UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

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

Date of Report (Date of earliest event reported): September 24, 2024

KINGSWAY FINANCIAL SERVICES INC.

(Exact name of registrant as specified in its charter)

Delaware	**001-15204**	**85-1792291**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)
10 S. Riverside Plaza, Suite 1520 Chicago, IL (Address of principal executive offices)		**60606** (Zip Code)

Registrant's telephone number, including area code: **(312) 766-2138**

Former name or former address, if changed since last report: **Not Applicable**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:
☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	**Trading Symbol**	**Name of each exchange on which registered**
Common Stock, par value $0.01 per share	KFS	New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

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

Item 1.01 Entry into a Material Definitive Agreement.

Private Placement of Class B Preferred Stock

On September 24, 2024, Kingsway Financial Services Inc., a Delaware corporation (the "Company"), entered into certain Subscription Agreements (the "Subscription Agreements") pursuant to which the Company issued and sold in a private placement (the "Private Placement") to accredited investors in the aggregate 330,000 shares of a newly created class of preferred stock designated Class B Preferred Stock, with a liquidation preference of $25 per share (the "Class B Preferred Stock"), for aggregate proceeds of $8,2500,000. The shares of Class B Preferred Stock were offered and sold without registration under the Securities Act of 1933, as amended (the "Securities Act"), in reliance upon the exemption from registration under Section 4(a)(2) of the Securities Act and/or Rule 506 of Regulation D promulgated thereunder.

On September 24, 2024 the Company filed a certificate of designations for the Class B Preferred Stock with the Delaware Secretary of State (the "Class B Certificate of Designations") which sets forth the following key terms. The following description of the Class B Certificate of Designations does not purport to be complete and is qualified in its entirety by reference to the full text of the Class B Certificate of Designations, a copy of which is attached hereto as Exhibit 3.1 and incorporated herein by reference.

Conversion Terms

Each share of Class B Preferred Stock is convertible at the option of the holder thereof into 2.6316 shares of the Company's common stock, par value $0.01 per share (the "Common Shares"), at any time prior to September 24, 2031. Subject to certain adjustments set forth in the Class B Certificate of Designations, the maximum number of Common Shares issuable upon conversion of the Class B Preferred Stock is 842,112 Common Shares. The number of Common Shares into which the Class B Preferred Stock will be convertible will be subject to adjustment in the event of certain stock dividends, subdivisions and consolidations, rights offerings, special distributions, capital reorganizations and reclassifications of Common Shares by the Company.

Dividend Terms

The Class B Preferred Stock will rank senior to all classes and series of the Company's currently outstanding capital stock. The holders of Class B Preferred Stock will, in priority to any other class or series of capital stock ranking junior to the Class B Preferred Stock, be entitled to receive fixed, cumulative, preferential cash dividends at a rate of 8% per share of Class B Preferred Stock per annum, payable in equal quarterly installments if declared by the board of directors of the Company. Dividends on outstanding shares of Class B Preferred Stock will accrue from day to day commencing on the date of issuance of each such share of Class B Preferred Stock. In the event the dividend is not paid and cumulates for a period greater than two consecutive quarters from the date of most recent dividend payment, the cash dividend rate will increase to 18% per share of Class B Preferred Stock per annum.

Liquidation Preference

In the event of the liquidation, dissolution or winding-up of the Company, the holders of Class B Preferred Stock will be entitled to receive $25.00 per share of Class B Preferred Stock, plus accrued but unpaid dividends thereon, whether declared or not, before any amount is paid or any assets distributed to holders of shares of the Company ranking junior as to the return of capital to the Class B Preferred Stock. After payment to the holders Class B Preferred Stock of the amounts so payable to the, such holders will not be entitled to share in any further payment in respect of the distribution of the assets of the Company.

Mandatory Redemption

The Company will redeem all outstanding shares of Class B Preferred Stock on September 24, 2031 for the price of $25.00 per share of Class B Preferred Stock, plus accrued but unpaid dividends thereon, whether or not declared, up to and including the date specified for redemption.

