any or all of the functions of the SEC, or with any national securities exchange, as the case may be;

p. promptly after any request therefor by the Administrative Agent or any Lender, copies of (i) any documents described in Section 101(k)(1) of ERISA that any Borrower or any ERISA Affiliate may request with respect to any Multiemployer Plan and

(ii) any notices described in Section 101(l)(1) of ERISA that any Borrower or any ERISA Affiliate may request with respect to any Multiemployer Plan; provided that if a Borrower or any ERISA Affiliate has not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plan, the applicable Borrower or the applicable ERISA Affiliate will promptly make a request for such documents and notices from such administrator or sponsor and will provide copies of such documents and notices promptly after receipt thereof; and

q. promptly following any request therefor, (y) such other information regarding the operations, material changes in ownership of Equity Interests, business affairs and financial condition of any Loan Party or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request and (z) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation.

Section 5.02 Notices of Material Events. The Borrower Representative will furnish to the Administrative Agent and each Lender prompt (but in any event within any time period that may be specified below) written notice of the following:

(1) the occurrence of any Default;

(2) receipt of any notice of any investigation, litigation, or proceeding by a Governmental Authority commenced against any Loan Party that (i) seeks damages in excess of \$5,000,000, (ii) seeks injunctive relief, (iii) is asserted or instituted against any Plan, its fiduciaries or its assets, (iv) alleges criminal misconduct by any Loan Party, (v) alleges the violation of, or seeks to impose remedies under, any Environmental Law or related Requirement of Law, or seeks to impose Environmental Liability, (vi) asserts

liability on the part of any Loan Party in excess of \$5,000,000 in respect of any tax, fee, assessment, or other governmental charge, or (vii) involves any product recall;

(3) receipt of any notice of any litigation or proceeding commenced by any Person that is not a Governmental Authority against any Loan Party that (i) seeks damages in excess of \$5,000,000, (ii) seeks injunctive relief, (iii) is asserted or instituted against any Plan, its fiduciaries or its assets, (iv) alleges the violation of, or seeks to impose remedies under, any Environmental Law or related Requirement of Law, or seeks to impose Environmental Liability, or ~~(v)~~ involves any product recall and, in each case could reasonably be expected to result in a material Adverse Effect;

(4) any Lien (other than Permitted Encumbrances) or claim made or asserted against any of the Collateral;

(5) any loss, damage, or destruction to the Collateral in the amount of \$2,000,000 or more, whether or not covered by insurance;

(6) within two Business Days of receipt thereof, any and all default notices received under or with respect to any leased location or public warehouse where Collateral is located;

(7) within two Business Days after the occurrence thereof, any Loan Party entering into a Swap Agreement or an amendment thereto, together with copies of all agreements evidencing such Swap Agreement or amendment;

(8) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Loan Parties and their Subsidiaries in an aggregate amount exceeding \$1,000,000;

(9) any material change in accounting or financial reporting practices by any Loan Party;

(10) any other development that results, or could reasonably be expected to result, in a Material Adverse Effect; and

(11) any change in the information provided in the Beneficial Ownership Certification delivered to such Lender that would result in a change to the list of beneficial owners identified in such certification.

Each notice delivered under this Section must be accompanied by a statement of a Financial Officer or other executive officer of the Borrower Representative setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 5.03 Existence; Conduct of Business. Each Loan Party will (a) do or cause to be done all things necessary to preserve, renew, and keep in full force and effect its legal existence and the rights, qualifications, licenses, permits, franchises, governmental authorizations, and intellectual property rights material to the conduct of its business, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted, provided

that, the foregoing will not prohibit any merger, consolidation, liquidation, or dissolution permitted under Section 6.03 and (b) carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted.

Section 5.04 Payment of Obligations. Each Loan Party will pay or discharge all Material Indebtedness and all other material liabilities and obligations, including Taxes, before the same become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (c) any such liabilities are not in excess of \$5,000,000 and none of the Collateral would become subject to forfeiture or loss as a result of the contest; provided that, each Loan Party will remit withholding taxes and other payroll taxes to appropriate Governmental Authorities as and when claimed to be due, notwithstanding the foregoing exceptions.

Section 5.05 Maintenance of Properties. Each Loan Party will keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

Section 5.06 Books and Records; Inspection Rights.

(1) Each Loan Party will keep proper books of record and account in which full, true, and correct entries are made of all dealings and transactions in relation to its business and activities.

(2) Each Loan Party will permit any representatives designated by the Administrative Agent or any Lender (including employees of the Administrative Agent or any Lender), upon reasonable prior notice, during business hours, at such reasonable times, and as often as reasonably requested, to visit and discuss with such Loan Party's Financial Officers and other executive management such Loan Party's affairs, finances, and condition.

(3) Each Loan Party will permit any representatives designated by the Administrative Agent or any Lender (including employees of the Administrative Agent, any Lender, or any consultants, accountants, lawyers, agents, and appraisers retained by the Administrative Agent), upon reasonable prior notice and during business hours, to visit and inspect such Loan Party's properties, to conduct at such Loan Party's premises, and at the times specified below, field examinations of such Loan Party's assets, liabilities, books and records, including examining and making extracts from its books and records, and to discuss its affairs, finances, and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested (all such activities described herein constituting a "field examination" for the purposes of this clause (c)). Each Loan Party acknowledges that the Administrative Agent, after exercising its rights of inspection and examination, may prepare and distribute to the Lenders certain Reports pertaining to such Loan Party's assets for internal use by the Administrative Agent and the Lenders. Notwithstanding any of the foregoing, the Administrative Agent may, in its Permitted Discretion, perform field examinations pursuant to this Section as follows:

- (a) the field examination specified in Section 4.01(s);

(b) if any Event of Default is in existence, the Administrative Agent may conduct, at the Borrowers' expense, any field examinations requested by the Administrative Agent at such time;

(c) so long as Availability at all times during the preceding twelve month period has remained equal to or greater than 12.5% of the Aggregate Revolving Commitment, the Administrative Agent may conduct one field examination during such twelve month period (in addition to the field examination specified in clause (a) preceding); and

(d) if Availability at any time during the preceding twelve month period has been less than 12.5% of the Aggregate Revolving Commitment the Administrative Agent may conduct two field examinations during such twelve month period (in addition to the field examination specified in clause (a) preceding).

The Loan Parties will be responsible for the costs and expenses of all field examinations conducted pursuant to this clause (c).

Section 5.07 Compliance with Laws and Material Contractual Obligations. Each Loan Party will, and will cause each Subsidiary to, (i) comply with each Requirement of Law applicable to it or its property (including Environmental Laws) and (ii) perform in all material respects its obligations under material agreements to which it is a party, except, in each case, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Each Loan Party will maintain in effect and enforce policies and procedures designed to ensure compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees, and agents with Anti-Corruption Laws and applicable Sanctions.

Section 5.08 Use of Proceeds.

(1) The proceeds of the Loans and the Letters of Credit will be used only (i) for working capital and general corporate purposes of the Borrowers and their Domestic Subsidiaries, (ii) for Investments permitted under Section 6.04, and (iii) to pay fees and expenses incurred by the Loan Parties in connection with entering into the Transactions. No part of the proceeds of any Loan and no Letter of Credit will be used, whether directly or indirectly, (y) for any purpose that entails a violation of any of the regulations of the Federal Reserve Board, including Regulation T, Regulation U, and Regulation X or (z) to make any Acquisition other than, subject to clause (y) preceding, any Permitted Acquisition.

(2) No Borrower will request any Borrowing or Letter of Credit, and no Borrower will use, and each Borrower will provide that its Subsidiaries and its and their respective directors, officers, employees, and agents will not use, the proceeds of any Borrowing or Letter of Credit (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing, or facilitating any activities, business, or transaction of or with any Sanctioned Person, or in any Sanctioned Country, except to the extent permitted for a Person required to comply

with Sanctions, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 5.09 Accuracy of Information. The Loan Parties will ensure that any information, including financial statements or other documents, furnished to the Administrative Agent or the Lenders in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder contains no material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and the furnishing of such information will be deemed to be a representation and warranty by the Borrowers on the date thereof as to the matters specified in this Section; provided that, with respect to projected financial information, the Loan Parties will only ensure that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

Section 5.10 Insurance. Each Loan Party will maintain with financially sound and reputable carriers having a financial strength rating of at least A- by A.M. Best Company (a) insurance in such amounts (with no greater risk retention) and against such risks (including: loss or damage by fire and loss in transit; theft, burglary, pilferage, larceny, embezzlement, and other criminal activities; business interruption; and general liability) and such other hazards, as is customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (b) all insurance required pursuant to the Collateral Documents. The Borrowers will furnish to the Lenders information in reasonable detail as to the insurance so maintained (y) upon request of the Administrative Agent (not more frequently than annually) and (z) promptly after any material change in insurer or coverage amounts.

Section 5.11 Casualty and Condemnation. The Borrowers will (a) furnish to the Administrative Agent and the Lenders prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any material portion of the Collateral or interest therein under power of eminent domain or by condemnation or similar proceeding and (b) ensure that the Net Proceeds of any such event (whether in the form of insurance proceeds, condemnation awards, or otherwise) are collected and applied in accordance with the applicable provisions of this Agreement and the Collateral Documents.

Section 5.12 Appraisals. Subject to the other terms of this Section, at any time that the Administrative Agent requests, each Borrower will, and will cause each other Loan Party to, provide the Administrative Agent with appraisals or updates thereof of its Inventory from an appraiser selected and engaged by the Administrative Agent, and prepared on a basis satisfactory to the Administrative Agent, such appraisals and updates to include information required by any applicable Requirement of Law. The Administrative Agent may, in its Permitted Discretion, require an appraisal pursuant to this Section as follows:

- (1) if any Event of Default is in existence, the Administrative Agent may request an appraisal of the Borrower's Inventory;
- (2) so long as Availability at all times during the preceding twelve month period has remained equal to or greater than 12.5% of the Aggregate Revolving Commitment, the

Administrative Agent may request one appraisal of the Borrowers' Inventory during such twelve month period; and

(3) if Availability at any time during the preceding twelve month period has been less than 12.5% of the Aggregate Revolving Commitment the Administrative Agent may request two appraisals of the Borrowers' Inventory during such twelve month period.

The Loan Parties will be responsible for the costs and expenses of all appraisals requested by the Administrative Agent pursuant to this Section.

~~Section 5.13~~ Depository Banks. Within five months of the Effective Date, or such later date as may be agreed to by the Administrative Agent in its sole discretion, each Loan Party will maintain the Administrative Agent as its principal depository bank, including for the maintenance of operating, administrative, cash management, collection activity, and other deposit accounts for the conduct of its business (other than in the case of any jurisdiction in which the Administrative Agent or its Affiliates do not offer services reasonably convenient to any location of a Loan Party); provided that, notwithstanding anything in this Agreement or the Security Agreement to the contrary, the Loan Parties will establish and maintain (a) a Collateral Deposit Account (as defined in the Security Agreement) with the Administrative Agent and (b) require that all Credit Card Accounts paid to any Borrower by a credit card issuer, processor, or servicer are directed by the applicable credit card issuer, processor, or servicer to be directly sent to a Collateral Deposit Account (and if such Collateral Deposit Account is not maintained with the Administrative Agent it is subject to a Deposit Account Control Agreement).

Section 5.14 Additional Collateral; Further Assurances.

(1) Subject to any applicable Requirement of Law, each Loan Party will cause each Domestic Subsidiary formed or acquired after the date of this Agreement, including any limited liability company formed pursuant to any Division, to become a Loan Party by executing a Joinder Agreement. In connection therewith, the Administrative Agent must have received all documentation and other information regarding such newly formed or acquired Subsidiaries as may be required to comply with the applicable "know your customer" rules and regulations, including the USA Patriot Act. Upon execution and delivery thereof, each such Person (i) will automatically become a Loan Guarantor hereunder and thereupon will have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents and (ii) will grant Liens to the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, in any property of such Loan Party that constitutes Collateral.

(2) Without limiting the foregoing, each Loan Party will execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements, and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, and other documents and such other actions or deliveries of the type required by Section 4.01, as applicable), that may be required by any Requirement of Law or that the Administrative Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all in form and

substance reasonably satisfactory to the Administrative Agent and all at the expense of the Borrowers.

ARTICLE 6

Negative Covenants

Until all of the Secured Obligations have been Paid in Full, each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lenders that:

Section 6.01 Indebtedness. No Loan Party will create, incur, assume, or suffer to exist any Indebtedness, except:

- (1) the Secured Obligations;
- (2) Indebtedness existing on the date hereof and set forth in Schedule 6.01 and any extensions, renewals, refinancings, and replacements of any such Indebtedness in accordance with clause (f) following;
- (3) Indebtedness of any Loan Party to any Subsidiary and of any Subsidiary to any Loan Party, provided that (i) Indebtedness of any Subsidiary that is not a Loan Party to any Loan Party will be subject to Section 6.04 and (ii) Indebtedness of any Loan Party to any Subsidiary that is not a Loan Party will be subordinated to the Secured Obligations on terms reasonably satisfactory to the Administrative Agent;
- (4) Guarantees by any Loan Party of Indebtedness of any Subsidiary and by any Subsidiary of Indebtedness of any Loan Party, provided that (i) the Indebtedness so Guaranteed is permitted by this Section 6.01, (ii) Guarantees by any Loan Party of Indebtedness of any Subsidiary that is not a Loan Party will be subject to Section 6.04, and (iii) Guarantees permitted under this clause (d) will be subordinated to the Secured Obligations on the same terms as the Indebtedness so Guaranteed is subordinated to the Secured Obligations;
- (5) Indebtedness of any Loan Party incurred to finance the acquisition, construction, or improvement of any fixed or capital assets (whether or not constituting purchase money Indebtedness), including Capital Lease Obligations, and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals, and replacements of any such Indebtedness in accordance with clause (f) following; provided that (i) such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this clause (e) together with any Refinance Indebtedness in respect thereof permitted by clause (f) following, does not exceed \$2,500,000 at any time outstanding;
- (6) Indebtedness that represents extensions, renewals, refinancings, or replacements (such Indebtedness being so extended, renewed, refinanced, or replaced

being referred to herein as the “Refinance Indebtedness”) of any of the Indebtedness described in clause (b) and clause (e) preceding and clause (i), clause (j), and clause (k) following (such Indebtedness being referred to herein as the “Original Indebtedness”); provided that (i) such Refinance Indebtedness does not increase the principal amount or interest rate of the Original Indebtedness, (ii) any Liens securing such Refinance Indebtedness are not extended to any additional property of any Loan Party, (iii) no Loan Party that is not originally obligated with respect to repayment of such Original Indebtedness is required to become obligated with respect to such Refinance Indebtedness, (iv) such Refinance Indebtedness does not result in a shortening of the average weighted maturity of such Original Indebtedness, (v) the terms of such Refinance Indebtedness are not materially less favorable to the obligor thereunder than under the original terms of such Original Indebtedness, and (vi) if such Original Indebtedness was subordinated in right of payment to the Secured Obligations, then the terms and conditions of such Refinance Indebtedness must include subordination terms and conditions that are at least as favorable to the Administrative Agent and the Lenders as those that were applicable to such Original Indebtedness;

(7) Indebtedness owed to any Person providing workers’ compensation, health, disability, or other employee benefits or property, casualty, or liability insurance, pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business;

(8) Indebtedness of any Loan Party in respect of performance bonds, bid bonds, appeal bonds, surety bonds, and similar obligations, in each case provided in the ordinary course of business;

(9) Indebtedness of any Person that becomes a Loan Party after the Effective Date; provided that (i) such Indebtedness exists at the time such Person becomes a Loan Party and is not created in contemplation of or in connection with such Person becoming a Loan Party and (ii) the aggregate principal amount of Indebtedness permitted by this clause (i), together with any Refinance Indebtedness in respect thereof permitted by clause (f) preceding, does not exceed \$1,000,000 at any time outstanding;

(10) other unsecured Indebtedness in an aggregate principal amount not exceeding \$2,500,000 at any time outstanding;

(11) subject to the terms of Section 6.02(i), other secured Indebtedness in an aggregate principal amount not exceeding \$2,500,000 at any time outstanding;

(12) unsecured Indebtedness consisting of the financing of insurance premiums;

and

(13) Subordinated Indebtedness in an aggregate principal amount not exceeding \$2,500,000 at any time outstanding.

Section 6.02 Liens. No Loan Party will create, incur, assume, or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including Accounts) or rights in respect of any thereof, except:

- (1) Liens created pursuant to any Loan Document;
- (2) Permitted Encumbrances;
- (3) any Lien on any property or asset of any Borrower or any Subsidiary existing on the date hereof and set forth in Schedule 6.02; provided that (i) such Lien does not apply to any other property or asset of such Borrower or Subsidiary or any other Borrower or Subsidiary and (ii) such Lien secures only those obligations that it secures on the Effective Date, and extensions, renewals, and replacements thereof that do not increase the outstanding principal amount thereof;
- (4) Liens on fixed or capital assets acquired, constructed, or improved by any Borrower or any Subsidiary; provided that (i) such Liens secure Indebtedness permitted by Section 6.01(e), (ii) such Liens and the Indebtedness secured thereby are incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring, constructing, or improving such fixed or capital assets, and (iv) such Liens do not apply to any other property or assets of such Borrower or Subsidiary or any other Borrower or Subsidiary;
- (5) any Lien existing on any property or asset (other than Accounts and Inventory) prior to the acquisition thereof by any Borrower or any Subsidiary or existing on any property or asset (other than Accounts and Inventory) of any Person that becomes a Loan Party after the date hereof prior to the time such Person becomes a Loan Party; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Loan Party, as the case may be, (ii) such Lien does not apply to any other property or assets of the Loan Party, and (iii) such Lien secures only those obligations that it secures on the date of such acquisition or the date such Person becomes a Loan Party, as the case may be, and extensions, renewals, and replacements thereof that do not increase the outstanding principal amount thereof;
- (6) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the UCC in effect in the relevant jurisdiction covering only the items being collected upon;
- (7) Liens arising out of Sale and Leaseback Transactions permitted by Section 6.06;
- (8) Liens granted by a Subsidiary that is not a Loan Party in favor of any Borrower or another Loan Party in respect of Indebtedness owed by such Subsidiary;
- (9) Liens not otherwise permitted under clause (a) through clause (g) preceding securing obligations permitted under Section 6.01(k); provided that none of the Collateral may be subject to any Lien permitted under this clause (i) and
- (10) Liens that constitute a "security interest" for the purposes of section 17(1)(b) of the PPSA which do not, in substance, secure payment or performance of an obligation.

Notwithstanding the foregoing, none of the Liens permitted pursuant to this [Section 6.02](#) may at any time attach to any Loan Party's (y) Accounts, other than those permitted under [clause \(a\)](#) and [clause \(d\)\(ii\)](#) of the definition of Permitted Encumbrances and [clause \(a\)](#) preceding and (z) Inventory, other than those permitted under [clause \(a\)](#) and [clause \(b\)](#) of the definition of Permitted Encumbrances and [clause \(a\)](#) preceding.

Section 6.03 [Fundamental Changes](#).

(1) No Loan Party will merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or otherwise Dispose of all or any substantial part of its assets, or all or any substantial part of the Equity Interests of any of its Domestic Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate, ~~or dissolve, or enter into a Division~~, or ~~or~~ dissolve, ~~or enter into a Division~~, except that, if at the time thereof and immediately after giving effect thereto no Event of Default has occurred and is continuing (i) any Subsidiary of any Borrower may merge into a Borrower in a transaction in which ~~a~~ [such](#) Borrower is the surviving entity, (ii) any Loan Party (other than a Borrower) may merge into any other Loan Party in a transaction in which the surviving entity is a Loan Party, and (iii) any Subsidiary that is not a Loan Party may liquidate, dissolve, or enter into a Division if the Loan Party that owns such Subsidiary determines in good faith that such liquidation, dissolution, or Division is in the best interests of such Loan Party and is not materially disadvantageous to the Lenders; provided that, any such merger involving a Person that is not a wholly owned Domestic Subsidiary immediately prior to such merger will not be permitted unless also permitted by [Section 6.04](#).

(2) No Loan Party will engage to any material extent in any business other than businesses of the type conducted by the Loan Parties on the date hereof and businesses reasonably related or incidental thereto.

(3) No Loan Party will change the basis of determining the last day of its fiscal year from the basis in effect on the Effective Date.

(4) No Loan Party will change (i) its methodology for determining the cost basis of Inventory until (A) the Borrower representative has given prior written notice to the Administrative Agent of such change, (B) notwithstanding any limitation in [Section 5.12](#), the Administrative Agent has received a new appraisal of the Borrowers' Inventory, and (C) the Borrowers and the Credit Parties have agreed to any changes reasonably necessary to the determination of the Borrowing Base arising from such change or (ii) the accounting basis upon which its financial statements are prepared.

(5) No Loan Party will change the tax filing elections it has made under the Code.

(6) [No Loan Party will consummate a Division as the Dividing Person, without the prior written consent of the Administrative Agent. Without limiting the foregoing, if any Loan Party that is a limited liability company consummates a Division \(with or without the prior consent of the Administrative Agent as required above\), each Division Successor will be required to comply with the obligations set forth in Section 5.14 and the other](#)

[further assurances obligations set forth in the Loan Documents and become a Loan Party under this Agreement and the other Loan Documents.](#)

Section 6.04 Investments, Loans, Advances, Guarantees, and Acquisitions. No Loan Party will (x) purchase, hold, or acquire (including pursuant to any merger with any Person that was not a Loan Party and a wholly owned Subsidiary prior to such merger) any evidences of Indebtedness or Equity Interests or other securities (including any option, warrant, or other right to acquire any of the foregoing), (y) make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or (z) purchase or otherwise acquire (in one transaction or a series of transactions and whether through purchase of assets, merger, or otherwise) any assets of any other Person constituting a business unit (each of the activities described in clause (x) through clause (z) preceding being an "Investment"), except:

- (1) Permitted Investments;
- (2) investments in existence on the date hereof and described in Schedule 6.04;
- (3) investments by the Loan Parties in Equity Interests in their respective Subsidiaries, provided that, at any time that the Payment Conditions are not met, the Loan Parties will not make any new investment under this clause (c);
- (4) loans or advances made by any Loan Party to any Subsidiary, provided that, at any time that the Payment Conditions are not met, the Loan Parties will not make any new loans or advances under this clause (d);
- (5) Guarantees constituting Indebtedness permitted by Section 6.01, provided that, at any time that the Payment Conditions are not met, the Loan Parties will not make any new Guarantee of Indebtedness under this clause (e);
- (6) loans or advances made by a Loan Party to its employees, officers, or directors for travel and entertainment expenses, relocation costs, and other purposes up to a maximum of \$100,000 in the aggregate at any one time outstanding;
- (7) loans or advances made by a Loan Party to its employees, officers, or directors in connection with the granting or exercise of options and any payment of tax liabilities related thereto in connection with any employee benefit plans or stock option plans approved by the board of directors of Allbirds;
- (8) notes payable, or stock or other securities issued by Account Debtors to a Loan Party pursuant to negotiated agreements with respect to settlement of such Account Debtor's Accounts in the ordinary course of business, consistent with past practices;
- (9) investments in the form of Swap Agreements permitted by Section 6.07;
- (10) investments of any Person existing at the time such Person becomes a Subsidiary of a Loan Party or consolidates or merges with a Loan Party (including in connection with a Permitted Acquisition) so long as such investments were not made in contemplation of such Person becoming a Subsidiary or of such merger;

- (11) investments received in connection with Dispositions permitted by Section 6.05;
- (12) investments constituting deposits described in clause (c) and clause (d)(i) of the definition of the term "Permitted Encumbrances";
- (13) subject to the Payment Conditions being met, Permitted Acquisitions; and

(14) subject to the Payment Conditions being met, other Investments approved by the board of directors of Allbirds, subject to the Loan Parties' compliance with the USA PATRIOT Act, the Beneficial Ownership Regulations, and the terms of Section 5.01(q) and Section 5.02(k).

Section 6.05 Asset Sales. No Loan Party will Dispose of any asset, including any Equity Interest owned by it, nor will any Borrower permit any Subsidiary to issue any additional Equity Interest in such Subsidiary (other than to another Borrower or another Subsidiary in compliance with Section 6.04), except:

- (1) Dispositions of (i) Inventory for fair value and in the ordinary course of business and (ii) used, obsolete, worn out, or surplus equipment or property in the ordinary course of business;
- (2) Dispositions of assets to any Borrower or any Subsidiary, provided that any such Dispositions involving a Subsidiary that is not a Loan Party must be made in compliance with Section 6.09;
- (3) Dispositions of Accounts in connection with the compromise, settlement, or collection thereof;
- (4) Dispositions of Permitted Investments and other investments, other than Equity Interests of Domestic Subsidiaries, permitted by Section 6.04;
- (5) Sale and Leaseback Transactions permitted by Section 6.06;
- (6) Dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Borrower or any Subsidiary; and
- (7) Dispositions of assets (other than Equity Interests in a Domestic Subsidiary unless all Equity Interests in such Domestic Subsidiary are sold) that are not permitted by any other clause of this Section, provided that the aggregate fair market value of all assets Disposed of in reliance upon this clause (g) do not exceed \$5,000,000 during any fiscal year of Allbirds.

Section 6.06 Sale and Leaseback Transactions. No Loan Party will enter into any arrangement, directly or indirectly, whereby it sells or transfers any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred (a "Sale and Leaseback Transaction"), except for any such sale

of any fixed or capital assets by any Loan Party that is made for cash consideration in an amount not less than the fair value of such fixed or capital asset and that is consummated within 90 days after such Loan Party acquires or completes the construction of such fixed or capital asset.

Section 6.07 Swap Agreements. No Loan Party will enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which any Loan Party has actual exposure (other than those in respect of Equity Interests of any Loan Party) and (b) Swap Agreements entered into in order to effectively cap, collar, or exchange interest rates (from floating to fixed rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of any Loan Party.

Section 6.08 Restricted Payments: Certain Payments of Indebtedness.

(1) No Loan Party will declare or make, or agree to declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except (i) Allbirds may declare and pay dividends with respect to its common stock payable solely in additional shares of its common stock, and, with respect to its preferred stock, payable solely in additional shares of such preferred stock or in shares of its common stock, (ii) Subsidiaries may declare and pay dividends ratably with respect to their Equity Interests, and (iii) Allbirds may make other Restricted Payments subject to the satisfaction of the Payment Conditions.

(2) No Loan Party will make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities, or other property) of or in respect of principal of or interest on any Indebtedness, or any payment or other distribution (whether in cash, securities, or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation, or termination of any Indebtedness, except:

- (a) payment of Indebtedness created under the Loan Documents;
- (b) payment of regularly scheduled interest and principal payments as and when due in respect of any Indebtedness permitted under Section 6.01;
- (c) refinancings of Indebtedness to the extent permitted by Section 6.01;
- (d) payment of secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness; and
- (e) subject to satisfaction of the Payment Conditions (including on a pro forma basis after giving effect thereto), payment of other Indebtedness not otherwise permitted under this Section 6.08(b).

Section 6.09 Transactions with Affiliates. No Loan Party will sell, lease, or otherwise transfer any property or assets to, or purchase, lease, or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) transactions that (i) are in the ordinary course of business and (ii) are at prices and on terms

and conditions not less favorable to such Loan Party than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among any Loan Parties not involving any other Affiliate, (c) any investment permitted by [Section 6.04\(c\)](#), [Section 6.04\(d\)](#), or [Section 6.04\(e\)](#), (d) any Indebtedness permitted under [Section 6.01\(c\)](#), (e) any Restricted Payment permitted by [Section 6.08](#), (f) loans or advances to employees permitted under [Section 6.04](#),

(3) the payment of reasonable fees to directors of any Loan Party who are not employees of such Loan Party, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers, and employees of the Loan Parties in the ordinary course of business, and (h) any issuances of securities or other payments, awards, or grants in cash, securities, or otherwise pursuant to, or the funding of, employment agreements, stock options, and stock ownership plans approved by a Loan Party's board of directors.

Section 6.10 Restrictive Agreements. No Loan Party will, nor will it permit any Subsidiary to, directly or indirectly, enter into, incur, or permit to exist any agreement or other arrangement that prohibits, restricts, or imposes any condition upon (a) the ability of such Loan Party or any Subsidiary to create, incur, or permit to exist any Lien upon any of its property or assets or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any of its Equity Interests or to make or repay loans or advances to any Loan Party or any other Subsidiary or to Guarantee Indebtedness of any Loan Party or any other Subsidiary; provided that

(i) the foregoing will not apply to restrictions and conditions imposed by any Requirement of Law or by any Loan Document, (ii) the foregoing will not apply to restrictions and conditions existing on the date hereof identified on [Schedule 6.10](#) (but will apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing will not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided that, such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder, (iv) clause (a) preceding will not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, and (v) clause (a) preceding will not apply to customary provisions in leases and other contracts restricting the assignment thereof.

Section 6.11 Amendment of Material Documents. No Loan Party will, nor will it permit any Subsidiary to, amend, modify, or waive any of its rights under its charter, articles, or certificate of incorporation or organization, by-laws, operating, management or partnership agreement, or other organizational or governing documents to the extent any such amendment, modification, or waiver would be adverse to the Lenders.

Section 6.12 Financial Covenants.

(a) [reserved]

(b) **Fixed Charge Coverage Ratio.** The Loan Parties will not permit the Fixed Charge Coverage Ratio determined for the Loan Parties (excluding any Subsidiary that is not a Loan Party) on a consolidated basis, for the twelve month period ended as of the last day of any fiscal month of Allbirds during any applicable testing period, to be less than 1.00 to 1.00. As used in this [Section 6.13\(b\)](#), "applicable testing period" means the period

(i) beginning on the last day of the fiscal month ended immediately prior to the date (A) of the occurrence of any Event of Default or (B) that Availability is less than 10.0% of the

Aggregate Revolving Commitment and (ii) continuing through and including the last day of the fiscal month following the date that Availability has been greater than (or equal to) 10.0% of the Aggregate Revolving Commitment and no Event of Default has existed, in each case for a period of 30 consecutive days.

ARTICLE 7

Events of Default

If any of the following events ("Events of Default") occur:

(1) the Borrowers fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same becomes due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(2) the Borrowers fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement or any other Loan Document, when and as the same becomes due and payable, and such failure continues unremedied for a period of five Business Days;

(3) any representation or warranty made or deemed made by or on behalf of any Loan Party in, or in connection with, this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement, or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, proves to have been materially incorrect when made or deemed made;

(4) any Loan Party fails to observe or perform any covenant, condition, or agreement contained in Section 5.02(a), Section 5.03 (with respect to a Loan Party's existence), or Section 5.08 or in Article 6;

(5) any Loan Party fails to observe or perform any covenant, condition, or agreement contained in this Agreement (other than those that constitute a default under another Section of this Article), and such failure continues unremedied for a period of
(i) five days after the earlier of any Loan Party's knowledge of such breach or notice thereof from the Administrative Agent (which notice will be given at the request of any Lender) if such breach relates to terms or provisions of Section 5.01, Section 5.02 (other than Section 5.02(a)), Section 5.03 through Section 5.07, Section 5.10, Section 5.11, or Section 5.13 or
(ii) fifteen days after the earlier of any Loan Party's knowledge of such breach or notice thereof from the Administrative Agent (which notice will be given at the request of any Lender) if such breach relates to terms or provisions of any other Section of this Agreement;

(6) any Loan Party fails to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same becomes due and payable;

(7) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption, or defeasance thereof, prior to its scheduled maturity; provided that, this clause (g) will not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness to the extent such sale or transfer is permitted by Section 6.05;

(8) an involuntary proceeding is commenced or an involuntary petition is filed seeking (i) liquidation, reorganization, or other relief in respect of a Loan Party or its debts, or of a substantial part of its assets, under any federal, state, or foreign bankruptcy, insolvency, receivership, or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator, or similar official for any Loan Party or for a substantial part of its assets, and, in any such case, such proceeding or petition continues undismissed for 60 days or an order or decree approving or ordering any of the foregoing is entered;

(9) any Loan Party (i) voluntarily commences any proceeding or files any petition seeking liquidation, reorganization, or other relief under any Federal, state, or foreign bankruptcy, insolvency, receivership, or similar law now or hereafter in effect,

(ii) consents to the institution of, or fails to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) applies for or consents to the appointment of a receiver, trustee, custodian, sequestrator, conservator, or similar official for such Loan Party or for a substantial part of its assets, (iv) files an answer admitting the material allegations of a petition filed against it in any such proceeding,

(v) makes a general assignment for the benefit of creditors, or (vi) takes any action for the purpose of effecting any of the foregoing;

(10) any Loan Party becomes unable, admits in writing its inability, or publicly declares its intention not to, or fails generally to pay its debts as they become due;

(11) (i) one or more judgments for the payment of money, to the extent not covered by insurance or that the applicable insurance carrier has denied coverage or liability, in an aggregate amount in excess of \$10,000,000 are rendered against any Loan Party and the same remain undischarged for a period of 30 consecutive days during which execution is not effectively stayed, or any action is legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party to enforce any such judgment or (ii) any Loan Party fails within 30 days to discharge one or more non-monetary judgments or orders that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, which judgments or orders, in any such case, are not stayed on appeal or otherwise being appropriately contested in good faith by proper proceedings diligently pursued;

(12) an ERISA Event occurs that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be

expected to result in a Material Adverse Effect or liability of the Loan Parties in an aggregate amount exceeding \$1,000,000;

(13) a Change in Control occurs;

(14) the occurrence of any default or event of default, as specified in any Loan Document (other than this Agreement) or the breach of any of the terms or provisions of any Loan Document (other than this Agreement), which default, event of default, or breach continues beyond any period of grace therein provided;

(15) the Loan Guaranty fails to remain in full force or effect or any action is taken to discontinue or to assert the invalidity or unenforceability of the Loan Guaranty, or any Guarantor fails to comply with any of the terms or provisions of the Loan Guaranty to which it is a party, or any Guarantor denies that it has any further liability under the Loan Guaranty to which it is a party, or gives notice to such effect, including notice of termination delivered pursuant to [Section 10.08](#);

(16) except as permitted by the terms of any Collateral Document, (i) any Collateral Document for any reason fails to create a valid security interest in any Collateral purported to be covered thereby or (ii) any Lien securing any Secured Obligation ceases to be a perfected, first priority (subject to the terms of this Agreement and the Security Agreement) Lien;

(17) this Agreement or any Collateral Document fails to remain in full force or effect or any action is taken to discontinue or to assert the invalidity or unenforceability of this Agreement or any Collateral Document; or

(18) any material provision of any Loan Document for any reason ceases to be valid, binding, and enforceable in accordance with its terms (or any Loan Party challenges the enforceability of any Loan Document or asserts in writing, or engages in any action or inaction that evidences its assertion, that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding, and enforceable in accordance with its terms);

then, and in every such event (other than an event with respect to any Loan Party described in [clause \(h\)](#) or [clause \(i\)](#) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders will, by notice to the Borrower Representative, take any or all of the following actions, at the same or different times:

(i) terminate the Commitments (including the Swingline Commitment), whereupon the Commitments will terminate immediately; (ii) declare the Loans then outstanding to be due and payable in whole (or in part, but ratably as among the Classes of Loans and the Loans of each Class at the time outstanding, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees ([including any break funding payments](#)) and other obligations of the Loan Parties accrued hereunder, will become due and payable immediately, in each case without presentment, demand, protest, or other notice of any kind, all of which are hereby waived by the Loan Parties; and (iii) require cash collateral for the LC Exposure in accordance with [Section 2.06\(j\)](#); and in the case of any event with respect

to any Loan Party in clause (h) or clause (i) of this Article, the Commitments (including the Swingline Commitment) will automatically terminate and the principal of the Loans then outstanding and the cash collateral for the LC Exposure, together with accrued interest thereon and all fees (including any break funding payments) and other obligations of the Loan Parties accrued hereunder, will automatically become due and payable, in each case without presentment, demand, protest, or other notice of any kind, all of which are hereby waived by the Loan Parties. During the existence of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders will, increase the rate of interest applicable to the Loans and other Obligations as set forth in this Agreement and exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

ARTICLE 8

The Administrative Agent

Section 8.01 Authorization and Action.

(1) Each Lender, on behalf of itself and any of its Affiliates that are Secured Parties, and ~~the~~ each Issuing Bank hereby irrevocably appoints the entity named as the Administrative Agent in the heading of this Agreement and its successors and assigns to serve as the administrative agent and collateral agent under the Loan Documents and each Lender and ~~the~~ each Issuing Bank authorizes the Administrative Agent to take such actions as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent under such agreements and to exercise such powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than within the U.S., each Lender and ~~the~~ each Issuing Bank hereby grants to the Administrative Agent any required powers of attorney to execute and enforce any Collateral Document governed by the laws of such jurisdiction on such Lender's or such Issuing Bank's behalf. Without limiting the foregoing, each Lender and ~~the~~ each Issuing Bank hereby authorizes the Administrative Agent to execute and deliver, and to perform its obligations under, each of the Loan Documents to which the Administrative Agent is a party, to exercise all rights, powers, and remedies that the Administrative Agent may have under such Loan Documents.

(2) As to any matters not expressly provided for herein and in the other Loan Documents (including enforcement or collection), the Administrative Agent will not be required to exercise any discretion or take any action, but will be required to act or to refrain from acting (and will be fully protected in so acting or refraining from acting) upon the written instructions of the Required Lenders (or such other number or percentage of the Lenders as may be necessary, pursuant to the terms in the Loan Documents), and, unless and until revoked in writing, such instructions will be binding upon each Lender and ~~the~~ each Issuing Bank; provided that the Administrative Agent will not be required to take any action that (i) the Administrative Agent reasonably believes exposes it to liability unless the Administrative Agent receives an indemnification satisfactory to it from the Lenders and the Issuing ~~Bank Banks~~ with respect to such action or (ii) is contrary to this Agreement or any other Loan Document or applicable law, including any action that may be in violation of the automatic stay under any requirement of law relating to bankruptcy,

insolvency or reorganization, or relief of debtors or that may effect a forfeiture, modification, or termination of property of a Defaulting Lender in violation of any requirement of law relating to bankruptcy, insolvency or reorganization, or relief of debtors; provided, further, that the Administrative Agent may seek clarification or direction from the Required Lenders prior to the exercise of any such instructed action and may refrain from acting until such clarification or direction has been provided. Except as expressly set forth in the Loan Documents, the Administrative Agent will not have any duty to disclose, and will not be liable for the failure to disclose, any information relating to any Loan Party or any Affiliate of any Loan Party that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity. Nothing in this Agreement will require the Administrative Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it has reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(3) In performing its functions and duties hereunder and under the other Loan Documents, the Administrative Agent is acting solely on behalf of the Lenders and the Issuing ~~Bank~~ Banks (except in limited circumstances expressly provided for herein relating to the maintenance of the Register), and the Administrative Agent's duties are entirely mechanical and administrative in nature. Without limiting the generality of the foregoing:

(a) the Administrative Agent does not assume and will not be deemed to have assumed any obligation or duty or any other relationship as the agent, fiduciary, or trustee of or for any Lender, any Issuing Bank, or any other Secured Party or holder of any other obligation other than as expressly set forth herein and in the other Loan Documents, regardless of whether a Default or an Event of Default has occurred and is continuing (and it is understood and agreed that the use of the term "agent" (or any similar term) herein or in any other Loan Document with reference to the Administrative Agent is not intended to connote any fiduciary duty or other implied (or express) obligations arising under agency doctrine of any applicable law, and that such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties); additionally, each Lender agrees that it will not assert any claim against the Administrative Agent based on an alleged breach of fiduciary duty by the Administrative Agent in connection with this Agreement and the transactions contemplated hereby; and

(b) nothing in this Agreement or any Loan Document will require the Administrative Agent to account to any Lender for any sum or the profit element of any sum received by the Administrative Agent for its own account.

(4) The Administrative Agent may perform any of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any of their respective duties and exercise their respective rights and powers through their respective Related Parties. The exculpatory provisions of this Article will apply to any such sub-agent and to the Related Parties of the

Administrative Agent and any such sub-agent, and will apply to their respective activities pursuant to this Agreement. The Administrative Agent will not be responsible for the negligence or misconduct of any sub agent except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

(5) Other than the Administrative Agent, no other “syndication agent”, “documentation agent”, or any “arranger” (or any other similar title granted to any Lender) will have obligations or duties whatsoever in such capacity under this Agreement or any other Loan Document and will incur no liability hereunder or thereunder in such capacity, but all such persons will have the benefit of the indemnities provided for hereunder.

(6) In case of the pendency of any proceeding with respect to any Loan Party under any federal, state, or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, the Administrative Agent (irrespective of whether the principal of any Loan or any reimbursement obligation in respect of any LC Disbursement is then due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent has made any demand on any Borrower) will be entitled and empowered (but not obligated) 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, LC Disbursements, and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing [BankBanks](#), and the Administrative Agent (including any claim under [Section 2.12](#), [Section 2.13](#), [Section 2.15](#), [Section 2.17](#), and [Section 9.03](#)) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator, or other similar official in any such proceeding is hereby authorized by each Lender, ~~the~~ [each](#) Issuing Bank, and each other Secured Party to make such payments to the Administrative Agent and, in the event that the Administrative Agent consents to the making of such payments directly to the Lenders, the Issuing [BankBanks](#), or the other Secured Parties, to pay to the Administrative Agent any amount due to it, in its capacity as the Administrative Agent, under the Loan Documents (including under [Section 9.03](#)). Nothing contained herein will be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment, or composition affecting the Obligations or the rights of any Lender or Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Bank in any such proceeding.

(7) The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders, and the Issuing [BankBanks](#), and, except solely to the extent of the Loan Parties' right to consent pursuant to and subject to the conditions set forth in this Article, no Loan Party nor any of their respective Affiliates, will have any rights as a third party

beneficiary under any such provisions. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Secured Obligations provided under the Loan Documents, to have agreed to the provisions of this Article.

Section 8.02 Administrative Agent's Reliance, Indemnification, Etc.

(1) Neither the Administrative Agent nor any of its Related Parties will be

(1) liable for any action taken or omitted to be taken by it under or in connection with this Agreement or the other Loan Documents (y) with the consent of or at the request of the Required Lenders (or such other number or percentage of the Lenders as may be necessary, or as the Administrative Agent may reasonably believe to be necessary, under the circumstances as provided in the Loan Documents) or (z) in the absence of its own gross negligence or willful misconduct (such absence to be presumed unless otherwise determined by a court of competent jurisdiction by a final and nonappealable judgment) or

(2) responsible in any manner to any of the Lenders for any recitals, statements, representations, or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement, or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability, or sufficiency of this Agreement or any other Loan Document (including in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by facsimile, emailed pdf, or any other electronic means that reproduces an image of an actual executed signature page) or for any failure of any Loan Party to perform its obligations hereunder or thereunder.

(2) The Administrative Agent will be deemed not to have knowledge of any

(i) notice of any of the events or circumstances set forth or described in Section 5.02 unless and until written notice thereof stating that it is a "notice under Section 5.02" in respect of this Agreement and identifying the specific clause under said Section is given to the Administrative Agent by the Borrower Representative or (ii) notice of any Default or Event of Default unless and until written notice thereof (stating that it is a "notice of ~~default~~ Default" or a "notice of an Event of Default") is given to the Administrative Agent by the Borrower Representative, a Lender, or ~~the an~~ Issuing Bank. Further, and the Administrative Agent will not be responsible for or have any duty to ascertain or inquire into (iA) any statement, warranty, or representation made in or in connection with any Loan Document, (iiB) the contents of any certificate, report, or other document delivered thereunder or in connection therewith, (iiiC) the performance or observance of any of the covenants, agreements, or other terms or conditions set forth in any Loan Document or the occurrence of any Default, (iv or Event of Default, (D) the sufficiency, validity, enforceability, effectiveness, or genuineness of any Loan Document or any other agreement, instrument, or document, (vE) the satisfaction of any condition set forth in Article 4 or elsewhere in any Loan Document, other than to confirm receipt of items (which on their face purport to be such items), expressly required to be delivered to the Administrative Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent, or (viE) the creation, perfection, or priority of Liens on the Collateral.

(3) Without limiting the foregoing, the Administrative Agent (i) may treat the payee of any promissory note as its holder until such promissory note has been assigned in accordance with [Section 9.04](#), (ii) may rely on the Register to the extent set forth in [Section 9.04\(b\)](#), (iii) may consult with legal counsel (including counsel to the Borrowers), independent public accountants and other experts selected by it, and will not be liable for any action taken or omitted to be taken reasonably by it in accordance with the advice of such counsel, accountants, or experts, (iv) makes no warranty or representation to any Lender or Issuing Bank and will not be responsible to any Lender or Issuing Bank for any statements, warranties, or representations made by or on behalf of any Loan Party in connection with this Agreement or any other Loan Document, (v) in determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent has received notice to the contrary from such Lender or Issuing Bank sufficiently in advance of the making of such Loan or the issuance of such Letter of Credit, and (vi) will be entitled to rely on, and will incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any notice, consent, certificate, or other instrument or writing (which writing may be a fax, any electronic message, Internet or intranet website posting, or other distribution) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated by the proper party or parties (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

Section 8.03 Posting of Communications.

(1) The Loan Parties agree that the Administrative Agent may, but will not be obligated to, make any Communications available to the Lenders and the Issuing ~~Bank~~ Banks by posting the Communications on IntraLinks™, DebtDomain, SyndTrak, ClearPar, or any other electronic system chosen by the Administrative Agent to be its electronic transmission system (the “Approved Electronic Platform”).

(2) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Effective Date, a user ID/password authorization system) and the Approved Electronic Platform is secured through a per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, ~~the~~ each Issuing Bank, and each Loan Party acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure, that the Administrative Agent is not responsible for approving or vetting the representatives or contacts of any Lender that are added to the Approved Electronic Platform, and that there are confidentiality and other risks associated with such distribution. Each of the Lenders, ~~the~~ each Issuing Bank, and each Loan Party hereby approves distribution of the Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(3) THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS ARE PROVIDED “AS IS” AND “AS AVAILABLE”. THE

APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT WILL THE ADMINISTRATIVE AGENT, ANY ARRANGER, ANY DOCUMENTATION AGENT, SYNDICATION AGENT, OR ANY OF THEIR RESPECTIVE RELATED PARTIES (INCLUDING ANY OTHER TITLE THAT MAY BE GIVEN TO ANY SECURED PARTY HERETO, COLLECTIVELY, THE "APPLICABLE PARTIES") HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER, ANY ISSUING BANK, OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, LOSSES, OR EXPENSES (WHETHER IN TORT, CONTRACT, OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET OR THE APPROVED ELECTRONIC PLATFORM.

"Communications" means, collectively, any notice, demand, communication, information, document, or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein that is distributed by the Administrative Agent, any Lender, or [any](#) Issuing Bank by means of electronic communications pursuant to this Section, including through an Approved Electronic Platform.

(4) Each Lender and Issuing Bank agrees that notice to it (as provided in the next sentence) specifying that Communications have been posted to the Approved Electronic Platform will constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender and Issuing Bank agrees (i) to notify the Administrative Agent in writing (which could be in the form of electronic communication) from time to time of such Lender's or Issuing Bank's (as applicable) email address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such email address.

(5) Each of the Lenders, [each](#) Issuing Bank, and each Loan Party agrees that the Administrative Agent may, but (except as may be required by applicable law) will not be obligated to, store the Communications on the Approved Electronic Platform in accordance with the Administrative Agent's generally applicable document retention procedures and policies.

(6) Nothing herein will prejudice the right of the Administrative Agent, any Lender, or [any](#) Issuing Bank to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

Section 8.04 The Administrative Agent Individually; Reliance. With respect to its Commitment, Loans, and Letters of Credit, the Person serving as the Administrative Agent will have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or Issuing Bank, as the case may be. The terms "Issuing Bank", "Lenders", "Required Lenders", and any similar terms will, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity as a Lender, Issuing Bank, or as one of the Required Lenders, as applicable. The Person serving as the Administrative Agent and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust, or other business with, any Loan Party, any Subsidiary, or any Affiliate of any of the foregoing as if such Person was not acting as the Administrative Agent and without any duty to account therefor to the Lenders or the Issuing ~~Bank~~Banks.

Section 8.05 Successor Administrative Agent.

(1) The Administrative Agent may resign at any time by giving 30 days prior written notice thereof to the Lenders, the Issuing ~~Bank~~Banks, and the Borrower Representative, whether or not a successor Administrative Agent has been appointed. Upon any such resignation, the Required Lenders will have the right, to appoint a successor Administrative Agent. If no successor Administrative Agent has been so appointed by the Required Lenders and has accepted such appointment within 30 days after the retiring Administrative Agent's giving of notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing ~~Bank~~Banks, appoint a successor Administrative Agent that must be a bank with an office in New York, New York or an Affiliate of any such bank. In either case, such appointment will be subject to the prior written approval of the Borrower Representative (which approval may not be unreasonably withheld and will not be required while an Event of Default has occurred and is continuing). Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent, such successor Administrative Agent will succeed to and become vested with, all the rights, powers, privileges, and duties of the retiring Administrative Agent. Upon the acceptance of appointment as Administrative Agent by a successor Administrative Agent, the retiring Administrative Agent will be discharged from its duties and obligations under this Agreement and the other Loan Documents. Prior to any retiring Administrative Agent's resignation hereunder as Administrative Agent, the retiring Administrative Agent will take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Loan Documents.

(2) Notwithstanding clause (a) preceding, in the event no successor Administrative Agent has been so appointed and has accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the effectiveness of its resignation to the Lenders, the Issuing ~~Bank~~Banks, and the Borrowers, whereupon, on the date of effectiveness of such resignation stated in such notice, (i) the retiring Administrative Agent will be discharged from its duties and obligations hereunder and under the other Loan Documents; provided that, solely for purposes of maintaining any security interest granted to the Administrative Agent under any Collateral Document for the benefit of the Secured Parties, the retiring Administrative Agent will continue to be vested with such security interest as collateral

agent for the benefit of the Secured Parties and continue to be entitled to the rights set forth in such Collateral Document and Loan Document, and, in the case of any Collateral in the possession of the Administrative Agent, will continue to hold such Collateral, in each case until such time as a successor Administrative Agent is appointed and accepts such appointment in accordance with this Section (it being understood and agreed that the retiring Administrative Agent will have no duty or obligation to take any further action under any Collateral Document, including any action required to maintain the perfection of any such security interest), and (ii) the Required Lenders will succeed to and become vested with all the rights, powers, privileges, and duties of the retiring Administrative Agent; provided that (A) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent must be made directly to such Person and (B) all notices and other communications required or contemplated to be given or made to the Administrative Agent must be given or made directly to each Lender and Issuing Bank. Following the effectiveness of the Administrative Agent's resignation from its capacity as such, the provisions of this Article, Section 2.17(d), and Section 9.03, as well as any exculpatory, reimbursement, and indemnification provisions set forth in any other Loan Document, will continue in effect for the benefit of such retiring Administrative Agent, its sub agents, and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent and in respect of the matters referred to in the proviso under clause (a), preceding.

Section 8.06 Acknowledgements of the Lenders and Issuing Bank.

(1) Each Lender and each Issuing Bank represents ~~that~~ and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility, (ii) it is engaged in making, acquiring, or holding commercial loans and in providing other facilities set forth herein as may be applicable to such Lender or Issuing Bank, in each case in the ordinary course of its business and that, and not for the purpose of purchasing, acquiring, or holding any other type of financial instrument (and each Lender and each Issuing Bank agrees not to assert a claim in contravention of the foregoing), (iii) it has, independently and without reliance upon the Administrative Agent, any Arranger, any Syndication Agent, any Co-Documentation Agent, or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire, or hold Loans hereunder. Each Lender, and (iv) it is sophisticated with respect to decisions to make, acquire, and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such Issuing Bank, and either it, or the Person exercising discretion in making its decision to make, acquire, and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring, or holding such commercial loans or providing such other facilities. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Arranger, any Syndication Agent, any Co-Documentation Agent, or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and information (which may contain material, non-public information within the meaning of the U.S. securities laws concerning the Loan Parties and their Affiliates) as it may from

time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document, or any related agreement or any document furnished hereunder or thereunder.

(2) Each Lender, by delivering its signature page to this Agreement on the Effective Date, or delivering its signature page to an Assignment and Assumption or any other Loan Document pursuant to which it becomes a Lender hereunder, will be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Effective Date or the effective date of any such Assignment and Assumption or any other Loan Document pursuant to which it may have become a Lender hereunder.

(3) Each Lender hereby agrees that: (i) it has requested a copy of each Report prepared by or on behalf of the Administrative Agent; (ii) the Administrative Agent (A) makes no representation or warranty, express or implied, as to the completeness or accuracy of any Report or any of the information contained therein or any inaccuracy or omission contained in or relating to a Report and (B) will not be liable for any information contained in any Report; (iii) the Reports are not comprehensive audits or examinations, and that any Person performing any field examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel and that the Administrative Agent undertakes no obligation to update, correct, or supplement the Reports; (iv) it will keep all Reports confidential and strictly for its internal use, not share the Report with any Loan Party or any other Person except as otherwise permitted pursuant to this Agreement; and (v) without limiting the generality of any other indemnification provision contained in this Agreement, (A) it will hold the Administrative Agent and any such other Person preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any extension of credit that the indemnifying Lender has made or may make to ~~the~~ a Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (B) it will pay and protect, and indemnify, defend, and hold the Administrative Agent and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorneys' fees) incurred by the Administrative Agent or any such other Person as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

(4)

(a) Each Lender hereby agrees that (y) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment, or repayment of principal, interest, fees, or otherwise; individually and collectively, a "Payment") were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender will promptly, but in no event later than one Business Day thereafter, return

to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect and (z) to the extent permitted by applicable law, such Lender will not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense, or right of set-off or recoupment with respect to any demand, claim, or counterclaim by the Administrative Agent for the return of any Payments received, including any defense based on "discharge for value" or any similar doctrine. A notice of the Administrative Agent to any Lender under this Section 8.06(d) will be conclusive, absent manifest error.

(b) Each Lender hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (y) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a "Payment Notice") or (z) that was not preceded or accompanied by a Payment Notice, such Lender will be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender will promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, such Lender will promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(c) Each Borrower and each other Loan Party hereby agrees that (y) in the event an erroneous Payment (or portion thereof) is not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent will be subrogated to all the rights of such Lender with respect to such amount and (z) an erroneous Payment will not pay, prepay, repay, discharge, or otherwise satisfy any Obligations owed by any Borrower or any other Loan Party.

(d) Each party's obligations under this Section 8.06(d) will survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments, or the repayment, satisfaction or discharge of all Obligations under any Loan Document.

Section 8.07 Collateral Matters.

(1) Except with respect to the exercise of setoff rights in accordance with Section 9.08 or with respect to a Secured Party's right to file a proof of claim in an insolvency proceeding, no Secured Party will have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Secured Obligations, it being understood and agreed that all powers, rights, and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms thereof. In its capacity, the Administrative Agent is a "representative" of the Secured Parties within the meaning of the term "secured party" as defined in the UCC. In the event that any Collateral is hereafter pledged by any Person as collateral security for the Secured Obligations, the Administrative Agent is hereby authorized, and hereby granted a power of attorney, to execute and deliver on behalf of the Secured Parties any Loan Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of the Administrative Agent on behalf of the Secured Parties.

(2) In furtherance of the foregoing and not in limitation thereof, no arrangements in respect of Banking Services the obligations under which constitute Secured Obligations and no Swap Agreement the obligations under which constitute Secured Obligations, will create (or be deemed to create) in favor of any Secured Party that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Loan Party under any Loan Document. By accepting the benefits of the Collateral, each Secured Party that is a party to any such arrangement in respect of Banking Services or Swap Agreement, as applicable, will be deemed to have appointed the Administrative Agent to serve as administrative agent and collateral agent under the Loan Documents and agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this clause (b).

(3) The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion, to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(b). The Administrative Agent will not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value, or collectability of the Collateral, the existence, priority, or perfection of the Administrative Agent's Lien thereon or any certificate prepared by any Loan Party in connection therewith, nor will the Administrative Agent be responsible or liable to the Lenders or any other Secured Party for any failure to monitor or maintain any portion of the Collateral.

Section 8.08 Credit Bidding. The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including by accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar laws in any other jurisdictions to which a Loan Party is subject, or (b) at any other sale, foreclosure, or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the

Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties will be entitled to be, and will be, credit bid by the Administrative Agent at the direction of the Required Lenders on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that will vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid (i) the Administrative Agent will be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles, (ii) each of the Secured Parties' ratable interests in the Obligations that were credit bid will be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (iii) the Administrative Agent will be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or equity interests thereof, will be governed, directly or indirectly, by, and the governing documents will provide for, control by the vote of the Required Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in [Section 9.02](#) of this Agreement), (iv) the Administrative Agent on behalf of such acquisition vehicle or vehicles will be authorized to issue to each of the Secured Parties, ratably on account of the relevant Obligations which were credit bid, interests, whether as equity, partnership [interests](#), limited partnership interests, or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured Party or acquisition vehicle to take any further action, and (v) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of Obligations credit bid by the acquisition vehicle or otherwise), such Obligations will automatically be reassigned to the Secured Parties pro rata with their original interest in such Obligations and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations will automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Obligations of each Secured Party are deemed assigned to the acquisition vehicle or vehicles as set forth in [clause \(ii\)](#) preceding, each Secured Party will execute such documents and provide such information regarding the Secured Party (and/or any designee of the Secured Party that will receive interests in or debt instruments issued by such acquisition vehicle) as the Administrative Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid, or the consummation of the transactions contemplated by such credit bid.

Section 8.09 [Certain ERISA Matters](#).

(1) Each Lender (y) represents and warrants, as of the date such Person became a Lender party hereto, to, and (z) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of,

the Administrative Agent, and each Arranger, and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that at least one of the following is and will be true:

(a) such Lender is not using “plan assets” (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments;

(b) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds), or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of, and performance of the Loans, the Letters of Credit, the Commitments, and this Agreement, ~~and the conditions for exemptive relief thereunder are and will continue to be satisfied in connection therewith;~~

(c) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer, and perform the Loans, the Letters of Credit, the Commitments, and this Agreement, (C) the entrance into, participation in, administration of, and performance of the Loans, the Letters of Credit, the Commitments, and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14, and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84- 14 are satisfied with respect to such Lender’s entrance into, participation in, administration of, and performance of the Loans, the Letters of Credit, the Commitments, and this Agreement; or

(d) such other representation, warranty, and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(2) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has ~~not~~ provided another representation, warranty, and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (y) ~~represents and warrants~~, as of the date such Person became a Lender party hereto, ~~to~~, represents and warrants to and (z) ~~covenants~~, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, covenants, in each case for the benefit of: the Administrative Agent, and each Arranger, and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that: none of the Administrative Agent, any Arranger, any Syndication Agent, any Co-Documentation Agent, or any of their

respective Affiliates is a fiduciary with respect to the Collateral or the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document, or any documents related to hereto or thereto).

(a) none of the Administrative Agent, or any Arranger, or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any ~~documents related to hereto or thereto~~);

(b) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of, and performance of the Loans, the Letters of Credit, the Commitments, and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21, as amended from time to time) and is a bank, an insurance carrier, an investment adviser, a broker-dealer, or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR §2510.3-~~21(c)(1)(i)(A)-(E)~~;

(c) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of, and performance of the Loans, the Letters of Credit, the Commitments, and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in ~~respect of the Obligations~~);

(d) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of, and performance of the Loans, the Letters of Credit, the Commitments, and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Letters of Credit, the Commitments, and this Agreement and is responsible for exercising independent judgment in evaluating the transactions ~~hereunder, and~~

(e) no fee or other compensation is being paid directly to the Administrative Agent, or any Arranger, or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the ~~Letters of Credit, the Commitments, or this Agreement.~~

(3)= The Administrative Agent; and each Arranger, Syndication Agent, and Co-Documentation Agent hereby informs the Lenders that each such Person is not undertaking to provide ~~impartial~~ investment advice; or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof

(i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments, ~~and~~ this Agreement, and any other Loan Documents, (ii) may recognize a gain if it extended the Loans, the Letters of Credit, or the Commitments for an amount

less than the amount being paid for an interest in the Loans, the Letters of Credit, or the Commitments by such Lender, or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents, or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees, or fees similar to the foregoing.

Section 8.10 Flood Laws. JPMCB has adopted internal policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and related legislation (the "Flood Laws"). JPMCB, as administrative agent or collateral agent on a syndicated facility, will post on the applicable electronic platform (or otherwise distribute to each Lender in the syndicate) documents that it receives in connection with the Flood Laws. However, JPMCB reminds each Lender and Participant in the facility that, pursuant to the Flood Laws, each federally regulated Lender (whether acting as a Lender or Participant in the facility) is responsible for assuring its own compliance with the flood insurance requirements.

ARTICLE 9

Miscellaneous

Section 9.01 Notices.

(1) Except in the case of notices and other communications expressly permitted to be given by telephone or Electronic Systems (and subject in each case to clause (b) following), all notices and other communications provided for herein must be in writing and be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

- if to any Loan Party, to the Borrower Representative at: Allbirds, Inc.

730 Montgomery Street
San Francisco, California 94111 Attention: Joey Zwillinger Email: joey@allbirds.com

- if to the Administrative Agent, JPMCB in its capacity as an Issuing Bank, or the Swingline Lender, to JPMorgan Chase Bank, N.A. at:

JPMorgan Chase Bank, N.A. 3 Park Plaza, Suite 900
Irvine, California 92614
Attention: Portfolio Manager – Allbirds Facsimile No: (949) 833-4524

- if to any other Lender or Issuing Bank, to it at its address or facsimile number set forth in its Administrative Questionnaire.

All such notices and other communications (i) sent by hand or overnight courier service, or mailed by certified or registered mail, will be deemed to have been given when received, (ii) sent by facsimile will be deemed to have been given when sent, provided that, if not given during normal business hours of the recipient, such notice or communication will be deemed to have been given at the opening of business on the next Business Day of the recipient, or (iii) delivered through Electronic Systems or Approved Electronic Platforms, as applicable, to the extent provided in clause (b), following will be effective as provided in such clause.

(2) Notices and other communications to any Borrower, any Loan Party, the Lenders, and the Issuing Banks hereunder may be delivered or furnished by using Electronic Systems or Approved Electronic Platforms, as applicable, or pursuant to procedures approved by the Administrative Agent; provided that the foregoing will not apply to notices pursuant to Article 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent and the Borrower Representative (on behalf of the Loan Parties) may, in its discretion, agree to accept notices and other communications to it hereunder by Electronic Systems or Approved Electronic Platforms, as applicable, pursuant to procedures approved by it; provided that, approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise proscribes, all such notices and other communications

(i) sent to an e-mail address will 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 not given during the normal business hours of the recipient, such notice or communication will be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) posted to an Internet or intranet website will be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clause (i) and clause (ii) preceding, if such notice, e-mail, or other communication is not sent during the normal business hours of the recipient, such notice or communication will be deemed to have been sent at the opening of business on the next Business Day of the recipient.

- (3) Any party hereto may change its address, facsimile number, or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

Section 9.02 Waivers; Amendments.

(1) No failure or delay by the Administrative Agent, ~~the any~~ Issuing Bank, or any Lender in exercising any right or power hereunder or under any other Loan Document will operate as a waiver thereof, nor will any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing ~~Bank~~Banks, and the

Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom will in any event be effective unless the same is permitted by [Section 9.02\(b\)](#), and then such waiver or consent will be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit will not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender, or ~~the~~ [any](#) Issuing Bank may have had notice or knowledge of such Default at the time.

(2) Except as provided in the first sentence of [Section 2.09\(f\)](#) (with respect to any commitment increase) and subject to [Section 2.14\(c\)](#), [Section 2.14\(d\)](#), [Section 2.14\(e\)](#), and [Section 9.02\(e\)](#), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended, or modified except (x) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders or (y) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, with the consent of the Required Lenders; provided that, no such agreement will (i) increase the Commitment of any Lender without the written consent of such Lender (including any such Lender that is a Defaulting Lender), (ii) reduce or forgive the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce or forgive any interest or fees payable hereunder, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby (provided that any amendment or modification of the financial covenants in this Agreement (or any defined term used therein) will not constitute a reduction in the rate of interest or fees for purposes of this [clause \(ii\)](#)), (iii) postpone any scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any date for the payment of any interest, fees, or other Obligations payable hereunder, or reduce the amount of, waive, or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby, (iv) change [Section 2.09\(d\)](#), [Section 2.18\(b\)](#), or [Section 2.18\(d\)](#) in a manner that would alter the ratable reduction of Commitments or the manner in which payments are shared, without the written consent of each Lender (other than any Defaulting Lender), (v) increase the advance rates set forth in the definition of Borrowing Base or add new categories of eligible assets, without the written consent of each Lender (other than any Defaulting Lender), (vi) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend, or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (other than any Defaulting Lender) directly affected thereby, (vii) change [Section 2.20](#) without the consent of each Lender (other than any Defaulting Lender), (viii) release any Loan Guarantor from its obligation under its Loan Guaranty or any other guarantor (if any) under any Obligation Guaranty (except as otherwise permitted herein or in the other Loan Documents), without the written consent of each Lender (other than any Defaulting Lender), or (ix) except as provided in [clause \(c\)](#) of this Section or in any Collateral Document, release all or substantially all of the

Collateral, without the written consent of each Lender (other than any Defaulting Lender); provided, further, that no such agreement will amend, modify, or otherwise affect the rights or duties of the Administrative Agent, the Issuing Bank, or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, the Issuing Bank, or the Swingline Lender, as the case may be (it being understood that any amendment to Section 2.20 will require the consent of the Administrative Agent, the Issuing Bank, and the Swingline Lender); provided, further, that no such agreement will amend or modify the provisions of Section 2.07 2.06 or any letter of credit application and any bilateral agreement between the Borrower Representative and ~~the each~~ Issuing Bank regarding ~~the such~~ Issuing Bank's Issuing Bank Sublimit or the respective rights and obligations between the Borrower and ~~the such~~ Issuing Bank in connection with the issuance of Letters of Credit without the prior written consent of the Administrative Agent and the Issuing ~~Bank~~Banks, respectively. The Administrative Agent may also amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.04. Any amendment, waiver, or other modification of this Agreement or any other Loan Document that by its terms affects the rights or duties under this Agreement of the Lenders of one or more Classes (but not the Lenders of any other Class), may be effected by an agreement or agreements in writing entered into by the Borrowers and the requisite number or percentage in interest of each affected Class of Lenders that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time.

(3) The Lenders and the Issuing ~~Bank~~Banks hereby irrevocably authorize the Administrative Agent, at its option and in its sole discretion, to release any Liens granted to the Administrative Agent by the Loan Parties on any Collateral (i) upon Payment in Full of all Secured Obligations and cash collateralization of all Unliquidated Obligations in a manner satisfactory to each affected Lender, (ii) constituting property being Disposed of if the Loan Party Disposing of such property certifies to the Administrative Agent that the Disposition is made in compliance with the terms of this Agreement (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry), and to the extent that the property being Disposed of constitutes 100% of the Equity Interests of a Subsidiary, the Administrative Agent is authorized to release any Loan Guaranty provided by such Subsidiary, (iii) constituting property leased to a Loan Party under a lease that has expired or been terminated in a transaction permitted under this Agreement, or (iv) as required to effect any Disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to Article 7. Except as provided in the preceding sentence, the Administrative Agent will not release any Liens on Collateral without the prior written authorization of the Required Lenders; provided that, the Administrative Agent may in its discretion, release its Liens on Collateral valued in the aggregate not in excess of 10.0% of the Revolving Commitment during any calendar year without the prior written authorization of the Required Lenders (it being agreed that the Administrative Agent may rely conclusively on one or more certificates of the Borrowers as to the value of any Collateral to be so released, without further inquiry). Any such release will not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any Disposition, all of which will continue to constitute part of the Collateral.

Any execution and delivery by the Administrative Agent of documents in connection with any such release will be without recourse to or warranty by the Administrative Agent.

(4) If, in connection with any proposed amendment, waiver, or consent requiring the consent of “each Lender” or “each Lender affected thereby,” the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but has not been obtained being referred to herein as a “Non-Consenting Lender”), then the Borrowers may elect to replace a Non-Consenting Lender as a Lender party to this Agreement, provided that, concurrently with such replacement, (i) another bank or other entity that is reasonably satisfactory to the Borrowers, the Administrative Agent, and the Issuing ~~Bank agrees~~Banks agree, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 9.04, and (ii) the Borrowers will pay to such Non-Consenting Lender in same day funds on the day of such replacement (A) all interest, fees, and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrowers hereunder to and including the date of termination, including payments due to such Non-Consenting Lender under Section 2.15 and Section 2.17, and (B) an amount, if any, equal to the payment that would have been due to such Lender on the day of such replacement under Section 2.16 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender. Each party hereto agrees that (y) an assignment required pursuant to this clause may be effected pursuant to an Assignment and Assumption executed by the Borrower Representative, the Administrative Agent, and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants) and (z) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and will be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided, further, that any such documents will be without recourse to or warranty by the parties thereto.

(5) Notwithstanding anything to the contrary herein the Administrative Agent may, with the consent of the Borrower Representative only, amend, modify, or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect, or inconsistency.

Section 9.03 Expenses; Indemnity; Damage Waiver.

(1) The Loan Parties will, jointly and severally, pay all (x) reasonable out-of- pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges, and disbursements of counsel for the Administrative Agent, in connection with the syndication and distribution (including via the internet or through any Electronic System or Approved Electronic Platform) of the credit facilities provided for herein, the preparation and administration of the Loan Documents and any amendments,

modifications, or waivers of the provisions of the Loan Documents (whether or not the transactions contemplated hereby or thereby are consummated), (y) reasonable out-of-pocket expenses incurred by ~~the any~~ Issuing Bank in connection with the issuance, amendment, renewal, or extension of any Letter of Credit or any demand for payment thereunder, and (z) out-of-pocket expenses incurred by the Administrative Agent, ~~the any~~ Issuing Bank, or any Lender, including the fees, charges, and disbursements of any counsel or other advisors or other professionals for the Administrative Agent, ~~the any~~ Issuing Bank, or any Lender, in connection with the enforcement, collection, or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring, or negotiations in respect of such Loans or Letters of Credit. Expenses being reimbursed by the Loan Parties under this Section include, without limiting the generality of the foregoing, fees, costs, and expenses incurred in connection with:

- (a) appraisals and insurance reviews;
- (b) field examinations and the preparation of Reports based on the fees charged by a third party retained by the Administrative Agent or the internally allocated fees for each Person employed by the Administrative Agent with respect to each field examination;
- (c) background checks regarding senior management and/or key investors, as deemed necessary or appropriate in the sole discretion of the Administrative Agent;
- (d) Taxes, fees, and other charges for (A) lien and title searches, (B) title insurance, (C) recording the Mortgages, (D) filing financing statements and continuations, and (E) other actions to perfect, protect, and continue the Administrative Agent's Liens;
- (e) sums paid or incurred to take any action required of any Loan Party under the Loan Documents that such Loan Party fails to pay or take; and
- (f) forwarding loan proceeds, collecting checks and other items of payment, and establishing and maintaining the accounts and lock boxes, and costs and expenses of preserving and protecting the Collateral.

All of the foregoing fees, costs, and expenses may be charged to the Borrowers as Revolving Loans or to another deposit account, all as described in [Section 2.18\(c\)](#).

(2) The Loan Parties will, jointly and severally, indemnify the Administrative Agent, each Arranger, the Issuing Bank, and 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, penalties, incremental taxes, liabilities, and related expenses, including the fees, charges, and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents

or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by a Loan Party or a Subsidiary, or any Environmental Liability related in any way to a Loan Party or a Subsidiary, (iv) the failure of a Loan Party to deliver to the Administrative Agent the required receipts or other required documentary evidence with respect to a payment made by a Loan Party for Taxes pursuant to Section 2.17, or (v) any actual or prospective claim, litigation, investigation, arbitration, or proceeding relating to any of the foregoing, whether or not such claim, litigation, investigation, arbitration, or proceeding is brought by any Loan Party or their respective equity holders, Affiliates, creditors, or any other third Person and whether based on contract, tort, or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity will not, as to any Indemnitee, be available to the extent that such losses, claims, damages, penalties, liabilities, or related expenses 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. This Section 9.03(b) will not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim.

(3) Each Lender severally agrees to pay any amount required to be paid by any Loan Party under clause (a) or clause (b) of this Section 9.03 to the Administrative Agent, each Issuing Bank, and the Swingline Lender, and each Related Party of any of the foregoing Persons (each, an "Agent Indemnitee") (to the extent not reimbursed by a Loan Party and without limiting the obligation of any Loan Party to do so), ratably according to their respective Applicable Percentage in effect on the date on which indemnification is sought under this Section (or, if indemnification is sought after the date upon which the Commitments have terminated and the Loans have been paid in full, ratably in accordance with such Applicable Percentage immediately prior to such date), from and against any and all losses, claims, damages, liabilities, and related expenses, including the fees, charges, and disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent Indemnitee in any way relating to or arising out of the Commitments, this Agreement, any of the other Loan Documents, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent Indemnitee under or in connection with any of the foregoing; 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 Indemnitee in its capacity as such; provided, further, that no Lender will be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent Indemnitee's gross negligence or willful misconduct. The agreements in this Section will survive the termination of this Agreement and the Payment in Full of the Secured Obligations.

(4) To the extent permitted by applicable law, no Loan Party will assert, and each Loan Party hereby waives, any claim against any Indemnitee (i) for any damages arising from the use by others of information or other materials obtained through telecommunications, electronic or other information transmission systems (including the Internet) or (ii) on any theory of liability, for special, indirect, consequential, or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit, or the use of the proceeds thereof; provided that, nothing in this Section 9.03(d) will relieve any Loan Party of any obligation it may have to indemnify an Indemnitee against special, indirect, consequential, or punitive damages asserted against such Indemnitee by a third party.

(5) All amounts due under this Section will be payable not later than five Business Days after written demand therefor.

Section 9.04 Successors and Assigns.

(1) The provisions of this Agreement are binding upon and inure to the benefit of the parties hereto and their respective successors and assigns (including any Affiliate of ~~the~~ an Issuing Bank that issues any Letter of Credit), except that (i) no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by any Borrower without such consent will be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, will be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of ~~the~~ an Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in Section 9.03(c)) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing ~~Bank~~Banks, and the Lenders) any legal or equitable right, remedy, or claim under or by reason of this Agreement.

(2)

(a) Subject to the conditions set forth in Section 9.04(b)(ii), any Lender may assign to one or more Persons (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment, participations in Letters of Credit, and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

(i) the Borrower Representative, provided that the Borrower Representative will be deemed to have consented to any such assignment of all or a portion of the Revolving Loans and Commitments unless it objects thereto by written notice to the Administrative Agent within ten Business Days after having received notice thereof and provided, further, that no consent of the Borrower Representative will be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee;

- (ii) the Administrative Agent;
- (iii) ~~the~~ each Issuing Bank; and
- (iv) the Swingline Lender.

(b) Assignments will be subject to the following additional conditions:

(i) except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) will not be less than \$5,000,000 unless each of the Borrower Representative and the Administrative Agent otherwise consents, provided that no such consent of the Borrower Representative will be required if an Event of Default exists;

(ii) each partial assignment will be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(iii) the parties to each assignment will execute and deliver to the Administrative Agent (y) an Assignment and Assumption or (z) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, together with a processing and recordation fee of \$3,500; and

(iv) the assignee, if it is not a Lender, will deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (that may contain material non-public information about the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

For the purposes of this Section 9.04(b), the terms "Approved Fund" and "Ineligible Institution" have the following meanings:

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding, or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (x) a Lender, (y) an Affiliate of a Lender, or (z) an entity or an Affiliate of an entity that administers or manages a Lender.

“Ineligible Institution” means a (w) natural person, (x) a Defaulting Lender or its Parent, (y) company, investment vehicle, or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof; provided that, with respect to this clause (y), preceding, such company, investment vehicle, or trust will not constitute an Ineligible Institution if it (1) has not been established for the primary purpose of acquiring any Loans or Commitments, (2) is managed by a professional advisor, who is not such natural person or a relative thereof, having significant experience in the business of making or purchasing commercial loans, and (3) has assets greater than \$25,000,000 and a significant part of its activities consist of making or purchasing commercial loans and similar extensions of credit in the ordinary course of its business; provided that upon the occurrence and during the continuance of an Event of Default, any Person (other than a Lender) will be an Ineligible Institution if after giving effect to any proposed assignment to such Person, such Person would hold more than 25.0% of the then outstanding Aggregate Credit Exposure or Commitments, as the case may be, or (z) a Loan Party or a Subsidiary or other Affiliate of a Loan Party.

(c) Subject to acceptance and recording thereof pursuant to Section 9.04(b)(iv), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder will be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder will, 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 will cease to be a party hereto but will continue to be entitled to the benefits of Section 2.15, Section 2.16, Section 2.17, and Section 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section will be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 9.04(c).

(d) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrowers, will maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register will be conclusive, and the Borrowers, the Administrative Agent, the Issuing BankBanks, and the Lenders will treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register will be available for inspection by the Borrowers, ~~the~~ any Issuing Bank, and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(e) Upon its receipt of (y) a duly completed Assignment and Assumption executed by an assigning Lender and an assignee or (z) to the extent applicable, an agreement incorporating an Assignment and Assumption by

reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, the assignee's completed Administrative Questionnaire (unless the assignee is already a Lender hereunder), the processing and recordation fee referred to in [Section 9.04\(b\)](#) and any written consent to such assignment required by [Section 9.04\(b\)](#), the Administrative Agent will accept such Assignment and Assumption and record the information contained therein in the Register; provided that, if either the assigning Lender or the assignee fails to make any payment required to be made by it pursuant to [Section 2.05](#), [Section 2.06\(d\)](#), [Section 2.06\(e\)](#), [Section 2.07\(b\)](#), [Section 2.18\(d\)](#), or [Section 9.03\(c\)](#), the Administrative Agent will have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment has been made in full, together with all accrued interest thereon. No assignment will be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this [clause \(v\)](#).

(3) Any Lender may, without the consent of, or notice to, the Borrowers, the Administrative Agent, the Issuing [Bank/Banks](#), or the Swingline Lender, sell participations to one or more banks or other entities (a "Participant") other than an Ineligible Institution in all or a portion of such Lender's rights and 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 will remain unchanged, (ii) such Lender will remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrowers, the Administrative Agent, the Issuing [Bank/Banks](#), and the other Lenders will continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation will provide that such Lender will 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, modification, or waiver described in the first proviso to [Section 9.02\(b\)](#) that affects such Participant. The Borrowers agree that each Participant will be entitled to the benefits of [Section 2.15](#), [Section 2.16](#), and [Section 2.17](#) (subject to the requirements and limitations therein, including the requirements under [Section 2.17\(f\)](#) and [Section 2.17\(g\)](#) (it being understood that the documentation required under [Section 2.17\(f\)](#) will be delivered to the participating Lender and the information and documentation required under [Section 2.17\(g\)](#) will be delivered to the Borrowers and the Administrative Agent)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to [Section 9.04\(b\)](#); provided that, such Participant (y) agrees to be subject to the provisions of [Section 2.18](#) and [Section 2.19](#) as if it were an assignee under [Section 9.04\(b\)](#) and (z) will not be entitled to receive any greater payment under [Section 2.15](#) or [Section 2.17](#), with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 2.19(b) with respect to any Participant. To the extent permitted by law, each Participant also will be entitled to the benefits of Section 9.08 as though it were a Lender, provided that such Participant agrees to be subject to Section 2.18(c) as though it were a Lender. Each Lender that sells a participation will, acting solely for this purpose as a non-fiduciary agent of the Borrowers, 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 this Agreement or any other Loan Document (the "Participant Register"); provided that no Lender will have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit, or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit, or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register will be conclusive absent manifest error, and such Lender will treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) will have no responsibility for maintaining a Participant Register.

(4) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section will not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest will release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 9.05 Survival.

(1) All covenants, agreements, representations, and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document will be considered to have been relied upon by the other parties hereto and will survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, ~~the~~ any Issuing Bank, or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and will continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Section 2.15, Section 2.16, Section 2.17, and Section 9.03 and Article 8 will survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments, or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

(2) If at any time any payment of any portion of the Secured Obligations (including a payment effected through exercise of a right of setoff) is rescinded, or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of any Loan Party or otherwise (including pursuant to any settlement entered into by a Secured Party in its discretion), each Loan Party's obligations under this Agreement with respect to that payment will be reinstated at such time as though the payment had not been made and all of the terms and conditions of this Agreement and the other Loan Documents will be reinstated in full until such time as any Secured Obligations rescinded or otherwise restored have been Paid in Full.

Section 9.06 Counterparts; Integration; Effectiveness; Electronic Execution.

(1) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which will constitute an original, but all of which when taken together will constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to (i) fees payable to the Administrative Agent and (ii) increases or reductions of the Issuing Bank Sublimit of ~~the~~ any Issuing Bank constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement will become effective when it has been executed by the Administrative Agent and when the Administrative Agent has received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(2) Delivery of an executed counterpart of a signature page of ~~this Agreement by telecopy~~ (x) this Agreement, (y) any other Loan Document, and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 9.01), certificate, request, statement, disclosure, or authorization related to this Agreement, any other Loan Document, and/or the transactions contemplated hereby and/or thereby (each an "Ancillary Document") that is an Electronic Signature transmitted by facsimile, emailed pdf., or any other electronic means that reproduces an image of the an actual executed signature page will be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document, or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to ~~any document to be signed in connection with this Agreement and the transactions contemplated hereby or thereby, any other Loan Document, and/or any Ancillary Document~~ will be deemed to include Electronic Signatures, deliveries, or the keeping of records in any electronic form (including deliveries by facsimile, emailed pdf., or any other electronic means that reproduces an image of an actual executed signature page), each of which will be of the same legal effect, validity, or enforceability as a manually executed signature, physical delivery thereof, or the use of a paper-based recordkeeping system, as the case may be, ~~to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act;~~ provided that nothing herein will require the Administrative

Agent to accept ~~electronic signatures~~ Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders will be entitled to rely on such Electronic Signature purportedly given by or on behalf of any Borrower or any other Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature will be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, each Borrower and each other Loan Party hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings, or litigation among the Administrative Agent, the Lenders, the Borrowers, and the other Loan Parties, Electronic Signatures transmitted by facsimile, emailed pdf., or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document, and/or any Ancillary Document will have the same legal effect, validity, and enforceability as any paper original. (B) the Administrative Agent and each of the Lenders may, at its option, create one or more copies of this Agreement, any other Loan Document, and/or any Ancillary Document in the form of an imaged electronic record in any format, that will be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records will be considered an original for all purposes and will have the same legal effect, validity, and enforceability as a paper record). (C) waives any argument, defense, or right to contest the legal effect, validity, or enforceability of this Agreement, any other Loan Document, and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document, and/or such Ancillary Document, respectively, including with respect to any signature pages thereto, and (D) waives any claim against any Lender-Related Person for any Liabilities arising solely from the Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures and/or transmissions by facsimile, emailed pdf., or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of any Borrower and/or any other Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 9.07 Severability. Any provision of any Loan Document held to be invalid, illegal, or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality, or unenforceability without affecting the validity, legality, and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction will not invalidate such provision in any other jurisdiction.

Section 9.08 Right of Setoff. If an Event of Default has occurred and is continuing, each Lender, ~~the~~ each Issuing Bank, and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held, and other obligations at any time owing, by such Lender, the Issuing Bank, or any such Affiliate, to or for the credit or the account of any Loan Party against any and all of the Secured Obligations held by

such Lender, ~~the~~ such Issuing Bank, or their respective Affiliates, irrespective of whether or not such Lender, ~~the~~ such Issuing Bank, or their respective Affiliates have made any demand under the Loan Documents and although such obligations may be contingent or unmaturred or are owed to a branch office or Affiliate of such Lender or ~~the~~ such Issuing Bank different from the branch office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender exercises any such right of setoff, (y) all amounts so set off must be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.20 and, pending such payment, will be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing ~~Bank~~Banks, and the Lenders and (z) the Defaulting Lender must provide promptly to the Administrative Agent a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The applicable Lender, the applicable Issuing Bank, or such Affiliate will notify the Borrower Representative and the Administrative Agent of such setoff or application, provided that any failure to give or any delay in giving such notice will not affect the validity of any such setoff or application under this Section. The rights of each Lender, the Issuing Bank, and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, ~~the~~ such Issuing Bank, or their respective Affiliates may have.

Section 9.09 Governing Law; Jurisdiction; Consent to Service of Process.

(1) The Loan Documents (other than those containing a contrary express choice of law provision) will be governed by and construed in accordance with the internal laws of the State of California, but giving effect to federal laws applicable to national banks.

(2) Each of the Lenders and the Administrative Agent hereby irrevocably and unconditionally agrees that, notwithstanding the governing law provisions of any applicable Loan Document, any claims brought against the Administrative Agent by any Secured Party relating to this Agreement, any other Loan Document, the Collateral, or the consummation or administration of the transactions contemplated hereby or thereby will be construed in accordance with and governed by the law of the State of California.

(3) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any U.S. federal or California state court sitting in Orange County, California, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Documents, the transactions relating hereto or thereto, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may (and any such claims, cross-claims, or third party claims brought against the Administrative Agent or any of its Related Parties may only) be heard and determined in such California state or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document will affect any right that the Administrative Agent, the Issuing Bank, or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(4) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action, or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in Section 9.09(c). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(5) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 9.10 Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE OR OTHER AGENT (INCLUDING ANY ATTORNEY) OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 9.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and will not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 9.12 Confidentiality. Each of the Administrative Agent, the Issuing ~~Bank~~Banks, and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its ~~and its~~ Affiliates' and its and their respective directors, officers, employees, and agents, including accountants, legal counsel, and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential),

(b) to the extent requested by any Governmental Authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by any Requirement of Law or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under this Agreement or any other Loan Document or any suit, action, or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and their obligations, (g) with the consent of the Borrower Representative, (h) to holders of Equity Interests in any Loan Party, (i) to any Person

providing a Guarantee of all or any portion of the Secured Obligations, or (j) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, ~~the any~~ Issuing Bank, or any Lender on a non-confidential basis from a source other than the Loan Parties. For the purposes of this Section, "Information" means all information received from the Borrowers relating to the Borrowers or their business, other than any such information that is available to the Administrative Agent, ~~the any~~ Issuing Bank, or any Lender on a non-confidential basis prior to disclosure by the Borrowers and other than information pertaining to this Agreement provided by arrangers to data service providers, including league table providers, that serve the lending industry; provided that, in the case of information received from the Borrowers 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 will 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 9.13 Several Obligations; Nonreliance; Violation of Law. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder will not relieve any other Lender from any of its obligations hereunder. Each Lender hereby represents that it is not relying on or looking to any margin stock (as defined in Regulation U ~~of the Board~~) for the repayment of the Borrowings provided for herein. Anything contained in this Agreement to the contrary notwithstanding, neither ~~the any~~ Issuing Bank nor any Lender will be obligated to extend credit to the Borrowers in violation of any Requirement of Law.

Section 9.14 USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies each Loan Party that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify, and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the USA PATRIOT Act.

Section 9.15 Disclosure. Each Loan Party, each Lender, and ~~the each~~ Issuing Bank hereby acknowledges and agrees that the Administrative Agent and/or its Affiliates from time to time may hold investments in, make other loans to, or have other relationships with any of the Loan Parties and their respective Affiliates.

Section 9.16 Appointment for Perfection. Each Lender hereby appoints each other Lender as its agent for the purpose of perfecting Liens, for the benefit of the Administrative Agent and the other Secured Parties, in assets that, in accordance with Article 9 of the UCC or any other applicable law can be perfected only by possession or control. Should any Lender (other than the Administrative Agent) obtain possession or control of any such Collateral, such Lender will notify the Administrative Agent thereof, and, promptly upon the Administrative Agent's request therefor will deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions.

Section 9.17 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges, and other

amounts that are treated as interest on such Loan under applicable law (collectively the “Charges”), exceed the maximum lawful rate (the “Maximum Rate”) that may be contracted for, charged, taken, received, or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, will be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section will be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods will be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the NYFRB Rate to the date of repayment, will have been received by such Lender.

Section 9.18 Reserved.

Section 9.19 Acknowledgement and Consent to Bail-In of EEA Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Affected Financial Institution arising under any Loan Document may be subject to the ~~write-down and conversion powers of an EEA~~ Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (1) the application of any Write-Down and Conversion Powers by ~~an EEA~~ the applicable Resolution Authority to any such liabilities arising hereunder that may be payable to it by any party hereto that is an EEA Affected Financial Institution; and
- (2) the effects of any Bail-In Action on any such liability, including, if applicable:
 - (a) a reduction in full or in part or cancellation of any such liability;
 - (b) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
 - (c) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of ~~any EEA~~ the applicable Resolution Authority.

Section 9.20 No Fiduciary Duty, Etc. Each Borrower acknowledges and agrees, and acknowledges its Subsidiaries’ understanding, that no Credit Party will have any obligations except those obligations expressly set forth herein and in the other Loan Documents and each Credit Party is acting solely in the capacity of an arm’s length contractual counterparty to each Borrower with respect to the Loan Documents and the transaction contemplated therein and not as a financial advisor or a fiduciary to, or an agent of, any Borrower or any other Person. Each Borrower agrees that it will not assert any claim against any Credit Party based on an alleged

breach of fiduciary duty by such Credit Party in connection with this Agreement and the transactions contemplated hereby. Additionally, each Borrower acknowledges and agrees that no Credit Party is advising any Borrower as to any legal, tax, investment, accounting, regulatory, or any other matters in any jurisdiction. Each Borrower will consult with its own advisors concerning such matters and will be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and the Credit Parties will have no responsibility or liability to any Borrower with respect thereto. Each Borrower further acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party, together with its Affiliates, is a full service securities or banking firm engaged in securities trading and brokerage activities as well as providing investment banking and other financial services. In the ordinary course of business, any Credit Party may provide investment banking and other financial services to, and/or acquire, hold, or sell, for its own accounts and the accounts of customers, equity, debt, and other securities and financial instruments (including bank loans and other obligations) of, any Borrower and other companies with which any Borrower may have commercial or other relationships. With respect to any securities and/or financial instruments so held by any Credit Party or any of its customers, all rights in respect of such securities and financial instruments, including any voting rights, will be exercised by the holder of the rights, in its sole discretion. In addition, each Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party and its Affiliates may be providing debt financing, equity capital, or other services (including financial advisory services) to other companies in respect of which a Borrower may have conflicting interests regarding the transactions described herein and otherwise. No Credit Party will use confidential information obtained from any Borrower by virtue of the transactions contemplated by the Loan Documents or its other relationships with such Borrower in connection with the performance by such Credit Party of services for other companies, and no Credit Party will furnish any such information to other companies. Each Borrower also acknowledges that no Credit Party has any obligation to use in connection with the transactions contemplated by the Loan Documents, or to furnish to any Borrower, confidential information obtained from other companies.

Section 9.21 Ranking – NZ. Except for Permitted Encumbrances and Liens described in Section 6.02(j), the NZ Security Agreement has or will have the ranking in priority that it is expressed to have in the NZ Security Agreement and it is not subject to any prior ranking or pari passu ranking Liens.

Section 9.22 PPSA Provisions.

- (1) Where the Administrative Agent has a security interest (as defined in the PPSA) under any Loan Document, to the extent the law permits each Loan Party (as applicable):
 - (a) has no rights under, or by reference to, sections 114(1)(a), 133 and 134 of the PPSA; and
 - (b) waives its rights to:
 - (i) not have goods damaged if the Administrative Agent removes an accession under section 125 of the PPSA;

- (ii) receive notice of the removal of an accession under section 129 of the PPSA;
- (iii) apply to the applicable court for an order concerning the removal of an accession under section 131 of the PPSA;
- (iv) receive a statement of account under section 116 of the PPSA;
- (v) receive notice of any proposal of the Administrative Agent to retain collateral under section 120(2) of the PPSA; and
- (vi) object to any proposal of the Administrative Agent to retain collateral under section 121 of the PPSA;

(c) waives its right under section 148 of the PPSA to receive a copy of a verification statement in respect of any financing statement or financing change statement registered by the Administrative Agent.

(2) If the Administrative Agent exercises a right, power, or remedy in connection with it, that exercise is taken not to be an exercise of a right, power, or remedy under the PPSA unless the Administrative Agent states otherwise at the time of exercise. However, this clause does not apply to a right, power, or remedy that can only be exercised under the PPSA.

(3) This Section does not affect any rights a Person has or would have other than by reason of the PPSA and applies despite any other clause in any Loan Document.

Section 9.23 Appointment of Administrative Agent as NZ Security Trustee. For the purposes of any Liens or Collateral created under the NZ Security Agreement, the following additional provisions will apply.

(1) In this Section, the following terms have the following meanings: “Appointee” means any receiver, receiver and manager, voluntary administrator, or other insolvency officer appointed in respect of any Loan Party or its assets.

“Charged Property” means the assets of the Loan Parties subject to a security interest under the NZ Security Agreement.

“Delegate” means any delegate, agent, attorney, or co-trustee appointed by the Administrative Agent (in its capacity as security trustee).

(2) The Secured Parties appoint the Administrative Agent to hold the security interests constituted by the NZ Security Agreement on trust for the Secured Parties on the terms of the Loan Documents and the Administrative Agent accepts that appointment.

(3) The Administrative Agent and its subsidiaries and associated companies may each retain for its own account and benefit any fee, remuneration, and profits paid to it in connection with (i) its activities under the Loan Documents and (ii) its engagement in any kind of banking or other business with any Loan Party.

(4) Nothing in this Agreement constitutes the Administrative Agent as a trustee or fiduciary of, nor will the Administrative Agent have any duty or responsibility to, any Loan Party.

(5) The Administrative Agent will have no duties or obligations to any other Person except for those that are expressly specified in the Loan Documents or mandatorily required by applicable law.

(6) The Administrative Agent may appoint one or more Delegates on such terms (that may include the power to sub-delegate) and subject to such conditions as the Administrative Agent thinks fit, to exercise and perform all or any of the duties, rights, powers, and discretions vested in it by the NZ Security Agreements and will not be obliged to supervise any Delegate or be responsible to any Person for any loss incurred by reason of any act, omission, misconduct, or default on the part of any Delegate, except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such Delegate.

(7) The Administrative Agent may (whether for the purpose of complying with any law or regulation of any overseas jurisdiction, or for any other reason) appoint (and subsequently remove) any Person to act jointly with the Administrative Agent either as a separate trustee or as a co-trustee on such terms and subject to such conditions as the Administrative Agent thinks fit and with such of the duties, rights, powers, and discretions vested in the Administrative Agent by the NZ Security Agreement as may be conferred by the instrument of appointment of that Person.

(8) The Administrative Agent will notify the Lenders of the appointment of each Appointee (other than a Delegate).

(9) The Administrative Agent may pay reasonable remuneration to any Delegate or Appointee, together with any costs and expenses (including legal fees) reasonably incurred by the Delegate or Appointee in connection with its appointment. All such remuneration, costs, and expenses will be treated, for the purposes of this Agreement, as paid or incurred by the Administrative Agent.

(10) Each Delegate and each Appointee will have every benefit, right, power, and discretion and the benefit of every exculpation (together "Rights") of the Administrative Agent (in its capacity as security trustee) under the NZ Security Agreement, and each reference to the Administrative Agent (where the context requires that such reference is to the Administrative Agent in its capacity as security trustee) in the provisions of the NZ Security Agreement which confer Rights will be deemed to include a reference to each Delegate and each Appointee.

(11) Each Secured Party confirms its approval of the NZ Security Agreement and authorizes and instructs the Administrative Agent: (i) to execute and deliver the NZ Security Agreement; (ii) to exercise the rights, powers, and discretions given to the Administrative Agent (in its capacity as security trustee) under or in connection with the NZ Security Agreement together with any other incidental rights, powers, and discretions; and (iii) to give any authorizations and confirmations to be given by the Administrative Agent (in its capacity as security trustee) on behalf of the Secured Parties under the NZ Security Agreement.

(12) The Administrative Agent may accept without inquiry the title (if any) which any Person may have to the Charged Property.

(13) Each other Secured Party confirms that it does not wish to be registered as a joint proprietor of any security interest constituted by the NZ Security Agreement and accordingly authorizes: (i) the Administrative Agent to hold such security interest in its sole name (or in the name of any Delegate) as trustee for the Secured Parties; and (ii) Land Information NZ (or other relevant registry) to register the Administrative Agent (or any Delegate or Appointee) as a sole proprietor of such security interest.

(14) Except to the extent that the NZ Security Agreement otherwise requires, any moneys that the Administrative Agent receives under or pursuant to the NZ Security Agreement may be: (i) invested in any investments that the Administrative Agent selects and that are authorized by applicable law; or (ii) placed on deposit at any bank or institution (including the Administrative Agent) on terms that the Administrative Agent thinks fit, in each case in the name or under the control of the Administrative Agent, and the Administrative Agent will hold those moneys, together with any accrued income (net of any applicable Tax) to the order of the Lenders, and will pay them to the Lenders on demand.

(15) On a disposal of any of the Charged Property that is permitted under the Loan Documents, the Administrative Agent will (at the cost of the Loan Parties) execute any release of the NZ Security Agreement or other claim over that Charged Property that may be required or take any other action that the Administrative Agent considers desirable.

(16) The Administrative Agent will not be liable for:

(a) any defect in or failure of the title (if any) that any Person may have to any assets over which security is intended to be created by the NZ Security Agreement;

(b) any loss resulting from the investment or deposit at any bank of moneys which it invests or deposits in a manner permitted by a NZ Security Agreement;

(c) the exercise of, or the failure to exercise, any right, power, or discretion given to it by or in connection with any Loan Document or any other agreement, arrangement, or document entered into, or executed in anticipation of, under or in connection with, any Loan Document; or

- (d) any shortfall that arises upon enforcing the NZ Security Agreement.
- (17) The Administrative Agent will not be obligated to:
- (a) obtain any authorization or environmental permit in respect of any of the Charged Property or the NZ Security Agreement;
 - (b) hold in its own possession the NZ Security Agreement, title deed or other document relating to the Charged Property or the NZ Security Agreement;
 - (c) perfect, protect, register, make any filing, or give any notice in respect of a NZ Security Agreement (or the order of ranking of the NZ Security Agreement), unless that failure arises directly from its own gross negligence or willful misconduct; or
 - (d) require any further assurances in relation to the NZ Security Agreement.
- (18) In respect of the NZ Security Agreement, the Administrative Agent will not be obligated to: (i) insure, or require any other Person to insure, the Charged Property; or (2) make any enquiry or conduct any investigation into the legality, validity, effectiveness, adequacy, or enforceability of any insurance existing over such Charged Property.
- (19) In respect of the NZ Security Agreement, the Administrative Agent will not have any obligation or duty to any Person for any loss suffered as a result of: (i) the lack or inadequacy of any insurance; or (ii) the failure of the Administrative Agent to notify the insurers of any material fact relating to the risk assumed by them, or of any other information of any kind, unless the Required Lenders have requested the Administrative Agent do so in writing and the Administrative Agent has failed to do so within fourteen days after receipt of that request.
- (20) Every appointment of a successor Administrative Agent under the NZ Security Agreement will be by deed.
- (21) In the case of any conflict between the provisions of this Agreement and those of the Trustee Act 1956 (NZ), the provisions of this Agreement will prevail to the extent allowed by law.
- (22) The perpetuity period under the rule against perpetuities if applicable to this Agreement and the NZ Security Agreement will be 80 years from the Effective Date.

Section 9.24 [Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC \(such support "QFC Credit Support" and each such QFC a "Supported QFC"\), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act \(together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes"\) in respect of such Supported QFC and QFC Credit Support \(with the provisions below applicable](#)

notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of California and/or of the U.S. or any other state of the U.S.).

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation, and rights in property) were governed by the laws of the U.S. or a state of the U.S. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the U.S. or a state of the U.S. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender will in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

Section 9.25 Joint and Several. Each Borrower hereby unconditionally and irrevocably agrees it is jointly and severally liable to the Administrative Agent, the Issuing Banks, and the Lenders for the Secured Obligations. In furtherance thereof, each Borrower agrees that wherever in this Agreement it is provided that a Borrower is liable for a payment, such obligation is the joint and several obligation of each Borrower. Each Borrower acknowledges and agrees that its joint and several liability under this Agreement and the Loan Documents is absolute and unconditional and will not in any manner be affected or impaired by any acts or omissions whatsoever by the Administrative Agent, any Issuing Bank, any Lender, or any other Person. Each Borrower's liability for the Secured Obligations will not in any manner be impaired or affected by who receives or uses the proceeds of the credit extended hereunder or for what purposes such proceeds are used, and each Borrower waives notice of borrowing requests issued by, and loans or other extensions of credit made to, other Borrowers. Each Borrower hereby agrees not to exercise or enforce any right of exoneration, contribution, reimbursement, recourse, or subrogation available to such Borrower against any party liable for payment under this Agreement and the Loan Documents unless and until the Administrative Agent, each Issuing Bank, and each Lender have been paid in full and all of the Secured Obligations are satisfied and discharged following termination or expiration of all commitments of the Lenders to extend credit to the Borrowers. Each Borrower's joint and several liability hereunder with respect to the Secured Obligations will, to the fullest extent permitted by applicable law, be the unconditional liability of such Borrower irrespective of (a) the validity, enforceability, avoidance, or subordination of any of the Secured Obligations or of any other document evidencing all or any part of the Secured Obligations, (b) the absence of any attempt to collect any of the Secured Obligations from any other Loan Party or any Collateral or other security therefor, or the absence of any other action to enforce the same, (c) the amendment, modification, waiver, consent, extension, forbearance, or granting of any indulgence by the Administrative Agent or any Lender with respect to any provision of any instrument executed by any other Loan Party evidencing or securing the payment of any of the Secured

Obligations, or any other agreement now or hereafter executed by any other Loan Party and delivered to the Administrative Agent, (d) the failure by the Administrative Agent or any Lender to take any steps to perfect or maintain the perfected status of its Lien upon, or to preserve its rights to, any of the Collateral or other security for the payment or performance of any of the Secured Obligations or the Administrative Agent's release of any Collateral or of its Liens upon any Collateral, (e) the release or compromise, in whole or in part, of the liability of any other Loan Party for the payment of any of the Secured Obligations, (f) any increase in the amount of the Secured Obligations beyond any limits imposed herein or in the amount of any interest, fees, or other charges payable in connection therewith, in each case, if consented to by any other Borrower, or any decrease in the same, or (g) any other circumstance that might constitute a legal or equitable discharge or defense of any Loan Party. After the occurrence and during the continuance of any Event of Default, the Administrative Agent may proceed directly and at once, without notice to any Borrower, against any or all of the Loan Parties to collect and recover all or any part of the Secured Obligations, without first proceeding against any other Loan Party or against any Collateral or other security for the payment or performance of any of the Secured Obligations, and each Borrower waives any provision that might otherwise require the Administrative Agent or the Lenders under applicable law to pursue or exhaust remedies against any Collateral or other Loan Party before pursuing such Borrower or its property. Each Borrower consents and agrees that neither the Administrative Agent nor any Lender will be under any obligation to marshal any assets in favor of any Loan Party or against or in payment of any or all of the Secured Obligations. This Section 9.25 will not be effective until such time as there is more than one Borrower party to this Agreement.