Optional Redemption

The Company shall have the option to redeem 25% of the Class B Preferred Stock it has issued following a sale of assets representing more than 15% of the Company's consolidated revenues in the prior 12 month period at a price equal to the amount that would yield a total internal rate of return of 15% on the subscription price paid to the Company for the purchase of shares of Class B Preferred Stock submitted for redemption.

Voting Rights

The holders of Class B Preferred Stock will not be entitled to receive notice of or to attend any meeting of shareholders of the Company and will not be entitled to vote at any such meeting.

Acquisition of Image Solutions, LLC

On September 26, 2024, Steel Bridge Acquisition LLC ("Kingsway Buyer"), a subsidiary of the Company, entered into a Membership Interest Purchase Agreement (the "Purchase Agreement") with Image Solutions, LLC ("IS LLC"), Post IS Holdings, LLC ("Seller") and Garrett S. Williams ("Owner", and together with Seller, the "Seller Parties") pursuant to which, subject to the terms and conditions of the Purchase Agreement, Kingsway Buyer acquired from the Seller Parties all of the issued and outstanding equity interests of IS LLC (the "Purchased Interests"). The acquisition was effective as of 12:01 a.m. Central Time on September 26, 2024.

Pursuant to the terms of the Purchase Agreement, as consideration for the Purchased Interests, Kingsway Buyer paid cash consideration equal to $19,638,454 (the "Closing Consideration"), of which $220,000 was delivered to an escrow account for purposes of satisfying (a) any post-closing working capital adjustment and (b) the Seller Parties' post-closing indemnification obligations. The Closing Consideration was financed with a combination of cash on hand and debt financing provided by Avidbank, as described below, and is subject to adjustment based on the final determination of the amount of working capital, indebtedness, transaction expenses and cash of IS LLC as of the closing.

The Purchase Agreement contains customary representations and warranties and covenants from the Seller Parties, including but not limited to representations and warranties about IS LLC's business, financial statements, material contracts, liabilities, real property, intellectual property, customers and suppliers, legal proceedings, environmental matters, employee benefit matters and tax matters. The Seller Parties are also subject to customary indemnification obligations related to breaches or misrepresentations under the Purchase Agreement, customary covenants and any losses related to transaction expenses, indebtedness and certain taxes, subject in the case of misrepresentations to a maximum liability cap equal to $120,000 in certain circumstances. In connection with the entry into the Purchase Agreement, Kingsway Buyer has obtained a customary representations and warranties insurance policy as recourse for certain losses arising out of breaches of the representations and warranties of the Seller Parties in the Purchase Agreement.

Kingsway Buyer also made customary representations and warranties and covenants, including but not limited to representations and warranties about Kingsway Buyer's authority to enter into the transaction and ability to pay the Closing Consideration. Kingsway Buyer is also subject to customary indemnification obligations related to breaches or misrepresentations under the Purchase Agreement and customary covenants, subject to a maximum liability cap, in the case of misrepresentations, equal to $120,000, and in the case of other indemnification obligations, the Closing Consideration.

The foregoing description of the Purchase Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Purchase Agreement, a copy of which is attached hereto as Exhibit 10.2 and incorporated herein by reference. The representations, warranties and covenants contained in the Purchase Agreement were made only for the purposes of the Purchase Agreement, were made as of specific dates, were made solely for the benefit of the parties to the Purchase Agreement and may not have been intended to be statements of fact but, rather, as a method of allocating risk and governing the contractual rights and relationships among the parties to the Purchase Agreement. The assertions embodied in those representations and warranties may be subject to important qualifications and limitations agreed to by the parties to the Purchase Agreement in connection with negotiating their respective terms. Moreover, the representations and warranties may be subject to a contractual standard of materiality that may be different from what may be viewed as material to stockholders. For the foregoing reasons, none of the Company's stockholders or any other person should rely on such representations and warranties, or any characterizations thereof, as statements of factual information at the time they were made or otherwise.