ARTICLE 10

Loan Guaranty

Section 10.01 Guaranty. Each Loan Guarantor (other than those that have delivered a separate Guaranty) hereby agrees that it is jointly and severally liable for, and, as a primary obligor and not merely as surety, absolutely, unconditionally, and irrevocably guarantees to the Secured Parties, the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Secured Obligations and all costs and expenses, including all court costs and attorneys' and paralegals' fees (including allocated costs of in-house counsel and paralegals) and expenses paid or incurred by the Administrative Agent, the Issuing ~~Bank~~Banks, and the Lenders in endeavoring to collect all or any part of the Secured Obligations from, or in prosecuting any action against, any Borrower, any Loan Guarantor, or any other guarantor of all or any part of the Secured Obligations (such costs and expenses, together with the Secured Obligations, collectively the "Guaranteed Obligations"; provided that, the definition of "Guaranteed Obligations" does not create any guarantee by any Loan Guarantor of (or grant of security interest by any Loan Guarantor to support, as applicable) any Excluded Swap Obligations of such Loan Guarantor for purposes of determining any obligations of any Loan Guarantor). Each Loan Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any domestic or foreign branch or Affiliate of any Lender that extended any portion of the Guaranteed Obligations.

Section 10.02 Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Loan Guarantor waives any right to require the Administrative Agent, ~~the any~~ Issuing Bank, or any Lender to sue any Borrower, any Loan Guarantor, any other guarantor of, or any other Person obligated for, all or any part of the Guaranteed Obligations (each, an "Obligated Party"), or otherwise to enforce its payment against any collateral securing all or any part of the Guaranteed Obligations.

Section 10.03 No Discharge or Diminishment of Loan Guaranty.

(1) Except as otherwise provided for herein, the obligations of each Loan Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment, or termination for any reason (other than Payment in Full of the Guaranteed Obligations), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration, or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure, or ownership of any Borrower or any other Obligated Party liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization, or other similar proceeding affecting any Obligated Party or their assets or any resulting release or discharge of any obligation of any Obligated Party; or (iv) the existence of any claim, setoff, or other rights that any Loan Guarantor may have at any time against any Obligated Party, the Administrative Agent, ~~the any~~ Issuing Bank, any Lender, or any other Person, whether in connection herewith or in any unrelated transactions.

(2) The obligations of each Loan Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(3) Further, the obligations of any Loan Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Administrative Agent, ~~the any~~ Issuing Bank, or any Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations;

(3) any release, non-perfection, or invalidity of any indirect or direct security for the obligations of any Borrower for all or any part of the Guaranteed Obligations or any obligations of any other Obligated Party liable for any of the Guaranteed Obligations;

(4) any action or failure to act by the Administrative Agent, ~~the any~~ Issuing Bank, or any Lender with respect to any collateral securing any part of the Guaranteed Obligations; or

(5) any default, failure, or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission, or delay that might in any manner or to any extent vary the risk of such Loan Guarantor or that would otherwise operate as a discharge of any Loan Guarantor as a matter of law or equity (other than Payment in Full of the Guaranteed Obligations).

Section 10.04 Defenses Waived. To the fullest extent permitted by applicable law, each Loan Guarantor hereby waives any defense based on or arising out of any defense of any Borrower or any Loan Guarantor or the unenforceability of all or any part of the Guaranteed Obligations

from any cause, or the cessation from any cause of the liability of any Borrower, any Loan Guarantor, or any other Obligated Party, other than Payment in Full of the Guaranteed Obligations. Without limiting the generality of the foregoing, each Loan Guarantor irrevocably waives acceptance hereof, presentment, demand, protest, and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Obligated Party or any other Person. Each Loan Guarantor confirms that it is not a surety under any state law and will not raise any such law as a defense to its obligations hereunder. The Administrative Agent may, at its election, foreclose on any Collateral held by it by one or more judicial or nonjudicial sales, accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any collateral securing all or a part of the Guaranteed Obligations, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, without affecting or impairing in any way the liability of such Loan Guarantor under this Loan Guaranty except to the extent the Guaranteed Obligations have been Paid in Full. To the fullest extent permitted by applicable law, each Loan Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Loan Guarantor against any Obligated Party or any security.

Section 10.05 Rights of Subrogation. No Loan Guarantor will assert any right, claim, or cause of action, including a claim of subrogation, contribution, or indemnification, that it has against any Obligated Party or any collateral, until the Loan Parties and the Loan Guarantors have fully performed all their obligations to the Administrative Agent, the Issuing ~~Bank~~Banks, and the Lenders.

Section 10.06 Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations (including a payment effected through exercise of a right of setoff) is rescinded, or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of any Borrower or otherwise (including pursuant to any settlement entered into by a Secured Party in its discretion), each Loan Guarantor's obligations under this Loan Guaranty with respect to that payment will be reinstated at such time as though the payment had not been made and whether or not the Administrative Agent, the Issuing ~~Bank~~Banks, and the Lenders are in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy, or reorganization of any Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations will nonetheless be payable by the Loan Guarantors forthwith on demand by the Administrative Agent.

Section 10.07 Information. Each Loan Guarantor assumes all responsibility for being and keeping itself informed of the Borrowers' financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope, and extent of the risks that each Loan Guarantor assumes and incurs under this Loan Guaranty, and agrees that none of the Administrative Agent, ~~the any~~ Issuing Bank, or any Lender will have any duty to advise any Loan Guarantor of information known to it regarding those circumstances or risks.

Section 10.08 Termination. Each of the Lenders and the Issuing ~~Bank~~ Banks may continue to make loans or extend credit to the Borrowers based on this Loan Guaranty until five

days after such Lender or Issuing Bank receives written notice of termination from any Loan Guarantor. Notwithstanding receipt of any such notice, each Loan Guarantor will continue to be liable to the Lenders for any Guaranteed Obligations created, assumed, or committed to prior to the fifth day after receipt of the notice, and all subsequent renewals, extensions, modifications, and amendments with respect to, or substitutions for, all or any part of such Guaranteed Obligations. Nothing in this Section 10.08 will be deemed to constitute a waiver of, or eliminate, limit, reduce, or otherwise impair any rights or remedies the Administrative Agent or any Lender may have in respect of, any Default or Event of Default that exists under clause (q) of Article 7 as a result of any such notice of termination.

Section 10.09 Taxes. Each payment of the Guaranteed Obligations will be made by each Loan Guarantor without withholding for any Taxes, unless such withholding is required by law. If any Loan Guarantor determines, in its sole discretion exercised in good faith, that it is so required to withhold Taxes, then such Loan Guarantor may so withhold and will timely pay the full amount of withheld Taxes to the relevant Governmental Authority in accordance with applicable law. If such Taxes are Indemnified Taxes, then the amount payable by such Loan Guarantor will be increased as necessary so that, net of such withholding (including such withholding applicable to additional amounts payable under this Section), the Administrative Agent, Lender, or Issuing Bank (as the case may be) receives the amount it would have received had no such withholding been made.

Section 10.10 Maximum Liability. Notwithstanding any other provision of this Loan Guaranty, the amount guaranteed by each Loan Guarantor hereunder will be limited to the extent, if any, required so that its obligations hereunder will not be subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transactions Act, or similar statute or common law. In determining the limitations, if any, on the amount of any Loan Guarantor's obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification, or contribution that such Loan Guarantor may have under this Loan Guaranty, any other agreement, or applicable law will be taken into account.

Section 10.11 Contribution.

(a) To the extent that any Loan Guarantor makes a payment under this Loan Guaranty (a "Guarantor Payment") that, taking into account all other Guarantor Payments then previously or concurrently made by any other Loan Guarantor, exceeds the amount that otherwise would have been paid by or attributable to such Loan Guarantor if each Loan Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Loan Guarantor's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Loan Guarantors as determined immediately prior to the making of such Guarantor Payment, then, following indefeasible payment in full in cash of the Guarantor Payment and Payment in Full of the Guaranteed Obligations and the termination of this Agreement, such Loan Guarantor will be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Loan Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(b) As of any date of determination, the “Allocable Amount” of any Loan Guarantor will be equal to the excess of the fair saleable value of the property of such Loan Guarantor over the total liabilities of such Loan Guarantor (including the maximum amount reasonably expected to become due in respect of contingent liabilities, calculated, without duplication, assuming each other Loan Guarantor that is also liable for such contingent liability pays its ratable share thereof), giving effect to all payments made by other Loan Guarantors as of such date in a manner to maximize the amount of such contributions.

(c) This [Section 10.11](#) is intended only to define the relative rights of the Loan Guarantors, and nothing set forth in this [Section 10.11](#) is intended to or will impair the obligations of the Loan Guarantors, jointly and severally, to pay any amounts as and when the same become due and payable in accordance with the terms of this Loan Guaranty.

(d) The parties hereto acknowledge that the rights of contribution and indemnification hereunder constitute assets of the Loan Guarantor or Loan Guarantors to which such contribution and indemnification is owing.

(e) The rights of the indemnifying Loan Guarantors against other Loan Guarantors under this [Section 10.11](#) will be exercisable upon Payment in Full [of the Guaranteed Obligations](#) and the termination of this Agreement.

[Section 10.12 Liability Cumulative](#). The liability of each Loan Party as a Loan Guarantor under this [Article 10](#) is in addition to, and is cumulative with, all liabilities of each Loan Party to the Administrative Agent, the Issuing ~~Bank~~[Banks](#), and the Lenders under this Agreement and the other Loan Documents to which such Loan Party is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

[Section 10.13 Keepwell](#). Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally, and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guarantee in respect of a Swap Obligation ([provided](#) that, each Qualified ECP Guarantor will only be liable under this [Section 10.13](#) for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this [Section 10.13](#) or otherwise under this Loan Guaranty voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). Except as otherwise provided herein, the obligations of each Qualified ECP Guarantor under this [Section 10.13](#) will remain in full force and effect until the termination of all Swap Obligations. Each Qualified ECP Guarantor intends that this [Section 10.13](#) constitute, and this [Section 10.13](#) will be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Loan Party for all purposes of [Section 1a\(18\)\(A\)\(v\)\(II\)](#) of the Commodity Exchange Act.

ARTICLE 11

The Borrower Representative

[Section 11.01 Appointment; Nature of Relationship](#). Allbirds is hereby appointed by each of the Borrowers as its contractual representative (herein referred to as the “[Borrower](#)”

Representative”) hereunder and under each other Loan Document, and each of the Borrowers irrevocably authorizes the Borrower Representative to act as the contractual representative of such Borrower with the rights and duties expressly set forth herein and in the other Loan Documents. The Borrower Representative agrees to act as such contractual representative upon the express conditions contained in this Article 11. Additionally, the Borrowers hereby appoint the Borrower Representative as their agent to receive all of the proceeds of the Loans in the Funding Account(s), at which time the Borrower Representative will promptly disburse such Loans to the appropriate Borrower(s), provided that, in the case of a Revolving Loan, such amount will not exceed Availability. The Administrative Agent and the Lenders, and their respective officers, directors, agents, and employees, will not be liable to the Borrower Representative or any Borrower for any action taken or omitted to be taken by the Borrower Representative or the Borrowers pursuant to this Section 11.01.

Section 11.02 Powers. The Borrower Representative will have and may exercise such powers under the Loan Documents as are specifically delegated to the Borrower Representative by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Borrower Representative will have no implied duties to the Borrowers, or any obligation to the Lenders to take any action thereunder except any action specifically provided by the Loan Documents to be taken by the Borrower Representative.

Section 11.03 Employment of Agents. The Borrower Representative may execute any of its duties as the Borrower Representative hereunder and under any other Loan Document by or through authorized officers.

Section 11.04 Notices. Each Borrower will immediately notify the Borrower Representative of the occurrence of any Default hereunder referring to this Agreement describing such Default and stating that such notice is a “notice of default”. In the event that the Borrower Representative receives such a notice, the Borrower Representative will give prompt notice thereof to the Administrative Agent and the Lenders. Any notice provided to the Borrower Representative hereunder will constitute notice to each Borrower on the date received by the Borrower Representative.

Section 11.05 Successor Borrower Representative. Upon the prior written consent of the Administrative Agent, the Borrower Representative may resign at any time, such resignation to be effective upon the appointment of a successor Borrower Representative. The Administrative Agent will give prompt written notice of such resignation to the Lenders.

Section 11.06 Execution of Loan Documents; Borrowing Base Certificate. The Borrowers hereby empower and authorize the Borrower Representative, on behalf of the Borrowers, to execute and deliver to the Administrative Agent and the Lenders the Loan Documents and all related agreements, certificates, documents, or instruments as are necessary or appropriate to effect the purposes of the Loan Documents, including the Borrowing Base Certificates and the Compliance Certificates. Each Borrower agrees that any action taken by the Borrower Representative or the Borrowers in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by the Borrower Representative of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, will be binding upon all of the Borrowers.

Section 11.07 Reporting. Each Borrower hereby agrees that such Borrower will furnish promptly after each fiscal month to the Borrower Representative a copy of its Borrowing Base Certificate and any other certificate or report required hereunder or requested by the Borrower Representative on which the Borrower Representative will rely to prepare the Borrowing Base Certificates and Compliance Certificate required pursuant to the provisions of this Agreement.

Exhibit B
to
First Amendment to Credit Agreement

See Attached.

J.P.Morgan

CREDIT AGREEMENT

dated as of February 20, 2019 among ALLBIRDS, INC.

and its Affiliates Party Hereto

the Lenders Party Hereto and

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

JPMORGAN CHASE BANK, N.A.,
as Sole Bookrunner and Sole Lead Arranger

ASSET BASED LENDING

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Exhibit E – Joinder Agreement
Exhibit F-1 – U.S. Tax Certificate (For Foreign Lenders that are not Partnerships for U.S. Federal Income Tax Purposes)
Exhibit F-2 – U.S. Tax Certificate (For Foreign Participants that are not Partnerships for U.S. Federal Income Tax Purposes)

Exhibit F-3 – U.S. Tax Certificate (For Foreign Participants that are Partnerships for U.S. Federal Income Tax Purposes)

Exhibit F-4 – U.S. Tax Certificate (For Foreign that are Partnerships for U.S. Federal Income Tax Purposes)

Exhibit G – Form of Credit Card Notice

CREDIT AGREEMENT

This Credit Agreement, dated as of February 20, 2019 (as it may be amended or otherwise modified from time to time, together with all Exhibits and Schedules annexed hereto from time to time, each of which is incorporated herein and made a part hereof, this “Agreement”), is by and among Allbirds, Inc., and each other Person at any time party hereto as a Borrower, the other Loan Parties party hereto, the lending institutions party hereto as the Lenders, and JPMorgan Chase Bank, N.A., as the Administrative Agent.

The parties hereto agree as follows:

ARTICLE 1

Definitions

Section 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“Account” has the meaning assigned to such term in the Security Agreement and includes any Credit Card Accounts.

“Account Debtor” means any Person obligated on an Account.

“Acquisition” means any transaction, or any series of related transactions, consummated on or after the Effective Date, by which any Loan Party (a) acquires any going business or all or substantially all of the assets of any Person, whether through purchase of assets, merger, or otherwise or (b) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the Equity Interests of a Person that have ordinary voting power for the election of directors or other similar management personnel of a Person (other than Equity Interests having such power only by reason of the happening of a contingency) or a majority of the outstanding Equity Interests of a Person.

“Adjusted Daily Simple SOFR” means an interest rate per annum equal to (a) the Daily Simple SOFR, plus (b) 0.10%; provided that if the Adjusted Daily Simple SOFR as so determined would be less than the Floor, such rate will be deemed to be equal to the Floor for the purposes of this Agreement.

“Adjusted REVSOFR30 Rate” (a) means an interest rate per annum equal to (i) the REVSOFR30 Rate plus (ii) 0.00%; provided that (y) if the Adjusted REVSOFR30 Rate as so determined would be less than the Floor, such rate will be deemed to be equal to the Floor for the purposes of this Agreement and (z) if the REVSOFR30 Rate is not available, then the Adjusted REVSOFR30 Rate will be equal to the CB Floating Rate (unless an alternate rate is established in accordance with Section 2.14) and (b) when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted REVSOFR30 Rate.

“Adjusted Term SOFR Rate” means, for any Interest Period, an interest rate per annum equal to (a) the Term SOFR Rate for such Interest Period, plus (b) 0.10%; provided that if the

Adjusted Term SOFR Rate as so determined would be less than the Floor, such rate will be deemed to be equal to the Floor for the purposes of this Agreement.

“Administrative Agent” means JPMorgan Chase Bank, N.A. (including its successors and assigns), in its capacity as administrative agent for the Lenders hereunder.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the specified Person.

“Agent Indemnitee” has the meaning assigned to such term in Section 9.03(c). “Aggregate Credit Exposure” means, at any time, the aggregate Credit Exposure of all of the Lenders at such time.

“Aggregate Revolving Commitment” means, at any time, the aggregate of the Revolving Commitments of all of the Lenders, as increased or reduced from time to time pursuant to the terms and conditions hereof. As of the Effective Date, the Aggregate Revolving Commitment is \$40,000,000.

“Aggregate Revolving Exposure” means, at any time, the aggregate Revolving Exposure of all of the Lenders at such time (with the Swingline Exposure of each Lender calculated assuming that all of the Lenders have funded their participations in all Swingline Loans outstanding at such time).

“Agreement” has the meaning assigned to such term in the introductory paragraph of this Credit Agreement.

“Allbirds” means Allbirds, Inc., a Delaware corporation, and its successors and assigns. “Ancillary Document” has the meaning assigned to it in Section 9.06(b).

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to any Loan Party or any of their Subsidiaries from time to time concerning or relating to bribery or corruption.

“Applicable Parties” has the meaning assigned to it in Section 8.03(c).

“Applicable Percentage” means, with respect to any Lender, (a) with respect to Revolving Loans, LC Exposure, Overadvances, or Swingline Loans, a percentage equal to a fraction the numerator of which is such Lender’s Revolving Commitment and the denominator of which is the Aggregate Revolving Commitment, provided that, if the Revolving Commitments have terminated or expired, the Applicable Percentages will be determined based upon such Lender’s share of the Aggregate Revolving Exposure at that time and (b) with respect to Protective Advances or with

respect to the Aggregate Credit Exposure, a percentage based upon such Lender's share of the Aggregate Credit Exposure and the unused Commitments; provided that, in accordance with Section 2.20, so long as any Lender is a Defaulting Lender, such Defaulting Lender's Commitment will be disregarded in the calculations under clause (a) and clause (b) preceding.

"Applicable Rate" means, for any day, with respect to any Loan, or with respect to the commitment fees payable hereunder, as the case may be, the applicable rate per annum set forth below under the caption "Revolver CBFR/REVSOF30 Spread", "Revolver CBFR/CB Floating Rate Spread", "Revolver Term Benchmark/RFR Spread", or "Commitment Fee Rate", as the case may be, based upon the Average Quarterly Availability during the most recently ended fiscal quarter of Allbirds; provided that the "Applicable Rate" will be the applicable rates per annum set forth below in Category 1 during the period from the Effective Date to, and including, the last day of the fiscal quarter of Allbirds ending on or about March 31, 2019:

<u>Average Quarterly Availability</u>	<u>Revolver Term Benchmark/ RFR Spread</u>	<u>Revolver CBFR/ REVSOF30 Spread</u>	<u>Revolver CBFR/CB Floating Rate Spread</u>	<u>Commitment Fee Rate</u>
<u>Category 1 Greater than 20.0% of the Aggregate Revolving Commitment</u>	1.25%	1.25%	0.00%	0.20%
<u>Category 2 Less than or equal to 20.0% of the Aggregate Revolving Commitment</u>	1.50%	1.50%	0.00%	0.20%

For purposes of the foregoing, each change in the Applicable Rate resulting from a change in Average Quarterly Availability will be effective during the period commencing on and including the first day of each fiscal quarter of Allbirds and ending on the last day of such fiscal quarter, it being understood and agreed that, for purposes of determining the Applicable Rate on the first day of any fiscal quarter of Allbirds, the Average Quarterly Availability during the most recently ended fiscal quarter of Allbirds will be used. Notwithstanding the foregoing, the Average Quarterly Availability will be deemed to be in Category 2 if the Borrowers fail to deliver any Borrowing Base Certificate or related information required to be delivered by them pursuant to Section 5.01, during the period from the expiration of the time for delivery thereof until five days after each such Borrowing Base Certificate and related information is so delivered.

"Approved Electronic Platform" has the meaning assigned to such term in Section 8.03(a). "Approved Fund" has the meaning assigned to such term in Section 9.04.

"Arranger" means JPMorgan Chase Bank, N.A. in its capacity as sole bookrunner and sole lead arranger hereunder.

"Assignment and Assumption" means an assignment and assumption agreement entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other

form (including electronic records generated by the use of an electronic platform) approved by the Administrative Agent.

“Availability” means, at any time, an amount equal to (a) the lesser of (i) the Aggregate Revolving Commitment or (ii) the Borrowing Base, minus (b) the Aggregate Revolving Exposure.

“Availability Period” means the period from and including the Effective Date to but excluding the earlier of the Maturity Date or the date of termination of the Commitments.

“Available Revolving Commitment” means, at any time, the Aggregate Revolving Commitment, minus the Aggregate Revolving Exposure.

“Available Tenor” means, as of any date of determination and with respect to the then- current Benchmark, as applicable, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments of interest calculated pursuant to this Agreement as of such date and not including any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (e) of Section 2.14.

“Average Quarterly Availability” means, for any fiscal quarter of Allbirds, an amount equal to the average daily Availability during such fiscal quarter, as determined by the Administrative Agent’s system of records; provided that, in order to determine Availability on any day for purposes of this definition, Borrowing Base for such day will be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 5.01 as of such day.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“Bail-In Legislation” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule, or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation, or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration, or other insolvency proceedings).

“Banking Services” means each and any of the following bank services provided to any Loan Party or its Subsidiaries by JPMCB or any of its Affiliates: (a) credit cards for commercial customers (including, without limitation, “commercial credit cards” and purchasing cards), (b) stored value cards, (c) merchant processing services, and (d) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, any direct debit scheme or arrangement, overdrafts, cash pooling services, and interstate depository network services).

“Banking Services Obligations” means any and all obligations of the Loan Parties and their Subsidiaries, whether absolute or contingent and howsoever and whensoever created, arising,

evidenced, or acquired (including all renewals, extensions, and modifications thereof and substitutions therefor) in connection with Banking Services.

“Banking Services Reserves” means all Reserves that the Administrative Agent from time to time establishes in its Permitted Discretion for Banking Services then provided or outstanding.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy”, as now and hereafter in effect, or any successor statute.

“Bankruptcy Event” means, with respect to any Person, when such Person becomes the subject of a voluntary or involuntary bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors, or similar Person charged with the reorganization or liquidation of its business, appointed for it, or, in the determination of the Administrative Agent in its Permitted Discretion, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment or has had any order for relief in such proceeding entered in respect thereof, provided that a Bankruptcy Event will not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, unless such ownership interest results in or provides such Person with immunity from the jurisdiction of courts within the U.S. or any other applicable jurisdiction or from the enforcement of judgments or writs of attachment on such Person’s assets or permits such Person (or such Governmental Authority or instrumentality), to reject, repudiate, disavow, or disaffirm any contracts or agreements made by such Person.

“Benchmark” means, initially, with respect to any (i) RFR Loan, the Daily Simple SOFR, (2) Adjusted REVSOF30 Rate Loan, the REVSOF30 Rate, or (iii) Term Benchmark Loan, the Term SOFR Rate; provided that if a Benchmark Transition Event and the related Benchmark Replacement Date have occurred with respect to the Daily Simple SOFR, REVSOF30 Rate, or Term SOFR Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) of Section 2.14.

“Benchmark Replacement” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(a) the Adjusted Daily Simple SOFR;

(b) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower Representative as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to

(i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for dollar-denominated syndicated credit facilities at such time in the U.S. and (b) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (1) or clause (2) preceding would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower Representative for the applicable Corresponding Tenor giving due consideration to

(i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for dollar-denominated syndicated credit facilities at such time.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement and/or any Term Benchmark Loan or Adjusted REVSOF30 Rate Loan, any technical, administrative, or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative, or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date” means, with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(i) in the case of clause (1) or clause (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(ii) in the case of clause (3) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer

representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (3) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (1) or clause (2), with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Event" means, with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, the CME Term SOFR Administrator, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component), or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, that states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means, with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clause (1) or clause (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in Section 4975 of the Code to which Section 4975 of the Code applies, and (c) any Person whose assets include (for purposes of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Borrower” or “Borrowers” means, individually or collectively, Allbirds and any other Person at any time a party hereto as a Borrower. As of the Effective Date, Allbirds is the only Borrower.

“Borrower Representative” has the meaning assigned to such term in Section 11.01. “Borrowing” means (a) a Revolving Borrowing, (b) a Swingline Loan, (c) a Protective Advance, and (c) an Overadvance.

“Borrowing Base” means, at any time, the sum of (a) up to 90.0% of the face amount of the Borrowers’ Eligible Credit Card Accounts at such time, plus (b) up to 85.0% of the face amount of the Borrowers’ Eligible Trade Accounts at such time, plus (c) the lesser of up to (i) 90.0% of the Borrowers’ Eligible Inventory, at such time, valued at the lower of cost or market value, determined on a weighted average moving cost basis and (ii) the product of 90.0%, multiplied by the Net Orderly Liquidation Value percentage identified in the most recent inventory appraisal ordered by the Administrative Agent multiplied by the Borrowers’ Eligible Inventory, valued at the lower of cost or market value, determined on a weighted average moving cost basis, plus (d) 100% of the Borrowers’ Qualified Cash Balances, minus (e) Reserves.

“Borrowing Base Certificate” means a certificate, signed and certified as accurate and complete by a Financial Officer of the Borrower Representative, in substantially the form of Exhibit C or another form that is acceptable to the Administrative Agent in its sole discretion.

“Borrowing Request” means a request by the Borrower Representative for a Revolving Borrowing in accordance with Section 2.03.

“**Burdensome Restrictions**” means any consensual encumbrance or restriction of the type described in [Section 6.10\(a\)](#) or [Section 6.10\(b\)](#).

“**Business Day**” means any day (other than a Saturday or a Sunday) on which banks are open for business in New York, New York; provided that, in addition to the foregoing, a Business Day will be (a) in relation to RFR Loans and any interest rate settings, fundings, disbursements, settlements, or payments of any such RFR Loan, or any other dealings of such RFR Loan, and

(b) in relation to Loans referencing the Adjusted Term SOFR Rate and any interest rate settings, fundings, disbursements, settlements, or payments of any such Loans referencing the Adjusted Term SOFR Rate or any other dealings of such Loans referencing the Adjusted Term SOFR Rate, any such day that is only a U.S. Government Securities Business Day.

“**Capital Expenditures**” means, without duplication, any expenditure or commitment to expend money for any purchase or other acquisition of any asset that would be classified as a fixed or capital asset on a consolidated balance sheet prepared in accordance with GAAP, minus, in the case of the Loan Parties and their subsidiaries, (a) any software development costs to the extent deducted under the definition of EBITDA for any applicable period, (b) expenditures of insurance proceeds to rebuild or replace any asset after a casualty loss, and (c) leasehold improvement expenditures to the extent a Loan Party is reimbursed by the lessor within 180 days of such expenditures.

“**Capital Lease Obligations**” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases or financing leases on a balance sheet of such Person under GAAP, and the amount of such obligations will be the capitalized amount thereof determined in accordance with GAAP.

“**CB Floating Rate**” means the greater of the Prime Rate or 2.50%. Any change in the CB Floating Rate due to a change in the Prime Rate will be effective from and including the effective date of such change in the Prime Rate.

“**CBFR**”, when used in reference to: (a) a rate of interest, refers to the Adjusted REVSOFR30 Rate and (b) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the Adjusted REVSOFR30 Rate.

“**CFC**” means a “controlled foreign corporation” as defined in Section 957 of the Code. “**Change in Control**” means (a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than the Permitted Holders, become, or obtain rights (whether by means of warrants, options, or otherwise) to become, the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of at least 50.1% of the outstanding voting Equity Interests of Allbirds on a fully diluted basis, (b) occupation at any time of a majority of the seats (other than vacant seats) on the board of directors of Allbirds by Persons who were not (i) directors of Allbirds on the Effective Date or nominated, appointed or approved for consideration by shareholders for election by the board of directors of Allbirds, (ii) approved by the board of directors of Allbirds as director candidates prior to their election, nor (3) appointed by directors so nominated, appointed, or approved; or (c) except for transactions

permitted under this Agreement, Allbirds ceases to own (directly or indirectly), free and clear of all Liens or other encumbrances (other than Permitted Encumbrances), 100% of the outstanding voting Equity Interests of the other Borrowers on a fully diluted basis.

“Change in Law” means the occurrence after the date of this Agreement (or, with respect to any Lender, such later date on which such Lender becomes a party to this Agreement) of any of the following: (a) the adoption of or taking effect of any law, rule, regulation, or treaty; (b) any change in any law, rule, regulation, or treaty or in the administration, interpretation, implementation, or application thereof by any Governmental Authority; or (c) compliance by any Lender or Issuing Bank (or, for purposes of Section 2.15(b)), by any lending office of such Lender or by such Lender’s or Issuing Bank’s holding company, if any) with any request, guideline, requirement, or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that notwithstanding anything herein to the contrary, (y) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements, or directives thereunder or issued in connection therewith or in the implementation thereof and (z) all requests, rules, guidelines, requirements, or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority), or the U.S. or foreign regulatory authorities, in each case pursuant to Basel III, in each case will be deemed to be a “Change in Law”, regardless of the date enacted, adopted, issued, or implemented.

“Charges” has the meaning assigned to such term in Section 9.17.

“Class”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Swingline Loans, or Protective Advances, or Overadvances.

“CME Term SOFR Administrator” means CME Group Benchmark Administration Limited as administrator of the forward-looking term SOFR (or a successor administrator).

“Code” means the Internal Revenue Code of 1986, as amended from time to time. “Collateral” means any and all property owned, leased, or operated by a Person covered by the Collateral Documents and any and all other property of any Loan Party, now existing or hereafter acquired, that may at any time be, become, or be intended to be, subject to a Lien in favor of the Administrative Agent, on behalf of itself, the Lenders, and the other Secured Parties, to secure the Secured Obligations.

“Collateral Access Agreement” has the meaning assigned to such term in the Security Agreement.

“Collateral Documents” means, collectively, the Security Agreement, the NZ Security Agreement, and any other agreements, instruments, and documents executed in connection with this Agreement that are intended to create, perfect, or evidence Liens to secure the Secured Obligations, including, without limitation, all other security agreements, pledge agreements, mortgages, deeds of trust, loan agreements, notes, guarantees, subordination agreements, pledges, powers of attorney, consents, assignments, contracts, fee letters, notices, leases, financing statements, and all other written matter whether heretofore, now, or hereafter executed by any Loan Party and delivered to the Administrative Agent.

“Collection Account” has the meaning assigned to such term in the Security Agreement.

“Commercial LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding commercial Letters of Credit, plus (b) the aggregate amount of all LC Disbursements relating to commercial Letters of Credit that have not yet been reimbursed by or on behalf of the Borrowers. The Commercial LC Exposure of any Revolving Lender at any time will be its Applicable Percentage of the aggregate Commercial LC Exposure at such time.

“Commitment” means, with respect to each Lender, such Lender’s Revolving Commitment, together with the commitment of such Lender to acquire participations in Protective Advances hereunder. The initial amount of each Lender’s Commitment is set forth on the Commitment Schedule, or in the Assignment and Assumption or other documentation or record (as such term is defined in Section 9-102(a)(70) of the New York Uniform Commercial Code) as provided in Section 9.04(b)(ii)(C), pursuant to which such Lender has assumed its Commitment, as applicable.

“Commitment Schedule” means the Schedule attached hereto identified as such. “Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Communications” has the meaning assigned to such term in Section 8.03(c). “Compliance Certificate” means a certificate of a Financial Officer of the Borrower Representative in substantially the form of Exhibit D.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Control” means 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.

“Controlled Disbursement Account” means any deposit account of the Borrowers maintained with the Administrative Agent as a cash management account with a unique ABA routing number that effectively limits the number and frequency of daily check presentments pursuant to and under any agreement between a Borrower and the Administrative Agent, as modified and amended from time to time, and through which all, or substantially all, check disbursements of a Borrower, any other Loan Party, and any designated Subsidiary of a Borrower are made and settled on a daily basis with no uninvested balance remaining overnight.

“Corresponding Tenor” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“Covered Entity” means any of the following:

- (1) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (2) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (3) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Covered Party” has the meaning assigned to such term in Section 9.24.

“Credit Card Account” means an Account or any “payment intangible” (as defined in the UCC) together with all income, payments, and proceeds thereof, owed by a major credit or debit card issuer (including Visa, MasterCard, American Express, Discover, and such other issuers approved by the Administrative Agent) or any credit card processor or merchant bank providing credit card processing services to a Borrower resulting from charges by a customer of such Borrower on credit or debit cards issued by such issuer or processed by such processor or merchant bank in connection with the sale of goods by such Borrower, or services performed by such Borrower, in each case in the ordinary course of its business.

“Credit Card Notice” means a notice by a Borrower to a credit card issuer or credit card processor that (i) includes a directive to such credit card issuer or credit card processor to remit payments directly to the Collection Account, (ii) includes a requirement that the credit card issuer or credit card processor will not make any payments except as specified in such Credit Card Notice or as specified by the Administrative Agent in writing, and (iii) substantially in the form of Exhibit (G), or is otherwise in form and substance acceptable to the Administrative Agent.

“Credit Exposure” means, as to any Lender at any time, such Lender’s Revolving Exposure at such time.

“Credit Party” means the Administrative Agent, any Issuing Bank, the Swingline Lender, or any other Lender.

“Daily Simple SOFR” means, for any day (a “SOFR Rate Day”), a rate per annum equal to SOFR for the day (such day, a “SOFR Determination Date”) that is five U.S. Government Securities Business Days prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website. Any change in Daily Simple SOFR due to a change in SOFR will be effective from and including the effective date of such change in SOFR without notice to the Borrowers.

“DDA Access Product” means the bank service provided to any Loan Party by JPMCB in its sole discretion consisting of direct access to schedule payments from the Funding Account by electronic, internet, or other access mechanisms that may be agreed upon from time to time by

JPMCB and the funding of such payments under the Loan Borrowing Option in the DDA Access Product Agreement.

“DDA Access Product Agreement” means JPMCB’s Treasury Services End of Day Investment & Loan Sweep Service Terms, as in effect on the date of this Agreement, as the same may be amended or otherwise modified from time to time.

“Default” means any event or condition that constitutes an Event of Default or that upon notice, lapse of time, or both would, unless cured or waived, become an Event of Default.

“Default Right” has the meaning assigned to such term in, and will be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“Defaulting Lender” means any Lender that (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in Letters of Credit or Swingline Loans, or (iii) pay over to any Credit Party any other amount required to be paid by such Lender hereunder, unless, in the case of clause (i) preceding, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender’s good faith determination that a condition precedent to funding (specifically identified and including the particular Default, if any) has not been satisfied, (b) has notified any Borrower or any Credit Party in writing, or has made a public statement, to the effect that such Lender does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender’s good faith determination that a condition precedent (specifically identified and including the particular Default, if any) to funding a Loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by a Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations as of the date of certification) to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans under this Agreement, provided that such Lender will cease to be a Defaulting Lender pursuant to this clause (c), upon such Credit Party’s receipt of such certification in form and substance satisfactory to it and the Administrative Agent, or (d) has become the subject of (i) a Bankruptcy Event or (ii) a Bail-In Action.

“Deficiency Funding Date” has the meaning assigned to such term in Section 2.05(a).

“Disclosed Matters” means the actions, suits, proceedings, and environmental matters disclosed in Schedule 3.06.

“Disposition” or “Dispose” means the sale, transfer, license, lease, or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) of any property by any Person (including any sale and leaseback transaction and any issuance of Equity Interests by a Subsidiary of such Person), including any sale, assignment, transfer, or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Dividing Person” has the meaning assigned to it in the definition of “Division”.

“Division” means the division of the assets, liabilities, and/or obligations of a Person (the “Dividing Person”) among two or more Persons (whether pursuant to a “plan of division”, “divisive merger”, or similar arrangement), that may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

“Division Successor” means any Person that, upon the consummation of a Division of a Dividing Person, holds all or any portion of the assets, liabilities, and/or obligations previously held by such Dividing Person immediately prior to the consummation of such Division. A Dividing Person that retains any of its assets, liabilities, and/or obligations after a Division will be deemed a Division Successor upon the occurrence of such Division.

“Document” has the meaning assigned to such term in the Security Agreement. “Dollars”, “dollars”, and “\$” refer to lawful money of the U.S.

“Domestic Subsidiary” means a Subsidiary organized under the laws of a jurisdiction located in the U.S., but excluding any such Subsidiary that is a FSHCO.

“Dominion Event Date” means (a) the date of the occurrence of any Event of Default resulting from non-compliance by the Loan Parties with the terms of Section 5.01(g), Section 5.01(h), or Section 6.12 (provided that any such Event of Default resulting from a failure to comply with the terms of Section 5.01(g) or Section 5.01(h) will not result in a Dominion Event Date if the Loan Parties deliver the reporting information required by Section 5.01(g) or Section 5.01(h), as the case may be, within five Business Days of notice from the Administrative Agent of the Loan Parties’ failure to comply with Section 5.01(g) or Section 5.01(h)), (b) the date of the occurrence of any Event of Default under clause (a), clause (b), clause (h), clause (i), or clause (j) of Article 7, or (c) any date on which Availability is less than 10.0% of the Aggregate Revolving Commitment.

“Dominion Period” means any period of time beginning on a Dominion Event Date and continuing through a Dominion Termination Date, if any.

“Dominion Termination Date” means, the first day after any period of 30 consecutive days occurring after a Dominion Event Date, during which none of the conditions specified in the definition of Dominion Event Date exist.

“EBITDA” means, for any period, Net Income for such period, plus (a) without duplication and to the extent deducted in determining Net Income for such period, the sum of (i) Interest Expense for such period, (ii) expense for income taxes paid or accrued, (iii) all amounts attributable to depreciation and amortization expense for such period, (iv) any non-cash charges attributable to impairment of goodwill or other intangible assets, impairment of long-lived assets and any extraordinary, unusual, or non-recurring non-cash expenses or losses, (v) non-cash compensation expense arising from the sale or issuance of stock or the granting of stock options, (vi) fees and expenses directly incurred or paid in connection with (A) the Transactions, (B) any Permitted Acquisition or any other acquisition not prohibited by this Agreement, and (C) to the extent permitted hereunder, issuances or incurrence of Indebtedness, issuances of Equity Interests, or refinancing transactions and modifications of instruments of Indebtedness; provided that the aggregate amount of fees and expenses added back pursuant to this clause (vi) will not exceed 15.0% of EBITDA for any applicable period (prior to giving effect to the addback of such items

pursuant to this clause (vi)), (vii) any non-recurring charges, costs, losses, fees, and expenses directly incurred or paid directly as a result of discontinued operations or any sale or disposition of any asset of any Loan Party; provided that amounts added back to this clause (vii) will be actual and not projected and will be without duplication of amounts added back pursuant to clause (viii) following, (viii) restructuring charges or reserves, including write-downs and write-offs, including any one-time costs incurred in connection with Permitted Acquisitions or any other acquisitions not prohibited by this Agreement and costs related to the closure, consolidation, and integration of facilities, information technology infrastructure and legal entities, and severance and retention bonuses; provided that amounts added back pursuant to this clause (viii) are actual and not projected, and do not exceed 15.0% of EBITDA for any applicable period (prior to giving effect to the addback of such items pursuant to this clause (viii)), (ix) adjustments relating to purchase price allocation accounting, and (x) net losses (including all fees, expenses, and charges related thereto) on the retirement or extinguishment of indebtedness, (xi) non-cash exchange, translation, or performance losses relating to any hedging transactions or foreign currency fluctuations, (xii) any extraordinary non-cash charges for such period, and (xiii) any other non-cash charges for such period (but excluding any non-cash charge in respect of an item that was included in Net Income in a prior period, and any non-cash charge that relates to the write-down or write-off of inventory), minus (b) without duplication and to the extent included in Net Income, (i) any cash payments made during such period in respect of non-cash charges described in clause (a)(xiii) preceding taken in a prior period, (ii) any software development costs to the extent capitalized during such period, (iii) interest income, (iv) exchange, translation, or performance gains relating to any hedging transactions or foreign currency fluctuations, and (v) any extraordinary gains and any non-cash items of income for such period, all calculated on a consolidated basis in accordance with GAAP.

“ECP” means an “eligible contract participant” as defined in Section 1(a)(18) of the Commodity Exchange Act or any regulations promulgated thereunder and the applicable rules issued by the Commodity Futures Trading Commission and/or the SEC.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) preceding, or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in clause (a) or clause (b) preceding and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegate) having responsibility for the resolution of any EEA Financial Institution.

“Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate, or accept such contract or record.

“Electronic System” means any electronic system, including e-mail, e-fax, web portal access for such Borrower, and any other Internet or extranet-based site, whether such electronic system is owned, operated, or hosted by the Administrative Agent or any Issuing Bank and any of their respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

“Eligible Accounts” means Eligible Credit Card Accounts and Eligible Trade Accounts. “Eligible Credit Card Account” means at the time of any determination thereof, any Credit Card Account that satisfies the following criteria at the time of creation and continues to meet such criteria at the time of such determination: such Credit Card Account (i) is owned by a Borrower; (ii) has been earned by performance and represents the bona fide amount due to the applicable Borrower from a credit card issuer or credit card processor, and in each case originated in the ordinary course of business of the applicable Borrower; (iii) unless owed by Visa, MasterCard, American Express Company, Discover, or any credit card processor or merchant bank providing credit card processing services to a Borrower acceptable to the Administrative Agent in its Permitted Discretion; and (iv) is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clause (a) through clause (m) following. Without limiting the foregoing, to qualify as an Eligible Credit Card Account, a Credit Card Account must indicate no Person other than a Borrower as payee or remittance party. In determining the amount to be so included, the face amount of a Credit Card Account will be reduced by, without duplication, to the extent not reflected in such face amount or otherwise excluded below, (y) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges, or other allowances (including any amount that the applicable Borrower may be obligated to rebate to a customer, a credit card issuer or a credit card processor pursuant to the terms of any agreement or understanding (written or oral)) and (z) the aggregate amount of all cash received in respect of such Credit Card Account but not yet applied by the applicable Borrower to reduce the amount of such Credit Card Account. Except as otherwise agreed by the Administrative Agent in its Permitted Discretion, a Credit Card Account will not be an Eligible Credit Card Account if:

- (1) such Credit Card Account does not constitute an “account” (as defined in the UCC) or “payment intangible” (as defined in the UCC);
- (2) such Credit Card Account has been outstanding for more than seven Business Days from the date of the applicable sale to a customer of a Borrower;
- (3) a Borrower does not have good, valid, and marketable title, free and clear of any Lien to such Credit Card Account, excluding any rights of offset of a credit card issuer or processor in the ordinary course of business;
- (4) such Credit Card Account is not subject to a first priority perfected Lien (excluding any rights of offset of a credit card issuer or processor in the ordinary course of business) in favor of the Administrative Agent, for the benefit of the Lenders (it being the intent that chargebacks in the ordinary course by such processors will not be deemed a violation of this clause (d));

(5) such Credit Card Account is disputed, is with recourse, or is subject to a claim, counterclaim, offset, or chargeback that has been asserted (to the extent of such claim, counterclaim, offset, or chargeback);

(6) the credit card issuer or the credit card processor with respect to such Credit Card Account has the right under certain circumstances to require the applicable Borrower to repurchase such Credit Card Account from such credit card issuer or credit card processor;

(7) such Credit Card Account is due from a credit card issuer or credit card processor that has (i) applied for, suffered, or consented to the appointment of any receiver, custodian, trustee, or liquidator of its assets, (ii) had possession of all or a material part of its property taken by any receiver, custodian, trustee, or liquidator, (iii) filed, or had filed against it, any request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, winding-up, or voluntary or involuntary case under any state or federal bankruptcy laws, (iv) admitted in writing its inability, or is generally unable to, pay its debts as they become due, (v) become insolvent, (vi) ceased operation of its business, or (vii) taken any corporate action, legal proceedings, or other procedure or step is taken in relation to (A) the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, administration, or reorganization (by way of voluntary arrangements, scheme of arrangement, or otherwise), (B) a composition, compromise, assignment, or arrangement with any creditor, (C) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager, or other similar officer in respect of such Account Debtor or any of their assets, or (D) enforcement of any Lien over any assets of such Account Debtor, or any analogous procedure or step is taken in any jurisdiction;

(8) such Credit Card Account is not a valid, legally enforceable obligation of the applicable credit card issuer or credit card processor with respect thereto;

(9) such Credit Card Account does not conform to in all material respects all representations, warranties, or other provisions in the Loan Documents relating to Credit Card Accounts;

(10) such Credit Card Account is due from a credit card issuer or credit card processor that is not located in the U.S. unless the applicable credit card issuer or credit card processor remits payment directly to the Collection Account (as defined in the Security Agreement);

(11) is owed in any currency other than U.S. dollars, unless such Credit Card Account is reported in the applicable Borrowing Base Certificate in a U.S. dollar equivalent amount at the time of submission of the applicable Borrowing Base Certificate;

(12) such Credit Card Account is evidenced by "chattel paper" (as defined in the UCC) or an "instrument" (as defined in the UCC) of any kind unless such chattel paper or instrument is in the possession of the Administrative Agent, and to the extent necessary or appropriate, endorsed to the Administrative Agent; or

(13) any Credit Card Account due from a credit card issuer or credit card processor that:

- a. the Administrative Agent has not received a copy of a Credit Card Notice sent by the Borrower to the applicable credit card issuer or credit card processor; or
- b. the Administrative Agent has received a copy of a Credit Card Notice sent to the applicable credit card issuer or credit card processor, but either the Administrative Agent or the Borrower has determined that, notwithstanding the instructions in the applicable Credit Card Notice, such credit card issuer or credit card processor is not following the instructions given in such Credit Card Notice.

The Administrative Agent retains the right, from time to time in its Permitted Discretion, to establish additional standards of eligibility for Credit Card Accounts.

“Eligible Inventory” means, at any time, the Inventory of a Borrower that the Administrative Agent determines in its Permitted Discretion is eligible as the basis for the extension of Revolving Loans and Swingline Loans and the issuance of Letters of Credit. Without limiting the Administrative Agent’s discretion provided herein, Eligible Inventory of a Borrower will not include any Inventory:

- (1) that is not subject to a first priority perfected Lien in favor of the Administrative Agent;
- (2) that is subject to any Lien other than (i) a Lien in favor of the Administrative Agent and (ii) a Permitted Encumbrance that does not have priority over the Lien in favor of the Administrative Agent;
- (3) that is, in the Administrative Agent’s opinion, slow moving, obsolete, unmerchantable, defective, used, unfit for sale, not salable at prices approximating at least the cost of such Inventory in the ordinary course of business, or unacceptable due to age, type, category, and/or quantity;
- (4) with respect to which any covenant, representation, or warranty contained in this Agreement or in the Security Agreement has been breached or is not true and that does not conform to all standards imposed by any Governmental Authority;
- (5) in which any Person other than such Borrower (i) has any direct or indirect ownership, interest, or title or (ii) is indicated on any purchase order or invoice with respect to such Inventory as having or purporting to have an interest therein;
- (6) that is not finished goods or that constitutes work-in-process, raw materials, spare or replacement parts, subassemblies, packaging and shipping material, manufacturing supplies, samples, prototypes, displays or display items, bill-and-hold or ship-in-place goods, goods that are returned or marked for return, repossessed goods, defective or damaged goods, goods held on consignment, or goods that are not of a type held for sale in the ordinary course of business;

(7) that is not located in the U.S. or New Zealand or is in transit with a common carrier from vendors and suppliers, provided that, up to the greater of \$10,000,000 or 25.0% of the Aggregate Revolving Commitment of Inventory in transit from vendors and suppliers may be included as Eligible Inventory despite the foregoing provision of this clause (g), if:

(x) the Administrative Agent has received (A) a true and correct copy of the bill of lading and other shipping documents for such Inventory and (B) evidence of satisfactory casualty insurance naming the Administrative Agent as lender loss payee and otherwise covering such risks as the Administrative Agent may reasonably request;

(y) for inventory that is in transit within the U.S. or New Zealand, the bill of lading is non-negotiable and the Administrative Agent has received, if requested, a duly executed Collateral Access Agreement, in form and substance satisfactory to the Administrative Agent, from the applicable customs broker, freight forwarder, or carrier for such Inventory;

(z) for inventory that is in transit to a Borrower in the U.S. or New Zealand from outside the U.S. or New Zealand, either

i. the bill of lading is negotiable and the Administrative Agent has received (x) confirmation that the bill is issued in the name of such Borrower and consigned to the order of the Administrative Agent or a third party acceptable to the Administrative Agent (which may be Flexport International LLC or another customs broker acceptable to the Administrative Agent; such third party being referred to hereinafter as a "transit agent"), and an acceptable agreement among the Borrowers, the Administrative Agent, and the transit agent has been executed and delivered, in which the transit agent agrees, in part, that it holds the negotiable bill of lading and other shipping documents and all Inventory represented thereby as agent for the Administrative Agent and has granted the Administrative Agent access to such Inventory, (y) confirmation that such Borrower has paid for the goods, and (z) an estimate from such Borrower of the customs duties, customs fees and all other amounts due to the transit agent associated with the Inventory in order to establish an appropriate Reserve; or

ii. the bill of lading is non-negotiable and, the Administrative Agent has received (x) confirmation that the bill is issued in the name of such Borrower or a transit agent, and an acceptable agreement among the Borrowers, the Administrative Agent, and the transit agent has been executed and delivered, in which the transit agent agrees, in part, that it holds the non-negotiable bill of lading and other shipping documents and all Inventory represented thereby as agent for the Administrative Agent and has granted the Administrative Agent access to such Inventory, (aa) confirmation that such Borrower has paid for the goods, and (z) an estimate from such Borrower of the customs duties, customs fees and all

other amounts due to the transit agent associated with the Inventory in order to establish an appropriate Reserve,

(4) the common carrier is not an Affiliate of the applicable vendor or supplier or any Loan Party, and

(5) the transit agent (as described in clause (iii) preceding) is not an Affiliate of any Loan Party;

(8) that is located in any location leased by such Borrower (i) unless (A) the lessor has delivered to the Administrative Agent a Collateral Access Agreement or (B) a Reserve for rent, charges, and other amounts due or to become due with respect to such facility has been established by the Administrative Agent in its Permitted Discretion or (2) where less than \$100,000 of Inventory of the Borrowers is located at such location;

a. that is located in any third party warehouse or is in the possession of a bailee (other than a third party processor) and is not evidenced by a Document (other than bills of lading to the extent permitted pursuant to clause (g) preceding) (i) unless (A) such warehouseman or bailee has delivered to the Administrative Agent a Collateral Access Agreement and such other documentation as the Administrative Agent may require or (B) an appropriate Reserve has been established by the Administrative Agent in its Permitted Discretion or (ii) where less than \$100,000 of Inventory of the Borrowers is located;

(10) [reserved]

(11) that is a discontinued product or component thereof;

(12) that is the subject of a consignment by such Borrower as consignor;

(13) that is perishable;

(14) that contains or bears any intellectual property rights licensed to such Borrower unless the Administrative Agent is satisfied that it may sell or otherwise dispose of such Inventory without (i) infringing the rights of such licensor, (ii) violating any contract with such licensor, or (iii) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such Inventory under the current licensing agreement;

(15) that is not reflected in a current perpetual inventory report of such Borrower (unless such Inventory is reflected in a report to the Administrative Agent as "in transit" Inventory);

(16) for which reclamation rights have been asserted by the seller; or

(17) that has been acquired from a Sanctioned Person.

The Administrative Agent retains the right, from time to time in its Permitted Discretion, to establish additional standards of eligibility for Inventory.

“Eligible Trade Accounts” means, at any time, the Accounts, excluding any Credit Card Accounts, of a Borrower that the Administrative Agent determines in its Permitted Discretion are eligible as the basis for the extension of Revolving Loans and Swingline Loans and the issuance of Letters of Credit. Without limiting the Administrative Agent’s discretion provided herein, Eligible Trade Accounts will not include any Account of a Borrower:

- (1) that is not subject to a first priority perfected security interest in favor of the Administrative Agent;
- (2) that is subject to any Lien other than (i) a Lien in favor of the Administrative Agent and (ii) a Permitted Encumbrance that does not have priority over the Lien in favor of the Administrative Agent;
- (3) (i) that is unpaid more than 90 days after the date of the original invoice therefor or more than 60 days after the original due date therefor, or (ii) that has been written off the books of such Borrower or otherwise designated as uncollectible;
- (4) that is owing by an Account Debtor for which more than 50.0% of the Accounts owing from such Account Debtor and its Affiliates are ineligible pursuant to clause (c) preceding;
- (5) [reserved]
- (6) with respect to which any covenant, representation, or warranty contained in this Agreement or in the Security Agreement has been breached or is not true;
- (7) that (i) does not arise from the sale of goods or performance of services in the ordinary course of business, (ii) is not evidenced by an invoice or other documentation satisfactory to the Administrative Agent that has been sent to the Account Debtor,
- (3) represents a progress billing or is contingent upon such Borrower’s completion of any further performance; provided that such Accounts will not be ineligible solely as a result of the customer having a right to return goods purchased in the ordinary course of business (whether contractual or common law), (iv) represents a sale on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment, cash-on-delivery, or any other repurchase or return basis, or (v) relates to payments of interest;
- (8) for which the goods giving rise to such Account have not been shipped to the Account Debtor or for which the services giving rise to such Account have not been performed by such Borrower or if such Account was invoiced more than once (excluding “reminder notices” and other normal follow-up correspondence and billing matters with respect to previous invoices);
- (9) with respect to which any check or other instrument of payment has been returned uncollected for any reason;
- (10) that is owed by an Account Debtor that has (i) applied for, suffered, or consented to the appointment of any receiver, custodian, trustee, or liquidator of its assets, (ii) had possession of all or a material part of its property taken by any receiver, custodian, trustee, or liquidator, (iii) filed, or had filed against it, any request or petition for

liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, winding-up, or voluntary or involuntary case under any state or federal bankruptcy laws,
(4) admitted in writing its inability, or is generally unable to, pay its debts as they become due, (v) become insolvent, or (vi) ceased operation of its business;

(11) that is owed by any Account Debtor that has sold all or substantially all of its assets;

(12) that, unless otherwise agreed to in writing by the Administrative Agent in its Permitted Discretion, is owed by an Account Debtor that (i) does not maintain its chief executive office in the U.S., Canada, or New Zealand or (ii) is not organized under applicable law of the U.S., any state of the U.S., or the District of Columbia, Canada, or any province of Canada, or New Zealand unless, in any such case, such Account is backed by a Letter of Credit acceptable to the Administrative Agent that is in the possession of, and is directly drawable by, the Administrative Agent;

(13) that is owed in any currency other than U.S. dollars or any other currency agreed to in writing by the Administrative Agent in its Permitted Discretion;

(14) that is owed by (i) any government (or any department, agency, public corporation, or instrumentality thereof) of any country other than the U.S. unless such Account is backed by a Letter of Credit acceptable to the Administrative Agent that is in the possession of, and is directly drawable by, the Administrative Agent or (ii) any government of the U.S., or any department, agency, public corporation, or instrumentality thereof, unless the Federal Assignment of Claims Act of 1940, as amended (31 U.S.C. § 3727 et seq. and 41 U.S.C. § 15 et seq.), and any other steps necessary to perfect the Lien of the Administrative Agent in such Account have been complied with to the Administrative Agent's satisfaction;

(15) that is owed by any Affiliate of any Loan Party or any employee, officer, director, agent, or stockholder of any Loan Party or any of its Affiliates;

(16) [reserved]

(17) that is owed by an Account Debtor or any Affiliate of such Account Debtor to which any Loan Party is indebted, but only to the extent of such indebtedness, or is subject to any security, deposit, progress payment, retainage, or other similar advance made by or for the benefit of an Account Debtor, in each case to the extent thereof;

(18) that is subject to any counterclaim, deduction, defense, setoff, or dispute but only to the extent of any such counterclaim, deduction, defense, setoff, or dispute;

(19) that is evidenced by any promissory note, chattel paper, or instrument;

(20) that is owed by an Account Debtor that is a Sanctioned Person;

(21) with respect to which such Borrower has made any agreement with the Account Debtor for any reduction thereof, other than discounts and adjustments given in the ordinary course of business but only to the extent of any such reduction, or any Account

that was partially paid and such Borrower created a new receivable for the unpaid portion of such Account;

(22) that does not comply in all material respects with the requirements of all applicable laws and regulations, whether Federal, state, or local, including the Federal Consumer Credit Protection Act, the Federal Truth in Lending Act, and Regulation Z;

(23) that is for goods that have been sold under a purchase order or pursuant to the terms of a contract or other agreement or understanding (written or oral) that indicates or purports that any Person other than such Borrower has or has had an ownership interest in such goods, or that indicates any party other than such Borrower as payee or remittance party; or

(24) that was created on cash on delivery terms.

In determining the amount of an Eligible Trade Account of a Borrower, the face amount of an Account may, in the Administrative Agent's Permitted Discretion, be reduced by, without duplication, to the extent not reflected in such face amount, (i) the amount of all accrued and actual discounts, claims, credits, or credits pending, promotional program allowances, price adjustments, finance charges, or other allowances (including any amount that such Borrower may be obligated to rebate to an Account Debtor pursuant to the terms of any agreement or understanding (written or oral)) and (ii) the aggregate amount of all cash received in respect of such Account but not yet applied by such Borrower to reduce the amount of such Account. The Administrative Agent retains the right, from time to time in its Permitted Discretion, to establish additional standards of eligibility for Accounts.

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to (a) the environment, (b) preservation or reclamation of natural resources, (c) the management, Release, or threatened Release of any Hazardous Material, or (d) health and safety matters.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties, or indemnities), of any Borrower or Subsidiary directly or indirectly resulting from or based upon (a) any violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment, or disposal of any Hazardous Materials, (c) any exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment, or (e) any contract, agreement, or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust, or other equity ownership interests in a Person, and any warrants, options, or other rights entitling the holder thereof to purchase or acquire any of the foregoing, but excluding any debt securities convertible into any of the foregoing.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with a Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or Section 4001(14) of ERISA or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived), (b) the failure to satisfy the “minimum funding standard” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived, (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, (d) the incurrence by any Borrower or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan, (e) the receipt by any Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, (f) the incurrence by any Borrower or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal of any Borrower or any ERISA Affiliate from any Plan or Multiemployer Plan, or (g) the receipt by any Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Borrower or any ERISA Affiliate of any notice, concerning the imposition upon any Borrower or any ERISA Affiliate of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, in critical status, or in reorganization, within the meaning of Title IV of ERISA.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“Event of Default” has the meaning assigned to such term in Article 7.

“Excess Availability” means, at any time, an amount equal to the result of (a) Availability, minus (b) the aggregate amount of all outstanding accounts payable that have been unpaid for more than 60 days after the due date therefor (other than accounts payable being contested or disputed in good faith).

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation, or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an ECP at the time the Guarantee of such Guarantor or the grant of such security interest becomes or would become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion will apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

“Excluded Taxes” 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, the

jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes; (b) in the case of a Lender, withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan, Letter of Credit, or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan, Letter of Credit, or Commitment (other than pursuant to an assignment request by the Borrowers under [Section 2.19\(b\)](#)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to [Section 2.17](#), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan, Letter of Credit, or Commitment or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Recipient's failure to comply with [Section 2.17\(f\)](#); and (d) any withholding Taxes imposed under FATCA.

"[Extenuating Circumstance](#)" means any period during which the Administrative Agent has determined in its sole discretion (a) that due to unforeseen and/or nonrecurring circumstances, it is impractical and/or not feasible to submit or receive a Borrowing Request or Interest Election Request by email or fax or through Electronic System and (b) to accept a Borrowing Request or Interest Election Request telephonically.

"[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 agreement entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules, or practices adopted pursuant to any intergovernmental agreement, treaty, or convention among Governmental Authorities and implementing such Sections of the Code.

"[Federal Funds Effective Rate](#)" means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depository institutions, as determined in such manner as set forth on the NYFRB's Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate, provided that, if the Federal Funds Effective Rate as so determined would be less than 0.00%, such rate will be deemed to be 0.00% for the purposes of this Agreement.

"[Federal Reserve Board](#)" means the Board of Governors of the Federal Reserve System of the U.S.

"[Financial Officer](#)" means the chief financial officer, vice president of finance, head of finance, principal accounting officer, treasurer, or controller of a Borrower.

"[Fixed Charge Coverage Ratio](#)" means, as of any date, the ratio of (a) EBITDA, minus Unfinanced Capital Expenditures, divided by (b) Fixed Charges.

"[Fixed Charges](#)" means, for any period, without duplication, cash Interest Expense, plus scheduled principal payments on Indebtedness (excluding with respect to the Loan Parties the Revolving Loans) actually made, plus expenses for taxes paid in cash, plus Restricted Payments paid in cash, plus Capital Lease Obligation payments.

"[Flood Laws](#)" has the meaning assigned to such term in [Section 8.10](#).

“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment, or renewal of this Agreement or otherwise) with respect to the Adjusted Term SOFR Rate, Adjusted REVSOF30 Rate, or the Adjusted Daily Simple SOFR, as applicable. For the avoidance of doubt, the initial Floor for each of the Adjusted Term SOFR Rate, Adjusted REVSOF30 Rate, or the Adjusted Daily Simple SOFR will be 0.00%.

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

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

“FSHCO” means a Subsidiary that owns no assets other than Equity Interests of, and Indebtedness from, one or more CFCs.

“Funding Account” has the meaning assigned to such term in Section 4.01(h). “GAAP” means generally accepted accounting principles in the U.S.

“Governmental Authority” means the government of the U.S., any other nation, or 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.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities, or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital, or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee does not include endorsements for collection or deposit in the ordinary course of business.

“Guaranteed Obligations” has the meaning assigned to such term in Section 10.01. “Guarantors” means all Loan Guarantors and any non-Loan Parties (if any) that have delivered an Obligation Guaranty, and the term “Guarantor” means each or any one of them individually.

“Hazardous Materials” means: (a) any substance, material, or waste that is included within the definitions of “hazardous substances,” “hazardous materials,” “hazardous waste,” “toxic substances,” “toxic materials,” “toxic waste,” or words of similar import in any Environmental

Law; (b) those substances listed as hazardous substances by the U.S. Department of Transportation (or any successor agency) (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) (40 C.F.R. Part 302 and amendments thereto); and
(c) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical.

“**IFRS**” means the body of pronouncements issued by the International Accounting Standards Board (IASB), including International Financial Reporting Standards and interpretations approved by the IASB, International Accounting Standards and Standing Interpretations Committee interpretations approved by the predecessor International Accounting Standards Committee and adapted for use in the European Union.

“**Indebtedness**” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes, or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (j) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances, (k) obligations under any earn-out (which for all purposes of this Agreement will be valued at the maximum potential amount payable with respect to such earn-out), (l) any other Off-Balance Sheet Liability and (m) obligations, whether absolute or contingent and howsoever and whensoever created, arising, evidenced, or acquired (including all renewals, extensions, and modifications thereof and substitutions therefor), under (i) any and all Swap Agreements and (ii) any and all cancellations, buy backs, reversals, terminations, or assignments of any Swap Agreement transaction. The Indebtedness of any Person includes the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“**Indemnified Taxes**” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by, or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), preceding, Other Taxes.

“**Indemnitee**” has the meaning assigned to such term in Section 9.03(b). “**Ineligible Institution**” has the meaning assigned to such term in Section 9.04(b). “**Information**” has the meaning assigned to such term in Section 9.12.

“Interest Election Request” means a request by the Borrower Representative to convert or continue a Revolving Borrowing in accordance with Section 2.08.

“Interest Expense” means, for any period, total interest expense (including that attributable to Capital Lease Obligations) for such period with respect to all outstanding Indebtedness (including all commissions, discounts, and other fees and charges owed with respect to letters of credit and bankers’ acceptances and net costs under Swap Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP), calculated on a consolidated basis for such period in accordance with GAAP.

“Interest Payment Date” means (a) with respect to any CBFR Loan, the first Business Day of each calendar month and the Maturity Date, (b) with respect to any RFR Loan, (i) each date that is on the numerically corresponding day in each calendar month that is one month after the Borrowing of such Loan (or, if there is no such numerically corresponding day in such month, then the last day of such month) (ii) the Maturity Date, and (c) with respect to any Term Benchmark Loan, the last day of each Interest Period applicable to the Borrowing of which such Loan is a part (and, in the case of a Term Benchmark Borrowing with an Interest Period of more than three months duration, each day prior to the last day of such Interest Period that occurs at intervals of three months duration after the first day of such Interest Period) and the Maturity Date.

“Interest Period” means, with respect to any Term Benchmark Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, three, or six months thereafter, or with the consent of each Lender, twelve months thereafter (in each case, subject to the availability for the Benchmark applicable to the relevant Loan or Commitment), as the Borrower Representative may elect; provided that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period will be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period will end on the next preceding Business Day, (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) will end on the last Business Day of the last calendar month of such Interest Period, and (c) no tenor that has been removed from this definition pursuant to Section 2.14(e) will be available for specification in such Borrowing Request or Interest Election Request. For purposes hereof, the date of a Borrowing initially will be the date on which such Borrowing is made and, in the case of a Revolving Borrowing, thereafter will be the effective date of the most recent conversion or continuation of such Borrowing.

“Inventory” has the meaning assigned to such term in the Security Agreement. “Investment” has the meaning assigned to such term in Section 6.04.

“IRS” means the United States Internal Revenue Service.

“Issuing Bank” means, individually and collectively, each of JPMCB and any other Revolving Lender from time to time designated by the Borrower Representative as an Issuing Bank (in each case, through itself or through one of its designated affiliates or branch offices), with the consent of such Revolving Lender and the Administrative Agent, each in its capacity as the issuer of Letters of Credit hereunder, and its respective successors in such capacity as provided in Section 2.06(i). Any Issuing Bank may, in its discretion, arrange for one or more Letters of Credit

to be issued by its Affiliates, in which case the term "Issuing Bank" will include any such Affiliate with respect to Letters of Credit issued by such Affiliate (it being agreed that such Issuing Bank will, or will cause such Affiliate to, comply with the requirements of Section 2.06 with respect to such Letters of Credit). At any time there is more than one Issuing Bank, all singular references to the Issuing Bank will mean any Issuing Bank, either Issuing Bank, each Issuing Bank, the Issuing Bank that has issued the applicable Letter of Credit, or both (or all) Issuing Banks, as the context may require.

"Issuing Bank Sublimit" means, as of the Effective Date, (i) \$20,000,000, in the case of JPMCB and (ii) such amount as is designated to the Administrative Agent and the Borrower Representative in writing by an Issuing Bank; provided that any Issuing Bank will be permitted at any time to increase or reduce its Issuing Bank Sublimit upon providing five Business Days prior written notice thereof to the Administrative Agent and the Borrower Representative.

"Joinder Agreement" means a Joinder Agreement in substantially the form of Exhibit E. "JPMCB" means JPMorgan Chase Bank, N.A., a national banking association, in its individual capacity, and its successors.

"LC Collateral Account" has the meaning assigned to such term in Section 2.06(j).

"LC Disbursement" means any payment made by an Issuing Bank pursuant to a Letter of Credit.

"LC Exposure" means, at any time, the sum of the Commercial LC Exposure and the Standby LC Exposure at such time. The LC Exposure of any Revolving Lender at any time will be its Applicable Percentage of the aggregate LC Exposure at such time.

"Lenders" means the Persons listed on the Commitment Schedule and any other Person that has become a Lender hereunder pursuant to Section 2.09 or an Assignment and Assumption or otherwise, other than any such Person that ceases to be a Lender hereunder pursuant to an Assignment and Assumption or otherwise. Unless the context otherwise requires, the term "Lenders" includes the Swingline Lender and each Issuing Bank.

"Letter of Credit Agreement" has the meaning assigned to such term in Section 2.06(b). "Letters of Credit" means the letters of credit issued pursuant to this Agreement, and the term "Letter of Credit" means any one of them or each of them singularly, as the context may require.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge, or security interest (including a security interest as defined in section 17(1)(a) of the PPSA) in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease, or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset, and (c) in the case of securities, any purchase option, call, or similar right of a third party with respect to such securities.

“Loan Borrowing Option” has the meaning assigned to such term in the DDA Access Product Agreement.

“Loan Documents” means, collectively, this Agreement, any promissory notes issued pursuant to this Agreement, any Letter of Credit Agreement, the Collateral Documents, the Loan Guaranty, any Obligation Guaranty, and all other agreements, instruments, documents, and certificates identified in Section 4.01 executed and delivered to, or in favor of, the Administrative Agent or any Lender and including all other pledges, powers of attorney, consents, assignments, contracts, notices, letter of credit agreements, letter of credit applications, and any agreements between the Borrower Representative and an Issuing Bank regarding such Issuing Bank’s Issuing Bank Sublimit or the respective rights and obligations between the applicable Borrower and an Issuing Bank in connection with the issuance by such Issuing Bank of Letters of Credit, and all other written matter whether heretofore, now, or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Administrative Agent or any Lender in connection with this Agreement or the transactions contemplated hereby. Any reference in this Agreement or any other Loan Document to a Loan Document will include all appendices, exhibits, or schedules thereto, and all amendments, restatements, supplements, or other modifications thereto, and will refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

“Loan Guarantor” means (a) each Borrower at any time party hereto with respect to the Secured Obligations of the other Borrowers and (b) any other Loan Party at any time party hereto that is not a Borrower.

“Loan Guaranty” means Article 10 of this Agreement.

“Loan Parties” means, collectively, the Borrowers, the Loan Guarantors, any other Person that becomes a party to this Agreement pursuant to a Joinder Agreement, and their respective successors and assigns, and the term “Loan Party” means any one of them or all of them individually, as the context may require.

“Loans” means the loans and advances made by the Lenders pursuant to this Agreement, including Swingline Loans, Overadvances, and Protective Advances.

“Margin Stock” means margin stock within the meaning of Regulation T, Regulation U, and Regulation X, as applicable.

“Material Adverse Effect” means a material adverse effect on (a) the business, operations, or financial condition, of the Loan Parties taken as a whole, (b) the ability of any Loan Party to perform any of its Obligations, (c) the Collateral, or the Administrative Agent’s Liens (on behalf of itself and other Secured Parties) on the Collateral, or the priority of such Liens, or (d) the rights of, or benefits available to, the Administrative Agent, the Issuing Banks, or the Lenders under any of the Loan Documents.

“Material Indebtedness” means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Swap Agreements, of any one or more of the Loan Parties in an outstanding principal amount exceeding \$10,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Loan Parties in respect of any Swap Agreement at any time will be the maximum aggregate amount (giving effect to any netting

agreements) that such Loan Party would be required to pay if such Swap Agreement were terminated at such time.

“Maturity Date” means February 20, 2024 or any earlier date on which the Commitments are reduced to zero or otherwise terminated pursuant to the terms hereof.

“Maximum Rate” has the meaning assigned to such term in Section 9.17. “Moody’s” means Moody’s Investors Service, Inc.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Income” means, for any Person (the “subject Person”) for any period, the consolidated net income (or loss), determined on a consolidated basis for the subject Person in accordance with GAAP; provided that the following will be excluded from the determination of Net Income (a) the income (or deficit) of any Person accrued prior to the date it becomes a subsidiary of the subject Person or is merged into or consolidated with the subject Person, (b) the income (or deficit) of any Person (other than a subsidiary of the subject Person) in which the subject Person has an ownership interest, except to the extent that any such income is actually received by the subject Person in the form of dividends or similar distributions, and (c) the undistributed earnings of any subsidiary of the subject Person to the extent that the declaration or payment of dividends or similar distributions by such subsidiary is not at the time permitted by the terms of any contractual obligation (other than under any Loan Document) or Requirement of Law applicable to such Subsidiary.

“Net Orderly Liquidation Value” means, with respect to Inventory of any Person, the orderly liquidation value thereof as determined in a manner acceptable to the Administrative Agent by an appraiser acceptable to the Administrative Agent, net of all costs of liquidation thereof.

“Net Proceeds” means, with respect to any event, (a) the cash proceeds received in respect of such event including (i) any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds, and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, minus (b) the sum of (i) all reasonable fees and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such event, (ii) in the case of a sale, transfer, or other disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event, and (iii) the amount of all taxes paid (or reasonably estimated to be payable) and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable, in each case during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by a Financial Officer of the Borrower Representative).

“Non-Consenting Lender” has the meaning assigned to such term in Section 9.02(d). “NYFRED” means the Federal Reserve Bank of New York.

“NYFRB Rate” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Administrative Agent from a federal funds broker of recognized standing selected by the Administrative Agent; provided, further, that if any of the aforesaid rates as so determined would be less than 0.00%, such rate will be deemed to be 0.00% for purposes of this Agreement.

“NYFRB’s Website” means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

“NZ Security Agreement” means that certain General Security Deed, dated on or about the Effective Date, as such agreement may be amended, restated, or otherwise modified from time to time.

“Obligated Party” has the meaning assigned to such term in Section 10.02.

“Obligation Guaranty” means any Guarantee of all or any portion of the Secured Obligations executed and delivered to the Administrative Agent for the benefit of the Secured Parties by a guarantor that is not a Loan Party.

“Obligations” means all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities, and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership, or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of any of the Loan Parties to any of the Lenders, the Administrative Agent, any Issuing Bank, or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law, or otherwise, arising or incurred under this Agreement or any of the other Loan Documents or in respect of any of the Loans made or reimbursement or other obligations incurred or any of the Letters of Credit or other instruments at any time evidencing any thereof.

“Off-Balance Sheet Liability” of a Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any indebtedness, liability, or obligation under any so-called “synthetic lease” transaction entered into by such Person, and (c) any indebtedness, liability, or obligation arising with respect to any other transaction that is the functional equivalent of or takes the place of borrowing but that does not constitute a liability on the balance sheet of such Person (other than operating leases).

“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 Taxes (other than a connection arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to, or enforced, any Loan Document, or sold or assigned an interest in any Loan, Letter of Credit, or any Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing, or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement, or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19).

“Overadvance” has the meaning assigned to such term in Section 2.05(b).

“Overnight Bank Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight eurodollar transactions denominated in Dollars by U.S.-managed banking offices of depository institutions (as such composite rate is determined by the NYFRB as set forth on the NYFRB’s Website from time to time) and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Paid in Full” or “Payment in Full” means, (a) the payment in full in cash of all outstanding Loans and LC Disbursements, together with accrued and unpaid interest thereon, (b) the termination, expiration, or cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Administrative Agent of a cash deposit, or at the discretion of the Administrative Agent a backup standby letter of credit satisfactory to the Administrative Agent and the applicable Issuing Bank, in an amount equal to 105% of the LC Exposure as of the date of such payment), (c) the payment in full in cash of the accrued and unpaid fees, including the applicable Prepayment Fee, if any, (d) the payment in full in cash of all reimbursable expenses and other Secured Obligations (other than Unliquidated Obligations for which no claim has been made and other obligations expressly stated to survive such payment and termination of this Agreement), together with accrued and unpaid interest thereon, (e) the termination of all Commitments, and (f) the termination of the Swap Agreement Obligations and the Banking Services Obligations or entering into other arrangements satisfactory to the Secured Parties counterparties thereto.

“Parent” means, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

“Participant” has the meaning assigned to such term in Section 9.04(c). “Participant Register” has the meaning assigned to such term in Section 9.04(c).

“Payment Condition” is deemed to be satisfied in connection with a Restricted Payment or Investment if:

- (1) no Event of Default has occurred and is continuing or would result immediately after giving effect to such Restricted Payment or Investment; and
- (2) any one of the following circumstances then exist:
 - a. no Credit Exposure is outstanding;
 - b. if any Credit Exposure is outstanding, immediately after giving effect to such Restricted Payment or Investment, the Borrowers have Excess

Availability calculated on a pro forma basis after giving effect to such Restricted Payment or Investment of not less than the greater of (A) 15.0% of the Aggregate Revolving Commitment or (B) \$6,000,000; or

c. if any Credit Exposure is outstanding, (A) immediately after giving effect to such Restricted Payment or Investment, the Borrowers have Excess Availability calculated on a pro forma basis after giving effect to such Restricted Payment or Investment of not less than the greater of (y) 10.0% of the Aggregate Revolving Commitment or (z) \$4,000,000 and (B) the Fixed Charge Coverage Ratio of the Loan Parties calculated on a pro forma and consolidated basis for the immediately preceding twelve calendar months is not less than 1.10 to 1.00; and

with respect to clause (ii) and clause (iii) preceding, the Borrower Representative has delivered to the Administrative Agent a written certification with respect thereto and attaching calculations therefor, as applicable.

“Payment Notice” has the meaning assigned to such term in Section 8.06(d)(ii).

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Permitted Acquisition” means any Acquisition by any Loan Party in a transaction that satisfies each of the following requirements:

- (1) no Event of Default has occurred and is continuing or would result immediately after giving effect to such Restricted Payment or Investment;
- (2) such Acquisition is not a hostile or contested acquisition;
- (3) the business acquired in connection with such Acquisition is (i) located in the U.S., (ii) organized under applicable U.S. and state laws, and (iii) not engaged, directly or indirectly, in any line of business other than the businesses in which the Loan Parties are engaged on the Effective Date and any business activities that are substantially similar, related, or incidental thereto;
- (4) [reserved]
- (5) as soon as available, but not less than 30 days prior to such Acquisition, the Borrower Representative has provided the Administrative Agent (i) notice of such Acquisition and (ii) a copy of all business and financial information reasonably requested by the Administrative Agent, including pro forma financial statements, statements of cash flow, and Availability projections;
- (6) if the Accounts and Inventory acquired in connection with such Acquisition are proposed to be included in the determination of the Borrowing Base, the Administrative Agent has conducted an audit and field examination of such Accounts and Inventory, the results of which must be satisfactory to the Administrative Agent in its Permitted Discretion;

(7) the total cash consideration and Indebtedness assumed or incurred in connection with such Acquisition does not exceed \$10,000,000;

(8) if such Acquisition is an acquisition of the Equity Interests of a Person, such Acquisition is structured so that the acquired Person becomes a Wholly-Owned Subsidiary of a Borrower and a Loan Party pursuant to the terms of this Agreement;

(9) if such Acquisition is an acquisition of assets, such Acquisition is structured so that a Loan Party acquires such assets;

(10) if such Acquisition is an acquisition of Equity Interests, such Acquisition will not result in any violation of Regulation U;

(11) if such Acquisition involves a merger or a consolidation involving a Loan Party, such Loan Party is the surviving entity;

(12) no Loan Party, as a result of or in connection with any such Acquisition, assumes or incurs any direct or contingent liabilities (whether relating to environmental, tax, litigation, or other matters) that could have a Material Adverse Effect;

(13) in connection with an Acquisition of the Equity Interests of any Person, all Liens on property of such Person that constitute Collateral are terminated unless the Administrative Agent and the Lenders in their sole discretion consent otherwise, and in connection with an Acquisition of the assets of any Person, all Liens on such assets are terminated;

(14) [reserved]

(15) [reserved]

(16) [reserved]

(17) all actions required to be taken with respect to any newly acquired or formed Wholly-Owned Subsidiary of a Loan Party required under Section 5.14 have been taken; and

(18) the Borrower Representative has delivered to the Administrative Agent the final executed material documentation relating to such Acquisition within 15 days following the consummation thereof.

“Permitted Discretion” means a determination made in good faith in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

“Permitted Encumbrances” means:

(1) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 5.04;

(2) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s, and other like Liens imposed by law, arising in the ordinary course of business and securing

obligations that are not overdue by more than 30 days or are being contested in compliance with Section 5.04:

(3) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance, and other social security laws or regulations;

(4) (i) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds, and other obligations of a like nature, in each case in the ordinary course of business and (ii) rights of offset of a credit card issuer or processor in the ordinary course of business;

(5) judgment Liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article 7; and

(6) easements, zoning restrictions, rights-of-way, and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of any Borrower or any Subsidiary;

provided that the term "Permitted Encumbrances" does not include any Lien securing Indebtedness, except with respect to clause (d)(i) preceding.

"Permitted Holders" means any combination of one or more of (a) Tiger Global Investment Partners X, L.P., (b) Timothy Oliver Brown, and (c) Maveron Equity Partners V, L.P.

"Permitted Investments" means:

(1) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the U.S. (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the U.S.), in each case maturing within one year from the date of acquisition thereof;

(2) investments in commercial paper maturing within one year from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;

(3) investments in certificates of deposit, bankers' acceptances, and time deposits maturing within one year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the U.S. or any state thereof that has a combined capital and surplus and undivided profits of not less than \$500,000,000;

(4) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) preceding and entered into with a financial institution satisfying the criteria described in clause (c) preceding;

(5) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's, and (iii) have portfolio assets of at least \$500,000,000; and

(6) any other investments in cash, cash equivalents, or for which there is a ready and liquid marketplace (including, mutual funds and marketable securities) for buying and selling such investments and that are permitted pursuant to an investment policy approved by the board of directors of Allbirds and provided to the Administrative Agent.

“Permitted Liens” means Permitted Encumbrances and Liens permitted under Section 6.02.

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

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which any Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Plan Asset Regulations” means 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time.

“PPSA” means the New Zealand Personal Property Securities Act 1999. “Prepayment Event” means:

- (1) during any Dominion Period, Disposition of any Collateral;
- (2) during any Dominion Period, any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any Collateral; and
- (3) the incurrence by any Loan Party of any Indebtedness, other than Indebtedness permitted under Section 6.01.

“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate will be effective from and including the date such change is publicly announced or quoted as being effective.

“Projections” has the meaning assigned to such term in Section 5.01(f). “Protective Advance” has the meaning assigned to such term in Section 2.04.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and will be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“QFC Credit Support” has the meaning assigned to such term in Section 9.24.

“Qualified Cash Balance” means, at any time, the aggregate collected balance in deposit accounts (as defined in the UCC) and securities accounts (as defined in Section 8-501 of the UCC) of the Borrowers maintained with the Administrative Agent that are designated by the Borrowers and the Administrative Agent to hold “qualified cash” and that are subject to a Deposit Account Control Agreement (as defined in the Security Agreement); provided that any such securities accounts only hold investments of cash and other Permitted Investments included in clause (a) through clause (e) of the definition thereof with maturities of less than 90 days from the date of acquisition.

“Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding \$10,000,000 at the time the relevant Loan Guaranty or grant of the relevant security interest becomes or would become effective with respect to such Swap Obligation or such other Person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Recipient” means, as applicable, (a) the Administrative Agent, (b) any Lender, and (4) any Issuing Bank, or any combination thereof (as the context requires).

“Reference Time” with respect to any setting of the then-current Benchmark means (a) if such Benchmark is the Term SOFR Rate, 5:00 a.m. (Chicago, Illinois time) on the day that is two U.S. Government Securities Business Days preceding the date of such setting, (b) if the RFR for such Benchmark is Daily Simple SOFR, then four Business Days prior to such setting, or (c) if such Benchmark is not the Term SOFR Rate or Daily Simple SOFR, the time determined by the Administrative Agent in its reasonable discretion.

“Reference Time” with respect to any setting of the then-current Benchmark means (a) if such Benchmark is the Term SOFR Rate or REVSOFR30 Rate, 5:00 a.m. (Chicago, Illinois time) on the day that is two U.S. Government Securities Business Days preceding the date of such setting or (b) if such Benchmark is not the Term SOFR Rate or REVSOFR30 Rate, the time determined by the Administrative Agent in its reasonable discretion.

“Refinance Indebtedness” has the meaning assigned to such term in Section 6.01(f). “Register” has the meaning assigned to such term in Section 9.04(b).

“Regulation D” means Regulation D of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation T” means Regulation T of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation U” means Regulation U of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation X” means Regulation X of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation Z” means Regulation Z of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, partners, members, trustees, employees, agents, administrators, managers, representatives, and advisors of such Person and such Person’s Affiliates.

“Release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing, or dumping of any substance into the environment.

“Relevant Governmental Body” means the Federal Reserve Board, the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board or the NYFRB or, in each case, any successor thereto.

“Relevant Rate” means (a) with respect to any Term Benchmark Borrowing, the Adjusted Term SOFR Rate, (b) with respect to any Adjusted REVSOFR30 Rate Borrowing, the Adjusted REVSOFR30 Rate, or (c) with respect to any RFR Borrowing, the Adjusted Daily Simple SOFR, as applicable.

“Report” means reports prepared by the Administrative Agent or another Person showing the results of appraisals, field examinations, or audits pertaining to the assets of the Loan Parties from information furnished by or on behalf of the Borrowers, after the Administrative Agent has exercised its rights of inspection pursuant to this Agreement, which Reports may be distributed to the Lenders by the Administrative Agent.

“Reporting Frequency Change Period” means any period occurring between (a) the date three Business Days after the earlier to occur of (i) any Event of Default or (ii) Availability being less than 12.5% of the Aggregate Revolving Commitment and (b) the date that for a period of 30 consecutive days Availability has been equal to or greater than 12.5% of the Aggregate Revolving Commitment and no Event of Default has been in existence.

“Required Lenders” means, subject to Section 2.20, at any time, Lenders having Credit Exposure and unused Commitments representing at least 51.0% of the sum of the Aggregate Credit Exposure and unused Commitments at such time; provided that, as long as there are only two Lenders, Required Lenders will mean both Lenders.

“Requirement of Law” means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation, and bylaws or operating, management, or partnership agreement, or other organizational or governing documents of such Person and (b) any statute, law

(including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction, or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Reserves” means any and all reserves that the Administrative Agent deems necessary, in its Permitted Discretion, to maintain (including reserves for accrued and unpaid interest on the Secured Obligations, Banking Services Reserves, volatility reserves, reserves for rent at locations leased by any Loan Party and for consignee’s, warehousemen’s, and bailee’s charges, reserves for dilution of Accounts (including Credit Card Accounts), reserves for Inventory shrinkage, reserves for customs charges and shipping charges related to any Inventory in transit, reserves for Swap Agreement Obligations, reserves for uninsured losses of any Loan Party, reserves for uninsured, underinsured, un-indemnified or under-indemnified liabilities or potential liabilities with respect to any litigation, and reserves for taxes, fees, assessments, and other governmental charges) with respect to the Collateral or any Loan Party.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means, with respect to any Loan Party, the president, Financial Officer, or other executive officer of such Loan Party.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities, or other property) with respect to any Equity Interests of Allbirds or any Subsidiary, or any payment (whether in cash, securities, or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation, or termination of any such Equity Interests or any option, warrant, or other right to acquire any such Equity Interests.

“Revolving Borrowing” means Revolving Loans of the same Type, made, converted, or continued on the same date and, in the case of Term Benchmark Loans, as to which a single Interest Period is in effect.

“Revolving Commitment” means, with respect to each Lender, the amount set forth on the Commitment Schedule opposite such Lender’s name, or in the Assignment and Assumption or other documentation or record (as such term is defined in Section 9-102(a)(70) of the New York Uniform Commercial Code) as provided in Section 9.04(b)(ii)(C) pursuant to which such Lender has assumed its Revolving Commitment, as applicable, as such Revolving Commitment may be reduced or increased from time to time pursuant to (a) Section 2.09 and (b) assignments by or to such Lender pursuant to Section 9.04; provided that at no time will the Revolving Exposure of any Lender exceed its Revolving Commitment. The initial aggregate amount of the Lenders’ Revolving Commitments is \$40,000,000.

“Revolving Exposure” means, with respect to any Lender at any time, the sum of (a) the outstanding principal amount of such Lender’s Revolving Loans, its LC Exposure, and its Swingline Exposure at such time, plus (b) an amount equal to its Applicable Percentage of the aggregate principal amount of Protective Advances outstanding at such time, plus (c) an amount equal to its Applicable Percentage of the aggregate principal amount of Overadvances outstanding at such time.

“Revolving Lender” means, as of any date of determination, a Lender with a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Exposure.

“Revolving Loan” means a Loan made pursuant to Section 2.01(a).

“REVSOF30 Rate” means the Term SOFR Reference Rate for a one month period, as such rate is published by the CME Term SOFR Administrator, at approximately 5:00 a.m., Chicago, Illinois time, two U.S. Government Securities Business Days prior to the first Business Day of each month, adjusted monthly on the first Business Day of each month. Any change in the REVSOF30 Rate will be effective from and include the effective date of such change.

“RFR Borrowing” means, as to any Borrowing, the RFR Loans comprising such Borrowing.

“RFR Loan” means a Loan that bears interest at a rate based on the Adjusted Daily Simple SOFR.

“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business.

“Sale and Leaseback Transaction” has the meaning assigned to such term in Section 6.06.

“Sanctioned Country” means, at any time, a country, region, or territory that is itself the subject or target of any Sanctions (at the time of this Agreement, the so-called Donetsk People’s Republic, the so-called Luhansk People’s Republic, the Crimea Region of Ukraine, Cuba, Iran, North Korea, and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the United Nations Security Council, the European Union or any European Union member state, His Majesty’s Treasury of the United Kingdom, or other relevant sanctions authority, (b) any Person operating, organized, or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in clause (a) or clause (b) preceding, or (d) any Person otherwise the subject of any Sanctions.

“Sanctions” means all economic or financial sanctions or trade embargoes imposed, administered, or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or (b) the United Nations Security Council, the European Union, any European Union member state, His Majesty’s Treasury of the United Kingdom, or other relevant sanctions authority.

“SEC” means the Securities and Exchange Commission of the U.S.

“Secured Obligations” means all Obligations, together with all (a) Banking Services Obligations and (b) Swap Agreement Obligations owing to one or more Lenders or their respective Affiliates; provided that the definition of “Secured Obligations” will not create any guarantee by any Guarantor of (or grant of security interest by any Guarantor to support, as applicable) any

Excluded Swap Obligations of such Guarantor for purposes of determining any obligations of any Guarantor.

“Secured Parties” means (a) the Administrative Agent, (b) the Lenders, (c) each Issuing Bank, (d) each provider of Banking Services, to the extent the Banking Services Obligations in respect thereof constitute Secured Obligations, (e) each counterparty to any Swap Agreement, to the extent the obligations thereunder constitute Secured Obligations, (f) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document, and (g) the successors and assigns of each of the foregoing.

“Security Agreement” means that certain Pledge and Security Agreement (including any and all supplements thereto), dated as of the date hereof, among the Loan Parties and the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, and any other pledge or security agreement entered into, after the date of this Agreement by any other Loan Party (as required by this Agreement or any other Loan Document) or any other Person for the benefit of the Administrative Agent and the other Secured Parties, as the same may be amended, restated, supplemented, or otherwise modified from time to time.

“Settlement” has the meaning assigned to such term in Section 2.05(d). “Settlement Date” has the meaning assigned to such term in Section 2.05(d).

“SOFR” means a rate per annum equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the NYFRB’s website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SOFR Determination Date” has the meaning specified in the definition of “Daily Simple SOFR”.

“SOFR Rate Day” has the meaning specified in the definition of “Daily Simple SOFR”. “Standby LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all standby Letters of Credit outstanding at such time, plus (b) the aggregate amount of all LC Disbursements relating to standby Letters of Credit that have not yet been reimbursed by or on behalf of the Borrowers at such time. The Standby LC Exposure of any Revolving Lender at any time will be its Applicable Percentage of the aggregate Standby LC Exposure at such time.

“Statements” has the meaning assigned to such term in Section 2.18(f).

“Subordinated Indebtedness” of a Person means any Indebtedness of such Person the payment of which is subordinated to payment of the Secured Obligations to the written satisfaction of the Administrative Agent.

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association, or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association, or other entity (a) of which securities or other ownership interests representing more than 50.0% of the equity or more than 50.0% of the ordinary voting power or, in the case of a partnership, more than 50.0% of the general partnership interests are, as of such date, owned, controlled, or held or (b) that is, as of such date, otherwise Controlled, by the parent and/or one or more subsidiaries of the parent.

“Subsidiary” means any direct or indirect subsidiary of Allbirds or another Loan Party, as applicable.

“Supported QFC” has the meaning assigned to such term in Section 9.24.

“Swap Agreement” means any agreement with respect to any swap, forward, spot, future, credit default, or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value, or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees, or consultants of the Loan Parties or the Subsidiaries will be a Swap Agreement.

“Swap Agreement Obligations” means any and all obligations of the Loan Parties, whether absolute or contingent and howsoever and whensoever created, arising, evidenced, or acquired (including all renewals, extensions, and modifications thereof and substitutions therefor), under (a) any and all Swap Agreements permitted hereunder with a Lender or an Affiliate of a Lender and (b) any and all cancellations, buy backs, reversals, terminations, or assignments of any Swap Agreement transaction permitted hereunder with a Lender or an Affiliate of a Lender.

“Swap Obligation” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract, or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act or any rules or regulations promulgated thereunder.

“Swingline Exposure” means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Revolving Lender at any time will be its Applicable Percentage of the total Swingline Exposure at such time.

“Swingline Lender” means JPMCB, in its capacity as lender of Swingline Loans hereunder. Any consent required of the Administrative Agent or an Issuing Bank will be deemed to be required of the Swingline Lender and any consent given by JPMCB in its capacity as the Administrative Agent or Issuing Bank will be deemed given by JPMCB in its capacity as the Swingline Lender.

“Swingline Loan” has the meaning assigned to such term in Section 2.05(a).

“Target Balance” has the meaning assigned to such term in the DDA Access Product Agreement.

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

“Term Benchmark” when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted Term SOFR Rate.

“Term SOFR Determination Day” has the meaning assigned to such term in the definition of Term SOFR Reference Rate.

“Term SOFR Rate” means, with respect to any Term Benchmark Borrowing and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Chicago, Illinois time, two U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.

“Term SOFR Reference Rate” means, for any day and time (such day, the “Term SOFR Determination Day”), and for any tenor comparable to the applicable Interest Period, the rate per annum published by the CME Term SOFR Administrator and identified by the Administrative Agent as the forward-looking term rate based on SOFR. If by 5:00 p.m. (New York, New York time) on such Term SOFR Determination Day, the “Term SOFR Reference Rate” for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then, so long as such day is otherwise a U.S. Government Securities Business Day, the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator, so long as such first preceding U.S. Government Securities Business Day is not more than five U.S. Government Securities Business Days prior to such Term SOFR Determination Day.

“Transactions” means the execution, delivery, and performance by the Loan Parties of this Agreement and the other Loan Documents, the borrowing of Loans and other credit extensions, the use of the proceeds thereof, and the issuance of Letters of Credit hereunder.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted Term SOFR Rate, the Adjusted Daily Simple SOFR, or the CBFR.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of California or in any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

“UK Financial Institutions” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential

Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Unfinanced Capital Expenditures” means, for any period, Capital Expenditures made during such period that are not financed from the proceeds of any Indebtedness (other than the Revolving Loans; it being understood and agreed that, to the extent any Capital Expenditures are financed with Revolving Loans, such Capital Expenditures will be deemed Unfinanced Capital Expenditures); provided that, with respect to the Loan Parties, Unfinanced Capital Expenditures will not include any Capital Expenditures made prior to January 1, 2020.

“Unliquidated Obligations” means, at any time, any Secured Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Secured Obligation that is (a) an obligation to reimburse a bank for drawings not yet made under a letter of credit issued by it, (b) any other obligation (including any guarantee) that is contingent in nature at such time, or (c) an obligation to provide collateral to secure any of the foregoing types of obligations.

“U.S.” means the United States of America.

“U.S. Government Securities Business Day” means any day except for (a) a Saturday, (b) a Sunday, or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in U.S. government securities.

“U.S. Person” means a “United States person” within the meaning of Section 7701(a)(30) of the Code.

“U.S. Special Resolution Regime” has the meaning assigned to such term in Section 9.24. “U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 2.17(f)(ii)(B)(3).

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to

time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify, or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities, or obligations of that Person or any other Person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”) or by Type (e.g., a “Term Benchmark Loan”, an “RFR Loan” or “an Adjusted REVSOF30 Rate Loan”) or by Class and Type (e.g., a “Term Benchmark Revolving Loan”, an “RFR Revolving Loan” or “an Adjusted REVSOF30 Rate Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “Term Benchmark Borrowing”, an “RFR Borrowing” or “an Adjusted REVSOF30 Rate Borrowing”) or by Class and Type (e.g., a “Term Benchmark Revolving Borrowing”, an “RFR Revolving Borrowing” or “an Adjusted REVSOF30 Rate Revolving Borrowing”).

Section 1.03 Terms Generally. The definitions of terms herein will apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun includes the corresponding masculine, feminine, and neuter forms. The words “include”, “includes” and “including” will be deemed to be followed by the phrase “without limitation”. The word “law” will be construed as referring to all statutes, rules, regulations, codes, and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply) and all judgments, orders, and decrees of all Governmental Authorities. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument, or other document herein will be construed as referring to such agreement, instrument, or other document as from time to time amended, restated, supplemented, or otherwise modified (subject to any restrictions on such amendments, restatements, supplements, or modifications set forth herein), (b) any definition of or reference to any statute, rule, or regulation will be construed as referring thereto as from time to time amended, supplemented, or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person will be construed to include such Person’s successors and assigns (subject to any restrictions on assignments set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that has succeeded to any or all functions thereof, (d) the words “herein”, “hereof”, and “hereunder”, and words of similar import, will be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits, and Schedules will be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (f) any reference in any definition to the phrase “at any time” or “for any period” will refer to the same time or period for all calculations or determinations within such definition, and (g) the words “asset” and “property” will 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.

Section 1.04 Accounting Terms; GAAP.

(1) Except as otherwise expressly provided herein, all terms of an accounting or financial nature will be construed in accordance with GAAP, as in effect from time to time; provided that, if after the date hereof the Loan Parties migrate to IFRS or there occurs any change in GAAP or in the application thereof on the operation of any provision hereof and the Borrower Representative notifies the Administrative Agent that the Borrowers request an amendment to any provision hereof to eliminate the effect of such migration to IFRS or change in GAAP or in the application thereof (or if the Administrative Agent notifies the Borrower Representative that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such migration to IFRS or change in GAAP or in the application thereof, then such provision will be interpreted on the basis of GAAP as in effect and applied immediately before such migration or change has become effective until such notice has been withdrawn or such provision amended in accordance herewith.

(2) Notwithstanding anything to the contrary contained in Section 1.04(a) or in the definition of "Capital Lease Obligations," in the event of an accounting change requiring all leases to be capitalized, only those leases (assuming for purposes hereof that such leases were in existence on the date hereof) that would constitute capital leases in conformity with GAAP on the date hereof will be considered capital leases, and all calculations and deliverables under this Agreement or any other Loan Document will be made or delivered, as applicable, in accordance therewith.

Section 1.05 Interest Rates; Benchmark Notifications. The interest rate on a Loan denominated in dollars may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 2.14(b) provides a mechanism for determining an alternative rate of interest. The Administrative Agent does not warrant or accept any responsibility for, and will not have any liability with respect to, the administration, submission, performance, or any other matter related to any interest rate used in this Agreement, or with respect to any alternative or successor rate thereto, or replacement rate thereof, including whether the composition or characteristics of any such alternative, successor, or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the existing interest rate being replaced or have the same volume or liquidity as did any existing interest rate prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate used in this Agreement or any alternative, successor, or replacement rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrowers. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and will have no liability to the Borrowers, any Lender, or any other Person for damages of any kind, including direct or indirect, special, punitive, incidental, or consequential damages, costs, losses, or expenses (whether in tort, contract, or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

Section 1.06 Status of Obligations. In the event that any Loan Party at any time issues or has outstanding any Subordinated Indebtedness, such Loan Party will take, and will cause each other Loan Party to take, all such actions as are necessary to cause the Secured Obligations to constitute senior indebtedness (however denominated) in respect of such Subordinated Indebtedness and to enable the Administrative Agent and the Lenders to have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness. Without limiting the foregoing, the Secured Obligations are hereby designated as "senior indebtedness" and as "designated senior indebtedness" and words of similar import under and in respect of any indenture or other agreement or instrument under which such Subordinated Indebtedness is outstanding and are further given all such other designations as are required under the terms of any such Subordinated Indebtedness in order that the Lenders may have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness.

Section 1.07 Reserved.

Section 1.08 Letters of Credit. Unless otherwise specified herein, the amount of a Letter of Credit at any time will be deemed to be the stated amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit will be deemed to be the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Article 29(a) of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time) or Rule 3.13 or Rule 3.14 of the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time) or similar terms in the governing rules or law or of the Letter of Credit itself, or if compliant documents have been presented but not yet honored, such Letter of Credit will be deemed to be "outstanding" and "undrawn" in the amount so remaining available to be paid, and the obligations of the Borrowers and each Lender will remain in full force and effect until the Issuing Banks and the Lenders have no further obligations to make any payments or disbursements under any circumstances with respect to any Letter of Credit.

Section 1.09 Divisions. For all purposes under the Loan Documents, in connection with any Division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation, or liability of any Person becomes the asset, right, obligation, or liability of a different Person, then it will be deemed to have been transferred from the original Person to the subsequent Person and (b) if any new Person comes into existence, such new Person will be deemed to have been organized and acquired on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE 2

The Credits

Section 2.01 Commitments. Subject to the terms and conditions set forth herein, each Lender severally (and not jointly) agrees to make Revolving Loans in dollars to the Borrowers from time to time during the Availability Period in an aggregate principal amount that will not result in (a) such Lender's Revolving Exposure exceeding such Lender's Revolving Commitment or (b) the Aggregate Revolving Exposure exceeding the lesser of (i) the Aggregate Revolving Commitment, minus Reserves or (ii) the Borrowing Base, subject to the Administrative Agent's authority, in its sole discretion, to make Protective Advances and Overadvances pursuant to the terms of Section 2.04 and Section 2.05. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay, and reborrow Revolving Loans.