Avidbank Loan Agreement

On September 26, 2024, Kingsway Buyer and IS LLC (collectively, "Borrowers") entered into a new secured credit facility (the "Loan Agreement") with Avidbank as lender ("Lender"). The new facility comprises a six year $7.75 million term loan (the "Term Loan") and a two year revolving credit facility of up to $500,000 (the "Revolver"). The payment and performance by Borrowers are not guaranteed by the Company or any subsidiary of the Company not a party to the Loan Agreement.

Prior to September 26, 2027, the Term Loan is prepayable at the option of Borrowers at any time in whole or in part, provided that concurrent with any such prepayment, Borrowers shall pay an Early Termination Fee (as defined in the Loan Agreement) of between 0.75% and 1.25% of the amount prepaid, depending on the date of such prepayment. After September 26, 2027, the Term Loan is prepayable at the option of Borrowers at any time in whole or in part without premium or penalty.

Notwithstanding the foregoing, Borrowers must pay Lender, as a reduction, first in outstanding principal under the Term Loan, and second towards any outstanding Revolver, 100% of the net proceeds derived from (i) any disposition permitted under the Loan Agreement, (ii) if requested by Lender, the issuance of any additional subordinate debt permitted under the Loan Agreement or (iii) any cash received by Borrowers not in the ordinary course of business; provided, that Borrowers are not required to repay amounts to the extent such proceeds derived from clauses (i)–(iii) are utilized within 270 days after receipt to acquire equipment or other tangible assets for the business.

Borrowings under the Term Loan and the Revolver will bear interest at a rate equal to the greater of (i) the Prime Rate plus 0.50% per annum or (ii) 7.25% per annum. As of September 26, 2024, the interest rate on the Term Loan and the Revolver was 8.50%.

Amounts outstanding under the Loan Agreement may be accelerated upon the occurrence of customary events of default. In addition to various other customary covenants and commitments, the Loan Agreement requires that, subject to a limited cure right, Borrowers:

- Not permit the Fixed Charge Coverage Ratio (as defined in the Loan Agreement) for any fiscal quarter to be less than 1.15:1.00; and
- Not permit the Senior Leverage Ratio (as defined in the Loan Agreement) for any fiscal month to be greater than (i) from September 30, 2024 through August 31, 2025, 3.00:1.00, (ii) from September 30, 2025 through August 31, 2026, 2.75:1.00 and (iii) from September 30, 2026 and each fiscal month thereafter, 2.50:1.00.

The foregoing description of the Loan Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Loan Agreement, a copy of which is attached hereto as Exhibit 10.3 and incorporated herein by reference.

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

The information provided in response to Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities.

The information provided in response to Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02. The offer and sale of the Class B Preferred Stock in the Private Placement was made in reliance on the exemption from registration afforded under Section 4(a)(2) of the Securities Act and/or Rule 506 of Regulation D promulgated under the Securities Act. This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

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

On September 24, 2024, the Company filed the Class B Certificate of Designations with the Secretary of State of the State of Delaware. The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 5.03.

Item 7.01 Regulation FD Disclosure.

On September 27, 2024, the Company issued a press release announcing the acquisition of IS LLC. The press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

The information contained in this Item 7.01 and Exhibit 99.1 attached hereto shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that Section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as expressly set forth by specific reference in such filing.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
3.1	Class B Certificate of Designations
10.1	Form of Subscription Agreement – Legal Entity
10.2	Form of Subscription Agreement – Individual Investor
10.3	Membership Interest Purchase Agreement, dated as of September 26, 2024, by and among Steel Bridge Acquisition LLC, Image Solutions, LLC, Post IS Holdings, LLC and Garrett S. Williams*
10.4	Credit Agreement, dated as of September 26, 2024, between Image Solutions, LLC, Steel Bridge Acquisition LLC and Avidbank*
99.1	Kingsway Financial Services Inc. press release, dated September 27, 2024
104	Cover Page Interactive Data File

*The annexes, schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company agrees to furnish supplementally a copy of such annexes, schedules and exhibits, or any section thereof, to the Securities and Exchange Commission upon request.

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 hereunto duly authorized.

KINGSWAY FINANCIAL SERVICES INC.