Section 2.02 Loans and Borrowings.

(1) Each Loan (other than a Swingline Loan) will be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. The failure of any Lender to make any Loan required to be made by it will not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender will be responsible for any other Lender's failure to make Loans as required. Any Protective Advance, any Overadvance, and any Swingline Loan will be made in accordance with the procedures set forth in Section 2.04 and Section 2.05.

(2) Subject to Section 2.14, each Revolving Borrowing will be comprised entirely of CBFR Loans or Term Benchmark Loans as the Borrower Representative may request in accordance herewith, provided that all Borrowings made on the Effective Date must be made as CBFR Borrowings but may be converted into Term Benchmark Borrowings in accordance with Section 2.08. Each Swingline Loan will be a CBFR Loan. Each Lender at its option may make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan (and in the case of an Affiliate, the provisions of Section 2.14, Section 2.15, Section 2.16, and Section 2.17 will apply to such Affiliate to the same extent as to such Lender); provided that any exercise of such option will not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement.

(3) At the commencement of each Interest Period for any Term Benchmark Revolving Borrowing, such Borrowing must be in an aggregate amount that is an integral multiple of \$500,000 and not less than \$1,000,000. CBFR Revolving Borrowings may be in any amount. Borrowings of more than one Type and Class may be outstanding at the same time; provided that there will not at any time be more than a total of five Term Benchmark Borrowings outstanding.

(4) Notwithstanding any other provision of this Agreement, the Borrower Representative will not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

Section 2.03 Requests for Revolving Borrowings. To request a Revolving Borrowing, the Borrower Representative must notify the Administrative Agent of such request either in writing (delivered by hand or fax) by delivering a Borrowing Request signed by a Responsible Officer of the Borrower Representative or through Electronic System if arrangements for doing so have been

approved by the Administrative Agent (or if an Extenuating Circumstance exists, by telephone) not later than (y) in the case of a Term Benchmark Borrowing, 10:00 a.m., Chicago, Illinois time, three U.S. Government Securities Business Days before the date of the proposed Borrowing or (z) in the case of a CBFR Borrowing, 12:00 noon, Chicago, Illinois time, on the date of the proposed Borrowing; provided that any such notice of a CBFR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e) may be given not later than 9:00 a.m., Chicago, Illinois time, on the date of such proposed Borrowing. Each such Borrowing Request will be irrevocable and each such telephonic Borrowing Request, if permitted, must be confirmed immediately upon the cessation of the Extenuating Circumstance by hand delivery, facsimile, or a communication through Electronic System to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by a Responsible Officer of the Borrower Representative. Each such written (or if permitted, telephonic) Borrowing Request must specify the following information:

- (1) the name of the applicable Borrower(s);
- (2) the aggregate amount of the requested Revolving Borrowing and a breakdown of the separate wires comprising such Borrowing;
- (3) the date of such Revolving Borrowing, which must be a Business Day;
- (4) whether such Revolving Borrowing is to be a CBFR Borrowing or a Term Benchmark Borrowing; and
- (5) in the case of a Term Benchmark Borrowing, the initial Interest Period to be applicable thereto, which must be a period contemplated by the definition of the term "Interest Period."

If no election as to the Type of Revolving Borrowing is specified, then the requested Revolving Borrowing will be a CBFR Borrowing. If no Interest Period is specified with respect to any requested Term Benchmark Revolving Borrowing, then the applicable Borrower(s) will be deemed to have selected an Interest Period of one month duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent will advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

Section 2.04 Protective Advances.

(1) Subject to the limitations set forth below, the Administrative Agent is authorized by the Borrowers and the Lenders, from time to time in the Administrative Agent's sole discretion (but will have absolutely no obligation to), to make Loans to the Borrowers, on behalf of all Lenders, that the Administrative Agent, in its Permitted Discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations, or (iii) to pay any other amount chargeable to or required to be paid by the Borrowers pursuant to the terms of this Agreement, including payments of reimbursable expenses (including costs, fees, and expenses as described in Section 9.03) and other sums payable under the Loan Documents (any of such Loans are herein referred to as "Protective Advances"); provided that the aggregate amount of Protective Advances

outstanding at any time will not at any time exceed 10.0% of the Revolving Commitment; provided, further, that the Aggregate Revolving Exposure after giving effect to the Protective Advances being made will not exceed the Aggregate Revolving Commitment. Protective Advances may be made even if the conditions precedent set forth in Section 4.02 have not been satisfied. The Protective Advances will be secured by the Liens in favor of the Administrative Agent in and to the Collateral and will constitute Obligations hereunder. All Protective Advances will be CBFR Borrowings. The making of a Protective Advance on any one occasion will not obligate the Administrative Agent to make any Protective Advance on any other occasion. The Administrative Agent's authorization to make Protective Advances may be revoked at any time by the Required Lenders. Any such revocation must be in writing and will become effective prospectively upon the Administrative Agent's receipt thereof. At any time that there is sufficient Availability and the conditions precedent set forth in Section 4.02 have been satisfied, the Administrative Agent may request the Revolving Lenders to make a Revolving Loan to repay a Protective Advance. At any other time the Administrative Agent may require the Lenders to fund their risk participations described in Section 2.04(b).

(2) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default), each Lender will be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent, without recourse or warranty, an undivided interest and participation in such Protective Advance in proportion to such Lender's Applicable Percentage. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Advance purchased hereunder, the Administrative Agent will promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Protective Advance.

Section 2.05 Swingline Loans and Overadvances.

(1) The Administrative Agent, the Swingline Lender, and the Revolving Lenders agree that in order to facilitate the administration of this Agreement and the other Loan Documents, promptly after the Borrower Representative requests a CBFR Borrowing, at any time there are two or more Revolving Lenders, the Swingline Lender may elect to have the terms of this Section 2.05(a) apply to such Borrowing Request by advancing, on behalf of the Revolving Lenders and in the amount requested, same day funds to the Borrowers, on the date of the applicable Borrowing to the Funding Account (each such Loan made solely by the Swingline Lender pursuant to this Section 2.05(a) is referred to in this Agreement as a "Swingline Loan"), with settlement among them as to the Swingline Loans to take place on a periodic basis as set forth in Section 2.05(d). Each Swingline Loan will be subject to all the terms and conditions applicable to other CBFR Loans funded by the Revolving Lenders, except that all payments thereon will be payable to the Swingline Lender solely for its own account. In addition, the Borrowers hereby authorize the Swingline Lender to, and the Swingline Lender may, subject to the terms and conditions set forth herein (but without any further written notice required), not later than 1:00 p.m., Chicago, Illinois time, on each Business Day, make available to the Borrowers by means of a credit to the Funding Account(s), the proceeds of a Swingline Loan to the extent necessary to pay items to be drawn on any Controlled Disbursement Account that

Business Day subject to the Administrative Agent's standard procedures for calculating clearing totals each morning; provided that, if on any Business Day there is insufficient borrowing capacity to permit the Swingline Lender to make available to the Borrowers a Swingline Loan in the amount necessary to pay all items to be so drawn on any such Controlled Disbursement Account on such Business Day, then the Borrowers will be deemed to have requested a CBR Borrowing pursuant to Section 2.03 in the amount of such deficiency to be made on such Business Day. In addition, the Borrowers hereby authorize the Swingline Lender to, and the Swingline Lender will, subject to the terms and conditions set forth herein (but without any further written notice required), to the extent that from time to time on any Business Day funds are required under the DDA Access Product to reach the Target Balance (a "Deficiency Funding Date"), make available to the applicable Borrower the proceeds of a Swingline Loan in the amount of such deficiency up to the Target Balance, by means of a credit to the applicable Funding Account on or before the start of business on the next succeeding Business Day, and such Swingline Loan will be deemed made on such Deficiency Funding Date. The aggregate amount of Swingline Loans outstanding at any time will not exceed 10.0% of the Revolving Commitment. The Swingline Lender will not make any Swingline Loan if the requested Swingline Loan exceeds Availability (before or after giving effect to such Swingline Loan). All Swingline Loans will be CBR Borrowings.

(2) Any provision of this Agreement to the contrary notwithstanding, at the request of the Borrower Representative, the Administrative Agent may in its sole discretion (but with absolutely no obligation) on behalf of the Revolving Lenders, (y) make Revolving Loans to the Borrowers in amounts that exceed Availability (any such excess Revolving Loans are herein referred to collectively as "Overadvances") or (z) deem the amount of Revolving Loans outstanding to the Borrowers that are in excess of Availability to be Overadvances; provided that no Overadvance will result in a Default due to the Borrowers' failure to comply with Section 2.01 for so long as such Overadvance remains outstanding in accordance with the terms of this clause (h), but solely with respect to the amount of such Overadvance. In addition, Overadvances may be made even if the condition precedent set forth in Section 4.02(c) has not been satisfied. All Overadvances will constitute CBR Borrowings. The making of an Overadvance on any one occasion will not obligate the Administrative Agent to make any Overadvance on any other occasion. The authority of the Administrative Agent to make Overadvances is limited to an aggregate amount not to exceed 10.0% of the Revolving Commitment at any time, no Overadvance may remain outstanding for more than 30 days, and no Overadvance will cause any Revolving Lender's Revolving Exposure to exceed its Revolving Commitment; provided that, the Required Lenders may at any time revoke the Administrative Agent's authorization to make Overadvances. Any such revocation must be in writing and will become effective prospectively upon the Administrative Agent's receipt thereof.

(3) Upon the making of a Swingline Loan or an Overadvance (whether before or after the occurrence of a Default and regardless of whether a Settlement has been requested with respect to such Swingline Loan or Overadvance), each Revolving Lender will be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Swingline Lender or the Administrative Agent, as the case may be, without recourse or warranty, an undivided interest and participation in such Swingline Loan or Overadvance in proportion to its Applicable Percentage of the

Aggregate Revolving Commitment. The Swingline Lender or the Administrative Agent may, at any time, require the Revolving Lenders to fund their participations. From and after the date, if any, on which any Revolving Lender is required to fund its participation in any Swingline Loan or Overadvance purchased hereunder, the Administrative Agent will promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Swingline Loan or Overadvance.

(4) The Administrative Agent, on behalf of the Swingline Lender, will request settlement (a "Settlement") with the Revolving Lenders on at least a weekly basis or on any date that the Administrative Agent elects, by notifying the Revolving Lenders of such requested Settlement by facsimile, telephone, or e-mail no later than 12:00 noon Chicago, Illinois time on the date of such requested Settlement (the "Settlement Date"). Each Revolving Lender (other than the Swingline Lender, in the case of the Swingline Loans) will transfer the amount of such Revolving Lender's Applicable Percentage of the outstanding principal amount of the applicable Loan with respect to which Settlement is requested to the Administrative Agent, to such account of the Administrative Agent as the Administrative Agent may designate, not later than 2:00 p.m., Chicago, Illinois time, on such Settlement Date. Settlements may occur during the existence of a Default and whether or not the applicable conditions precedent set forth in Section 4.02 have then been satisfied. Such amounts transferred to the Administrative Agent will be applied against the amounts of the Swingline Lender's Swingline Loans and, together with the Swingline Lender's Applicable Percentage of such Swingline Loan, will constitute Revolving Loans of such Revolving Lenders, respectively. If any such amount is not transferred to the Administrative Agent by any Revolving Lender on such Settlement Date, the Swingline Lender will be entitled to recover from such Lender on demand such amount, together with interest thereon, as specified in Section 2.07.

Section 2.06 Letters of Credit.

(1) General. Subject to the terms and conditions set forth herein, the Borrower Representative may request any Issuing Bank to issue Letters of Credit for the Borrower Representative's own account or for the account of another Loan Party denominated in dollars as the applicant thereof for the support of its or its Subsidiaries' obligations, in a form reasonably acceptable to such Issuing Bank, at any time and from time to time during the Availability Period. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of any Letter of Credit Agreement, the terms and conditions of this Agreement will control. Notwithstanding anything herein to the contrary, such Issuing Bank will have no obligation hereunder to issue, and will not issue, any Letter of Credit (i) the proceeds of which would be made available to any Person (A) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is the subject of any Sanctions or (B) in any manner that would result in a violation of any Sanctions by any party to this Agreement,

(ii) if any order, judgment, or decree of any Governmental Authority or arbitrator by its terms purports to enjoin or restrain such Issuing Bank from issuing, amending, or extending such Letter of Credit, or requests that such Issuing Bank refrain from issuing, amending, or extending such Letter of Credit, or any Requirement of Law relating to such Issuing Bank or any request or directive (whether or not having the force of law) from any

Governmental Authority with jurisdiction over such Issuing Bank prohibits the issuance, amendment, or extension of letters of credit generally or such Letter of Credit in particular or any such order, judgment or decree, or law imposes upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve, or capital or liquidity requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or imposes upon such Issuing Bank any unreimbursed loss, cost, or expense that was not applicable on the Effective Date and that such Issuing Bank in good faith deems material to it, or (iii) if the issuance, amendment, or extension of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements, or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements, or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the U.S. or foreign regulatory authorities, in each case pursuant to Basel III, will in each case be deemed not to be in effect on the Effective Date for purposes of clause (ii) preceding, regardless of the date enacted, adopted, issued, or implemented.

(2) Notice of Issuance, Amendment, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment or extension of an outstanding Letter of Credit), the Borrower Representative must deliver by hand or facsimile (or transmit through Electronic System, if arrangements for doing so have been approved by the respective Issuing Bank) to an Issuing Bank selected by the Borrower Representative and to the Administrative Agent (reasonably in advance of, but in any event no less than three Business Days prior to the requested date of issuance, amendment, or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended or extended, and specifying the date of issuance, amendment, or extension (that must be a Business Day), the date on which such Letter of Credit is to expire (that must comply with Section 2.06(c)), the amount of such Letter of Credit, the name and address of the beneficiary thereof, and such other information as is necessary to prepare, amend, or extend such Letter of Credit. In addition, as a condition to any such Letter of Credit issuance, the applicable Borrower must have entered into a continuing agreement (or other letter of credit agreement) for the issuance of letters of credit and/or must submit a letter of credit application, in each case, as required by the respective Issuing Bank and using such Issuing Bank's standard form (each, a "Letter of Credit Agreement"). A Letter of Credit will be issued, amended, or extended only if (and upon issuance, amendment, or extension of each Letter of Credit the Borrowers will be deemed to represent and warrant that), after giving effect to such issuance, amendment, or extension (i) the aggregate LC Exposure will not exceed \$20,000,000, (ii) the aggregate Standby LC Exposure will not exceed \$20,000,000, (iii) the aggregate Commercial LC Exposure will not exceed \$20,000,000, (iv) no Revolving Lender's Revolving Exposure will exceed its Revolving Commitment, and (v) the Aggregate Revolving Exposure will not exceed the lesser of (A) the Aggregate Revolving Commitment, minus Reserves or (B) the Borrowing Base. Notwithstanding the foregoing or anything to the contrary contained herein, no Issuing Bank will be obligated to issue or modify any Letter of Credit if, immediately after giving effect thereto, the outstanding LC Exposure in respect of all Letters of Credit issued by such Person and its Affiliates would exceed such Issuing Bank's Issuing Bank Sublimit. Without limiting the

_____foregoing and without affecting the limitations contained herein, it is understood and agreed that the Borrower Representative may from time to time request that an Issuing Bank issue Letters of Credit in excess of its individual Issuing Bank Sublimit in effect at the time of such request, and each Issuing Bank agrees to consider any such request in good faith. Any Letter of Credit so issued by an Issuing Bank in excess of its individual Issuing Bank Sublimit then in effect will nonetheless constitute a Letter of Credit for all purposes of this Agreement, and will not affect the Issuing Bank Sublimit of any other Issuing Bank, subject to the limitations on the aggregate LC Exposure set forth in clause (i) of this Section 2.06(b).

(3)_____ Expiration Date. Each Letter of Credit will expire (or be subject to termination or non-renewal by notice from the applicable Issuing Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any extension of the expiration thereof, including, without limitation, any automatic renewal provision, one year after such extension) and (ii) the date that is five Business Days prior to the Maturity Date.

(4) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount or extending the term thereof) and without any further action on the part of the applicable Issuing Bank or the Revolving Lenders, such Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the respective Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrowers on the date due as provided in Section 2.06(e), or of any reimbursement payment required to be refunded to the Borrowers for any reason, including after the Maturity Date. Each such payment must be made without any offset, abatement, withholding, or reduction whatsoever. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this clause (d) in respect of Letters of Credit is absolute and unconditional and will not be affected by any circumstance whatsoever, including any amendment or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments.

(5) Reimbursement. If the Issuing Bank makes any LC Disbursement in respect of a Letter of Credit, the Borrowers will reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 11:00 a.m., Chicago, Illinois time, on (i) the Business Day that the Borrower Representative receives notice of such LC Disbursement, if such notice is received prior to 9:00 a.m., Chicago, Illinois time, on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower Representative receives such notice, if such notice is received after 9:00 a.m., Chicago, Illinois time, on the day of receipt; provided that the Borrowers may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or Section 2.05 that such payment be financed with a CBFR Revolving Borrowing or a Swingline Loan in an equivalent amount and, to the extent so financed, the Borrowers' obligation to make such payment will be discharged and replaced by the resulting CBFR

Revolving Borrowing or Swingline Loan. If the Borrowers fail to make such payment when due, the Administrative Agent will notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the Borrowers in respect thereof, and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Revolving Lender will pay to the Administrative Agent such Lender's Applicable Percentage of the payment then due from the Borrowers, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 will apply, *mutatis mutandis*, to the payment obligations of the Revolving Lenders), and the Administrative Agent will promptly pay to the respective Issuing Bank the amounts so received by the Administrative Agent from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrowers pursuant to this clause (e), the Administrative Agent will distribute such payment to the respective Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this clause (e), to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank as their interests may appear. Any payment made by a Revolving Lender pursuant to this clause (e) to reimburse an Issuing Bank for any LC Disbursement (other than the funding of CBFR Revolving Loans or a Swingline Loan as contemplated above) will not constitute a Loan and will not relieve the Borrowers of their obligation to reimburse such LC Disbursement.

(6) **Obligations Absolute.** The Borrowers' joint and several obligation to reimburse LC Disbursements as provided in Section 2.06(e) will be absolute, unconditional, and irrevocable, and will be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, any Letter of Credit Agreement, or this Agreement, or any term or provision therein or herein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent, or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) any payment by the respective Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrowers' obligations hereunder. None of the Administrative Agent, the Revolving Lenders, any Issuing Bank, or any of their Related Parties, will have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss, or delay in transmission or delivery of any draft, document, notice, or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation, or any consequence arising from causes beyond the control of an Issuing Bank; provided that, the foregoing will not be construed to excuse an Issuing Bank from liability to the Borrowers to the extent of any direct damages (as opposed to special, indirect, consequential, or punitive damages, claims in respect of which are hereby waived by the Borrowers to the extent permitted by applicable law) suffered by any Borrower that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in

the absence of gross negligence or willful misconduct on the part of an Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank will be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented that appear on their face to be in substantial compliance with the terms of a Letter of Credit, an Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(7) Disbursement Procedures. The Issuing Bank for any Letter of Credit will, within the time allowed by applicable law or the specific terms of the Letter of Credit, following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. Such Issuing Bank will promptly after such examination notify the Administrative Agent and the applicable Borrower by telephone (confirmed by fax or through Electronic Systems) of such demand for payment if such Issuing Bank has made or will make an LC Disbursement thereunder; provided that such notice need not be given prior to payment by the Issuing Bank and any failure to give or delay in giving such notice will not relieve the Borrowers of their obligation to reimburse such Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement.

(8) Interim Interest. If the Issuing Bank for any Letter of Credit makes any LC Disbursement, then, unless the Borrowers reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof will bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrowers reimburse such LC Disbursement, at the rate per annum then applicable to CBFRR Revolving Loans and such interest will be due and payable on the date when such reimbursement is payable; provided that, if the Borrowers fail to reimburse such LC Disbursement when due pursuant to Section 2.06(e), then Section 2.13(d) will apply. Interest accrued pursuant to this clause (h) will be for the account of such Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to Section 2.06(e) to reimburse such Issuing Bank for such LC Disbursement will be for the account of such Lender to the extent of such payment.

(9) Replacement and Resignation of an Issuing Bank.

a. An Issuing Bank may be replaced at any time by written agreement among the Borrower Representative, the Administrative Agent, the replaced Issuing Bank, and the successor Issuing Bank. The Administrative Agent will notify the Revolving Lenders of any such replacement of an Issuing Bank. At the time any such replacement becomes effective, the Borrowers will pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (A) the successor Issuing Bank will have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit to be issued by it thereafter and (B) references herein to the term "Issuing Bank" will be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context requires. After the replacement of an Issuing

Bank hereunder, the replaced Issuing Bank will remain a party hereto and will continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit then outstanding and issued by it prior to such replacement, but will not be required to issue additional Letters of Credit or extend or otherwise amend any existing Letter of Credit.

b. Subject to the appointment and acceptance of a successor Issuing Bank, any Issuing Bank may resign as an Issuing Bank at any time upon 30 days prior written notice to the Administrative Agent, the Borrower Representative, and the Lenders, in which case, such resigning Issuing Bank will be replaced in accordance with Section 2.06(i)(i).

(10) Cash Collateralization. If any Event of Default occurs and is continuing, on the Business Day that the Borrower Representative receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Lenders with LC Exposure representing greater than 50.0% of the aggregate LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Borrowers must deposit in an account or accounts with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders (the "LC Collateral Account"), an amount in cash equal to 105% of the amount of the LC Exposure as of such date, plus accrued and unpaid interest thereon; provided that, the obligation to deposit such cash collateral will become effective immediately, and such deposit will become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to any Borrower described in clause (h) or clause (i) of Article 7. Such Borrower also will deposit cash collateral in accordance with this clause as and to the extent required by Section 2.10(b), Section 2.11(b), or Section 2.20. Each such deposit will be held by the Administrative Agent as collateral for the payment and performance of the Secured Obligations. The Administrative Agent will have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and the Borrowers hereby grant the Administrative Agent a security interest in the LC Collateral Account and all money or other assets on deposit therein or credited thereto. Other than any interest earned on the investment of such deposits, which investments will be made at the option and sole discretion of the Administrative Agent and at the Borrowers' risk and expense, such deposits will not bear interest. Interest or profits, if any, on such investments will accumulate in the LC Collateral Account. Moneys in the LC Collateral Account will be applied by the Administrative Agent to reimburse each Issuing Bank for LC Disbursements for which it has not been reimbursed, together with related fees, costs, and customary processing charges, and, to the extent not so applied, will be held for the satisfaction of the reimbursement obligations of the Borrowers for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Lenders with LC Exposure representing greater than 50.0% of the aggregate LC Exposure), be applied to satisfy other Secured Obligations. If the Borrowers are required to provide an amount of cash collateral hereunder as a result of the occurrence of one or more Events of Default, such amount (to the extent not applied as aforesaid) will be returned to the Borrowers within three Business Days after all such Events of Default have been waived (as confirmed in writing by the Administrative Agent).

(11) Issuing Bank Reports to the Administrative Agent. Unless otherwise agreed by the Administrative Agent, each Issuing Bank will, in addition to its notification obligations set forth elsewhere in this Section, report in writing to the Administrative Agent (i) periodic activity (for such period or recurrent periods as may be requested by the Administrative Agent) in respect of Letters of Credit issued by such Issuing Bank, including all issuances, extensions, and amendments, all expirations and cancellations and all disbursements and reimbursements, (ii) reasonably prior to the time that such Issuing Bank issues, amends, or extends any Letter of Credit, the date of such issuance, amendment, or extension, and the stated amount of the Letters of Credit issued, amended, or extended by it and outstanding after giving effect to such issuance, amendment, or extension (and whether the amounts thereof have changed), (iii) on each Business Day on which such Issuing Bank makes any LC Disbursement, the date and amount of such LC Disbursement, (iv) on any Business Day on which any Borrower fails to reimburse an LC Disbursement required to be reimbursed to such Issuing Bank on such day, the date of such failure and the amount of such LC Disbursement, and (v) on any other Business Day, such other information as the Administrative Agent may reasonably request as to the Letters of Credit issued by such Issuing Bank.

(12) Letters of Credit Issued for Account of Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder supports any obligations of, or is for the account of, a Subsidiary, or states that a Subsidiary is the "account party," "applicant", "customer", "instructing party", or the like of or for such Letter of Credit, and without derogating from any rights of the Issuing Bank (whether arising by contract, at law, in equity, or otherwise) against such Subsidiary in respect of such Letter of Credit, the Borrowers (i) will reimburse, indemnify, and compensate the Issuing Bank hereunder for such Letter of Credit (including to reimburse any and all drawings thereunder) as if such Letter of Credit had been issued solely for the account of a Borrower and (ii) irrevocably waive any and all defenses that might otherwise be available to any of them as a guarantor or surety of any or all of the obligations of such Subsidiary in respect of such Letter of Credit. Each Borrower hereby acknowledges that the issuance of such Letters of Credit for any of their Subsidiaries inures to the benefit of the Borrowers, and that each Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

Section 2.07 Funding of Borrowings.

(1) Each Lender will make each Loan to be made by such Lender hereunder on the proposed date thereof solely by wire transfer of immediately available funds by 2:00 p.m., Chicago, Illinois time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender's Applicable Percentage; provided that, Swingline Loans will be made as provided in Section 2.05. The Administrative Agent will make such Loans available to the Borrower Representative by promptly crediting the funds so received in the aforesaid account of the Administrative Agent to the Funding Account(s); provided that CBFR Revolving Loans made to finance the reimbursement of (i) an LC Disbursement as provided in Section 2.06(e) will be remitted by the Administrative Agent to the applicable Issuing Bank and (ii) a Protective Advance or an Overadvance will be retained by the Administrative Agent.

(2) Unless the Administrative Agent has received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.07(a) and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers each severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the applicable Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrowers, the interest rate applicable to CBFR Loans. If such Lender pays such amount to the Administrative Agent, then such amount will constitute such Lender's Loan included in such Borrowing, provided that any interest received from a Borrower by the Administrative Agent during the period beginning when the Administrative Agent funded the Borrowing until such Lender pays such amount will be solely for the account of the Administrative Agent.

Section 2.08 Interest Elections.

(1) Each Borrowing initially will be of the Type specified in the applicable Borrowing Request and, in the case of a Term Benchmark Borrowing, will have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower Representative may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Term Benchmark Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower Representative may elect different options with respect to different portions of the affected Borrowing, in which case each such portion will be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion will be considered a separate Borrowing. This Section will not apply to Swingline Borrowings, Overadvances, or Protective Advances, which may not be converted or continued.

(2) To make an election pursuant to this Section, the Borrower Representative must notify the Administrative Agent of such election either in writing (delivered by hand or fax) by delivering an Interest Election Request signed by a Responsible Officer of the Borrower Representative or through Electronic System if arrangements for doing so have been approved by the Administrative Agent (or if an Extenuating Circumstance exists, by telephone) by the time that a Borrowing Request would be required under Section 2.03 if the Borrowers were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request will be irrevocable and each such telephonic Interest Election Request, if permitted, must be confirmed immediately upon the cessation of the Extenuating Circumstance by hand delivery, Electronic System, or fax to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by a Responsible Officer of the Borrower Representative.

(3) Each written (or if permitted, telephonic) Interest Election Request (including requests submitted through Electronic System) will specify the following information in compliance with Section 2.02:

- a. the name of the applicable Borrower and the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clause (iii) and clause (iv) following will be specified for each resulting Borrowing);
- b. the effective date of the election made pursuant to such Interest Election Request, which must be a Business Day;
- c. whether the resulting Borrowing is to be a CBFRR Borrowing or a Term Benchmark Borrowing; and
- d. if the resulting Borrowing is a Term Benchmark Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which must be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Term Benchmark Borrowing but does not specify an Interest Period, then the Borrowers will be deemed to have selected an Interest Period of one month duration.

(4) Promptly following receipt of an Interest Election Request, the Administrative Agent will advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(5) If the Borrower Representative fails to deliver a timely Interest Election Request with respect to a Term Benchmark Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing will be converted to a CBFRR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower Representative, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Term Benchmark Borrowing or an RFR Borrowing and (ii) unless repaid, each Term Benchmark Borrowing and each RFR Borrowing will be converted to a CBFRR Borrowing at the end of the Interest Period or Interest Payment Date applicable thereto.

Section 2.09 Termination and Reduction of Commitments; Increase in Revolving Commitments.

- (1) Unless previously terminated, the Revolving Commitments will terminate on the Maturity Date.
- (2) The Borrowers may at any time terminate the Revolving Commitments upon Payment in Full of the Secured Obligations.

(3) The Borrowers may from time to time reduce the Revolving Commitments; provided that (i) each reduction of the Revolving Commitments will be in an amount that is an integral multiple of \$500,000 and not less than \$5,000,000 and (ii) the Borrowers will not terminate or reduce the Revolving Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.11, the Aggregate Revolving Exposure would exceed the lesser of (A) the Aggregate Revolving Commitment or (B) the Borrowing Base.

(4) The Borrower Representative will notify the Administrative Agent of any election to terminate or reduce the Commitments under Section 2.09(b) or Section 2.09(c) at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent will advise the Lenders of the contents thereof. Each notice delivered by the Borrower Representative pursuant to this Section will be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower Representative may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower Representative (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments will be permanent. Each reduction of the Commitments will be made ratably among the Lenders in accordance with their respective Commitments.

(5) The Borrowers will have the right to increase the Aggregate Revolving Commitment by obtaining additional Revolving Commitments, either from one or more of the Lenders or another lending institution provided that (i) any such request for an increase must be in a minimum amount of \$5,000,000, (ii) the Borrower Representative, on behalf of the Borrowers, may make a maximum of three such requests, (iii) after giving effect thereto, the sum of the total of the additional Commitments will not exceed \$35,000,000, (iv) the Administrative Agent and each Issuing Bank have approved the identity of any such new Lender, such approvals not to be unreasonably withheld, (v) any such new Lender assumes all of the rights and obligations of a "Lender" hereunder, and (vi) the procedures described in Section 2.09(f) have been satisfied. Nothing contained in this Section 2.09 constitutes, or may otherwise be deemed to be, a commitment on the part of any Lender to increase its Commitment hereunder at any time.

(6) Any amendment hereto for such an increase or addition must be in form and substance satisfactory to the Administrative Agent and will only require the written signatures of the Administrative Agent, the Borrowers, and each Lender being added or increasing its Commitment, subject only to the approval of all Lenders if any such increase or addition would cause the Aggregate Revolving Commitment to exceed \$75,000,000. As a condition precedent to such an increase or addition, the Borrowers must deliver to the Administrative Agent (i) a certificate of each Loan Party signed by an authorized officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase and (B) in the case of the Borrowers, certifying that, before and after giving effect to such increase or addition, (1) the representations and warranties contained in Article 3 and the other Loan Documents are true and correct, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date and (2) no Default exists and

(ii) legal opinions and documents consistent with those delivered on the Effective Date, to the extent requested by the Administrative Agent.

(7) On the effective date of any such increase or addition, (i) any Lender increasing (or, in the case of any newly added Lender, extending) its Revolving Commitment will make available to the Administrative Agent such amounts in immediately available funds as the Administrative Agent determines, for the benefit of the other Lenders, as being required in order to cause, after giving effect to such increase or addition and the use of such amounts to make payments to such other Lenders, each Lender's portion of the outstanding Revolving Loans of all the Lenders to equal its revised Applicable Percentage of such outstanding Revolving Loans, and the Administrative Agent will make such other adjustments among the Lenders with respect to the Revolving Loans then outstanding and amounts of principal, interest, commitment fees, and other amounts paid or payable with respect thereto as are necessary, in the opinion of the Administrative Agent, in order to effect such reallocation and (ii) the Borrowers will be deemed to have repaid and reborrowed all outstanding Revolving Loans as of the date of any increase (or addition) in the Aggregate Revolving Commitment (with such reborrowing to consist of the Types of Revolving Loans, with related Interest Periods if applicable, specified in a notice delivered by the Borrower Representative, in accordance with the requirements of Section 2.03). The deemed payments made pursuant to clause (ii) of the immediately preceding sentence must be accompanied by payment of all accrued interest on the amount prepaid and, in respect of each Term Benchmark Loan, will be subject to indemnification by the Borrowers pursuant to the provisions of Section 2.16 if the deemed payment occurs other than on the last day of the related Interest Periods. Within a reasonable time after the effective date of any increase or addition, the Administrative Agent will, and is hereby authorized and directed to, revise the Commitment Schedule to reflect such increase or addition and will distribute such revised Commitment Schedule to each of the Lenders and the Borrower Representative, whereupon such revised Commitment Schedule will replace the previous Commitment Schedule and become part of this Agreement.

Section 2.10 Repayment of Loans; Evidence of Debt.

(1) The Borrowers hereby unconditionally promise to pay (i) to the Administrative Agent for the account of each Revolving Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date, (ii) to the Administrative Agent the then unpaid amount of each Protective Advance on the earlier of the Maturity Date or demand by the Administrative Agent, and (iii) to the Administrative Agent the then unpaid principal amount of each Overadvance on the earlier of the Maturity Date or demand by the Administrative Agent.

(2) At all times during a Dominion Period, on each Business Day, the Administrative Agent will apply all funds credited to the Collection Account on the immediately preceding Business Day (at the discretion of the Administrative Agent, whether or not immediately available), first to prepay any Protective Advances and Overadvances that may be outstanding, pro rata, and second to prepay the Revolving Loans (including Swingline Loans) and to cash collateralize outstanding LC Exposure. Notwithstanding the foregoing, to the extent any funds credited to the Collection Account constitute Net Proceeds, the application of such Net Proceeds will be subject to

Section 2.11(c). If no Dominion Period is in effect, upon request of the Borrower Representative, any collected funds in the Collection Account will be transferred to the Funding Account.

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

(4) The Administrative Agent will maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Class and Type thereof, and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder, and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(5) The entries made in the accounts maintained pursuant to Section 2.10(c) or Section 2.10(d) will be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that, the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein will not in any manner affect the obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement.

(6) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrowers will prepare, execute, and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon will at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form.

Section 2.11 Prepayment of Loans.

(1) The Borrowers will have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with Section 2.11(f) of this Section and, if applicable, payment of any break funding expenses under Section 2.16.

(2) Except for Overadvances permitted under Section 2.05, in the event and on such occasion that the Aggregate Revolving Exposure exceeds the lesser of (i) the Aggregate Revolving Commitment or (ii) the Borrowing Base, the Borrowers will prepay the Revolving Loans, LC Exposure, and/or Swingline Loans or cash collateralize LC Exposure in an account with the Administrative Agent pursuant to Section 2.06(j), as applicable, in an aggregate amount equal to such excess. In addition, except for Overadvances permitted under Section 2.05.

(3) In the event and on each occasion that any Net Proceeds are received by or on behalf of any Loan Party in respect of any Prepayment Event, if such Prepayment Event occurs during the existence of a Dominion Period, the Borrowers will, immediately after

such Net Proceeds are received by such Loan Party, prepay the Obligations and cash collateralize the LC Exposure as set forth in Section 2.11(e) below in an aggregate amount equal to 100% of such Net Proceeds.

(4) [reserved]

(5) All amounts required to be prepaid pursuant to Section 2.11(c) will be applied, first to prepay any Protective Advances and Overadvances that may be outstanding, pro rata, and second to prepay the Revolving Loans (including Swingline Loans) without a corresponding reduction in the Revolving Commitments and to cash collateralize outstanding LC Exposure.

(6) The Borrower Representative must notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by fax) or through Electronic System, if arrangements for doing so have been approved by the Administrative Agent, of any prepayment hereunder not later than (i) 10:00 a.m., Chicago, Illinois time, (A) in the case of prepayment of a Term Benchmark Revolving Borrowing, three Business Days before the date of prepayment or (B) in the case of prepayment of a CBFR Revolving Borrowing, on the date of prepayment. Each such notice will be irrevocable and must specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Revolving Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Revolving Borrowing, the Administrative Agent will advise the Lenders of the contents thereof. Each partial prepayment of any Revolving Borrowing must be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Revolving Borrowing will be applied ratably to the Revolving Loans included in the prepaid Borrowing. Prepayments must be accompanied by (i) accrued interest to the extent required by Section 2.13 and (ii) break funding payments pursuant to Section 2.16.

Section 2.12 Fees.

(1) The Borrowers agree to pay to the Administrative Agent for the account of each Lender a commitment fee, that will accrue at the Applicable Rate on the average daily amount of the Available Revolving Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which the Revolving Commitments terminate. Accrued commitment fees will be payable in arrears on the first Business Day of each calendar month and on the date on which the Revolving Commitments terminate, commencing on the first such date to occur after the Effective Date. All commitment fees will be computed on the basis of a year of 360 days and will be payable for the actual number of days elapsed, (including the first day but excluding the last day).

(2) The Borrowers agree to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee with respect to its participations in each outstanding Letter of Credit, that will accrue at the same Applicable Rate used to determine

the interest rate applicable to Term Benchmark Revolving Loans on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure and (ii) to each Issuing Bank for its own account a fronting fee with respect to each Letter of Credit issued by such Issuing Bank, that will accrue at the rate of 0.125% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) attributable to Letters of Credit issued by such Issuing Bank during the period from and including the Effective Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure with respect to Letters of Credit issued by such Issuing Bank, as well as such Issuing Bank's standard fees and commissions with respect to the issuance, amendment, or extension of any Letter of Credit and other processing fees and other standard costs and charges, of such Issuing Bank relating to Letters of Credit as from time to time in effect. Participation fees and fronting fees accrued through and including the last day of each calendar month will be payable on the first Business Day of each calendar month following such last day, commencing on the first such date to occur after the Effective Date; provided that all such fees will be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate will be payable on demand. Any other fees payable to an Issuing Bank pursuant to this Section 2.12(b) will be payable within ten days after demand. All participation fees and fronting fees will be computed on the basis of a year of 360 days and will be payable for the actual number of days elapsed (including the first day but excluding the last day).

(3) The Borrowers agree to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrowers and the Administrative Agent.

(4) [reserved]

(5) All fees payable hereunder must be paid on the dates due, in dollars in immediately available funds, to the Administrative Agent (or to an Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders. Fees paid will not be refundable under any circumstances.

Section 2.13 Interest.

(1) The Loans comprising CBFR Borrowings (including Swingline Loans) will bear interest at the CBFR, plus the Applicable Rate.

(2) The Loans comprising each Term Benchmark Borrowing will bear interest at the Adjusted Term SOFR Rate for the Interest Period in effect for such Borrowing, plus the Applicable Rate. Each RFR Loan will bear interest at a rate per annum equal to the Adjusted Daily Simple SOFR, plus the Applicable Rate.

(3) Each Protective Advance and each Overadvance will bear interest at the CBFR, plus the Applicable Rate for Revolving Loans, plus 2.00% per annum.

(4) Notwithstanding the foregoing, during the existence of an Event of Default, the Administrative Agent or the Required Lenders may, at their option, by notice to the Borrower Representative (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 9.02 requiring the consent of “each Lender affected thereby” for reductions in interest rates), declare that (i) all Loans will bear interest at 2.00% per annum, plus the rate otherwise applicable to such Loans as provided in this Section or (ii) in the case of any other amount outstanding hereunder, such amount will accrue at 2.00% per annum, plus the rate applicable to such fee or other obligation as provided hereunder.

(5) Accrued interest on each Loan (for CBFR Loans, accrued through the last day of the prior calendar month) will be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; provided that, (i) interest accrued pursuant to Section 2.13(d) will be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a CBFR Revolving Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid will be payable on the date of such repayment or prepayment, and (iii) in the event of any conversion of any Term Benchmark Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan will be payable on the effective date of such conversion.

(6) Interest computed by reference to the Term SOFR Rate, Daily Simple SOFR or REVSOF30 Rate will be computed on the basis of a year of 360 days. Interest computed by reference to the CB Floating Rate will be computed on the basis of a year of 365 days (or 366 days in a leap year). In each case interest will be payable for the actual number of days elapsed (including the first day but excluding the last day). All interest hereunder on any Loan will be computed on a daily basis based upon the outstanding principal amount of such Loan as of the applicable date of determination. A determination of the applicable CB Floating Rate, Adjusted Daily Simple SOFR, Daily Simple SOFR, Adjusted REVSOF30 Rate, REVSOF30 Rate, Adjusted Term SOFR Rate, or Term SOFR Rate will be determined by the Administrative Agent, and such determination will be conclusive absent manifest error.

Section 2.14 Alternate Rate of Interest; Illegality.

(1) Subject to clause (b), clause (c), clause (d), clause (e), and clause (f) of this Section 2.14, if:

a. the Administrative Agent determines (which determination will be conclusive and binding absent manifest error) (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, that adequate and reasonable means do not exist for ascertaining the Adjusted Term SOFR Rate (including because the Term SOFR Reference Rate is not available or published on a current basis), for such Interest Period or (B) at any time, that adequate and reasonable means do not exist for ascertaining the Adjusted REVSOF30 Rate (including because the Term SOFR Reference Rate is not available or published on a current basis); or

b. the Administrative Agent is advised by the Required Lenders that (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, the Adjusted Term SOFR Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period or (B) at any time the Adjusted REVSOF30 Rate will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing;

then the Administrative Agent will give notice thereof to the Borrower Representative and the Lenders through Electronic System as provided in Section 9.01 as promptly as practicable thereafter and, until (y) the Administrative Agent notifies the Borrower Representative and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (z) the Borrowers deliver a new Interest Election Request in accordance with the terms of Section 2.08 or a new Borrowing Request in accordance with the terms of Section 2.03, (1) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Term Benchmark Borrowing and any Borrowing Request that requests a Term Benchmark Borrowing will instead be deemed to be an Interest Election Request or a Borrowing Request, as applicable, for (y) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 2.14(a)(i) or Section 2.14(a)(ii), or (z) a CBFR Borrowing if the Adjusted Daily Simple SOFR also is the subject of Section 2.14(a)(i) or Section 2.14(a)(ii) and (2) any Borrowing Request that requests an RFR Borrowing will instead be deemed to be a Borrowing Request, as applicable, for a CBFR Borrowing; provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then all other Types of Borrowings shall be permitted. Furthermore, if any Term Benchmark Loan or RFR Loan is outstanding on the date of the Borrower Representative's receipt of the notice from the Administrative Agent referred to in this Section 2.14(a) with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until (y) the Administrative Agent notifies the Borrower Representative and the Lenders that the circumstances giving rise to such notice no longer exist with respect to the relevant Benchmark and (z) the Borrowers deliver a new Interest Election Request in accordance with the terms of Section 2.08 or a new Borrowing Request in accordance with the terms of Section 2.03, (1) any Term Benchmark Loan will on the last day of the Interest Period applicable to such Loan, be converted by the Administrative Agent to, and will constitute, (y) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not also the subject of Section 2.14(a)(i) or Section 2.14(a)(ii), on such day, or (z) a CBFR Loan if the Adjusted Daily Simple SOFR also is the subject of Section 2.14(a)(i) or Section 2.14(a)(ii), on such day, and (2) any RFR Loan will on and from such day be converted by the Administrative Agent to, and will constitute a CBFR Loan.

(2) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (y) if a Benchmark Replacement is determined in accordance with clause (1) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all

purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (z) if a Benchmark Replacement is determined in accordance with clause (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York, New York time) on the fifth Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(3) Notwithstanding anything to the contrary herein or in any other Loan Document, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(4) The Administrative Agent will promptly notify the Borrower Representative and the Lenders of (i) any occurrence of a Benchmark Transition Event, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) following, and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision, or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.14, including any determination with respect to a tenor, rate, or adjustment or of the occurrence or non-occurrence of an event, circumstance, or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.14.

(5) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Rate or REVSOFR30 Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i), preceding either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to

an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(6) Upon the Borrower Representative's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrowers may revoke any request for a Term Benchmark Borrowing or RFR Borrowing of, conversion to or continuation of Term Benchmark Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrowers will be deemed to have converted (1) any such request for a Term Benchmark Borrowing into a request for a Borrowing of or conversion to (A) an RFR Borrowing so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event or (B) a CBFR Borrowing if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event or (2) any such request for an RFR Borrowing into a request for a CBFR Borrowing. Furthermore, if any Term Benchmark Loan or RFR Loan is outstanding on the date of the Borrower Representative's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until such time as a Benchmark Replacement is implemented pursuant to this Section 2.14, (1) any Term Benchmark Loan will on the last day of the Interest Period applicable to such Loan, be converted by the Administrative Agent to, and will constitute, (x) an RFR Loan so long as the Adjusted Daily Simple SOFR is not the subject of a Benchmark Transition Event, on such day or (y) a CBFR Loan if the Adjusted Daily Simple SOFR is the subject of a Benchmark Transition Event, on such day and (2) any RFR Loan will on and from such day be converted by the Administrative Agent to, and shall constitute a CBFR Loan.

Section 2.15 Increased Costs.

(1) If any Change in Law:

- a. imposes, modifies, or deems applicable any reserve, special deposit, liquidity, or similar requirement (including any compulsory loan requirement, insurance charge, or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender or Issuing Bank;
- b. imposes on any Lender or Issuing Bank or the applicable offshore interbank market any other condition, cost, or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein; or
- c. subjects any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clause (b) through clause (d) of the definition of Excluded Taxes, and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities, or capital attributable thereto;

and the result of any of the foregoing is to increase the cost to such Lender, Issuing Bank, or other Recipient of making, continuing, converting into, or maintaining any Loan (or of

maintaining its obligation to make any such Loan) or to increase the cost to such Lender, Issuing Bank, or other Recipient of participating in, issuing, or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender, Issuing Bank, or other Recipient hereunder (whether of principal, interest, or otherwise), then the Borrowers will pay to such Lender, Issuing Bank, or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, Issuing Bank, or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(2) If any Lender or Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or Issuing Bank's capital or on the capital of such Lender's or Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of, or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or Issuing Bank's policies and the policies of such Lender's or Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrowers will pay to such Lender or Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or Issuing Bank or such Lender's or Issuing Bank's holding company for any such reduction suffered.

(3) A certificate of a Lender or Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or Issuing Bank or its holding company, as the case may be, as specified in Section 2.15(a) or Section 2.15(b) will be delivered to the Borrower Representative and will be conclusive absent manifest error. The Borrowers will pay such Lender or Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten days after receipt thereof.

(4) Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section will not constitute a waiver of such Lender's or Issuing Bank's right to demand such compensation; provided that, the Borrowers will not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or Issuing Bank, as the case may be, notifies the Borrower Representative of the Change in Law giving rise to such increased costs or reductions and of such Lender's or Issuing Bank's intention to claim compensation therefor; provided, further, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above will be extended to include the period of retroactive effect thereof.

Section 2.16 Break Funding Payments.

(1) With respect to Loans that are not RFR Loans, in the event of (i) the payment of any principal of any Term Benchmark Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default an optional or mandatory prepayment of Loans), (ii) the conversion of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto, (iii) the failure to borrow, convert, continue, or prepay any Term Benchmark Loan on the date specified in any notice

delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11(f) and is revoked in accordance therewith), or (iv) the assignment of any Term Benchmark Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower Representative pursuant to Section 2.19 or Section 9.02(d), then, in any such event, the Borrowers will compensate each Lender for the loss, cost, and expense attributable to such event. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section will be delivered to the Borrower Representative and will be conclusive absent manifest error. The Borrowers will pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.

(2) With respect to RFR Loans, in the event of (i) the payment of any principal of any RFR Loan other than on the Interest Payment Date applicable thereto (including as a result of an Event of Default or an optional or mandatory prepayment of Loans), (ii) the failure to borrow or prepay any RFR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11 and is revoked in accordance therewith), or (iii) the assignment of any RFR Loan other than on the Interest Payment Date applicable thereto as a result of a request by the Borrowers pursuant to Section 2.18 or Section 9.02(d), then, in any such event, the Borrowers will compensate each Lender for the loss, cost, and expense attributable to such event. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section will be delivered to the Borrower Representative and will be conclusive absent manifest error. The Borrowers will pay such Lender the amount shown as due on any such certificate within ten days after receipt thereof.

Section 2.17 Withholding of Taxes: Gross-Up.

(1) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document will be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent will be entitled to make such deduction or withholding and will timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party will be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(2) Payment of Other Taxes by the Loan Parties. The Loan Parties will timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for, Other Taxes.

(3) Evidence of Payment. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.17, such Loan Party will deliver to the Administrative Agent the original or a certified copy of a receipt

issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment, or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(4) Indemnification by the Loan Parties. The Loan Parties will jointly and severally indemnify each Recipient, within ten 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) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Loan Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, will be conclusive absent manifest error.

(5) Indemnification by the Lenders. Each Lender will severally indemnify the Administrative Agent, within ten days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register, and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent will be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender from any other source against any amount due to the Administrative Agent under this Section 2.17(e).

(6) Status of Lenders.

a. Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document will deliver to the Borrower Representative and the Administrative Agent, at the time or times reasonably requested by the Borrower Representative or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower Representative or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower Representative or the Administrative Agent, will deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower Representative or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution, and

submission of such documentation (other than such documentation set forth in [Section 2.17\(f\)\(ii\)\(A\)](#), [Section 2.17\(f\)\(ii\)\(B\)](#), and [Section 2.17\(f\)\(ii\)\(D\)](#)) will not be required if in the Lender's reasonable judgment such completion, execution, or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

b. Without limiting the generality of the foregoing, in the event that any Borrower is a U.S. Person,

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

ii. any Foreign Lender and any Person that is not a U.S. Person that becomes the Administrative Agent (each a "Foreign Credit Party") will, to the extent it is legally entitled to do so, deliver to the Borrower Representative and the Administrative Agent (in such number of copies as are requested by the recipient) on or prior to the date on which such Foreign Credit Party becomes a Foreign Credit Party under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), whichever of the following is applicable:

1. in the case of a Foreign Credit Party claiming the benefits of an income tax treaty to which the United States is a party (y) with respect to payments of interest under any Loan Document, an executed copy of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (z) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

2. in the case of a Foreign Credit Party claiming that its extension of credit will generate U.S. effectively connected income, an executed copy of IRS Form W-8ECI;

3. in the case of a Foreign Credit Party claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (y) a certificate substantially in the form of [Exhibit C- 1](#) to the effect that such Foreign Credit Party is not a "bank" within

the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of a 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 (z) an executed copy of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or

4. to the extent a Foreign Credit Party is not the beneficial owner, an executed copy of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit C-2 or Exhibit C-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that, if the Foreign Credit Party is a partnership and one or more direct or indirect partners of such Foreign Credit Party are claiming the portfolio interest exemption, such Foreign Credit Party may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit C-4 on behalf of each such direct and indirect partner;

iii. any Foreign Credit Party will, to the extent it is legally entitled to do so, deliver to the Borrower Representative and the Administrative Agent (in such number of copies as are requested by the recipient) on or prior to the date on which such Foreign Credit Party becomes a Credit Party under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower Representative or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made; and

iv. if a payment made to a Credit Party any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Credit Party 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 Credit Party will deliver to the Borrower Representative and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower Representative or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower Representative or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Credit Party has complied with such Credit Party's obligations under FATCA or to determine the amount to deduct and withhold from such

payment. Solely for purposes of this clause (D), “FATCA” will include any amendments made to FATCA after the date of this Agreement.

Each Lender and the Administrative Agent agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it will update such form or certification or promptly notify the Borrower Representative and, if applicable, the Administrative Agent in writing of its legal inability to do so.

(7) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it will pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, will repay to such indemnified party the amount paid over pursuant to this clause (g) (plus any penalties, interest, or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this clause 2.17(g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this clause (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld, or otherwise imposed and the indemnification payments or additional amounts giving rise to such refund had never been paid. This clause (g) will not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(8) Survival. Each party’s obligations under this Section will survive the resignation or replacement of the 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 Loan Document (including the Payment in Full of the Secured Obligations).

(9) Defined Terms. For purposes of this Section 2.17, the term “Lender” includes any Issuing Bank and the term “applicable law” includes FATCA.

Section 2.18 Payments Generally; Allocation of Proceeds; Sharing of Setoffs.

(1) The Borrowers will make each payment required to be made by them hereunder (whether of principal, interest, fees, or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, Section 2.16, Section 2.17, or otherwise) prior to 2:00 p.m., Chicago, Illinois time, on the date when due, in immediately available funds, without setoff, recoupment, or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments will be made to the Administrative Agent at its offices at 10 South Dearborn

Street, Floor L2, Chicago, Illinois, except payments to be made directly to an Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Section 2.15, Section 2.16, Section 2.17, and Section 9.03 must be made directly to the Persons entitled thereto. The Administrative Agent will distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. Unless otherwise provided for herein, if any payment hereunder is due on a day that is not a Business Day, the date for payment will be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon will be payable for the period of such extension. All payments hereunder will be made in dollars.

(2) Any proceeds of Collateral received by the Administrative Agent (i) not constituting either (A) a specific payment of principal, interest, fees, or other sum payable under the Loan Documents (that will be applied as specified by the Borrowers), (B) a mandatory prepayment (that will be applied in accordance with Section 2.11) or (C) amounts to be applied from the Collection Account when full cash dominion is in effect (that will be applied in accordance with Section 2.10(b)) or (ii) during the existence of an Event of Default if the Administrative Agent so elects or the Required Lenders so direct, will be applied ratably, first, to pay any fees, indemnities, or expense reimbursements then due to the Administrative Agent and the Issuing Banks from the Borrowers (other than in connection with Banking Services Obligations or Swap Agreement Obligations), second, to pay any fees, indemnities, or expense reimbursements then due to the Lenders from the Borrowers (other than in connection with Banking Services Obligations or Swap Agreement Obligations), third, to pay interest due in respect of the Overadvances and Protective Advances, fourth, to pay the principal of the Overadvances and Protective Advances, fifth, to pay interest then due and payable on the Loans (other than the Overadvances and Protective Advances) ratably, sixth, to prepay principal on the Loans (other than the Overadvances and Protective Advances) and unreimbursed LC Disbursements and to pay any amounts owing in respect of Swap Agreement Obligations up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.22, for which Reserves have been established ratably, seventh, to pay an amount to the Administrative Agent equal to 105% of the aggregate LC Exposure, to be held as cash collateral for such Obligations, eighth, to pay any amounts owing in respect of Banking Services Obligations and Swap Agreement Obligations up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.22 and to the extent not paid pursuant to clause "sixth" above, and ninth, to pay any other Secured Obligation due to the Administrative Agent or any Lender by the Borrowers. Notwithstanding the foregoing, amounts received from any Loan Party will not be applied to any Excluded Swap Obligation of such Loan Party. Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrower Representative, or unless a Default is in existence, neither the Administrative Agent nor any Lender will apply any payment that it receives to any Term Benchmark Loan of a Class, except (y) on the expiration date of the Interest Period applicable thereto or (z) in the event, and only to the extent, that there are no outstanding CBR Loans of the same Class and, in any such event, the Borrowers will pay the break funding payment required in accordance with Section 2.16. The Administrative Agent and the Lenders will have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Secured Obligations.

(3) At the election of the Administrative Agent, all payments of principal, interest, LC Disbursements, fees, premiums, reimbursable expenses (including all reimbursement for fees, costs, and expenses pursuant to Section 9.03), and other sums payable under the Loan Documents, may be paid from the proceeds of Borrowings made hereunder whether made following a request by the Borrower Representative pursuant to Section 2.03 or a deemed request as provided in this Section or may be deducted from any deposit account of any Borrower maintained with the Administrative Agent. The Borrowers hereby irrevocably authorize (i) the Administrative Agent to make a Borrowing for the purpose of paying each payment of principal, interest, and fees as it becomes due hereunder or any other amount due under the Loan Documents and agrees that all such amounts charged will constitute Loans (including Swingline Loans and Overadvances, but such a Borrowing may only constitute a Protective Advance if it is to reimburse costs, fees, and expenses as described in Section 9.03) and that all such Borrowings will be deemed to have been requested pursuant to Section 2.03, Section 2.04, or Section 2.05, as applicable, and (ii) the Administrative Agent to charge any deposit account of any Borrower maintained with the Administrative Agent for each payment of principal, interest, and fees as it becomes due hereunder or any other amount due under the Loan Documents.

(4) If, except as otherwise expressly provided herein, any Lender, by exercising any right of setoff or counterclaim or otherwise, obtains payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other similarly situated Lender, then the Lender receiving such greater proportion will purchase (for cash at face value) participations in the Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments will be shared by all such Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements and Swingline Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations will be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this Section 2.18(d) will not be construed to apply to any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements or Swingline Loans to any assignee or participant, other than to the Borrowers or any Subsidiary or Affiliate thereof (as to which the provisions of this Section 2.18(d) will apply). Each 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 such Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

(5) Unless the Administrative Agent has received prior to any date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Banks pursuant to the terms hereof or any other Loan Document (including any date that is fixed for prepayment by notice from the Borrower Representative to the

Administrative Agent pursuant to Section 2.11(f)), notice from the Borrower Representative that the Borrowers will not make such payment or prepayment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Banks, as the case may be, the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders or the Issuing Banks, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the NYFRB Rate.

(6) The Administrative Agent may from time to time provide the Borrowers with account statements or invoices with respect to any of the Secured Obligations (the “Statements”). The Administrative Agent is under no duty or obligation to provide Statements, that, if provided, will be solely for the Borrowers’ convenience. Statements may contain estimates of the amounts owed during the relevant billing period, whether of principal, interest, fees, or other Secured Obligations. If the Borrowers pay the full amount indicated on a Statement on or before the due date indicated on such Statement, the Borrowers will not be in default of payment with respect to the billing period indicated on such Statement; provided that, acceptance by the Administrative Agent, on behalf of the Lenders, of any payment that is less than the total amount actually due at that time (including any past due amounts) will not constitute a waiver of the Administrative Agent’s or the Lenders’ right to receive payment in full at another time.

Section 2.19 Mitigation Obligations; Replacement of Lenders.

(1) If any Lender requests compensation under Section 2.15, or if the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender will use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches, or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or Section 2.17, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(2) If any Lender requests compensation under Section 2.15, or if the Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, or if any Lender becomes a Defaulting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights (other than its existing rights to payments pursuant to Section 2.15 or Section 2.17), and obligations under this Agreement and other Loan Documents to an assignee that will assume such obligations (which assignee may be

another Lender, if a Lender accepts such assignment); provided that (i) the Borrowers will have received the prior written consent of the Administrative Agent (and in circumstances where its consent would be required under Section 9.04, the Issuing Banks and the Swingline Lender), which consent will not unreasonably be withheld, (ii) such Lender will have received payment of an amount equal to the outstanding principal of its Loans, participations in LC Disbursements, and Swingline Loans, accrued interest thereon, accrued fees, and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal, accrued interest, and fees) or the Borrowers (in the case of all other amounts), and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. A Lender will not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply. Each party hereto agrees that (y) an assignment required pursuant to this clause may be effected pursuant to an Assignment and Assumption executed by the Borrower Representative, the Administrative Agent, and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants) and (z) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and will be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided, further, that any such documents will be without recourse to or warranty by the parties thereto.

Section 2.20 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions will apply for so long as such Lender is a Defaulting Lender:

(1) fees will cease to accrue on the unfunded portion of the Revolving Commitment of such Defaulting Lender pursuant to Section 2.12(a);

(2) any payment of principal, interest, fees, or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 2.18(b), or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 9.08 will be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Bank or the Swingline Lender hereunder; third, to cash collateralize the Issuing Banks' LC Exposure with respect to such Defaulting Lender in accordance with this Section; fourth, as the Borrower Representative may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower Representative, to be held in a deposit account and released pro

rata in order to (i) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (ii) cash collateralize the Issuing Banks' future LC Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with this Section; sixth, to the payment of any amounts owing to the Lenders, the Issuing Banks, or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Banks, or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by any Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (y) such payment is a payment of the principal amount of any Loans or LC Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share and (z) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment will be applied solely to pay the Loans of, and LC Disbursements owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Disbursements owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in the Borrowers' obligations corresponding to such Defaulting Lender's LC Exposure and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments without giving effect to clause (d) following. Any payments, prepayments, or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section will be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto;

(3) such Defaulting Lender will not have the right to vote on any issue on which voting is required (other than to the extent expressly provided in Section 9.02(b)) and the Commitment and Revolving Exposure of such Defaulting Lender will not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver, or other modification pursuant to Section 9.02) or under any other Loan Document; provided, that, except as otherwise provided in Section 9.02, this Section 2.20(c) will not apply to the vote of a Defaulting Lender in the case of an amendment, waiver, or other modification requiring the consent of such Lender or each Lender directly affected thereby;

(4) if any Swingline Exposure or LC Exposure exists at the time a Lender becomes a Defaulting Lender then:

a. all or any part of the Swingline Exposure and LC Exposure of such Defaulting Lender will be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent that such reallocation does not, as to any non-Defaulting Lender, cause such non-Defaulting Lender's Revolving Exposure to exceed its Revolving Commitment;

b. if the reallocation described in clause (i) preceding cannot, or can only partially, be effected, the Borrowers will within one Business Day following notice by the Administrative Agent (y) first, prepay such Swingline Exposure and (z) second, cash collateralize, for the benefit of the Issuing Banks, the Borrowers' obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) preceding) in accordance with the procedures set forth in Section 2.06(j) for so long as such LC Exposure is outstanding;

c. if the Borrowers cash collateralize any portion of such Defaulting Lender's LC Exposure pursuant to clause (ii) preceding, the Borrowers will not be required to pay any fees to such Defaulting Lender pursuant to Section 2.12(b) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

d. if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to clause (i) preceding, then the fees payable to the Lenders pursuant to Sections 2.12(a) and Section 2.12(b) will be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; and

e. if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or clause (ii) preceding, then, without prejudice to any rights or remedies of any Issuing Bank or any other Lender hereunder, all letter of credit fees payable under Section 2.12(b) with respect to such Defaulting Lender's LC Exposure will be payable to the Issuing Banks until and to the extent that such LC Exposure is reallocated and/or cash collateralized; and

(5) so long as such Lender is a Defaulting Lender, no Issuing Bank will be required to issue, amend, renew, extend, or increase any Letter of Credit, unless it is satisfied that such Defaulting Lender's then outstanding LC Exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrowers in accordance with Section 2.20(d), and LC Exposure related to any newly issued or increased Letter of Credit will be allocated among non-Defaulting Lenders in a manner consistent with Section 2.20(d)(i) (and such Defaulting Lender will not participate therein).

If (y) a Bankruptcy Event or a Bail-In Action with respect to the Parent of any Lender occurs following the date hereof and for so long as such event continues or (z) the Swingline Lender or any Issuing Bank has a reasonable belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, the Swingline Lender will not be required to fund any Swingline Loan and no Issuing Bank will be required to issue, amend, or increase any Letter of Credit, unless the Swingline Lender or such Issuing Bank, as the case may be, has entered into arrangements with the Borrowers or such Lender, satisfactory to the Swingline Lender or such Issuing Bank, as the case may be, to defease any risk to it in respect of such Lender hereunder.

In the event that each of the Administrative Agent, the Borrower, the Swingline Lender, and each Issuing Bank agrees that a Defaulting Lender has adequately remedied all matters that caused such

Lender to be a Defaulting Lender, then the Swingline Exposure and LC Exposure of the Lenders will be readjusted to reflect the inclusion of such Lender's Revolving Commitment and on the date of such readjustment such Lender will purchase at par such of the Loans of the other Lenders (other than Swingline Loans) as the Administrative Agent determines may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

Section 2.21 Returned Payments. If after receipt of any payment that is applied to the payment of all or any part of the Obligations (including a payment effected through exercise of a right of setoff), the Administrative Agent or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion), then the Obligations or part thereof intended to be satisfied will be revived and continued and this Agreement will continue in full force as if such payment or proceeds had not been received by the Administrative Agent or such Lender. The provisions of this Section 2.21 will be and remain effective notwithstanding any contrary action that may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 2.21 will survive the termination of this Agreement.

Section 2.22 Banking Services and Swap Agreements. Each Lender or Affiliate thereof providing Banking Services for, or having Swap Agreements with, any Loan Party will deliver to the Administrative Agent, promptly after entering into such Banking Services or Swap Agreements, written notice setting forth the aggregate amount of all Banking Services Obligations and Swap Agreement Obligations of such Loan Party to such Lender or Affiliate (whether matured or unmatured, absolute or contingent). In addition, each such Lender or Affiliate thereof will deliver to the Administrative Agent, following the end of each calendar month and upon a request therefor, a summary of the amounts due or to become due in respect of such Banking Services Obligations and Swap Agreement Obligations. The most recent information provided to the Administrative Agent will be used in determining the amounts to be applied in respect of such Banking Services Obligations and/or Swap Agreement Obligations pursuant to Section 2.18(b) and which tier of the waterfall, contained in Section 2.18(b), such Banking Services Obligations and/or Swap Agreement Obligations will be placed.

ARTICLE 3

Representations and Warranties

Each Loan Party represents and warrants to the Lenders that:

Section 3.01 Organization; Powers. Each Loan Party is duly organized or formed, validly existing, and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted, and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business, and is in good standing, in every jurisdiction where such qualification is required.

Section 3.02 Authorization; Enforceability. The Transactions are within each Loan Party's corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational actions and, if required, actions by equity holders. Each Loan Document to which each Loan Party is a party has been duly executed and delivered by such Loan Party and constitutes a legal, valid, and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 3.03 Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect and except for filings necessary to perfect Liens created pursuant to the Loan Documents, (b) will not violate any Requirement of Law applicable to any Loan Party, (c) will not violate or result in a default under any indenture, agreement, or other instrument binding upon any Loan Party or the assets of any Loan Party, or give rise to a right thereunder to require any payment to be made by any Loan Party, and (d) will not result in the creation or imposition of, or the requirement to create, any Lien on any asset of any Loan Party, except Liens created pursuant to the Loan Documents.

Section 3.04 Financial Condition; No Material Adverse Change.

(1) Allbirds has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity, and cash flows (i) as of and for the fiscal year ended December 31, 2017, reported on by Deloitte & Touche LLP, independent public accountants, and (ii) as of and for the fiscal month and the portion of the fiscal year ended September 30, 2018, certified by a Financial Officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of Allbirds and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to normal year-end audit adjustments (all of which, when taken as a whole, would not be materially adverse) and the absence of footnotes in the case of the statements referred to in clause (ii) preceding.

(2) No event, change, or condition has occurred that has had, or could reasonably be expected to have, a Material Adverse Effect, since December 31, 2017.

Section 3.05 Properties.

(1) As of the date of this Agreement, Schedule 3.05 sets forth the address of each parcel of real property that is owned or leased by any Loan Party. Each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, and, to the Loan Parties' knowledge, no default by any party to any such lease or sublease exists. Each of the Loan Parties has good and indefeasible title to, or valid leasehold interests in, all of its real and personal property, free of all Liens other than those permitted by Section 6.02.

(2) Each Loan Party owns, or is licensed to use, all material trademarks, tradenames, copyrights, patents, and other intellectual property necessary to its business as currently conducted, a materially correct and complete list of which, as of the date of this

Agreement, is set forth on Schedule 3.05, and the use thereof by each Loan Party does not infringe in any material respect upon the rights of any other Person, and each Loan Party's rights thereto are not subject to any licensing agreement or similar arrangement.

Section 3.06 Litigation and Environmental Matters.

(1) There are no actions, suits, or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Loan Party, threatened against or affecting any Loan Party (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve any Loan Document or the Transactions.

(2) Except for the Disclosed Matters (i) no Loan Party has received notice of any claim with respect to any Environmental Liability or knows of any basis for any Environmental Liability and (ii) and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, no Loan Party (A) has failed to comply with any Environmental Law or to obtain, maintain, or comply with any permit, license, or other approval required under any Environmental Law, (B) has become subject to any Environmental Liability, (C) has received notice of any claim with respect to any Environmental Liability, or (D) knows of any basis for any Environmental Liability.

(3) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

Section 3.07 Compliance with Laws and Agreements; No Default. Except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, each Loan Party is in compliance with (i) all Requirements of Law applicable to it or its property and (ii) all indentures, agreements, and other instruments binding upon it or its property. No Default has occurred and is continuing.

Section 3.08 Investment Company Status. No Loan Party is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

Section 3.09 Taxes.

(1) As of the Effective Date, each Loan Party has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party has set aside on its books adequate reserves or (b) to the extent that the failure to do so could not be expected to result in a Material Adverse Effect. As of the Effective Date, no tax liens have been filed and no claims are being asserted with respect to any such taxes.

(2) Neither this Agreement nor any other agreement, certificate, document, or instrument executed or delivered in connection therewith by any Loan Party or any other Person (other than the Credit Parties), were executed or delivered in the state of Florida,

no Loan Party is a Florida organization or has its executive offices or headquarters in Florida, no officer or employee of any Loan Party has engaged in any execution, delivery, negotiations, or other related activities with respect to this Agreement while in the state of Florida, and there are no stamp, documentary, mortgage, or intangibles taxes due in the state of Florida as a result of any Loan Party entering into this Agreement.

Section 3.10 ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan.

Section 3.11 Disclosure.

(1) The Loan Parties have disclosed to the Lenders all agreements, instruments, and corporate or other restrictions to which any Loan Party 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. None of the reports, financial statements, certificates, or other information furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document (as modified or supplemented by other information so furnished) contains any misstatement of fact or omits to state any fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading except to the extent that any such error or omission could not reasonably be expected to have a Material Adverse Effect; provided that, with respect to projected financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Effective Date, as of the Effective Date.

(2) As of the Effective Date, to the best knowledge of any Loan Party, the information included in the Beneficial Ownership Certification provided on or prior to the Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

Section 3.12 Material Agreements. No Loan Party is in default in any material respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in (a) any material agreement to which it is a party or (b) any agreement or instrument evidencing or governing Material Indebtedness.

Section 3.13 Solvency.

(1) Immediately after the consummation of the Transactions to occur on the Effective Date, (i) the fair value of the assets of the Loan Parties, taken as a whole at a fair valuation, will exceed their debts and liabilities, subordinated, contingent or otherwise, (ii) the present fair saleable value of the property of the Loan Parties taken as a whole will be greater than the amount that will be required to pay the probable liability of their debts and other liabilities, subordinated, contingent or otherwise, as such debts and other

liabilities become absolute and matured, (iii) the Loan Parties taken as a whole will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured, and (iv) the Loan Parties taken as a whole will not have unreasonably small capital with which to conduct the business in which they are engaged as such business is now conducted and is proposed to be conducted after the Effective Date.

(2) No Loan Party intends to, nor will it permit any other Loan Party to, and no Loan Party believes that it or any other Loan Party will, incur debts beyond its ability to pay such debts as they mature, taking into account the timing of and amounts of cash to be received by it or any such Loan Party and the timing of the amounts of cash to be payable on or in respect of its Indebtedness or the Indebtedness of any such other Loan Party.

Section 3.14 Insurance. Schedule 3.14 sets forth a description of all insurance maintained by or on behalf of the Loan Parties as of the Effective Date. As of the Effective Date, all premiums in respect of such insurance have been paid. Each Loan Party maintains, with financially sound and reputable insurance companies, insurance on all their real and personal property in such amounts, subject to such deductibles and self-insurance retentions and covering such properties and risks as are adequate and customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

Section 3.15 Capitalization and Subsidiaries. Schedule 3.15 sets forth, as of the Effective Date for each Loan Party, (a) such Person's name, (b) the name of each of its Subsidiaries, (c) a true and complete listing of each class of its authorized Equity Interests, all of which issued Equity Interests are validly issued, outstanding, fully paid, and non-assessable, and owned beneficially and of record by the Persons identified on Schedule 3.15, and (d) the type of entity of such Person. All of the issued and outstanding Equity Interests owned by any Loan Party have been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and are fully paid and non-assessable. There are no outstanding commitments or other obligations of any Loan Party to issue, and no options, warrants, or other rights of any Person to acquire, any shares of any class of capital stock or other equity interests of any Loan Party.

Section 3.16 Security Interest in Collateral. The provisions of this Agreement and the other Loan Documents create legal and valid Liens on all of the Collateral in favor of the Administrative Agent, for the benefit of the Secured Parties, and such Liens, upon completion of any necessary registration of filing requirements, constitute perfected and continuing Liens on the Collateral, securing the Secured Obligations, enforceable against the applicable Loan Party and all third parties, and having priority over all other Liens on the Collateral except in the case of

(a) Permitted Encumbrances, to the extent any such Permitted Encumbrances would have priority over the Liens in favor of the Administrative Agent pursuant to any applicable law or agreement and (b) Liens perfected only by possession (including possession of any certificate of title) to the extent the Administrative Agent has not obtained or does not maintain possession of such Collateral.

Section 3.17 Employment Matters. The hours worked by and payments made to employees of the Loan Parties have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local, or foreign law dealing with such matters in any material respect. All payments due from any Loan Party, or for which any claim may be made against any

Loan Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of such Loan Party.

Section 3.18 Margin Regulations. No Loan Party is engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds of any Borrowing or Letter of Credit hereunder will be used to buy or carry any Margin Stock. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than 25.0% of the value of the assets (either of any Loan Party only or of the Loan Parties and their Subsidiaries on a consolidated basis) will be Margin Stock.

Section 3.19 Use of Proceeds. The proceeds of the Loans have been used and will be used, whether directly or indirectly as set forth in Section 5.08.

Section 3.20 No Burdensome Restrictions. No Loan Party is subject to any Burdensome Restrictions except Burdensome Restrictions permitted under Section 6.10.

Section 3.21 Anti-Corruption Laws and Sanctions. Each Loan Party has implemented and maintains in effect practices and procedures designed to ensure compliance by such Loan Party, its Subsidiaries, and their respective directors, officers, employees, and agents with Anti-Corruption Laws and applicable Sanctions, and such Loan Party, its Subsidiaries, and their respective officers and directors and, to the knowledge of such Loan Party, its and its Subsidiaries' employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) any Loan Party, any Subsidiary, or any of their respective directors, officers, or, to the knowledge of any such Loan Party, employees or (b) to the knowledge of any such Loan Party, any agent of such Loan Party or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds, Transaction, or other transaction contemplated by this Agreement or the other Loan Documents will violate Anti-Corruption Laws or applicable Sanctions.

Section 3.22 Affiliate Transactions. Except as set forth on Schedule 3.22, as of the Effective Date, there are no existing or proposed agreements, arrangements, understandings, or transactions between any Loan Party and any of the officers, members, managers, directors, stockholders, parents, holders of other Equity Interests, employees, or Affiliates (other than Subsidiaries) of any Loan Party or any members of their respective immediate families, other than each of the Allbirds Long-Term Incentive Programs and transactions entered into that comply with the terms of Section 6.09, and none of the foregoing Persons are directly or indirectly indebted to or have any direct or indirect ownership, partnership, or voting interest in any Affiliate of any Loan Party or any Person with which any Loan Party has a business relationship or that competes with any Loan Party (except that any such Persons may own Equity Interests in (but not exceeding 2.0% of the outstanding Equity Interests of) any publicly traded company that may compete with a Loan Party).

Section 3.23 Common Enterprise. The successful operation and condition of each of the Loan Parties is dependent on the continued successful performance of the functions of the group of the Loan Parties as a whole and the successful operation of each of the Loan Parties is dependent on the successful performance and operation of each other Loan Party. Each Loan Party expects to derive benefit (and its board of directors or other governing body has determined that it may

reasonably be expected to derive benefit), directly and indirectly, from (a) successful operations of each of the other Loan Parties and (b) the credit extended by the Lenders to the Borrowers hereunder, both in their separate capacities and as members of the group of companies. Each Loan Party has determined that execution, delivery, and performance of this Agreement and any other Loan Documents to be executed by such Loan Party is within its purpose, in furtherance of its direct and/or indirect business interests, will be of direct and/or indirect benefit to such Loan Party, and is in its best interest.

Section 3.24 Affected Financial Institutions. No Loan Party is an Affected Financial Institution.

Section 3.25 Plan Assets; Prohibited Transactions. No Loan Party or any of its Subsidiaries is an entity deemed to hold "plan assets" (within the meaning of the Plan Asset Regulations), and neither the execution, delivery, nor performance of the transactions contemplated under this Agreement, including the making of any Loan and the issuance of any Letter of Credit hereunder, will give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.

ARTICLE 4

Conditions

Section 4.01 Effective Date. The obligations of the Lenders to make Loans and of the Issuing Banks to issue Letters of Credit hereunder will not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(1) Credit Agreement and Other Loan Documents. The Administrative Agent (or its counsel) has received (i) from each party hereto either (A) a counterpart of this Agreement signed on behalf of such party or (B) written evidence satisfactory to the Administrative Agent (that may include facsimile or other electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement, (ii) either (A) a counterpart of each other Loan Document signed on behalf of each party thereto or (B) written evidence satisfactory to the Administrative Agent (that may include facsimile or other electronic transmission of a signed signature page thereof) that each such party has signed a counterpart of such Loan Document, and (iii) such other certificates, documents, instruments, and agreements as the Administrative Agent reasonably requests in connection with the transactions contemplated by this Agreement and the other Loan Documents, including any promissory notes requested by a Lender pursuant to Section 2.10 payable to the order of each such requesting Lender and a written opinion of the Loan Parties' counsel, addressed to the Administrative Agent, the Issuing Banks, and the Lenders in the form of Exhibit B (together with any other real estate related opinions separately described herein), all in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

(2) Financial Statements and Projections. The Lenders have received (i) audited consolidated financial statements of Allbirds for the fiscal years ended December 31, 2016 and December 31, 2017, (ii) unaudited interim consolidated financial statements of Allbirds for each fiscal month ended after the date of the latest applicable

financial statements delivered pursuant to clause (i) preceding as to which such financial statements are available, and such financial statements do not, in the reasonable judgment of the Administrative Agent, reflect any material adverse change in the consolidated financial condition of Allbirds, as reflected in the audited, consolidated financial statements described in clause (i) preceding, and (iii) satisfactory projections through Allbirds' fiscal year ending December 31, 2021.

(3) Closing Certificates; Certified Certificate of Incorporation; Good Standing Certificates. The Administrative Agent has received (i) a certificate of each Loan Party, dated the Effective Date and executed by its Secretary or Assistant Secretary, that (A) certifies the resolutions of its Board of Directors, members, or other body authorizing the execution, delivery, and performance of the Loan Documents to which such Loan Party is a party, (B) identifies by name and title and bears the signatures of the officers of such Loan Party authorized to sign the Loan Documents to which it is a party and, in the case of any Borrower, its Financial Officers, and (C) contains appropriate attachments, including the certificate or articles of incorporation or organization of each Loan Party certified by the relevant authority of the jurisdiction of organization of such Loan Party and a true and correct copy of its bylaws or operating, management, or partnership agreement, or other organizational or governing documents, and (ii) a good standing certificate for each Loan Party from its jurisdiction of organization or the substantive equivalent available in the jurisdiction of organization for each Loan Party from the appropriate governmental officer in such jurisdiction.

(4) No Default Certificate. The Administrative Agent has received a certificate, signed by a Financial Officer of each Loan Party, dated as of the Effective Date (i) stating that no Default has occurred and is continuing, (ii) stating that the representations and warranties contained in the Loan Documents are true and correct as of such date, and (iii) certifying as to any other factual matters as may be reasonably requested by the Administrative Agent.

(5) Fees. The Lenders and the Administrative Agent have received all fees required to be paid, and all expenses for which invoices have been presented (including the reasonable fees and expenses of legal counsel), on or before the Effective Date. All such amounts will be paid with proceeds of Loans made on the Effective Date and will be reflected in the funding instructions given by the Borrower Representative to the Administrative Agent on or before the Effective Date.

(6) Lien Searches. The Administrative Agent has received the results of a recent lien search in each jurisdiction where the Loan Parties are organized and where the assets of the Loan Parties are located, and such search reveals no Liens on any of the assets of the Loan Parties except for Liens permitted by Section 6.02 or discharged on or prior to the Effective Date pursuant to a pay-off letter or other documentation satisfactory to the Administrative Agent.

(7) [reserved]

(8) Funding Account. The Administrative Agent has received a notice setting forth the deposit account(s) of the Borrowers (the "Funding Account") to which the

Administrative Agent is authorized by the Borrowers to transfer the proceeds of any Borrowings requested or authorized pursuant to this Agreement.

(9) [reserved]

(10) Collateral Access and Control Agreements. The Administrative Agent has received (i) each Collateral Access Agreement required to be provided pursuant to Section 4.13 of the Security Agreement and (ii) each Deposit Account Control Agreement required to be provided pursuant to Section 4.14 of the Security Agreement; provided that, the parties hereto agree that such agreements may be delivered any time within 60 days of the Effective Date and the Administrative Agent may in its sole discretion extend such time period for delivery upon written notice to the Borrower Representative.

(11) Solvency. The Administrative Agent has received a solvency certificate signed by a Financial Officer of each Loan Party dated the Effective Date.

(12) Borrowing Base Certificate. The Administrative Agent has received a Borrowing Base Certificate that calculates the Borrowing Base as of the end of the week immediately preceding the Effective Date.

(13) Closing Availability. After giving effect to all Borrowings to be made on the Effective Date, the issuance of any Letters of Credit on the Effective Date, and the payment of all fees and expenses due hereunder, and with all of the Loan Parties' indebtedness, liabilities, and obligations current, the Excess Availability is not less than \$19,000,000.

(14) Filings, Registrations, and Recordings. Each document (including any Uniform Commercial Code financing statement) required by the Collateral Documents or under law or reasonably requested by the Administrative Agent to be filed, registered, or recorded in order to create in favor of the Administrative Agent, for the benefit of itself, the Lenders, and the other Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 6.02), must be in proper form for filing, registration, or recordation and the Administrative Agent must have received written confirmation of such filing, registration, or recordation from the applicable Governmental Authority.

(15) Insurance. The Administrative Agent has received evidence of insurance coverage in form, scope, and substance reasonably satisfactory to the Administrative Agent and otherwise in compliance with the terms of Section 5.10 hereof and Section 4.12 of the Security Agreement.

(16) Letter of Credit Application. If a Letter of Credit is requested to be issued on the Effective Date, the Administrative Agent has received a properly completed letter of credit application (whether standalone or pursuant to a master agreement, as applicable) and such other documentation as the Issuing Bank may reasonably request. If requested by the Issuing Bank, the Borrowers have executed the applicable Issuing Bank's master agreement for the issuance of commercial Letters of Credit.

(17) Tax Withholding. The Administrative Agent has received a properly completed and signed IRS Form W-8 or W-9, as applicable, for each Loan Party.

(18) [reserved]

(19) Field Examination. The Administrative Agent or its designee has conducted a field examination of the Borrowers' Accounts, Inventory, and related working capital matters and of the Borrowers' related data processing and other systems, the results of which are satisfactory to the Administrative Agent in its sole discretion.

(20) [reserved]

(21) [reserved]

(22) USA PATRIOT Act, Etc.

a. The Administrative Agent must have received, at least five days prior to the Effective Date, all documentation and other information regarding the Loan Parties requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and

b. to the extent any Loan Party qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least five days prior to the Effective Date, any Lender that has requested, in a written notice to the Loan Parties at least ten days prior to the Effective Date, a Beneficial Ownership Certification in relation to each Loan Party must have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii), will be deemed to be satisfied).

(23) Other Documents. The Administrative Agent has received such other documents as the Administrative Agent, any Issuing Bank, any Lender, or their respective counsel may have reasonably requested.

The Administrative Agent will notify the Borrowers, the Lenders, and the Issuing Banks of the Effective Date, and such notice will be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of the Issuing Banks to issue Letters of Credit hereunder will not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 9.02) at or prior to 2:00 p.m., Chicago time, on February 20, 2019 (and, in the event such conditions are not so satisfied or waived, the Commitments will terminate at such time).

Section 4.02 Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of each Issuing Bank to issue, amend, or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(1) The representations and warranties of the Loan Parties set forth in the Loan Documents must be true and correct in all material respects with the same effect as though made on and as of the date of such Borrowing or the date of issuance, amendment, or extension of such Letter of Credit, as applicable (it being understood and agreed that any

representation or warranty that by its terms is made as of a specified date will be required to be true and correct only as of such specified date, and that any representation or warranty that is subject to any materiality qualifier will be required to be true and correct in all respects).

(2) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, or extension of such Letter of Credit, as applicable, (i) no Default may have occurred and be continuing and (ii) no Protective Advance may be outstanding.

(3) After giving effect to any Borrowing or the issuance, amendment, or extension of any Letter of Credit, Availability is not less than zero (\$0.00).

(4) No event may occurred and no condition may exist that has or could be reasonably expected to have a Material Adverse Effect.

Each Borrowing and each issuance, amendment, or extension of a Letter of Credit will be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the matters specified in this Section.

Notwithstanding the failure to satisfy the conditions precedent set forth in Section 4.02(a) or Section 4.02(b), unless otherwise directed by the Required Lenders, the Administrative Agent may, but will have no obligation to, continue to make Loans and an Issuing Bank may, but will have no obligation to, issue, amend, or extend, or cause to be issued, amended, or extended, any Letter of Credit for the ratable amount and risk of the Lenders from time to time if the Administrative Agent believes that making such Loans or issuing, amending, or extending, or causing the issuance, amendment, or extension of, any such Letter of Credit is in the best interests of the Lenders.

ARTICLE 5

Affirmative Covenants

Until all of the Secured Obligations have been Paid in Full each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lenders that:

Section 5.01 Financial Statements; Borrowing Base and Other Information. The Borrower Representative will furnish to the Administrative Agent and each Lender:

(1) within 180 days after the end of each fiscal year of Allbirds, its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants of recognized national standing (without a "going concern" or like qualification, commentary, or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of Allbirds and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(2) [reserved]

(3) within 30 days after the end of each fiscal month of Allbirds, its consolidated (and for any fiscal month end that is also the end of a fiscal quarter, accompanied by managerial reporting on a segment-by-segment basis) balance sheet and related statement of operations, as of the end of and for such fiscal month and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Financial Officer of the Borrower Representative as presenting fairly in all material respects the financial condition and results of operations of Allbirds and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(4) concurrently with any delivery of financial statements under Section 5.01(a) or Section 5.01(c), a certificate of a Financial Officer of the Borrower Representative in substantially the form of Exhibit D (i) certifying, in the case of the financial statements delivered under Section 5.01(c), as presenting fairly in all material respects the financial condition and results of operations of Allbirds and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes, (ii) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (iii) setting forth reasonably detailed calculations demonstrating compliance with Section 6.12, and (iv) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(5) [reserved]

(6) as soon as available but in any event no later than 60 days after the first day of each fiscal year of Allbirds, a copy of the plan and forecast (including a projected consolidated and consolidating balance sheet, income statement, and cash flow statement) of Allbirds for each month of the upcoming fiscal year (the "Projections") in form reasonably satisfactory to the Administrative Agent;

(7) at each of the times specified in the following table, and at such other times as may be necessary to re-determine Availability, as of the period then ended, a Borrowing Base Certificate and supporting information in connection therewith (including, in respect of any Borrowing Base Certificate delivered for the last day of any month that is also the end of any fiscal quarter of Allbirds, a calculation of Average Quarterly Availability for such quarter then ended, and an indication of what the Applicable Rate is as a result of such Average Quarterly Availability), together with any additional reports with respect to the Borrowing Base as the Administrative Agent may reasonably request:

Trigger Date/Event	Reporting Requirement
no Credit Exposure is outstanding, a Reporting Frequency Change Period does not exist, and neither the Borrower Representative nor any Borrower has requested any Revolving Loan or issuance of any Letter of Credit	within 30 days of the end of each fiscal quarter, as of the period then ended
no Credit Exposure is outstanding, a Reporting Frequency Change Period does not exist, and the Borrower Representative or any Borrower requests any Revolving Loan or issuance of any Letter of Credit	concurrently with such request for such Revolving Loan or issuance of such Letter of Credit as of the last day of the fiscal month most recently ended at least 30 days prior to the date of such request
no Credit Exposure is outstanding, a Reporting Frequency Change Period is in existence, and the Borrower Representative or any Borrower requests any Revolving Loan or issuance of any Letter of Credit	concurrently with such request for such Revolving Loan or issuance of such Letter of Credit as of the last day of the calendar week most recently ended at least three Business Days prior to the date of such request
any Credit Exposure is outstanding and a Reporting Frequency Change Period does not exist	within 30 days of the end of each fiscal month, as of the period then ended
any Credit Exposure is outstanding and a Reporting Frequency Change Period exists	on or before the third Business Day of each calendar week, as of the calendar week then ended
during the existence of any Event of Default	promptly upon the request of the Administrative Agent and continuing thereafter as requested

(8) concurrently with delivery of any Borrowing Base Certificate pursuant to clause (g) preceding, as of the period then ended, all delivered electronically in a text formatted file acceptable to the Administrative Agent;

(9) a detailed aging of the Borrowers' Accounts (including a listing, as of the end of the applicable period, by account debtor of all outstanding Accounts and all payments and collections thereon, and a reconciliation of sales and collections with respect thereto), prepared in a manner reasonably acceptable to the Administrative Agent, together with a summary specifying the name and

balance due for each Account Debtor of any Account, and, if requested by the Administrative Agent, the address for each such Account Debtor;

(2) a schedule detailing the Borrowers' Inventory, in form satisfactory to the Administrative Agent, (A) by location (showing Inventory in transit, any Inventory located with a third party under any consignment, bailee arrangement, or

warehouse agreement), by class (raw material, work-in-process, and finished goods), by product type, and by volume on hand, which Inventory will be valued at the lower of cost (determined on a weighted average moving cost basis) or market and adjusted for Reserves as the Administrative Agent has previously indicated to the Borrower Representative are deemed by the Administrative Agent to be appropriate, and (B) including a report of any variances or other results of Inventory counts performed by the Borrowers since the last Inventory schedule (including information regarding sales or other reductions, additions, returns, credits issued by the Borrowers, and complaints and claims made against the Borrowers);

(3) a worksheet of calculations prepared by the Borrowers to determine Eligible Accounts and Eligible Inventory, such worksheets detailing the Accounts and Inventory excluded from Eligible Accounts and Eligible Inventory and the reason for such exclusion;

(4) a reconciliation of the Borrowers' Accounts and Inventory between (A) the amounts shown in the Borrowers' general ledger and financial statements and the reports delivered pursuant to clause (i) and clause (ii) of this Section 5.01(h) and (B) the amounts and dates shown in the reports delivered pursuant to clause (i) and clause (ii) of this Section 5.01(h) and the Borrowing Base Certificate delivered pursuant to Section 5.01(g), as of such date;

(5) a reconciliation of the loan balance per the Borrowers' general ledger to the loan balance under this Agreement; and

(6) a schedule, in form reasonably satisfactory to the Administrative Agent, showing a reconciliation with respect to Credit Card Accounts of payments deposited to the Borrowers' Deposit Accounts, amounts scheduled for payment by credit card processors to the Borrowers, and activity statements received from credit card processors;

i. concurrently with delivery of any Borrowing Base Certificate pursuant to clause (g), preceding for any period that is the last day of a fiscal month, as of the fiscal month then ended, and at such other times as may be reasonably requested by the Administrative Agent, a schedule of the Borrowers' accounts payable, delivered electronically in a text formatted file acceptable to the Administrative Agent;

j. promptly upon the Administrative Agent's request, as frequently as may be reasonably requested, but in any event not more often than upon delivery of any Borrowing Base Certificate:

i. copies of invoices or other similar statements issued by the Borrowers to any credit card issuer or credit card processor in connection with any Credit Card Accounts, credit memos, shipping and delivery documents, and other information related thereto;

ii. copies of purchase orders, invoices, and shipping and delivery documents in connection with any Inventory purchased by any Loan Party; and

iii. a schedule detailing the balance of all intercompany accounts of the Loan Parties;

k. promptly upon request from the Administrative Agent, as frequently as may be reasonably requested, but in any event not more often than upon delivery of any Borrowing Base Certificate, as of the period then ended, the Borrowers' sales journal, cash receipts journal (identifying trade and non-trade cash receipts) and debit memo/credit memo journal;

l. [reserved]

m. [reserved]

n. [reserved]

o. promptly after the same become publicly available, copies of all periodic and other reports, proxy statements, and other materials filed by any Loan Party or any Subsidiary with the SEC, or any Governmental Authority succeeding to any or all of the functions of the SEC, or with any national securities exchange, as the case may be;

p. promptly after any request therefor by the Administrative Agent or any Lender, copies of (i) any documents described in Section 101(k)(1) of ERISA that any Borrower or any ERISA Affiliate may request with respect to any Multiemployer Plan and

(ii) any notices described in Section 101(l)(1) of ERISA that any Borrower or any ERISA Affiliate may request with respect to any Multiemployer Plan; provided that if a Borrower or any ERISA Affiliate has not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plan, the applicable Borrower or the applicable ERISA Affiliate will promptly make a request for such documents and notices from such administrator or sponsor and will provide copies of such documents and notices promptly after receipt thereof; and

q. promptly following any request therefor, (y) such other information regarding the operations, material changes in ownership of Equity Interests, business affairs and financial condition of any Loan Party or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request and (z) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation.

Section 5.02 Notices of Material Events. The Borrower Representative will furnish to the Administrative Agent and each Lender prompt (but in any event within any time period that may be specified below) written notice of the following:

(1) the occurrence of any Default;

(2) receipt of any notice of any investigation, litigation, or proceeding by a Governmental Authority commenced against any Loan Party that (i) seeks damages in excess of \$5,000,000, (ii) seeks injunctive relief, (iii) is asserted or instituted against any

Plan, its fiduciaries or its assets, (iv) alleges criminal misconduct by any Loan Party, (v) alleges the violation of, or seeks to impose remedies under, any Environmental Law or related Requirement of Law, or seeks to impose Environmental Liability, (vi) asserts liability on the part of any Loan Party in excess of \$5,000,000 in respect of any tax, fee, assessment, or other governmental charge, or (vii) involves any product recall;

(3) receipt of any notice of any litigation or proceeding commenced by any Person that is not a Governmental Authority against any Loan Party that (i) seeks damages in excess of \$5,000,000, (ii) seeks injunctive relief, (iii) is asserted or instituted against any Plan, its fiduciaries or its assets, (iv) alleges the violation of, or seeks to impose remedies under, any Environmental Law or related Requirement of Law, or seeks to impose Environmental Liability, or (v) involves any product recall and, in each case could reasonably be expected to result in a material Adverse Effect;

(4) any Lien (other than Permitted Encumbrances) or claim made or asserted against any of the Collateral;

(5) any loss, damage, or destruction to the Collateral in the amount of \$2,000,000 or more, whether or not covered by insurance;

(6) within two Business Days of receipt thereof, any and all default notices received under or with respect to any leased location or public warehouse where Collateral is located;

(7) within two Business Days after the occurrence thereof, any Loan Party entering into a Swap Agreement or an amendment thereto, together with copies of all agreements evidencing such Swap Agreement or amendment;

(8) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Loan Parties and their Subsidiaries in an aggregate amount exceeding \$1,000,000;

(9) any material change in accounting or financial reporting practices by any Loan Party;

(10) any other development that results, or could reasonably be expected to result, in a Material Adverse Effect; and

(11) any change in the information provided in the Beneficial Ownership Certification delivered to such Lender that would result in a change to the list of beneficial owners identified in such certification.

Each notice delivered under this Section must be accompanied by a statement of a Financial Officer or other executive officer of the Borrower Representative setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 5.03 Existence; Conduct of Business. Each Loan Party will (a) do or cause to be done all things necessary to preserve, renew, and keep in full force and effect its legal existence

and the rights, qualifications, licenses, permits, franchises, governmental authorizations, and intellectual property rights material to the conduct of its business, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted, provided that, the foregoing will not prohibit any merger, consolidation, liquidation, or dissolution permitted under Section 6.03 and (b) carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted.

Section 5.04 Payment of Obligations. Each Loan Party will pay or discharge all Material Indebtedness and all other material liabilities and obligations, including Taxes, before the same become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Loan Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (c) any such liabilities are not in excess of \$5,000,000 and none of the Collateral would become subject to forfeiture or loss as a result of the contest; provided that, each Loan Party will remit withholding taxes and other payroll taxes to appropriate Governmental Authorities as and when claimed to be due, notwithstanding the foregoing exceptions.

Section 5.05 Maintenance of Properties. Each Loan Party will keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

Section 5.06 Books and Records; Inspection Rights.

(1) Each Loan Party will keep proper books of record and account in which full, true, and correct entries are made of all dealings and transactions in relation to its business and activities.

(2) Each Loan Party will permit any representatives designated by the Administrative Agent or any Lender (including employees of the Administrative Agent or any Lender), upon reasonable prior notice, during business hours, at such reasonable times, and as often as reasonably requested, to visit and discuss with such Loan Party's Financial Officers and other executive management such Loan Party's affairs, finances, and condition.

(3) Each Loan Party will permit any representatives designated by the Administrative Agent or any Lender (including employees of the Administrative Agent, any Lender, or any consultants, accountants, lawyers, agents, and appraisers retained by the Administrative Agent), upon reasonable prior notice and during business hours, to visit and inspect such Loan Party's properties, to conduct at such Loan Party's premises, and at the times specified below, field examinations of such Loan Party's assets, liabilities, books and records, including examining and making extracts from its books and records, and to discuss its affairs, finances, and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested (all such activities described herein constituting a "field examination" for the purposes of this clause (c)). Each Loan Party acknowledges that the Administrative Agent, after exercising its rights of inspection and examination, may prepare and distribute to the Lenders certain Reports pertaining to such Loan Party's assets for internal use by the Administrative Agent and the Lenders. Notwithstanding any of the foregoing, the Administrative Agent may, in its Permitted Discretion, perform field examinations pursuant to this Section as follows:

- a. the field examination specified in Section 4.01(s);
- b. if any Event of Default is in existence, the Administrative Agent may conduct, at the Borrowers' expense, any field examinations requested by the Administrative Agent at such time;
- c. so long as Availability at all times during the preceding twelve month period has remained equal to or greater than 12.5% of the Aggregate Revolving Commitment, the Administrative Agent may conduct one field examination during such twelve month period (in addition to the field examination specified in clause (a) preceding); and
- d. if Availability at any time during the preceding twelve month period has been less than 12.5% of the Aggregate Revolving Commitment the Administrative Agent may conduct two field examinations during such twelve month period (in addition to the field examination specified in clause (a) preceding).

The Loan Parties will be responsible for the costs and expenses of all field examinations conducted pursuant to this clause (c).

Section 5.07 Compliance with Laws and Material Contractual Obligations. Each Loan Party will, and will cause each Subsidiary to, (i) comply with each Requirement of Law applicable to it or its property (including Environmental Laws) and (ii) perform in all material respects its obligations under material agreements to which it is a party, except, in each case, where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Each Loan Party will maintain in effect and enforce policies and procedures designed to ensure compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees, and agents with Anti-Corruption Laws and applicable Sanctions.

Section 5.08 Use of Proceeds.

(1) The proceeds of the Loans and the Letters of Credit will be used only (i) for working capital and general corporate purposes of the Borrowers and their Domestic Subsidiaries, (ii) for Investments permitted under Section 6.04, and (iii) to pay fees and expenses incurred by the Loan Parties in connection with entering into the Transactions. No part of the proceeds of any Loan and no Letter of Credit will be used, whether directly or indirectly, (y) for any purpose that entails a violation of any of the regulations of the Federal Reserve Board, including Regulation T, Regulation U, and Regulation X or (z) to make any Acquisition other than, subject to clause (y) preceding, any Permitted Acquisition.

(2) No Borrower will request any Borrowing or Letter of Credit, and no Borrower will use, and each Borrower will provide that its Subsidiaries and its and their respective directors, officers, employees, and agents will not use, the proceeds of any Borrowing or Letter of Credit (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing, or facilitating any activities, business, or transaction of or with any Sanctioned Person, or in

any Sanctioned Country, except to the extent permitted for a Person required to comply with Sanctions, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 5.09 Accuracy of Information. The Loan Parties will ensure that any information, including financial statements or other documents, furnished to the Administrative Agent or the Lenders in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder contains no material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and the furnishing of such information will be deemed to be a representation and warranty by the Borrowers on the date thereof as to the matters specified in this Section; provided that, with respect to projected financial information, the Loan Parties will only ensure that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

Section 5.10 Insurance. Each Loan Party will maintain with financially sound and reputable carriers having a financial strength rating of at least A- by A.M. Best Company (a) insurance in such amounts (with no greater risk retention) and against such risks (including: loss or damage by fire and loss in transit; theft, burglary, pilferage, larceny, embezzlement, and other criminal activities; business interruption; and general liability) and such other hazards, as is customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (b) all insurance required pursuant to the Collateral Documents. The Borrowers will furnish to the Lenders information in reasonable detail as to the insurance so maintained (y) upon request of the Administrative Agent (not more frequently than annually) and (z) promptly after any material change in insurer or coverage amounts.

Section 5.11 Casualty and Condemnation. The Borrowers will (a) furnish to the Administrative Agent and the Lenders prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any material portion of the Collateral or interest therein under power of eminent domain or by condemnation or similar proceeding and (b) ensure that the Net Proceeds of any such event (whether in the form of insurance proceeds, condemnation awards, or otherwise) are collected and applied in accordance with the applicable provisions of this Agreement and the Collateral Documents.

Section 5.12 Appraisals. Subject to the other terms of this Section, at any time that the Administrative Agent requests, each Borrower will, and will cause each other Loan Party to, provide the Administrative Agent with appraisals or updates thereof of its Inventory from an appraiser selected and engaged by the Administrative Agent, and prepared on a basis satisfactory to the Administrative Agent, such appraisals and updates to include information required by any applicable Requirement of Law. The Administrative Agent may, in its Permitted Discretion, require an appraisal pursuant to this Section as follows:

- (1) if any Event of Default is in existence, the Administrative Agent may request an appraisal of the Borrower's Inventory;
- (2) so long as Availability at all times during the preceding twelve month period has remained equal to or greater than 12.5% of the Aggregate Revolving Commitment, the

Administrative Agent may request one appraisal of the Borrowers' Inventory during such twelve month period; and

(3) if Availability at any time during the preceding twelve month period has been less than 12.5% of the Aggregate Revolving Commitment the Administrative Agent may request two appraisals of the Borrowers' Inventory during such twelve month period.

The Loan Parties will be responsible for the costs and expenses of all appraisals requested by the Administrative Agent pursuant to this Section.