Date: September 27, 2024

By: /s/ Kent A. Hansen
Name: Kent A. Hansen
Title: Chief Financial Officer

Exhibit 3.1

KINGSWAY FINANCIAL SERVICES INC.

CERTIFICATE OF DESIGNATIONS
OF
CLASS B PREFERRED STOCK

Pursuant to Section 151 of the Delaware General Corporation Law (as amended, supplemented or restated from time to time, the "DGCL"), Kingsway Financial Services Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), in accordance with the provisions of Section 103 of the DGCL, does hereby certify that:

Article Fourth of the Certificate of Incorporation of the Corporation (the "Certificate of Incorporation") provides that the total number of shares of all classes of stock that the Corporation shall have authority to issue is fifty one million (51,000,000), which shall include one million (1,000,000) shares of preferred stock, par value $0.01 per share (the "Preferred Stock"), of which two hundred twenty two thousand eight hundred seventy six (222,876) are designated as Class A Preferred Stock.

Article Fourth Section B of the Certificate of Incorporation authorizes the Board of Directors of the Corporation (the "Board"), to fix from time to time by resolution or resolutions the number of shares of any class or series of Preferred Stock, and to determine the voting powers (if any), designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions thereof, of any such class or series.

Pursuant to the authority conferred on the Board by the Certificate of Incorporation, the Board duly adopted the following resolution, effective September 11, 2024, designating a new series of Preferred Stock titled "Class B Preferred Stock":

RESOLVED, that pursuant to authority expressly granted to and vested in the Board and pursuant to the provisions of the Certificate of Incorporation and the provisions of Section 151 of the DGCL, the Board hereby authorizes and creates a series of preferred stock, herein designated as the Class B Preferred Stock, par value $0.01 per share, which shall consist of three hundred and thirty thousand (330,000) shares of the one million (1,000,000) shares of preferred stock which the Corporation now has authority to issue, and the Board hereby fixes the powers and preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions thereof, of the Class B Preferred Stock as follows:

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

"Board" has the meaning set forth in the Preamble hereof.

"Business Day" means a day other than a Saturday, a Sunday or any other day that is treated as a holiday for the purpose of legislation in the United States or in the municipality in which the registered office of the Corporation is located.

"Capital Reorganization" has the meaning set forth in Section 3(d)(iv).

"Certificate of Designations" means this Certificate of Designations of Class B Preferred Stock.

"Certificate of Incorporation" has the meaning set forth in the Preamble hereof.

"certificate of the Corporation" means a written certificate of the Corporation signed on behalf of the Corporation by any two of the officers or directors of the Corporation having knowledge of the matters therein affirmed.

"Class B Preferred Stock" has the meaning set forth in Section 2(a).

"Common Stock" means the common stock which the Corporation is authorized to issue.

"Common Stock Reorganization" has the meaning set forth in Section 3(d)(i).

"Conversion Basis" means 2.63158 shares of Common Stock for each share of Class B Preferred Stock converted, subject to adjustment as provided herein.

"Conversion Right" has the meaning set forth in Section 3(a). "Corporation" has the meaning set forth in the Preamble hereof.

"Current Market Price" means the arithmetic average of the daily volume weighted average price (VWAP) of the Common Stock on the stock exchange on which the Common Stock is then listed or quoted or, if not then listed or quoted on a stock exchange but reported on an over- the-counter market, the most recent bid price per share of the Common Stock, in each case for each of the thirty (30) consecutive Trading Days commencing forty-five (45) Trading Days before the date for determining the Current Market Price or, if the Common Stock is not listed or quoted on any stock exchange or over-the-counter market, such price as may be determined by the Board after consideration of an independent third party valuation of the Common Stock.

"DGCL" means the Delaware General Corporation Law, as amended from time to time.

"Dividend Payment Date" means the first day of each of January, April, July and October in each year.

"Dividend Quarter" means the period from but excluding a Dividend Payment Date to and including the next succeeding Dividend Payment Date.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Issue Date" means, as to each share of Class B Preferred Stock, the date on which such share of Class B Preferred Stock is issued.

"Mandatory Redemption Date" means September 24, 2031.

"Mandatory Redemption Price" has the meaning set forth in Section 5(c).