Section 5.13 Depository Banks. Within five months of the Effective Date, or such later date as may be agreed to by the Administrative Agent in its sole discretion, each Loan Party will maintain the Administrative Agent as its principal depository bank, including for the maintenance of operating, administrative, cash management, collection activity, and other deposit accounts for the conduct of its business (other than in the case of any jurisdiction in which the Administrative Agent or its Affiliates do not offer services reasonably convenient to any location of a Loan Party); provided that, notwithstanding anything in this Agreement or the Security Agreement to the contrary, the Loan Parties will establish and maintain (a) a Collateral Deposit Account (as defined in the Security Agreement) with the Administrative Agent and (b) require that all Credit Card Accounts paid to any Borrower by a credit card issuer, processor, or servicer are directed by the applicable credit card issuer, processor, or servicer to be directly sent to a Collateral Deposit Account (and if such Collateral Deposit Account is not maintained with the Administrative Agent it is subject to a Deposit Account Control Agreement).

Section 5.14 Additional Collateral: Further Assurances.

(1) Subject to any applicable Requirement of Law, each Loan Party will cause each Domestic Subsidiary formed or acquired after the date of this Agreement, including any limited liability company formed pursuant to any Division, to become a Loan Party by executing a Joinder Agreement. In connection therewith, the Administrative Agent must have received all documentation and other information regarding such newly formed or acquired Subsidiaries as may be required to comply with the applicable "know your customer" rules and regulations, including the USA Patriot Act. Upon execution and delivery thereof, each such Person (i) will automatically become a Loan Guarantor hereunder and thereupon will have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents and (ii) will grant Liens to the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, in any property of such Loan Party that constitutes Collateral.

(2) Without limiting the foregoing, each Loan Party will execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements, and instruments, and will take or cause to be taken such further actions (including the filing and recording of financing statements, fixture filings, and other documents and such other actions or deliveries of the type required by Section 4.01, as applicable), that may be required by any Requirement of Law or that the Administrative Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all in form and

substance reasonably satisfactory to the Administrative Agent and all at the expense of the Borrowers.

ARTICLE 6

Negative Covenants

Until all of the Secured Obligations have been Paid in Full, each Loan Party executing this Agreement covenants and agrees, jointly and severally with all of the other Loan Parties, with the Lenders that:

Section 6.01 Indebtedness. No Loan Party will create, incur, assume, or suffer to exist any Indebtedness, except:

- (1) the Secured Obligations;
- (2) Indebtedness existing on the date hereof and set forth in Schedule 6.01 and any extensions, renewals, refinancings, and replacements of any such Indebtedness in accordance with clause (f) following;
- (3) Indebtedness of any Loan Party to any Subsidiary and of any Subsidiary to any Loan Party, provided that (i) Indebtedness of any Subsidiary that is not a Loan Party to any Loan Party will be subject to Section 6.04 and (ii) Indebtedness of any Loan Party to any Subsidiary that is not a Loan Party will be subordinated to the Secured Obligations on terms reasonably satisfactory to the Administrative Agent;
- (4) Guarantees by any Loan Party of Indebtedness of any Subsidiary and by any Subsidiary of Indebtedness of any Loan Party, provided that (i) the Indebtedness so Guaranteed is permitted by this Section 6.01, (ii) Guarantees by any Loan Party of Indebtedness of any Subsidiary that is not a Loan Party will be subject to Section 6.04, and (iii) Guarantees permitted under this clause (d) will be subordinated to the Secured Obligations on the same terms as the Indebtedness so Guaranteed is subordinated to the Secured Obligations;
- (5) Indebtedness of any Loan Party incurred to finance the acquisition, construction, or improvement of any fixed or capital assets (whether or not constituting purchase money Indebtedness), including Capital Lease Obligations, and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals, and replacements of any such Indebtedness in accordance with clause (f) following; provided that (i) such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this clause (e) together with any Refinance Indebtedness in respect thereof permitted by clause (f) following, does not exceed \$2,500,000 at any time outstanding;
- (6) Indebtedness that represents extensions, renewals, refinancings, or replacements (such Indebtedness being so extended, renewed, refinanced, or replaced being referred to herein as the "Refinance Indebtedness") of any of the Indebtedness

described in clause (b) and clause (e) preceding and clause (i), clause (j), and clause (k) following (such Indebtedness being referred to herein as the "Original Indebtedness"); provided that (i) such Refinance Indebtedness does not increase the principal amount or interest rate of the Original Indebtedness, (ii) any Liens securing such Refinance Indebtedness are not extended to any additional property of any Loan Party, (iii) no Loan Party that is not originally obligated with respect to repayment of such Original Indebtedness is required to become obligated with respect to such Refinance Indebtedness, (iv) such Refinance Indebtedness does not result in a shortening of the average weighted maturity of such Original Indebtedness, (v) the terms of such Refinance Indebtedness are not materially less favorable to the obligor thereunder than under the original terms of such Original Indebtedness, and (vi) if such Original Indebtedness was subordinated in right of payment to the Secured Obligations, then the terms and conditions of such Refinance Indebtedness must include subordination terms and conditions that are at least as favorable to the Administrative Agent and the Lenders as those that were applicable to such Original Indebtedness;

(7) Indebtedness owed to any Person providing workers' compensation, health, disability, or other employee benefits or property, casualty, or liability insurance, pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business;

(8) Indebtedness of any Loan Party in respect of performance bonds, bid bonds, appeal bonds, surety bonds, and similar obligations, in each case provided in the ordinary course of business;

(9) Indebtedness of any Person that becomes a Loan Party after the Effective Date; provided that (i) such Indebtedness exists at the time such Person becomes a Loan Party and is not created in contemplation of or in connection with such Person becoming a Loan Party and (ii) the aggregate principal amount of Indebtedness permitted by this clause (i), together with any Refinance Indebtedness in respect thereof permitted by clause (f) preceding, does not exceed \$1,000,000 at any time outstanding;

(10) other unsecured Indebtedness in an aggregate principal amount not exceeding \$2,500,000 at any time outstanding;

(11) subject to the terms of Section 6.02(i), other secured Indebtedness in an aggregate principal amount not exceeding \$2,500,000 at any time outstanding;

(12) unsecured Indebtedness consisting of the financing of insurance premiums;

and

(13) Subordinated Indebtedness in an aggregate principal amount not exceeding \$2,500,000 at any time outstanding.

Section 6.02 Liens. No Loan Party will create, incur, assume, or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including Accounts) or rights in respect of any thereof, except:

(1) Liens created pursuant to any Loan Document;

(2) Permitted Encumbrances;

(3) any Lien on any property or asset of any Borrower or any Subsidiary existing on the date hereof and set forth in Schedule 6.02; provided that (i) such Lien does not apply to any other property or asset of such Borrower or Subsidiary or any other Borrower or Subsidiary and (ii) such Lien secures only those obligations that it secures on the Effective Date, and extensions, renewals, and replacements thereof that do not increase the outstanding principal amount thereof;

(4) Liens on fixed or capital assets acquired, constructed, or improved by any Borrower or any Subsidiary; provided that (i) such Liens secure Indebtedness permitted by Section 6.01(e), (ii) such Liens and the Indebtedness secured thereby are incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed 100% of the cost of acquiring, constructing, or improving such fixed or capital assets, and (iv) such Liens do not apply to any other property or assets of such Borrower or Subsidiary or any other Borrower or Subsidiary;

(5) any Lien existing on any property or asset (other than Accounts and Inventory) prior to the acquisition thereof by any Borrower or any Subsidiary or existing on any property or asset (other than Accounts and Inventory) of any Person that becomes a Loan Party after the date hereof prior to the time such Person becomes a Loan Party; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Loan Party, as the case may be, (ii) such Lien does not apply to any other property or assets of the Loan Party, and (iii) such Lien secures only those obligations that it secures on the date of such acquisition or the date such Person becomes a Loan Party, as the case may be, and extensions, renewals, and replacements thereof that do not increase the outstanding principal amount thereof;

(6) Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the UCC in effect in the relevant jurisdiction covering only the items being collected upon;

(7) Liens arising out of Sale and Leaseback Transactions permitted by Section 6.06;

(8) Liens granted by a Subsidiary that is not a Loan Party in favor of any Borrower or another Loan Party in respect of Indebtedness owed by such Subsidiary;

(9) Liens not otherwise permitted under clause (a) through clause (g), preceding securing obligations permitted under Section 6.01(k); provided that none of the Collateral may be subject to any Lien permitted under this clause (i) and

(10) Liens that constitute a "security interest" for the purposes of section 17(1)(b) of the PPSA which do not, in substance, secure payment or performance of an obligation.

Notwithstanding the foregoing, none of the Liens permitted pursuant to this Section 6.02 may at any time attach to any Loan Party's (y) Accounts, other than those permitted under clause (a), and

clause (d)(ii) of the definition of Permitted Encumbrances and clause (a) preceding and (z) Inventory, other than those permitted under clause (a) and clause (b) of the definition of Permitted Encumbrances and clause (a) preceding.

Section 6.03 Fundamental Changes.

(1) No Loan Party will merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or otherwise Dispose of all or any substantial part of its assets, or all or any substantial part of the Equity Interests of any of its Domestic Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Event of Default has occurred and is continuing (i) any Subsidiary of any Borrower may merge into a Borrower in a transaction in which such Borrower is the surviving entity, (ii) any Loan Party (other than a Borrower) may merge into any other Loan Party in a transaction in which the surviving entity is a Loan Party, and (iii) any Subsidiary that is not a Loan Party may liquidate, dissolve, or enter into a Division if the Loan Party that owns such Subsidiary determines in good faith that such liquidation, dissolution, or Division is in the best interests of such Loan Party and is not materially disadvantageous to the Lenders; provided that, any such merger involving a Person that is not a wholly owned Domestic Subsidiary immediately prior to such merger will not be permitted unless also permitted by Section 6.04.

(2) No Loan Party will engage to any material extent in any business other than businesses of the type conducted by the Loan Parties on the date hereof and businesses reasonably related or incidental thereto.

(3) No Loan Party will change the basis of determining the last day of its fiscal year from the basis in effect on the Effective Date.

(4) No Loan Party will change (i) its methodology for determining the cost basis of Inventory until (A) the Borrower representative has given prior written notice to the Administrative Agent of such change, (B) notwithstanding any limitation in Section 5.12, the Administrative Agent has received a new appraisal of the Borrowers' Inventory, and (C) the Borrowers and the Credit Parties have agreed to any changes reasonably necessary to the determination of the Borrowing Base arising from such change or (ii) the accounting basis upon which its financial statements are prepared.

(5) No Loan Party will change the tax filing elections it has made under the Code.

(6) No Loan Party will consummate a Division as the Dividing Person, without the prior written consent of the Administrative Agent. Without limiting the foregoing, if any Loan Party that is a limited liability company consummates a Division (with or without the prior consent of the Administrative Agent as required above), each Division Successor will be required to comply with the obligations set forth in Section 5.14 and the other further assurances obligations set forth in the Loan Documents and become a Loan Party under this Agreement and the other Loan Documents.

Section 6.04 Investments, Loans, Advances, Guarantees, and Acquisitions. No Loan Party will (x) purchase, hold, or acquire (including pursuant to any merger with any Person that was not a Loan Party and a wholly owned Subsidiary prior to such merger) any evidences of Indebtedness or Equity Interests or other securities (including any option, warrant, or other right to acquire any of the foregoing), (y) make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or (z) purchase or otherwise acquire (in one transaction or a series of transactions and whether through purchase of assets, merger, or otherwise) any assets of any other Person constituting a business unit (each of the activities described in clause (x) through clause (z), preceding being an "Investment"), except:

- (1) Permitted Investments;
- (2) investments in existence on the date hereof and described in Schedule 6.04;
- (3) investments by the Loan Parties in Equity Interests in their respective Subsidiaries, provided that, at any time that the Payment Conditions are not met, the Loan Parties will not make any new investment under this clause (c);
- (4) loans or advances made by any Loan Party to any Subsidiary, provided that, at any time that the Payment Conditions are not met, the Loan Parties will not make any new loans or advances under this clause (d);
- (5) Guarantees constituting Indebtedness permitted by Section 6.01, provided that, at any time that the Payment Conditions are not met, the Loan Parties will not make any new Guarantee of Indebtedness under this clause (e);
- (6) loans or advances made by a Loan Party to its employees, officers, or directors for travel and entertainment expenses, relocation costs, and other purposes up to a maximum of \$100,000 in the aggregate at any one time outstanding;
- (7) loans or advances made by a Loan Party to its employees, officers, or directors in connection with the granting or exercise of options and any payment of tax liabilities related thereto in connection with any employee benefit plans or stock option plans approved by the board of directors of Allbirds;
- (8) notes payable, or stock or other securities issued by Account Debtors to a Loan Party pursuant to negotiated agreements with respect to settlement of such Account Debtor's Accounts in the ordinary course of business, consistent with past practices;
- (9) investments in the form of Swap Agreements permitted by Section 6.07;
- (10) investments of any Person existing at the time such Person becomes a Subsidiary of a Loan Party or consolidates or merges with a Loan Party (including in connection with a Permitted Acquisition) so long as such investments were not made in contemplation of such Person becoming a Subsidiary or of such merger;
- (11) investments received in connection with Dispositions permitted by Section 6.05;

(12) investments constituting deposits described in clause (c) and clause (d)(i) of the definition of the term “Permitted Encumbrances”;

(13) subject to the Payment Conditions being met, Permitted Acquisitions; and

(14) subject to the Payment Conditions being met, other Investments approved by the board of directors of Allbirds, subject to the Loan Parties’ compliance with the USA PATRIOT Act, the Beneficial Ownership Regulations, and the terms of Section 5.01(g) and Section 5.02(k).

Section 6.05 Asset Sales. No Loan Party will Dispose of any asset, including any Equity Interest owned by it, nor will any Borrower permit any Subsidiary to issue any additional Equity Interest in such Subsidiary (other than to another Borrower or another Subsidiary in compliance with Section 6.04), except:

(1) Dispositions of (i) Inventory for fair value and in the ordinary course of business and (ii) used, obsolete, worn out, or surplus equipment or property in the ordinary course of business;

(2) Dispositions of assets to any Borrower or any Subsidiary, provided that any such Dispositions involving a Subsidiary that is not a Loan Party must be made in compliance with Section 6.09;

(3) Dispositions of Accounts in connection with the compromise, settlement, or collection thereof;

(4) Dispositions of Permitted Investments and other investments, other than Equity Interests of Domestic Subsidiaries, permitted by Section 6.04;

(5) Sale and Leaseback Transactions permitted by Section 6.06;

(6) Dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Borrower or any Subsidiary; and

(7) Dispositions of assets (other than Equity Interests in a Domestic Subsidiary unless all Equity Interests in such Domestic Subsidiary are sold) that are not permitted by any other clause of this Section, provided that the aggregate fair market value of all assets Disposed of in reliance upon this clause (g) do not exceed \$5,000,000 during any fiscal year of Allbirds.

Section 6.06 Sale and Leaseback Transactions. No Loan Party will enter into any arrangement, directly or indirectly, whereby it sells or transfers any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rents or leases such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred (a “Sale and Leaseback Transaction”), except for any such sale of any fixed or capital assets by any Loan Party that is made for cash consideration in an amount not less than the fair value of such fixed or capital asset and that is consummated within 90 days after such Loan Party acquires or completes the construction of such fixed or capital asset.

Section 6.07 Swap Agreements. No Loan Party will enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which any Loan Party has actual exposure (other than those in respect of Equity Interests of any Loan Party) and (b) Swap Agreements entered into in order to effectively cap, collar, or exchange interest rates (from floating to fixed rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of any Loan Party.

Section 6.08 Restricted Payments; Certain Payments of Indebtedness.

(1) No Loan Party will declare or make, or agree to declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except (i) Allbirds may declare and pay dividends with respect to its common stock payable solely in additional shares of its common stock, and, with respect to its preferred stock, payable solely in additional shares of such preferred stock or in shares of its common stock, (ii) Subsidiaries may declare and pay dividends ratably with respect to their Equity Interests, and (iii) Allbirds may make other Restricted Payments subject to the satisfaction of the Payment Conditions.

(2) No Loan Party will make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities, or other property) of or in respect of principal of or interest on any Indebtedness, or any payment or other distribution (whether in cash, securities, or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation, or termination of any Indebtedness, except:

- a. payment of Indebtedness created under the Loan Documents;
- b. payment of regularly scheduled interest and principal payments as and when due in respect of any Indebtedness permitted under Section 6.01;
- c. refinancings of Indebtedness to the extent permitted by Section 6.01;
- d. payment of secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness; and
- e. subject to satisfaction of the Payment Conditions (including on a pro forma basis after giving effect thereto), payment of other Indebtedness not otherwise permitted under this Section 6.08(b).

Section 6.09 Transactions with Affiliates. No Loan Party will sell, lease, or otherwise transfer any property or assets to, or purchase, lease, or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except

(a) transactions that (i) are in the ordinary course of business and (ii) are at prices and on terms and conditions not less favorable to such Loan Party than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among any Loan Parties not involving any other Affiliate, (c) any investment permitted by Section 6.04(c), Section 6.04(d), or Section 6.04(e), (d) any Indebtedness permitted under Section 6.01(c), (e) any Restricted Payment permitted by Section 6.08, (f) loans or advances to employees permitted under Section 6.04.

(3) the payment of reasonable fees to directors of any Loan Party who are not employees of such Loan Party, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers, and employees of the Loan Parties in the ordinary course of business, and (h) any issuances of securities or other payments, awards, or grants in cash, securities, or otherwise pursuant to, or the funding of, employment agreements, stock options, and stock ownership plans approved by a Loan Party's board of directors.

Section 6.10 Restrictive Agreements. No Loan Party will, nor will it permit any Subsidiary to, directly or indirectly, enter into, incur, or permit to exist any agreement or other arrangement that prohibits, restricts, or imposes any condition upon (a) the ability of such Loan Party or any Subsidiary to create, incur, or permit to exist any Lien upon any of its property or assets or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any of its Equity Interests or to make or repay loans or advances to any Loan Party or any other Subsidiary or to Guarantee Indebtedness of any Loan Party or any other Subsidiary; provided that (i) the foregoing will not apply to restrictions and conditions imposed by any Requirement of Law or by any Loan Document, (ii) the foregoing will not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.10 (but will apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing will not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided that, such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder, (iv) clause (a), preceding will not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, and (v) clause (a) preceding will not apply to customary provisions in leases and other contracts restricting the assignment thereof.

Section 6.11 Amendment of Material Documents. No Loan Party will, nor will it permit any Subsidiary to, amend, modify, or waive any of its rights under its charter, articles, or certificate of incorporation or organization, by-laws, operating, management or partnership agreement, or other organizational or governing documents to the extent any such amendment, modification, or waiver would be adverse to the Lenders.

Section 6.12 Financial Covenants.

a. [reserved]

b. Fixed Charge Coverage Ratio. The Loan Parties will not permit the Fixed Charge Coverage Ratio determined for the Loan Parties (excluding any Subsidiary that is not a Loan Party) on a consolidated basis, for the twelve month period ended as of the last day of any fiscal month of Allbirds during any applicable testing period, to be less than 1.00 to 1.00. As used in this Section 6.13(b), "applicable testing period" means the period (i) beginning on the last day of the fiscal month ended immediately prior to the date (A) of the occurrence of any Event of Default or (B) that Availability is less than 10.0% of the Aggregate Revolving Commitment and (ii) continuing through and including the last day of the fiscal month following the date that Availability has been greater than (or equal to) 10.0% of the Aggregate Revolving Commitment and no Event of Default has existed, in each case for a period of 30 consecutive days.

ARTICLE 7

Events of Default

If any of the following events ("Events of Default") occur:

- (1) the Borrowers fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same becomes due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;
- (2) the Borrowers fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement or any other Loan Document, when and as the same becomes due and payable, and such failure continues unremedied for a period of five Business Days;
- (3) any representation or warranty made or deemed made by or on behalf of any Loan Party in, or in connection with, this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement, or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, proves to have been materially incorrect when made or deemed made;
- (4) any Loan Party fails to observe or perform any covenant, condition, or agreement contained in Section 5.02(a), Section 5.03 (with respect to a Loan Party's existence), or Section 5.08 or in Article 6;
- (5) any Loan Party fails to observe or perform any covenant, condition, or agreement contained in this Agreement (other than those that constitute a default under another Section of this Article), and such failure continues unremedied for a period of
 - (i) five days after the earlier of any Loan Party's knowledge of such breach or notice thereof from the Administrative Agent (which notice will be given at the request of any Lender) if such breach relates to terms or provisions of Section 5.01, Section 5.02 (other than Section 5.02(a)), Section 5.03 through Section 5.07, Section 5.10, Section 5.11, or Section 5.13 or
 - (ii) fifteen days after the earlier of any Loan Party's knowledge of such breach or notice thereof from the Administrative Agent (which notice will be given at the request of any Lender) if such breach relates to terms or provisions of any other Section of this Agreement;
- (6) any Loan Party fails to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same becomes due and payable;
- (7) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption, or

defeasance thereof, prior to its scheduled maturity; provided that, this clause (g) will not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness to the extent such sale or transfer is permitted by Section 6.05;

(8) an involuntary proceeding is commenced or an involuntary petition is filed seeking (i) liquidation, reorganization, or other relief in respect of a Loan Party or its debts, or of a substantial part of its assets, under any federal, state, or foreign bankruptcy, insolvency, receivership, or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator, or similar official for any Loan Party or for a substantial part of its assets, and, in any such case, such proceeding or petition continues undismissed for 60 days or an order or decree approving or ordering any of the foregoing is entered;

(9) any Loan Party (i) voluntarily commences any proceeding or files any petition seeking liquidation, reorganization, or other relief under any Federal, state, or foreign bankruptcy, insolvency, receivership, or similar law now or hereafter in effect, (ii) consents to the institution of, or fails to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) applies for or consents to the appointment of a receiver, trustee, custodian, sequestrator, conservator, or similar official for such Loan Party or for a substantial part of its assets, (iv) files an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) makes a general assignment for the benefit of creditors, or (vi) takes any action for the purpose of effecting any of the foregoing;

(10) any Loan Party becomes unable, admits in writing its inability, or publicly declares its intention not to, or fails generally to pay its debts as they become due;

(11) (i) one or more judgments for the payment of money, to the extent not covered by insurance or that the applicable insurance carrier has denied coverage or liability, in an aggregate amount in excess of \$10,000,000 are rendered against any Loan Party and the same remain undischarged for a period of 30 consecutive days during which execution is not effectively stayed, or any action is legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party to enforce any such judgment or (ii) any Loan Party fails within 30 days to discharge one or more non-monetary judgments or orders that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, which judgments or orders, in any such case, are not stayed on appeal or otherwise being appropriately contested in good faith by proper proceedings diligently pursued;

(12) an ERISA Event occurs that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect or liability of the Loan Parties in an aggregate amount exceeding \$1,000,000;

(13) a Change in Control occurs;

(14) the occurrence of any default or event of default, as specified in any Loan Document (other than this Agreement) or the breach of any of the terms or provisions of

any Loan Document (other than this Agreement), which default, event of default, or breach continues beyond any period of grace therein provided;

(15) the Loan Guaranty fails to remain in full force or effect or any action is taken to discontinue or to assert the invalidity or unenforceability of the Loan Guaranty, or any Guarantor fails to comply with any of the terms or provisions of the Loan Guaranty to which it is a party, or any Guarantor denies that it has any further liability under the Loan Guaranty to which it is a party, or gives notice to such effect, including notice of termination delivered pursuant to [Section 10.08](#);

(16) except as permitted by the terms of any Collateral Document, (i) any Collateral Document for any reason fails to create a valid security interest in any Collateral purported to be covered thereby or (ii) any Lien securing any Secured Obligation ceases to be a perfected, first priority (subject to the terms of this Agreement and the Security Agreement) Lien;

(17) this Agreement or any Collateral Document fails to remain in full force or effect or any action is taken to discontinue or to assert the invalidity or unenforceability of this Agreement or any Collateral Document; or

(18) any material provision of any Loan Document for any reason ceases to be valid, binding, and enforceable in accordance with its terms (or any Loan Party challenges the enforceability of any Loan Document or asserts in writing, or engages in any action or inaction that evidences its assertion, that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding, and enforceable in accordance with its terms);

then, and in every such event (other than an event with respect to any Loan Party described in [clause \(h\)](#) or [clause \(i\)](#) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders will, by notice to the Borrower Representative, take any or all of the following actions, at the same or different times:

(i) terminate the Commitments (including the Swingline Commitment), whereupon the Commitments will terminate immediately; (ii) declare the Loans then outstanding to be due and payable in whole (or in part, but ratably as among the Classes of Loans and the Loans of each Class at the time outstanding, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees (including any break funding payments) and other obligations of the Loan Parties accrued hereunder, will become due and payable immediately, in each case without presentment, demand, protest, or other notice of any kind, all of which are hereby waived by the Loan Parties; and (iii) require cash collateral for the LC Exposure in accordance with [Section 2.06\(j\)](#); and in the case of any event with respect to any Loan Party in [clause \(h\)](#) or [clause \(i\)](#) of this Article, the Commitments (including the Swingline Commitment) will automatically terminate and the principal of the Loans then outstanding and the cash collateral for the LC Exposure, together with accrued interest thereon and all fees (including any break funding payments) and other obligations of the Loan Parties accrued hereunder, will automatically become due and payable, in each case without presentment, demand, protest, or other notice of any kind, all of which are hereby waived by the Loan Parties. During the existence of an Event of Default, the Administrative Agent may, and at the request of the

Required Lenders will, increase the rate of interest applicable to the Loans and other Obligations as set forth in this Agreement and exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

ARTICLE 8

The Administrative Agent

Section 8.01 Authorization and Action.

(1) Each Lender, on behalf of itself and any of its Affiliates that are Secured Parties, and each Issuing Bank hereby irrevocably appoints the entity named as the Administrative Agent in the heading of this Agreement and its successors and assigns to serve as the administrative agent and collateral agent under the Loan Documents and each Lender and each Issuing Bank authorizes the Administrative Agent to take such actions as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent under such agreements and to exercise such powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than within the U.S., each Lender and each Issuing Bank hereby grants to the Administrative Agent any required powers of attorney to execute and enforce any Collateral Document governed by the laws of such jurisdiction on such Lender's or such Issuing Bank's behalf. Without limiting the foregoing, each Lender and each Issuing Bank hereby authorizes the Administrative Agent to execute and deliver, and to perform its obligations under, each of the Loan Documents to which the Administrative Agent is a party, to exercise all rights, powers, and remedies that the Administrative Agent may have under such Loan Documents.

(2) As to any matters not expressly provided for herein and in the other Loan Documents (including enforcement or collection), the Administrative Agent will not be required to exercise any discretion or take any action, but will be required to act or to refrain from acting (and will be fully protected in so acting or refraining from acting) upon the written instructions of the Required Lenders (or such other number or percentage of the Lenders as may be necessary, pursuant to the terms in the Loan Documents), and, unless and until revoked in writing, such instructions will be binding upon each Lender and each Issuing Bank; provided that the Administrative Agent will not be required to take any action that (i) the Administrative Agent reasonably believes exposes it to liability unless the Administrative Agent receives an indemnification satisfactory to it from the Lenders and the Issuing Banks with respect to such action or (ii) is contrary to this Agreement or any other Loan Document or applicable law, including any action that may be in violation of the automatic stay under any requirement of law relating to bankruptcy, insolvency or reorganization, or relief of debtors or that may effect a forfeiture, modification, or termination of property of a Defaulting Lender in violation of any requirement of law relating to bankruptcy, insolvency or reorganization, or relief of debtors; provided, further, that the Administrative Agent may seek clarification or direction from the Required Lenders prior to the exercise of any such instructed action and may refrain from acting until such clarification or direction has been provided. Except as expressly set forth in the Loan Documents, the Administrative Agent will not have any duty to disclose, and will not

be liable for the failure to disclose, any information relating to any Loan Party or any Affiliate of any Loan Party that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity. Nothing in this Agreement will require the Administrative Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers if it has reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(3) In performing its functions and duties hereunder and under the other Loan Documents, the Administrative Agent is acting solely on behalf of the Lenders and the Issuing Banks (except in limited circumstances expressly provided for herein relating to the maintenance of the Register), and the Administrative Agent's duties are entirely mechanical and administrative in nature. Without limiting the generality of the foregoing:

a. the Administrative Agent does not assume and will not be deemed to have assumed any obligation or duty or any other relationship as the agent, fiduciary, or trustee of or for any Lender, any Issuing Bank, or any other Secured Party or holder of any other obligation other than as expressly set forth herein and in the other Loan Documents, regardless of whether a Default or an Event of Default has occurred and is continuing (and it is understood and agreed that the use of the term "agent" (or any similar term) herein or in any other Loan Document with reference to the Administrative Agent is not intended to connote any fiduciary duty or other implied (or express) obligations arising under agency doctrine of any applicable law, and that such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties); additionally, each Lender agrees that it will not assert any claim against the Administrative Agent based on an alleged breach of fiduciary duty by the Administrative Agent in connection with this Agreement and the transactions contemplated hereby; and

b. nothing in this Agreement or any Loan Document will require the Administrative Agent to account to any Lender for any sum or the profit element of any sum received by the Administrative Agent for its own account.

(4) The Administrative Agent may perform any of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any of their respective duties and exercise their respective rights and powers through their respective Related Parties. The exculpatory provisions of this Article will apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and will apply to their respective activities pursuant to this Agreement. The Administrative Agent will not be responsible for the negligence or misconduct of any sub agent except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

(5) Other than the Administrative Agent, no other “syndication agent”, “documentation agent”, or any “arranger” (or any other similar title granted to any Lender) will have obligations or duties whatsoever in such capacity under this Agreement or any other Loan Document and will incur no liability hereunder or thereunder in such capacity, but all such persons will have the benefit of the indemnities provided for hereunder.

(6) In case of the pendency of any proceeding with respect to any Loan Party under any federal, state, or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, the Administrative Agent (irrespective of whether the principal of any Loan or any reimbursement obligation in respect of any LC Disbursement is then due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent has made any demand on any Borrower) will be entitled and empowered (but not obligated) 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, LC Disbursements, and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks, and the Administrative Agent (including any claim under Section 2.12, Section 2.13, Section 2.15, Section 2.17, and Section 9.03) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator, or other similar official in any such proceeding is hereby authorized by each Lender, each Issuing Bank, and each other Secured Party to make such payments to the Administrative Agent and, in the event that the Administrative Agent consents to the making of such payments directly to the Lenders, the Issuing Banks, or the other Secured Parties, to pay to the Administrative Agent any amount due to it, in its capacity as the Administrative Agent, under the Loan Documents (including under Section 9.03). Nothing contained herein will be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment, or composition affecting the Obligations or the rights of any Lender or Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Bank in any such proceeding.

(7) The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders, and the Issuing Banks, and, except solely to the extent of the Loan Parties' right to consent pursuant to and subject to the conditions set forth in this Article, no Loan Party nor any of their respective Affiliates, will have any rights as a third party beneficiary under any such provisions. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Secured Obligations provided under the Loan Documents, to have agreed to the provisions of this Article.

Section 8.02 Administrative Agent's Reliance, Indemnification, Etc.

(1) Neither the Administrative Agent nor any of its Related Parties will be
(1) liable for any action taken or omitted to be taken by it under or in connection with this Agreement or the other Loan Documents (y) with the consent of or at the request of the Required Lenders (or such other number or percentage of the Lenders as may be necessary, or as the Administrative Agent may reasonably believe to be necessary, under the circumstances as provided in the Loan Documents) or (z) in the absence of its own gross negligence or willful misconduct (such absence to be presumed unless otherwise determined by a court of competent jurisdiction by a final and nonappealable judgment) or
(2) responsible in any manner to any of the Lenders for any recitals, statements, representations, or warranties made by any Loan Party or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement, or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability, or sufficiency of this Agreement or any other Loan Document (including in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by facsimile, emailed pdf., or any other electronic means that reproduces an image of an actual executed signature page) or for any failure of any Loan Party to perform its obligations hereunder or thereunder.

(2) The Administrative Agent will be deemed not to have knowledge of any
(i) notice of any of the events or circumstances set forth or described in Section 5.02 unless and until written notice thereof stating that it is a "notice under Section 5.02" in respect of this Agreement and identifying the specific clause under said Section is given to the Administrative Agent by the Borrower Representative or (ii) notice of any Default or Event of Default unless and until written notice thereof (stating that it is a "notice of Default" or a "notice of an Event of Default") is given to the Administrative Agent by the Borrower Representative, a Lender, or an Issuing Bank. Further, the Administrative Agent will not be responsible for or have any duty to ascertain or inquire into (A) any statement, warranty, or representation made in or in connection with any Loan Document, (B) the contents of any certificate, report, or other document delivered thereunder or in connection therewith, (C) the performance or observance of any of the covenants, agreements, or other terms or conditions set forth in any Loan Document or the occurrence of any Default or Event of Default, (D) the sufficiency, validity, enforceability, effectiveness, or genuineness of any Loan Document or any other agreement, instrument, or document, (E) the satisfaction of any condition set forth in Article 4 or elsewhere in any Loan Document, other than to confirm receipt of items (which on their face purport to be such items) expressly required to be delivered to the Administrative Agent or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent, or (F) the creation, perfection, or priority of Liens on the Collateral.

(3) Without limiting the foregoing, the Administrative Agent (i) may treat the payee of any promissory note as its holder until such promissory note has been assigned in accordance with Section 9.04, (ii) may rely on the Register to the extent set forth in Section 9.04(b), (iii) may consult with legal counsel (including counsel to the Borrowers), independent public accountants and other experts selected by it, and will not be liable for any action taken or omitted to be taken reasonably by it in accordance with the advice of such counsel, accountants, or experts, (iv) makes no warranty or representation to any Lender or Issuing Bank and will not be responsible to any Lender or Issuing Bank for any

statements, warranties, or representations made by or on behalf of any Loan Party in connection with this Agreement or any other Loan Document, (v) in determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent has received notice to the contrary from such Lender or Issuing Bank sufficiently in advance of the making of such Loan or the issuance of such Letter of Credit, and (vi) will be entitled to rely on, and will incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any notice, consent, certificate, or other instrument or writing (which writing may be a fax, any electronic message, Internet or intranet website posting, or other distribution) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated by the proper party or parties (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

Section 8.03 Posting of Communications.

(1) The Loan Parties agree that the Administrative Agent may, but will not be obligated to, make any Communications available to the Lenders and the Issuing Banks by posting the Communications on IntraLinks™, DebtDomain, SyndTrak, ClearPar, or any other electronic system chosen by the Administrative Agent to be its electronic transmission system (the "Approved Electronic Platform").

(2) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Effective Date, a user ID/password authorization system) and the Approved Electronic Platform is secured through a per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, each Issuing Bank, and each Loan Party acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure, that the Administrative Agent is not responsible for approving or vetting the representatives or contacts of any Lender that are added to the Approved Electronic Platform, and that there are confidentiality and other risks associated with such distribution. Each of the Lenders, each Issuing Bank, and each Loan Party hereby approves distribution of the Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(3) THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS ARE PROVIDED "AS IS" AND "AS AVAILABLE". THE APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR FREEDOM FROM

VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT WILL THE ADMINISTRATIVE AGENT, ANY ARRANGER, ANY DOCUMENTATION AGENT, SYNDICATION AGENT, OR ANY OF THEIR RESPECTIVE RELATED PARTIES (INCLUDING ANY OTHER TITLE THAT MAY BE GIVEN TO ANY SECURED PARTY HERETO, COLLECTIVELY, THE "APPLICABLE PARTIES") HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER, ANY ISSUING BANK, OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING DIRECT OR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, LOSSES, OR EXPENSES (WHETHER IN TORT, CONTRACT, OR OTHERWISE) ARISING OUT OF ANY LOAN PARTY'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET OR THE APPROVED ELECTRONIC PLATFORM.

"Communications" means, collectively, any notice, demand, communication, information, document, or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein that is distributed by the Administrative Agent, any Lender, or any Issuing Bank by means of electronic communications pursuant to this Section, including through an Approved Electronic Platform.

(4) Each Lender and Issuing Bank agrees that notice to it (as provided in the next sentence) specifying that Communications have been posted to the Approved Electronic Platform will constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender and Issuing Bank agrees (i) to notify the Administrative Agent in writing (which could be in the form of electronic communication) from time to time of such Lender's or Issuing Bank's (as applicable) email address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such email address.

(5) Each of the Lenders, each Issuing Bank, and each Loan Party agrees that the Administrative Agent may, but (except as may be required by applicable law) will not be obligated to, store the Communications on the Approved Electronic Platform in accordance with the Administrative Agent's generally applicable document retention procedures and policies.

(6) Nothing herein will prejudice the right of the Administrative Agent, any Lender, or any Issuing Bank to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

Section 8.04 The Administrative Agent Individually; Reliance. With respect to its Commitment, Loans, and Letters of Credit, the Person serving as the Administrative Agent will have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or Issuing Bank, as the case may be. The terms "Issuing Bank", "Lenders", "Required Lenders", and any similar terms will, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity as a Lender, Issuing Bank, or as one of the Required Lenders, as applicable. The Person

serving as the Administrative Agent and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust, or other business with, any Loan Party, any Subsidiary, or any Affiliate of any of the foregoing as if such Person was not acting as the Administrative Agent and without any duty to account therefor to the Lenders or the Issuing Banks.

Section 8.05 Successor Administrative Agent.

(1) The Administrative Agent may resign at any time by giving 30 days prior written notice thereof to the Lenders, the Issuing Banks, and the Borrower Representative, whether or not a successor Administrative Agent has been appointed. Upon any such resignation, the Required Lenders will have the right, to appoint a successor Administrative Agent. If no successor Administrative Agent has been so appointed by the Required Lenders and has accepted such appointment within 30 days after the retiring Administrative Agent's giving of notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent that must be a bank with an office in New York, New York or an Affiliate of any such bank. In either case, such appointment will be subject to the prior written approval of the Borrower Representative (which approval may not be unreasonably withheld and will not be required while an Event of Default has occurred and is continuing). Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent, such successor Administrative Agent will succeed to and become vested with, all the rights, powers, privileges, and duties of the retiring Administrative Agent. Upon the acceptance of appointment as Administrative Agent by a successor Administrative Agent, the retiring Administrative Agent will be discharged from its duties and obligations under this Agreement and the other Loan Documents. Prior to any retiring Administrative Agent's resignation hereunder as Administrative Agent, the retiring Administrative Agent will take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Loan Documents.

(2) Notwithstanding clause (a) preceding, in the event no successor Administrative Agent has been so appointed and has accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the effectiveness of its resignation to the Lenders, the Issuing Banks, and the Borrowers, whereupon, on the date of effectiveness of such resignation stated in such notice, (i) the retiring Administrative Agent will be discharged from its duties and obligations hereunder and under the other Loan Documents; provided that, solely for purposes of maintaining any security interest granted to the Administrative Agent under any Collateral Document for the benefit of the Secured Parties, the retiring Administrative Agent will continue to be vested with such security interest as collateral agent for the benefit of the Secured Parties and continue to be entitled to the rights set forth in such Collateral Document and Loan Document, and, in the case of any Collateral in the possession of the Administrative Agent, will continue to hold such Collateral, in each case until such time as a successor Administrative Agent is appointed and accepts such appointment in accordance with this Section (it being understood and agreed that the retiring Administrative Agent will have no duty or obligation to take any further action under any Collateral Document, including any action required to maintain the perfection of any such security interest), and (ii) the Required Lenders will succeed to and become

vested with all the rights, powers, privileges, and duties of the retiring Administrative Agent; provided that (A) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent must be made directly to such Person and (B) all notices and other communications required or contemplated to be given or made to the Administrative Agent must be given or made directly to each Lender and Issuing Bank. Following the effectiveness of the Administrative Agent's resignation from its capacity as such, the provisions of this Article, Section 2.17(d), and Section 9.03, as well as any exculpatory, reimbursement, and indemnification provisions set forth in any other Loan Document, will continue in effect for the benefit of such retiring Administrative Agent, its sub agents, and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent and in respect of the matters referred to in the proviso under clause (a) preceding.

Section 8.06 Acknowledgements of the Lenders and Issuing Bank.

(1) Each Lender and each Issuing Bank represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility, (ii) it is engaged in making, acquiring, or holding commercial loans and in providing other facilities set forth herein as may be applicable to such Lender or Issuing Bank, in each case in the ordinary course of business, and not for the purpose of purchasing, acquiring, or holding any other type of financial instrument (and each Lender and each Issuing Bank agrees not to assert a claim in contravention of the foregoing), (iii) it has, independently and without reliance upon the Administrative Agent, any Arranger, any Syndication Agent, any Co- Documentation Agent, or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire, or hold Loans hereunder, and (iv) it is sophisticated with respect to decisions to make, acquire, and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such Issuing Bank, and either it, or the Person exercising discretion in making its decision to make, acquire, and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring, or holding such commercial loans or providing such other facilities. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent any Arranger, any Syndication Agent, any Co- Documentation Agent, or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and information (which may contain material, non-public information within the meaning of the U.S. securities laws concerning the Loan Parties and their Affiliates) as it may from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document, or any related agreement or any document furnished hereunder or thereunder.

(2) Each Lender, by delivering its signature page to this Agreement on the Effective Date, or delivering its signature page to an Assignment and Assumption or any other Loan Document pursuant to which it becomes a Lender hereunder, will be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to,

the Administrative Agent or the Lenders on the Effective Date or the effective date of any such Assignment and Assumption or any other Loan Document pursuant to which it may have become a Lender hereunder.

(3) Each Lender hereby agrees that: (i) it has requested a copy of each Report prepared by or on behalf of the Administrative Agent; (ii) the Administrative Agent (A) makes no representation or warranty, express or implied, as to the completeness or accuracy of any Report or any of the information contained therein or any inaccuracy or omission contained in or relating to a Report and (B) will not be liable for any information contained in any Report; (iii) the Reports are not comprehensive audits or examinations, and that any Person performing any field examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel and that the Administrative Agent undertakes no obligation to update, correct, or supplement the Reports; (iv) it will keep all Reports confidential and strictly for its internal use, not share the Report with any Loan Party or any other Person except as otherwise permitted pursuant to this Agreement; and (v) without limiting the generality of any other indemnification provision contained in this Agreement, (A) it will hold the Administrative Agent and any such other Person preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any extension of credit that the indemnifying Lender has made or may make to a Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (B) it will pay and protect, and indemnify, defend, and hold the Administrative Agent and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorneys' fees) incurred by the Administrative Agent or any such other Person as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

(4)

a. Each Lender hereby agrees that (y) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment, or repayment of principal, interest, fees, or otherwise; individually and collectively, a "Payment") were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender will promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect and (z) to the extent permitted by applicable law, such Lender will not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense, or right of set-off or

recoupment with respect to any demand, claim, or counterclaim by the Administrative Agent for the return of any Payments received, including any defense based on "discharge for value" or any similar doctrine. A notice of the Administrative Agent to any Lender under this Section 8.06(d) will be conclusive, absent manifest error.

b. Each Lender hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (y) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a "Payment Notice") or (z) that was not preceded or accompanied by a Payment Notice, such Lender will be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender will promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, such Lender will promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

c. Each Borrower and each other Loan Party hereby agrees that (y) in the event an erroneous Payment (or portion thereof) is not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent will be subrogated to all the rights of such Lender with respect to such amount and (z) an erroneous Payment will not pay, prepay, repay, discharge, or otherwise satisfy any Obligations owed by any Borrower or any other Loan Party.

d. Each party's obligations under this Section 8.06(d) will survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments, or the repayment, satisfaction or discharge of all Obligations under any Loan Document.

Section 8.07 Collateral Matters.

(1) Except with respect to the exercise of setoff rights in accordance with Section 9.08 or with respect to a Secured Party's right to file a proof of claim in an insolvency proceeding, no Secured Party will have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Secured Obligations, it being understood and agreed that all powers, rights, and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms thereof. In its capacity, the Administrative Agent is a

“representative” of the Secured Parties within the meaning of the term “secured party” as defined in the UCC. In the event that any Collateral is hereafter pledged by any Person as collateral security for the Secured Obligations, the Administrative Agent is hereby authorized, and hereby granted a power of attorney, to execute and deliver on behalf of the Secured Parties any Loan Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of the Administrative Agent on behalf of the Secured Parties.

(2) In furtherance of the foregoing and not in limitation thereof, no arrangements in respect of Banking Services the obligations under which constitute Secured Obligations and no Swap Agreement the obligations under which constitute Secured Obligations, will create (or be deemed to create) in favor of any Secured Party that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Loan Party under any Loan Document. By accepting the benefits of the Collateral, each Secured Party that is a party to any such arrangement in respect of Banking Services or Swap Agreement, as applicable, will be deemed to have appointed the Administrative Agent to serve as administrative agent and collateral agent under the Loan Documents and agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this clause (b).

(3) The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion, to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(b). The Administrative Agent will not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value, or collectability of the Collateral, the existence, priority, or perfection of the Administrative Agent’s Lien thereon or any certificate prepared by any Loan Party in connection therewith, nor will the Administrative Agent be responsible or liable to the Lenders or any other Secured Party for any failure to monitor or maintain any portion of the Collateral.

Section 8.08 Credit Bidding. The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including by accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar laws in any other jurisdictions to which a Loan Party is subject, or (b) at any other sale, foreclosure, or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties will be entitled to be, and will be, credit bid by the Administrative Agent at the direction of the Required Lenders on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that will vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid (i) the

Administrative Agent will be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles, (ii) each of the Secured Parties' ratable interests in the Obligations that were credit bid will be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (iii) the Administrative Agent will be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or equity interests thereof, will be governed, directly or indirectly, by, and the governing documents will provide for, control by the vote of the Required Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 9.02 of this Agreement), (iv) the Administrative Agent on behalf of such acquisition vehicle or vehicles will be authorized to issue to each of the Secured Parties, ratably on account of the relevant Obligations which were credit bid, interests, whether as equity, partnership interests, limited partnership interests, or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured Party or acquisition vehicle to take any further action, and (v) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of Obligations credit bid by the acquisition vehicle or otherwise), such Obligations will automatically be reassigned to the Secured Parties pro rata with their original interest in such Obligations and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations will automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Obligations of each Secured Party are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (ii) preceding, each Secured Party will execute such documents and provide such information regarding the Secured Party (and/or any designee of the Secured Party that will receive interests in or debt instruments issued by such acquisition vehicle) as the Administrative Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid, or the consummation of the transactions contemplated by such credit bid.

Section 8.09 Certain ERISA Matters.

(1) Each Lender (y) represents and warrants, as of the date such Person became a Lender party hereto, to, and (z) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Arranger, and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that at least one of the following is and will be true:

- a. such Lender is not using "plan assets" (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments;
- b. the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent

qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds), or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of, and performance of the Loans, the Letters of Credit, the Commitments, and this Agreement;

c. (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer, and perform the Loans, the Letters of Credit, the Commitments, and this Agreement, (C) the entrance into, participation in, administration of, and performance of the Loans, the Letters of Credit, the Commitments, and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14, and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of, and performance of the Loans, the Letters of Credit, the Commitments, and this Agreement; or

d. such other representation, warranty, and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(2) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has provided another representation, warranty, and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (y) as of the date such Person became a Lender party hereto, represents and warrants to and (z) from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, covenants, in each case for the benefit of the Administrative Agent and each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that none of the Administrative Agent, any Arranger, any Syndication Agent, any Co-Documentation Agent, or any of their respective Affiliates is a fiduciary with respect to the Collateral or the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document, or any documents related to hereto or thereto).

(3) The Administrative Agent and each Arranger, Syndication Agent, and Co- Documentation Agent hereby informs the Lenders that each such Person is not undertaking to provide investment advice or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments, this Agreement, and any other Loan Documents, (ii) may recognize a gain if it extended the Loans, the Letters of Credit, or the Commitments for an amount less than

the amount being paid for an interest in the Loans, the Letters of Credit, or the Commitments by such Lender, or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents, or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees, or fees similar to the foregoing.

Section 8.10 Flood Laws. JPMCB has adopted internal policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and related legislation (the "Flood Laws"). JPMCB, as administrative agent or collateral agent on a syndicated facility, will post on the applicable electronic platform (or otherwise distribute to each Lender in the syndicate) documents that it receives in connection with the Flood Laws. However, JPMCB reminds each Lender and Participant in the facility that, pursuant to the Flood Laws, each federally regulated Lender (whether acting as a Lender or Participant in the facility) is responsible for assuring its own compliance with the flood insurance requirements.

ARTICLE 9

Miscellaneous

Section 9.01 Notices.

(1) Except in the case of notices and other communications expressly permitted to be given by telephone or Electronic Systems (and subject in each case to clause (b) following), all notices and other communications provided for herein must be in writing and be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

- if to any Loan Party, to the Borrower Representative at: Allbirds, Inc.

730 Montgomery Street
San Francisco, California 94111 Attention: Joey Zwillinger Email: joey@allbirds.com

- if to the Administrative Agent, JPMCB in its capacity as an Issuing Bank, or the Swingline Lender, to JPMorgan Chase Bank, N.A. at:

JPMorgan Chase Bank, N.A. 3 Park Plaza, Suite 900
Irvine, California 92614
Attention: Portfolio Manager – Allbirds Facsimile No: (949) 833-4524

- if to any other Lender or Issuing Bank, to it at its address or facsimile number set forth in its Administrative Questionnaire.

All such notices and other communications (i) sent by hand or overnight courier service, or mailed by certified or registered mail, will be deemed to have been given when received, (ii) sent by facsimile will be deemed to have been given when sent, provided that, if not given during normal business hours of the recipient, such notice or communication will be deemed to have been given at the opening of business on the next Business Day of the recipient, or (iii) delivered through Electronic Systems or Approved Electronic Platforms, as applicable, to the extent provided in clause (b) following will be effective as provided in such clause.

(2) Notices and other communications to any Borrower, any Loan Party, the Lenders, and the Issuing Banks hereunder may be delivered or furnished by using Electronic Systems or Approved Electronic Platforms, as applicable, or pursuant to procedures approved by the Administrative Agent; provided that the foregoing will not apply to notices pursuant to Article 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent and the Borrower Representative (on behalf of the Loan Parties) may, in its discretion, agree to accept notices and other communications to it hereunder by Electronic Systems or Approved Electronic Platforms, as applicable, pursuant to procedures approved by it; provided that, approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise proscribes, all such notices and other communications

(i) sent to an e-mail address will 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 not given during the normal business hours of the recipient, such notice or communication will be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) posted to an Internet or intranet website will be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clause (i) and clause (ii) preceding, if such notice, e-mail, or other communication is not sent during the normal business hours of the recipient, such notice or communication will be deemed to have been sent at the opening of business on the next Business Day of the recipient.

- (3) Any party hereto may change its address, facsimile number, or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

Section 9.02 Waivers; Amendments.

(1) No failure or delay by the Administrative Agent, any Issuing Bank, or any Lender in exercising any right or power hereunder or under any other Loan Document will operate as a waiver thereof, nor will any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Banks, and the Lenders

hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom will in any event be effective unless the same is permitted by Section 9.02(b), and then such waiver or consent will be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit will not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender, or any Issuing Bank may have had notice or knowledge of such Default at the time.

(2) Except as provided in the first sentence of Section 2.09(f) (with respect to any commitment increase) and subject to Section 2.14(c), Section 2.14(d), Section 2.14(e), and Section 9.02(e), neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended, or modified except (x) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders or (y) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, with the consent of the Required Lenders; provided that, no such agreement will (i) increase the Commitment of any Lender without the written consent of such Lender (including any such Lender that is a Defaulting Lender), (ii) reduce or forgive the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce or forgive any interest or fees payable hereunder, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby (provided that any amendment or modification of the financial covenants in this Agreement (or any defined term used therein) will not constitute a reduction in the rate of interest or fees for purposes of this clause (ii)), (iii) postpone any scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any date for the payment of any interest, fees, or other Obligations payable hereunder, or reduce the amount of, waive, or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby, (iv) change Section 2.09(d), Section 2.18(b), or Section 2.18(d) in a manner that would alter the ratable reduction of Commitments or the manner in which payments are shared, without the written consent of each Lender (other than any Defaulting Lender), (v) increase the advance rates set forth in the definition of Borrowing Base or add new categories of eligible assets, without the written consent of each Lender (other than any Defaulting Lender), (vi) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend, or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (other than any Defaulting Lender) directly affected thereby, (vii) change Section 2.20 without the consent of each Lender (other than any Defaulting Lender), (viii) release any Loan Guarantor from its obligation under its Loan Guaranty or any other guarantor (if any) under any Obligation Guaranty (except as otherwise permitted herein or in the other Loan Documents), without the written consent of each Lender (other than any Defaulting Lender), or (ix) except as provided in clause (c) of this Section or in any Collateral Document, release all or substantially all of the Collateral, without the written consent of each Lender (other than any Defaulting Lender);

provided, further, that no such agreement will amend, modify, or otherwise affect the rights or duties of the Administrative Agent, the Issuing Bank, or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, the Issuing Bank, or the Swingline Lender, as the case may be (it being understood that any amendment to Section 2.20 will require the consent of the Administrative Agent, the Issuing Bank, and the Swingline Lender); provided, further, that no such agreement will amend or modify the provisions of Section 2.06 or any letter of credit application and any bilateral agreement between the Borrower Representative and each Issuing Bank regarding such Issuing Bank's Issuing Bank Sublimit or the respective rights and obligations between the Borrower and such Issuing Bank in connection with the issuance of Letters of Credit without the prior written consent of the Administrative Agent and the Issuing Banks, respectively. The Administrative Agent may also amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.04. Any amendment, waiver, or other modification of this Agreement or any other Loan Document that by its terms affects the rights or duties under this Agreement of the Lenders of one or more Classes (but not the Lenders of any other Class), may be effected by an agreement or agreements in writing entered into by the Borrowers and the requisite number or percentage in interest of each affected Class of Lenders that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time.

(3) The Lenders and the Issuing Banks hereby irrevocably authorize the Administrative Agent, at its option and in its sole discretion, to release any Liens granted to the Administrative Agent by the Loan Parties on any Collateral (i) upon Payment in Full of all Secured Obligations and cash collateralization of all Unliquidated Obligations in a manner satisfactory to each affected Lender, (ii) constituting property being Disposed of if the Loan Party Disposing of such property certifies to the Administrative Agent that the Disposition is made in compliance with the terms of this Agreement (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry), and to the extent that the property being Disposed of constitutes 100% of the Equity Interests of a Subsidiary, the Administrative Agent is authorized to release any Loan Guaranty provided by such Subsidiary, (iii) constituting property leased to a Loan Party under a lease that has expired or been terminated in a transaction permitted under this Agreement, or (iv) as required to effect any Disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to Article 7. Except as provided in the preceding sentence, the Administrative Agent will not release any Liens on Collateral without the prior written authorization of the Required Lenders; provided that, the Administrative Agent may in its discretion, release its Liens on Collateral valued in the aggregate not in excess of 10.0% of the Revolving Commitment during any calendar year without the prior written authorization of the Required Lenders (it being agreed that the Administrative Agent may rely conclusively on one or more certificates of the Borrowers as to the value of any Collateral to be so released, without further inquiry). Any such release will not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any Disposition, all of which will continue to constitute part of the Collateral. Any execution and delivery by the Administrative Agent of documents in connection with any such release will be without recourse to or warranty by the Administrative Agent.

(4) If, in connection with any proposed amendment, waiver, or consent requiring the consent of “each Lender” or “each Lender affected thereby,” the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but has not been obtained being referred to herein as a “Non-Consenting Lender”), then the Borrowers may elect to replace a Non-Consenting Lender as a Lender party to this Agreement, provided that, concurrently with such replacement, (i) another bank or other entity that is reasonably satisfactory to the Borrowers, the Administrative Agent, and the Issuing Banks agree, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 9.04, and (ii) the Borrowers will pay to such Non-Consenting Lender in same day funds on the day of such replacement (A) all interest, fees, and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrowers hereunder to and including the date of termination, including payments due to such Non-Consenting Lender under Section 2.15 and Section 2.17, and (B) an amount, if any, equal to the payment that would have been due to such Lender on the day of such replacement under Section 2.16 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender. Each party hereto agrees that (y) an assignment required pursuant to this clause may be effected pursuant to an Assignment and Assumption executed by the Borrower Representative, the Administrative Agent, and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants) and (z) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and will be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided, further, that any such documents will be without recourse to or warranty by the parties thereto.

(5) Notwithstanding anything to the contrary herein the Administrative Agent may, with the consent of the Borrower Representative only, amend, modify, or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect, or inconsistency.

Section 9.03 ~~Expenses; Indemnity; Damage Waiver.~~

(1) The Loan Parties will, jointly and severally, pay all (x) reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges, and disbursements of counsel for the Administrative Agent, in connection with the syndication and distribution (including via the internet or through any Electronic System or Approved Electronic Platform) of the credit facilities provided for herein, the preparation and administration of the Loan Documents and any amendments, modifications, or waivers of the provisions of the Loan Documents (whether or not the transactions contemplated hereby or thereby are consummated), (y) reasonable out-of-pocket expenses incurred by any Issuing Bank in connection with the issuance,

amendment, renewal, or extension of any Letter of Credit or any demand for payment thereunder, and (z) out-of-pocket expenses incurred by the Administrative Agent, any Issuing Bank, or any Lender, including the fees, charges, and disbursements of any counsel or other advisors or other professionals for the Administrative Agent, any Issuing Bank, or any Lender, in connection with the enforcement, collection, or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring, or negotiations in respect of such Loans or Letters of Credit. Expenses being reimbursed by the Loan Parties under this Section include, without limiting the generality of the foregoing, fees, costs, and expenses incurred in connection with:

- a. appraisals and insurance reviews;
- b. field examinations and the preparation of Reports based on the fees charged by a third party retained by the Administrative Agent or the internally allocated fees for each Person employed by the Administrative Agent with respect to each field examination;
- c. background checks regarding senior management and/or key investors, as deemed necessary or appropriate in the sole discretion of the Administrative Agent;
- d. Taxes, fees, and other charges for (A) lien and title searches, (B) title insurance, (C) recording the Mortgages, (D) filing financing statements and continuations, and (E) other actions to perfect, protect, and continue the Administrative Agent's Liens;
- e. sums paid or incurred to take any action required of any Loan Party under the Loan Documents that such Loan Party fails to pay or take; and
- f. forwarding loan proceeds, collecting checks and other items of payment, and establishing and maintaining the accounts and lock boxes, and costs and expenses of preserving and protecting the Collateral.

All of the foregoing fees, costs, and expenses may be charged to the Borrowers as Revolving Loans or to another deposit account, all as described in [Section 2.18\(c\)](#).

(2) The Loan Parties will, jointly and severally, indemnify the Administrative Agent, each Arranger, the Issuing Bank, and 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, penalties, incremental taxes, liabilities, and related expenses, including the fees, charges, and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of the Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand

for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by a Loan Party or a Subsidiary, or any Environmental Liability related in any way to a Loan Party or a Subsidiary, (iv) the failure of a Loan Party to deliver to the Administrative Agent the required receipts or other required documentary evidence with respect to a payment made by a Loan Party for Taxes pursuant to Section 2.17, or (v) any actual or prospective claim, litigation, investigation, arbitration, or proceeding relating to any of the foregoing, whether or not such claim, litigation, investigation, arbitration, or proceeding is brought by any Loan Party or their respective equity holders, Affiliates, creditors, or any other third Person and whether based on contract, tort, or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity will not, as to any Indemnitee, be available to the extent that such losses, claims, damages, penalties, liabilities, or related expenses 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. This Section 9.03(b) will not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim.

(3) Each Lender severally agrees to pay any amount required to be paid by any Loan Party under clause (a) or clause (b) of this Section 9.03 to the Administrative Agent, each Issuing Bank, and the Swingline Lender, and each Related Party of any of the foregoing Persons (each, an "Agent Indemnitee") (to the extent not reimbursed by a Loan Party and without limiting the obligation of any Loan Party to do so), ratably according to their respective Applicable Percentage in effect on the date on which indemnification is sought under this Section (or, if indemnification is sought after the date upon which the Commitments have terminated and the Loans have been paid in full, ratably in accordance with such Applicable Percentage immediately prior to such date), from and against any and all losses, claims, damages, liabilities, and related expenses, including the fees, charges, and disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent Indemnitee in any way relating to or arising out of the Commitments, this Agreement, any of the other Loan Documents, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by such Agent Indemnitee under or in connection with any of the foregoing; 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 Indemnitee in its capacity as such; provided, further, that no Lender will be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements that are found by a final and nonappealable decision of a court of competent jurisdiction to have resulted from such Agent Indemnitee's gross negligence or willful misconduct. The agreements in this Section will survive the termination of this Agreement and the Payment in Full of the Secured Obligations.

(4) To the extent permitted by applicable law, no Loan Party will assert, and each Loan Party hereby waives, any claim against any Indemnitee (i) for any damages arising from the use by others of information or other materials obtained through telecommunications, electronic or other information transmission systems (including the Internet) or (ii) on any theory of liability, for special, indirect, consequential, or punitive

damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit, or the use of the proceeds thereof; provided that, nothing in this Section 9.03(d) will relieve any Loan Party of any obligation it may have to indemnify an Indemnitee against special, indirect, consequential, or punitive damages asserted against such Indemnitee by a third party.

(5) All amounts due under this Section will be payable not later than five Business Days after written demand therefor.

Section 9.04 Successors and Assigns.

(1) The provisions of this Agreement are binding upon and inure to the benefit of the parties hereto and their respective successors and assigns (including any Affiliate of an Issuing Bank that issues any Letter of Credit), except that (i) no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by any Borrower without such consent will be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, will be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of an Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in Section 9.03(c)) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Banks, and the Lenders) any legal or equitable right, remedy, or claim under or by reason of this Agreement.

(2)

a. Subject to the conditions set forth in Section 9.04(b)(ii), any Lender may assign to one or more Persons (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment, participations in Letters of Credit, and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

i. the Borrower Representative, provided that the Borrower Representative will be deemed to have consented to any such assignment of all or a portion of the Revolving Loans and Commitments unless it objects thereto by written notice to the Administrative Agent within ten Business Days after having received notice thereof and provided, further, that no consent of the Borrower Representative will be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee;

ii. the Administrative Agent;

iii. each Issuing Bank; and

iv. the Swingline Lender.

b. Assignments will be subject to the following additional conditions:

i. except in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) will not be less than \$5,000,000 unless each of the Borrower Representative and the Administrative Agent otherwise consents, provided that no such consent of the Borrower Representative will be required if an Event of Default exists;

ii. each partial assignment will be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

iii. the parties to each assignment will execute and deliver to the Administrative Agent (y) an Assignment and Assumption or (z) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, together with a processing and recordation fee of \$3,500; and

iv. the assignee, if it is not a Lender, will deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (that may contain material non-public information about the Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

For the purposes of this Section 9.04(b), the terms "Approved Fund" and "Ineligible Institution" have the following meanings:

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding, or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (x) a Lender, (y) an Affiliate of a Lender, or (z) an entity or an Affiliate of an entity that administers or manages a Lender.

"Ineligible Institution" means a (w) natural person, (x) a Defaulting Lender or its Parent, (y) company, investment vehicle, or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof; provided that, with respect to this clause (y), such company, investment vehicle, or trust will not constitute an Ineligible Institution if it (1) has not been established for the primary purpose of acquiring any Loans or Commitments, (2) is managed by a professional

advisor, who is not such natural person or a relative thereof, having significant experience in the business of making or purchasing commercial loans, and (3) has assets greater than \$25,000,000 and a significant part of its activities consist of making or purchasing commercial loans and similar extensions of credit in the ordinary course of its business; provided that upon the occurrence and during the continuance of an Event of Default, any Person (other than a Lender) will be an Ineligible Institution if after giving effect to any proposed assignment to such Person, such Person would hold more than 25.0% of the then outstanding Aggregate Credit Exposure or Commitments, as the case may be, or (z) a Loan Party or a Subsidiary or other Affiliate of a Loan Party.

c. Subject to acceptance and recording thereof pursuant to Section 9.04(b)(iv), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder will be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder will, 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 will cease to be a party hereto but will continue to be entitled to the benefits of Section 2.15, Section 2.16, Section 2.17, and Section 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section will be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 9.04(c).

d. The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrowers, will maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register will be conclusive, and the Borrowers, the Administrative Agent, the Issuing Banks, and the Lenders will treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register will be available for inspection by the Borrowers, any Issuing Bank, and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

e. Upon its receipt of (y) a duly completed Assignment and Assumption executed by an assigning Lender and an assignee or (z) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, the assignee's completed Administrative Questionnaire (unless the assignee is already a Lender hereunder), the processing and recordation fee referred to in Section 9.04(b) and any written consent to such assignment required by Section 9.04(b), the Administrative Agent will accept such Assignment and

Assumption and record the information contained therein in the Register; provided that, if either the assigning Lender or the assignee fails to make any payment required to be made by it pursuant to Section 2.05, Section 2.06(d), Section 2.06(e), Section 2.07(b), Section 2.18(d), or Section 9.03(c), the Administrative Agent will have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment has been made in full, together with all accrued interest thereon. No assignment will be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this clause (v).

(3) Any Lender may, without the consent of, or notice to, the Borrowers, the Administrative Agent, the Issuing Banks, or the Swingline Lender, sell participations to one or more banks or other entities (a "Participant") other than an Ineligible Institution in all or a portion of such Lender's rights and 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 will remain unchanged, (ii) such Lender will remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrowers, the Administrative Agent, the Issuing Banks, and the other Lenders will continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation will provide that such Lender will 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, modification, or waiver described in the first proviso to Section 9.02(b) that affects such Participant. The Borrowers agree that each Participant will be entitled to the benefits of Section 2.15, Section 2.16, and Section 2.17 (subject to the requirements and limitations therein, including the requirements under Section 2.17(f) and Section 2.17(g) (it being understood that the documentation required under Section 2.17(f) will be delivered to the participating Lender and the information and documentation required under Section 2.17(g) will be delivered to the Borrowers and the Administrative Agent)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 9.04(b); provided that, such Participant (y) agrees to be subject to the provisions of Section 2.18 and Section 2.19 as if it were an assignee under Section 9.04(b) and (z) will not be entitled to receive any greater payment under Section 2.15 or Section 2.17, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 2.19(b) with respect to any Participant. To the extent permitted by law, each Participant also will be entitled to the benefits of Section 9.08 as though it were a Lender, provided that such Participant agrees to be subject to Section 2.18(c) as though it were a Lender. Each Lender that sells a participation will, acting solely for this purpose as a non-fiduciary agent of the Borrowers, 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 this Agreement or any other Loan Document (the "Participant Register"); provided that no Lender will have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit, or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit, or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register will be conclusive absent manifest error, and such Lender will treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) will have no responsibility for maintaining a Participant Register.

(4) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section will not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest will release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 9.05 Survival.

(1) All covenants, agreements, representations, and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document will be considered to have been relied upon by the other parties hereto and will survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Bank, or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and will continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Section 2.15, Section 2.16, Section 2.17, and Section 9.03 and Article 8 will survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments, or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

(2) If at any time any payment of any portion of the Secured Obligations (including a payment effected through exercise of a right of setoff) is rescinded, or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of any Loan Party or otherwise (including pursuant to any settlement entered into by a Secured Party in its discretion), each Loan Party's obligations under this Agreement with respect to that payment will be reinstated at such time as though the payment had not been made and all of the terms and conditions of this Agreement and the other Loan Documents

will be reinstated in full until such time as any Secured Obligations rescinded or otherwise restored have been Paid in Full.

Section 9.06 Counterparts; Integration; Effectiveness; Electronic Execution.

(1) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which will constitute an original, but all of which when taken together will constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to (i) fees payable to the Administrative Agent and (ii) increases or reductions of the Issuing Bank Sublimit of any Issuing Bank constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement will become effective when it has been executed by the Administrative Agent and when the Administrative Agent has received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(2) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document, and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 9.01), certificate, request, statement, disclosure, or authorization related to this Agreement, any other Loan Document, and/or the transactions contemplated hereby and/or thereby (each an "Ancillary Document") that is an Electronic Signature transmitted by facsimile, emailed pdf., or any other electronic means that reproduces an image of an actual executed signature page will be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document, or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement, any other Loan Document, and/or any Ancillary Document will be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by facsimile, emailed pdf., or any other electronic means that reproduces an image of an actual executed signature page), each of which will be of the same legal effect, validity, or enforceability as a manually executed signature, physical delivery thereof, or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein will require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders will be entitled to rely on such Electronic Signature purportedly given by or on behalf of any Borrower or any other Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature will be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, each Borrower and each other Loan Party hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings, or litigation among the Administrative Agent, the Lenders, the Borrowers, and the other Loan Parties, Electronic Signatures

transmitted by facsimile, emailed pdf., or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document, and/or any Ancillary Document will have the same legal effect, validity, and enforceability as any paper original, (B) the Administrative Agent and each of the Lenders may, at its option, create one or more copies of this Agreement, any other Loan Document, and/or any Ancillary Document in the form of an imaged electronic record in any format, that will be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records will be considered an original for all purposes and will have the same legal effect, validity, and enforceability as a paper record), (C) waives any argument, defense, or right to contest the legal effect, validity, or enforceability of this Agreement, any other Loan Document, and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document, and/or such Ancillary Document, respectively, including with respect to any signature pages thereto, and (D) waives any claim against any Lender-Related Person for any Liabilities arising solely from the Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures and/or transmissions by facsimile, emailed pdf., or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of any Borrower and/or any other Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 9.07 Severability. Any provision of any Loan Document held to be invalid, illegal, or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality, or unenforceability without affecting the validity, legality, and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction will not invalidate such provision in any other jurisdiction.

Section 9.08 Right of Setoff. If an Event of Default has occurred and is continuing, each Lender, each Issuing Bank, and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held, and other obligations at any time owing, by such Lender, the Issuing Bank, or any such Affiliate, to or for the credit or the account of any Loan Party against any and all of the Secured Obligations held by such Lender, such Issuing Bank, or their respective Affiliates, irrespective of whether or not such Lender, such Issuing Bank, or their respective Affiliates have made any demand under the Loan Documents and although such obligations may be contingent or unmatured or are owed to a branch office or Affiliate of such Lender or such Issuing Bank different from the branch office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender exercises any such right of setoff, (y) all amounts so set off must be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.20 and, pending such payment, will be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks, and the Lenders and (z) the Defaulting Lender must provide promptly to the Administrative Agent a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The applicable Lender, the applicable Issuing Bank, or such Affiliate will notify the Borrower Representative and the Administrative Agent of such setoff or application, provided that any failure to give or any delay in giving such notice will

not affect the validity of any such setoff or application under this Section. The rights of each Lender, the Issuing Bank, and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such Issuing Bank, or their respective Affiliates may have.

Section 9.09 Governing Law; Jurisdiction; Consent to Service of Process.

(1) The Loan Documents (other than those containing a contrary express choice of law provision) will be governed by and construed in accordance with the internal laws of the State of California, but giving effect to federal laws applicable to national banks.

(2) Each of the Lenders and the Administrative Agent hereby irrevocably and unconditionally agrees that, notwithstanding the governing law provisions of any applicable Loan Document, any claims brought against the Administrative Agent by any Secured Party relating to this Agreement, any other Loan Document, the Collateral, or the consummation or administration of the transactions contemplated hereby or thereby will be construed in accordance with and governed by the law of the State of California.

(3) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any U.S. federal or California state court sitting in Orange County, California, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Documents, the transactions relating hereto or thereto, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may (and any such claims, cross-claims, or third party claims brought against the Administrative Agent or any of its Related Parties may only) be heard and determined in such California state or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document will affect any right that the Administrative Agent, the Issuing Bank, or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(4) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action, or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in Section 9.09(c). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(5) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 9.10 Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE OR OTHER AGENT (INCLUDING ANY ATTORNEY) OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 9.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and will not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 9.12 Confidentiality. Each of the Administrative Agent, the Issuing Banks, and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates' and its and their respective directors, officers, employees, and agents, including accountants, legal counsel, and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any Governmental Authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by any Requirement of Law or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under this Agreement or any other Loan Document or any suit, action, or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and their obligations, (g) with the consent of the Borrower Representative, (h) to holders of Equity Interests in any Loan Party, (i) to any Person providing a Guarantee of all or any portion of the Secured Obligations, or (j) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Issuing Bank, or any Lender on a non-confidential basis from a source other than the Loan Parties. For the purposes of this Section, "Information" means all information received from the Borrowers relating to the Borrowers or their business, other than any such information that is available to the Administrative Agent, any Issuing Bank, or any Lender on a non-confidential basis prior to disclosure by the Borrowers and other than information pertaining to this Agreement provided by arrangers to data service providers, including league table providers, that serve the lending industry; provided that, in the case of information received from the Borrowers 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 will 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 9.13 Several Obligations; Nonreliance; Violation of Law. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder will not relieve any other Lender from any of its obligations hereunder. Each Lender hereby represents that it is not relying on or looking to any margin stock (as defined in Regulation U) for the repayment of the Borrowings provided for herein. Anything contained in this Agreement to the contrary notwithstanding, neither any Issuing Bank nor any Lender will be obligated to extend credit to the Borrowers in violation of any Requirement of Law.

Section 9.14 USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies each Loan Party that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify, and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the USA PATRIOT Act.

Section 9.15 Disclosure. Each Loan Party, each Lender, and each Issuing Bank hereby acknowledges and agrees that the Administrative Agent and/or its Affiliates from time to time may hold investments in, make other loans to, or have other relationships with any of the Loan Parties and their respective Affiliates.

Section 9.16 Appointment for Perfection. Each Lender hereby appoints each other Lender as its agent for the purpose of perfecting Liens, for the benefit of the Administrative Agent and the other Secured Parties, in assets that, in accordance with Article 9 of the UCC or any other applicable law can be perfected only by possession or control. Should any Lender (other than the Administrative Agent) obtain possession or control of any such Collateral, such Lender will notify the Administrative Agent thereof, and, promptly upon the Administrative Agent's request therefor will deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions.

Section 9.17 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges, and other amounts that are treated as interest on such Loan under applicable law (collectively the "Charges"), exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received, or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, will be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section will be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods will be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the NYFRB Rate to the date of repayment, will have been received by such Lender.

Section 9.18 Reserved.

Section 9.19 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (1) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder that may be payable to it by any party hereto that is an Affected Financial Institution; and
- (2) the effects of any Bail-In Action on any such liability, including, if applicable:
 - a. a reduction in full or in part or cancellation of any such liability;
 - b. a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
 - c. the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 9.20 No Fiduciary Duty, Etc.. Each Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that no Credit Party will have any obligations except those obligations expressly set forth herein and in the other Loan Documents and each Credit Party is acting solely in the capacity of an arm's length contractual counterparty to each Borrower with respect to the Loan Documents and the transaction contemplated therein and not as a financial advisor or a fiduciary to, or an agent of, any Borrower or any other Person. Each Borrower agrees that it will not assert any claim against any Credit Party based on an alleged breach of fiduciary duty by such Credit Party in connection with this Agreement and the transactions contemplated hereby. Additionally, each Borrower acknowledges and agrees that no Credit Party is advising any Borrower as to any legal, tax, investment, accounting, regulatory, or any other matters in any jurisdiction. Each Borrower will consult with its own advisors concerning such matters and will be responsible for making its own independent investigation and appraisal of the transactions contemplated hereby, and the Credit Parties will have no responsibility or liability to any Borrower with respect thereto. Each Borrower further acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party, together with its Affiliates, is a full service securities or banking firm engaged in securities trading and brokerage activities as well as providing investment banking and other financial services. In the ordinary course of business, any Credit Party may provide investment banking and other financial services to, and/or acquire, hold, or sell, for its own accounts and the accounts of customers, equity, debt, and other securities and financial instruments (including bank loans and other obligations) of, any

Borrower and other companies with which any Borrower may have commercial or other relationships. With respect to any securities and/or financial instruments so held by any Credit Party or any of its customers, all rights in respect of such securities and financial instruments, including any voting rights, will be exercised by the holder of the rights, in its sole discretion. In addition, each Borrower acknowledges and agrees, and acknowledges its Subsidiaries' understanding, that each Credit Party and its Affiliates may be providing debt financing, equity capital, or other services (including financial advisory services) to other companies in respect of which a Borrower may have conflicting interests regarding the transactions described herein and otherwise. No Credit Party will use confidential information obtained from any Borrower by virtue of the transactions contemplated by the Loan Documents or its other relationships with such Borrower in connection with the performance by such Credit Party of services for other companies, and no Credit Party will furnish any such information to other companies. Each Borrower also acknowledges that no Credit Party has any obligation to use in connection with the transactions contemplated by the Loan Documents, or to furnish to any Borrower, confidential information obtained from other companies.

Section 9.21 **Ranking – NZ.** Except for Permitted Encumbrances and Liens described in **Section 6.02(j)**, the NZ Security Agreement has or will have the ranking in priority that it is expressed to have in the NZ Security Agreement and it is not subject to any prior ranking or pari passu ranking Liens.

Section 9.22 **PPSA Provisions.**

- (1) Where the Administrative Agent has a security interest (as defined in the PPSA) under any Loan Document, to the extent the law permits each Loan Party (as applicable):
- a. has no rights under, or by reference to, sections 114(1)(a), 133 and 134 of the PPSA; and
 - b. waives its rights to:
 - i. not have goods damaged if the Administrative Agent removes an accession under section 125 of the PPSA;
 - ii. receive notice of the removal of an accession under section 129 of the PPSA;
 - iii. apply to the applicable court for an order concerning the removal of an accession under section 131 of the PPSA;
 - iv. receive a statement of account under section 116 of the PPSA;
 - v. receive notice of any proposal of the Administrative Agent to retain collateral under section 120(2) of the PPSA; and
 - vi. object to any proposal of the Administrative Agent to retain collateral under section 121 of the PPSA;

c. waives its right under section 148 of the PPSA to receive a copy of a verification statement in respect of any financing statement or financing change statement registered by the Administrative Agent.

(2) If the Administrative Agent exercises a right, power, or remedy in connection with it, that exercise is taken not to be an exercise of a right, power, or remedy under the PPSA unless the Administrative Agent states otherwise at the time of exercise. However, this clause does not apply to a right, power, or remedy that can only be exercised under the PPSA.

(3) This Section does not affect any rights a Person has or would have other than by reason of the PPSA and applies despite any other clause in any Loan Document.

Section 9.23 Appointment of Administrative Agent as NZ Security Trustee. For the purposes of any Liens or Collateral created under the NZ Security Agreement, the following additional provisions will apply.

(1) In this Section, the following terms have the following meanings: “Appointee” means any receiver, receiver and manager, voluntary administrator, or other insolvency officer appointed in respect of any Loan Party or its assets.

“Charged Property” means the assets of the Loan Parties subject to a security interest under the NZ Security Agreement.

“Delegate” means any delegate, agent, attorney, or co-trustee appointed by the Administrative Agent (in its capacity as security trustee).

(2) The Secured Parties appoint the Administrative Agent to hold the security interests constituted by the NZ Security Agreement on trust for the Secured Parties on the terms of the Loan Documents and the Administrative Agent accepts that appointment.

(3) The Administrative Agent and its subsidiaries and associated companies may each retain for its own account and benefit any fee, remuneration, and profits paid to it in connection with (i) its activities under the Loan Documents and (ii) its engagement in any kind of banking or other business with any Loan Party.

(4) Nothing in this Agreement constitutes the Administrative Agent as a trustee or fiduciary of, nor will the Administrative Agent have any duty or responsibility to, any Loan Party.

(5) The Administrative Agent will have no duties or obligations to any other Person except for those that are expressly specified in the Loan Documents or mandatorily required by applicable law.

(6) The Administrative Agent may appoint one or more Delegates on such terms (that may include the power to sub-delegate) and subject to such conditions as the Administrative Agent thinks fit, to exercise and perform all or any of the duties, rights,

powers, and discretions vested in it by the NZ Security Agreements and will not be obliged to supervise any Delegate or be responsible to any Person for any loss incurred by reason of any act, omission, misconduct, or default on the part of any Delegate, except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such Delegate.

(7) The Administrative Agent may (whether for the purpose of complying with any law or regulation of any overseas jurisdiction, or for any other reason) appoint (and subsequently remove) any Person to act jointly with the Administrative Agent either as a separate trustee or as a co-trustee on such terms and subject to such conditions as the Administrative Agent thinks fit and with such of the duties, rights, powers, and discretions vested in the Administrative Agent by the NZ Security Agreement as may be conferred by the instrument of appointment of that Person.

(8) The Administrative Agent will notify the Lenders of the appointment of each Appointee (other than a Delegate).

(9) The Administrative Agent may pay reasonable remuneration to any Delegate or Appointee, together with any costs and expenses (including legal fees) reasonably incurred by the Delegate or Appointee in connection with its appointment. All such remuneration, costs, and expenses will be treated, for the purposes of this Agreement, as paid or incurred by the Administrative Agent.

(10) Each Delegate and each Appointee will have every benefit, right, power, and discretion and the benefit of every exculpation (together "Rights") of the Administrative Agent (in its capacity as security trustee) under the NZ Security Agreement, and each reference to the Administrative Agent (where the context requires that such reference is to the Administrative Agent in its capacity as security trustee) in the provisions of the NZ Security Agreement which confer Rights will be deemed to include a reference to each Delegate and each Appointee.

(11) Each Secured Party confirms its approval of the NZ Security Agreement and authorizes and instructs the Administrative Agent: (i) to execute and deliver the NZ Security Agreement; (ii) to exercise the rights, powers, and discretions given to the Administrative Agent (in its capacity as security trustee) under or in connection with the NZ Security Agreement together with any other incidental rights, powers, and discretions; and (iii) to give any authorizations and confirmations to be given by the Administrative Agent (in its capacity as security trustee) on behalf of the Secured Parties under the NZ Security Agreement.

(12) The Administrative Agent may accept without inquiry the title (if any) which any Person may have to the Charged Property.

(13) Each other Secured Party confirms that it does not wish to be registered as a joint proprietor of any security interest constituted by the NZ Security Agreement and accordingly authorizes: (i) the Administrative Agent to hold such security interest in its sole name (or in the name of any Delegate) as trustee for the Secured Parties; and (ii) Land

Information NZ (or other relevant registry) to register the Administrative Agent (or any Delegate or Appointee) as a sole proprietor of such security interest.

(14) Except to the extent that the NZ Security Agreement otherwise requires, any moneys that the Administrative Agent receives under or pursuant to the NZ Security Agreement may be: (i) invested in any investments that the Administrative Agent selects and that are authorized by applicable law; or (ii) placed on deposit at any bank or institution (including the Administrative Agent) on terms that the Administrative Agent thinks fit, in each case in the name or under the control of the Administrative Agent, and the Administrative Agent will hold those moneys, together with any accrued income (net of any applicable Tax) to the order of the Lenders, and will pay them to the Lenders on demand.

(15) On a disposal of any of the Charged Property that is permitted under the Loan Documents, the Administrative Agent will (at the cost of the Loan Parties) execute any release of the NZ Security Agreement or other claim over that Charged Property that may be required or take any other action that the Administrative Agent considers desirable.

(16) The Administrative Agent will not be liable for:

- a. any defect in or failure of the title (if any) that any Person may have to any assets over which security is intended to be created by the NZ Security Agreement;
- b. any loss resulting from the investment or deposit at any bank of moneys which it invests or deposits in a manner permitted by a NZ Security Agreement;
- c. the exercise of, or the failure to exercise, any right, power, or discretion given to it by or in connection with any Loan Document or any other agreement, arrangement, or document entered into, or executed in anticipation of, under or in connection with, any Loan Document; or
- d. any shortfall that arises upon enforcing the NZ Security Agreement.

(17) The Administrative Agent will not be obligated to:

- a. obtain any authorization or environmental permit in respect of any of the Charged Property or the NZ Security Agreement;
- b. hold in its own possession the NZ Security Agreement, title deed or other document relating to the Charged Property or the NZ Security Agreement;
- c. perfect, protect, register, make any filing, or give any notice in respect of a NZ Security Agreement (or the order of ranking of the NZ Security Agreement), unless that failure arises directly from its own gross negligence or willful misconduct; or

d. require any further assurances in relation to the NZ Security Agreement.

(18) In respect of the NZ Security Agreement, the Administrative Agent will not be obligated to: (i) insure, or require any other Person to insure, the Charged Property; or (2) make any enquiry or conduct any investigation into the legality, validity, effectiveness, adequacy, or enforceability of any insurance existing over such Charged Property.

(19) In respect of the NZ Security Agreement, the Administrative Agent will not have any obligation or duty to any Person for any loss suffered as a result of: (i) the lack or inadequacy of any insurance; or (ii) the failure of the Administrative Agent to notify the insurers of any material fact relating to the risk assumed by them, or of any other information of any kind, unless the Required Lenders have requested the Administrative Agent do so in writing and the Administrative Agent has failed to do so within fourteen days after receipt of that request.

(20) Every appointment of a successor Administrative Agent under the NZ Security Agreement will be by deed.

(21) In the case of any conflict between the provisions of this Agreement and those of the Trustee Act 1956 (NZ), the provisions of this Agreement will prevail to the extent allowed by law.

(22) The perpetuity period under the rule against perpetuities if applicable to this Agreement and the NZ Security Agreement will be 80 years from the Effective Date.

Section 9.24 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of California and/or of the U.S. or any other state of the U.S.).

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation, and rights in property) were governed by the laws of the U.S. or a state of the U.S. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under

the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the U.S. or a state of the U.S. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender will in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

Section 9.25 Joint and Several. Each Borrower hereby unconditionally and irrevocably agrees it is jointly and severally liable to the Administrative Agent, the Issuing Banks, and the Lenders for the Secured Obligations. In furtherance thereof, each Borrower agrees that wherever in this Agreement it is provided that a Borrower is liable for a payment, such obligation is the joint and several obligation of each Borrower. Each Borrower acknowledges and agrees that its joint and several liability under this Agreement and the Loan Documents is absolute and unconditional and will not in any manner be affected or impaired by any acts or omissions whatsoever by the Administrative Agent, any Issuing Bank, any Lender, or any other Person. Each Borrower's liability for the Secured Obligations will not in any manner be impaired or affected by who receives or uses the proceeds of the credit extended hereunder or for what purposes such proceeds are used, and each Borrower waives notice of borrowing requests issued by, and loans or other extensions of credit made to, other Borrowers. Each Borrower hereby agrees not to exercise or enforce any right of exoneration, contribution, reimbursement, recourse, or subrogation available to such Borrower against any party liable for payment under this Agreement and the Loan Documents unless and until the Administrative Agent, each Issuing Bank, and each Lender have been paid in full and all of the Secured Obligations are satisfied and discharged following termination or expiration of all commitments of the Lenders to extend credit to the Borrowers. Each Borrower's joint and several liability hereunder with respect to the Secured Obligations will, to the fullest extent permitted by applicable law, be the unconditional liability of such Borrower irrespective of

(a) the validity, enforceability, avoidance, or subordination of any of the Secured Obligations or of any other document evidencing all or any part of the Secured Obligations, (b) the absence of any attempt to collect any of the Secured Obligations from any other Loan Party or any Collateral or other security therefor, or the absence of any other action to enforce the same, (c) the amendment, modification, waiver, consent, extension, forbearance, or granting of any indulgence by the Administrative Agent or any Lender with respect to any provision of any instrument executed by any other Loan Party evidencing or securing the payment of any of the Secured Obligations, or any other agreement now or hereafter executed by any other Loan Party and delivered to the Administrative Agent, (d) the failure by the Administrative Agent or any Lender to take any steps to perfect or maintain the perfected status of its Lien upon, or to preserve its rights to, any of the Collateral or other security for the payment or performance of any of the Secured Obligations or the Administrative Agent's release of any Collateral or of its Liens upon any Collateral, (e) the release or compromise, in whole or in part, of the liability of any other Loan Party for the payment of any of the Secured Obligations, (f) any increase in the amount of the Secured Obligations beyond any limits imposed herein or in the amount of any interest, fees, or other charges payable in connection therewith, in each case, if consented to by any other Borrower, or any decrease in the same, or (g) any other circumstance that might constitute a legal or equitable discharge or defense of any Loan Party. After the occurrence and during the continuance of any Event of Default, the Administrative Agent may proceed directly and at once, without notice to any Borrower, against any or all of the Loan Parties to collect and recover all or any part of the Secured Obligations, without first proceeding against any other Loan Party or against any Collateral or other security for the payment or performance of any of the Secured Obligations, and each Borrower waives any provision that might otherwise require the Administrative Agent or the

Lenders under applicable law to pursue or exhaust remedies against any Collateral or other Loan Party before pursuing such Borrower or its property. Each Borrower consents and agrees that neither the Administrative Agent nor any Lender will be under any obligation to marshal any assets in favor of any Loan Party or against or in payment of any or all of the Secured Obligations. This Section 9.25 will not be effective until such time as there is more than one Borrower party to this Agreement.

ARTICLE 10

Loan Guaranty

Section 10.01 Guaranty. Each Loan Guarantor (other than those that have delivered a separate Guaranty) hereby agrees that it is jointly and severally liable for, and, as a primary obligor and not merely as surety, absolutely, unconditionally, and irrevocably guarantees to the Secured Parties, the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Secured Obligations and all costs and expenses, including all court costs and attorneys' and paralegals' fees (including allocated costs of in-house counsel and paralegals) and expenses paid or incurred by the Administrative Agent, the Issuing Banks, and the Lenders in endeavoring to collect all or any part of the Secured Obligations from, or in prosecuting any action against, any Borrower, any Loan Guarantor, or any other guarantor of all or any part of the Secured Obligations (such costs and expenses, together with the Secured Obligations, collectively the "Guaranteed Obligations"; provided that, the definition of "Guaranteed Obligations" does not create any guarantee by any Loan Guarantor of (or grant of security interest by any Loan Guarantor to support, as applicable) any Excluded Swap Obligations of such Loan Guarantor for purposes of determining any obligations of any Loan Guarantor). Each Loan Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any domestic or foreign branch or Affiliate of any Lender that extended any portion of the Guaranteed Obligations.

Section 10.02 Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Loan Guarantor waives any right to require the Administrative Agent, any Issuing Bank, or any Lender to sue any Borrower, any Loan Guarantor, any other guarantor of, or any other Person obligated for, all or any part of the Guaranteed Obligations (each, an "Obligated Party"), or otherwise to enforce its payment against any collateral securing all or any part of the Guaranteed Obligations.

Section 10.03 No Discharge or Diminishment of Loan Guaranty.

(1) Except as otherwise provided for herein, the obligations of each Loan Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment, or termination for any reason (other than Payment in Full of the Guaranteed Obligations), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration, or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure, or ownership of any Borrower or any other Obligated Party liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization, or other similar proceeding

affecting any Obligated Party or their assets or any resulting release or discharge of any obligation of any Obligated Party; or (iv) the existence of any claim, setoff, or other rights that any Loan Guarantor may have at any time against any Obligated Party, the Administrative Agent, any Issuing Bank, any Lender, or any other Person, whether in connection herewith or in any unrelated transactions.

(2) The obligations of each Loan Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(3) Further, the obligations of any Loan Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Administrative Agent, any Issuing Bank, or any Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations;

(3) any release, non-perfection, or invalidity of any indirect or direct security for the obligations of any Borrower for all or any part of the Guaranteed Obligations or any obligations of any other Obligated Party liable for any of the Guaranteed Obligations;

(4) any action or failure to act by the Administrative Agent, any Issuing Bank, or any Lender with respect to any collateral securing any part of the Guaranteed Obligations; or

(5) any default, failure, or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission, or delay that might in any manner or to any extent vary the risk of such Loan Guarantor or that would otherwise operate as a discharge of any Loan Guarantor as a matter of law or equity (other than Payment in Full of the Guaranteed Obligations).

Section 10.04 Defenses Waived. To the fullest extent permitted by applicable law, each Loan Guarantor hereby waives any defense based on or arising out of any defense of any Borrower or any Loan Guarantor or the unenforceability of all or any part of the Guaranteed Obligations from any cause, or the cessation from any cause of the liability of any Borrower, any Loan Guarantor, or any other Obligated Party, other than Payment in Full of the Guaranteed Obligations. Without limiting the generality of the foregoing, each Loan Guarantor irrevocably waives acceptance hereof, presentment, demand, protest, and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Obligated Party or any other Person. Each Loan Guarantor confirms that it is not a surety under any state law and will not raise any such law as a defense to its obligations hereunder. The Administrative Agent may, at its election, foreclose on any Collateral held by it by one or more judicial or nonjudicial sales, accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any collateral securing all or a part of the Guaranteed Obligations, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, without affecting or impairing in any way the liability of such Loan Guarantor under this Loan Guaranty except to the extent the Guaranteed Obligations have been Paid in Full. To the fullest extent permitted by applicable law, each Loan Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to

applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Loan Guarantor against any Obligated Party or any security.

Section 10.05 Rights of Subrogation. No Loan Guarantor will assert any right, claim, or cause of action, including a claim of subrogation, contribution, or indemnification, that it has against any Obligated Party or any collateral, until the Loan Parties and the Loan Guarantors have fully performed all their obligations to the Administrative Agent, the Issuing Banks, and the Lenders.

Section 10.06 Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Guaranteed Obligations (including a payment effected through exercise of a right of setoff) is rescinded, or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of any Borrower or otherwise (including pursuant to any settlement entered into by a Secured Party in its discretion), each Loan Guarantor's obligations under this Loan Guaranty with respect to that payment will be reinstated at such time as though the payment had not been made and whether or not the Administrative Agent, the Issuing Banks, and the Lenders are in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy, or reorganization of any Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations will nonetheless be payable by the Loan Guarantors forthwith on demand by the Administrative Agent.

Section 10.07 Information. Each Loan Guarantor assumes all responsibility for being and keeping itself informed of the Borrowers' financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope, and extent of the risks that each Loan Guarantor assumes and incurs under this Loan Guaranty, and agrees that none of the Administrative Agent, any Issuing Bank, or any Lender will have any duty to advise any Loan Guarantor of information known to it regarding those circumstances or risks.

Section 10.08 Termination. Each of the Lenders and the Issuing Banks may continue to make loans or extend credit to the Borrowers based on this Loan Guaranty until five days after such Lender or Issuing Bank receives written notice of termination from any Loan Guarantor. Notwithstanding receipt of any such notice, each Loan Guarantor will continue to be liable to the Lenders for any Guaranteed Obligations created, assumed, or committed prior to the fifth day after receipt of the notice, and all subsequent renewals, extensions, modifications, and amendments with respect to, or substitutions for, all or any part of such Guaranteed Obligations. Nothing in this Section 10.08 will be deemed to constitute a waiver of, or eliminate, limit, reduce, or otherwise impair any rights or remedies the Administrative Agent or any Lender may have in respect of, any Default or Event of Default that exists under clause (g) of Article 7 as a result of any such notice of termination.

Section 10.09 Taxes. Each payment of the Guaranteed Obligations will be made by each Loan Guarantor without withholding for any Taxes, unless such withholding is required by law. If any Loan Guarantor determines, in its sole discretion exercised in good faith, that it is so required to withhold Taxes, then such Loan Guarantor may so withhold and will timely pay the full amount of withheld Taxes to the relevant Governmental Authority in accordance with applicable law. If such Taxes are Indemnified Taxes, then the amount payable by such Loan Guarantor will be

increased as necessary so that, net of such withholding (including such withholding applicable to additional amounts payable under this Section), the Administrative Agent, Lender, or Issuing Bank (as the case may be) receives the amount it would have received had no such withholding been made.

Section 10.10 Maximum Liability. Notwithstanding any other provision of this Loan Guaranty, the amount guaranteed by each Loan Guarantor hereunder will be limited to the extent, if any, required so that its obligations hereunder will not be subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transactions Act, or similar statute or common law. In determining the limitations, if any, on the amount of any Loan Guarantor's obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification, or contribution that such Loan Guarantor may have under this Loan Guaranty, any other agreement, or applicable law will be taken into account.

Section 10.11 Contribution.

(a) To the extent that any Loan Guarantor makes a payment under this Loan Guaranty (a "Guarantor Payment") that, taking into account all other Guarantor Payments then previously or concurrently made by any other Loan Guarantor, exceeds the amount that otherwise would have been paid by or attributable to such Loan Guarantor if each Loan Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Loan Guarantor's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Loan Guarantors as determined immediately prior to the making of such Guarantor Payment, then, following indefeasible payment in full in cash of the Guarantor Payment and Payment in Full of the Guaranteed Obligations and the termination of this Agreement, such Loan Guarantor will be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Loan Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(b) As of any date of determination, the "Allocable Amount" of any Loan Guarantor will be equal to the excess of the fair saleable value of the property of such Loan Guarantor over the total liabilities of such Loan Guarantor (including the maximum amount reasonably expected to become due in respect of contingent liabilities, calculated, without duplication, assuming each other Loan Guarantor that is also liable for such contingent liability pays its ratable share thereof), giving effect to all payments made by other Loan Guarantors as of such date in a manner to maximize the amount of such contributions.

(c) This Section 10.11 is intended only to define the relative rights of the Loan Guarantors, and nothing set forth in this Section 10.11 is intended to or will impair the obligations of the Loan Guarantors, jointly and severally, to pay any amounts as and when the same become due and payable in accordance with the terms of this Loan Guaranty.

(d) The parties hereto acknowledge that the rights of contribution and indemnification hereunder constitute assets of the Loan Guarantor or Loan Guarantors to which such contribution and indemnification is owing.

(e) The rights of the indemnifying Loan Guarantors against other Loan Guarantors under this Section 10.11 will be exercisable upon Payment in Full of the Guaranteed Obligations and the termination of this Agreement.

Section 10.12 Liability Cumulative. The liability of each Loan Party as a Loan Guarantor under this Article 10 is in addition to, and is cumulative with, all liabilities of each Loan Party to the Administrative Agent, the Issuing Banks, and the Lenders under this Agreement and the other Loan Documents to which such Loan Party is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

Section 10.13 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally, and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guarantee in respect of a Swap Obligation (provided that, each Qualified ECP Guarantor will only be liable under this Section 10.13 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 10.13 or otherwise under this Loan Guaranty voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). Except as otherwise provided herein, the obligations of each Qualified ECP Guarantor under this Section 10.13 will remain in full force and effect until the termination of all Swap Obligations. Each Qualified ECP Guarantor intends that this Section 10.13 constitute, and this Section 10.13 will be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

ARTICLE 11

The Borrower Representative

Section 11.01 Appointment; Nature of Relationship. Allbirds is hereby appointed by each of the Borrowers as its contractual representative (herein referred to as the “Borrower Representative”) hereunder and under each other Loan Document, and each of the Borrowers irrevocably authorizes the Borrower Representative to act as the contractual representative of such Borrower with the rights and duties expressly set forth herein and in the other Loan Documents. The Borrower Representative agrees to act as such contractual representative upon the express conditions contained in this Article 11. Additionally, the Borrowers hereby appoint the Borrower Representative as their agent to receive all of the proceeds of the Loans in the Funding Account(s), at which time the Borrower Representative will promptly disburse such Loans to the appropriate Borrower(s), provided that, in the case of a Revolving Loan, such amount will not exceed Availability. The Administrative Agent and the Lenders, and their respective officers, directors, agents, and employees, will not be liable to the Borrower Representative or any Borrower for any action taken or omitted to be taken by the Borrower Representative or the Borrowers pursuant to this Section 11.01.

Section 11.02 Powers. The Borrower Representative will have and may exercise such powers under the Loan Documents as are specifically delegated to the Borrower Representative by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Borrower Representative will have no implied duties to the Borrowers, or any obligation to the

Lenders to take any action thereunder except any action specifically provided by the Loan Documents to be taken by the Borrower Representative.

Section 11.03 Employment of Agents. The Borrower Representative may execute any of its duties as the Borrower Representative hereunder and under any other Loan Document by or through authorized officers.

Section 11.04 Notices. Each Borrower will immediately notify the Borrower Representative of the occurrence of any Default hereunder referring to this Agreement describing such Default and stating that such notice is a "notice of default". In the event that the Borrower Representative receives such a notice, the Borrower Representative will give prompt notice thereof to the Administrative Agent and the Lenders. Any notice provided to the Borrower Representative hereunder will constitute notice to each Borrower on the date received by the Borrower Representative.

Section 11.05 Successor Borrower Representative. Upon the prior written consent of the Administrative Agent, the Borrower Representative may resign at any time, such resignation to be effective upon the appointment of a successor Borrower Representative. The Administrative Agent will give prompt written notice of such resignation to the Lenders.

Section 11.06 Execution of Loan Documents; Borrowing Base Certificate. The Borrowers hereby empower and authorize the Borrower Representative, on behalf of the Borrowers, to execute and deliver to the Administrative Agent and the Lenders the Loan Documents and all related agreements, certificates, documents, or instruments as are necessary or appropriate to effect the purposes of the Loan Documents, including the Borrowing Base Certificates and the Compliance Certificates. Each Borrower agrees that any action taken by the Borrower Representative or the Borrowers in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by the Borrower Representative of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, will be binding upon all of the Borrowers.

Section 11.07 Reporting. Each Borrower hereby agrees that such Borrower will furnish promptly after each fiscal month to the Borrower Representative a copy of its Borrowing Base Certificate and any other certificate or report required hereunder or requested by the Borrower Representative on which the Borrower Representative will rely to prepare the Borrowing Base Certificates and Compliance Certificate required pursuant to the provisions of this Agreement.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 333-260696, 333-260697, and 333-263892 on Form S-8 of our report dated March 10, 2023, relating to the financial statements of Allbirds, Inc. appearing in this Annual Report on Form 10-K for the year ended December 31, 2022.

/s/ Deloitte & Touche LLP

San Francisco, California
March 10, 2023

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Joseph Zwillinger, certify that:

1. I have reviewed this Annual Report on Form 10-K of Allbirds, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 10, 2023

/s/ Joseph Zwilling

Joseph Zwilling

Co-Chief Executive Officer

(Principal Executive Officer)

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Michael Bufano, certify that:

1. I have reviewed this Annual Report on Form 10-K of Allbirds, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 10, 2023

/s/ Michael Bufano
Michael Bufano
Chief Financial Officer
(Principal Financial Officer)

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350) as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, Joseph Zwilling, Co-Chief Executive Officer of Allbirds, Inc. (the "Company"), hereby certifies that, to the best of his knowledge:

1. The Company's Annual Report on Form 10-K for the period ended December 31, 2022, to which this Certification is attached as Exhibit 32.1 (the "Periodic Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and
2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 10, 2023

/s/ Joseph Zwilling
Joseph Zwilling
Co-Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350) as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, Michael Bufano, Chief Financial Officer of Allbirds, Inc. (the "Company"), hereby certifies that, to the best of his knowledge:

1. The Company's Annual Report on Form 10-K for the period ended December 31, 2022, to which this Certification is attached as Exhibit 32.2 (the "Periodic Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act; and
2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 10, 2023

/s/ Michael Bufano

Michael Bufano
Chief Financial Officer
(Principal Financial Officer)