"Optional Redemption Price" means, in respect of the Optional Redemption, a price equal to the amount that would yield a Total Internal Rate of Return of 15% on the subscription price paid to the Corporation for the purchase of shares of Class B Preferred Stock submitted for redemption.

"Preferred Stock" has the meaning set forth in the Preamble hereof.

"ranking as to the return of capital" means ranking with respect to the distribution of assets in the event of the liquidation, dissolution or winding up of the Corporation, or other distribution of assets of the Corporation among its shareholders for the purpose of winding up its affairs, whether voluntary or involuntary.

"Reclassification" has the meaning set forth in Section 3(d)(v). "Rights Offering" has the meaning set forth in Section 3(d)(ii).

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Special Distribution" has the meaning set forth in Section 3(d)(iii).

"Stated Value" means an amount equal to twenty five dollars ($25) per share of Class B Preferred Stock.

"Total Internal Rate of Return" means, in respect of any redeemed shares of Class B Preferred Stock held by the holder thereof, the annual rate based on a 365-day period used to discount each cash flow in respect of such redeemed shares of Class B Preferred Stock (such cash flow to include subscription price paid to the Corporation, cash dividends received by the holder, and cash received by the holder from the redemption of such shares) to the Issue Date of such redeemed shares of Class B Preferred Stock such that the present value of the aggregate of such cash flow equals zero. In connection with any calculation required hereunder, the Total Internal Rate of Return will be calculated with reference to the period from the Issue Date to the date on which the relevant payment is made in full.

"Trading Day" means any day on which The New York Stock Exchange is open for trading, provided that if the Common Stock is not listed on The New York Stock Exchange on any day which is intended to be a Trading Day for the purposes hereof, "Trading Day" shall mean any day that any other stock exchange or over-the-counter market on which the Common Stock is listed or quoted, as shall be specified for such purpose by the Board, is open for trading and any reference to price on The New York Stock Exchange shall be deemed to mean price on such other exchange or over-the-counter market.

Section 2. Designation and Number. The class of non-voting preferred stock created hereby shall be designated as the Corporation's Class B Preferred Stock, par value $0.01 per share (the "Class B Preferred Stock") and the number of authorized shares so designated and constituting the Class B Preferred Stock shall be three hundred and thirty thousand (330,000) shares, which number may be increased or decreased (but not below the number of shares of Class B Preferred Stock then outstanding) by further resolution duly adopted by the Board.

Section 3. Conversion Privilege.

(a) Right to Convert. The holders of Class B Preferred Stock shall have the right (the "Conversion Right"), exercisable at any time, to convert all or any part of their shares of Class B Preferred Stock into a number of shares of Common Stock equal to the Conversion Basis.

(b) Exercise of Conversion Right. Any holder of Class B Preferred Stock desiring to exercise the Conversion Right shall provide the Corporation (whether via electronic mail or otherwise) a written conversion notice in the form attached hereto as Annex A, (i) specifying the number of shares of Class B Preferred Stock to be converted, and shall present and surrender to the Corporation at its registered office the certificate or certificates representing the shares of Class B Preferred Stock to be converted, if certificated, (ii) naming the persons in whose name the shares of Common Stock are to be registered, and (iii) stating the number of shares of Common Stock to be issued to each. If any of the shares of Common Stock is to be issued to persons other than the holder of such shares of Class B Preferred Stock, all other conditions precedent to the Corporation's duty to register a transfer of shares shall also be satisfied. On the date of such delivery and if such conditions are satisfied, each person in whose name the shares of Common Stock are to be issued as designated in the notice shall be deemed for all purposes the holder of fully paid shares of Common Stock in the number designated in such notice (not exceeding in aggregate as among such persons the total number of shares of Common Stock resulting from the conversion) and such persons shall be entitled to the delivery by the Corporation, in its discretion, of certificates representing their Common Stock or evidence of ownership in book-entry form. Upon the conversion of shares of Class B Preferred Stock, the converted shares of Class B Preferred Stock shall be automatically cancelled and shall thereafter cease to represent any entitlement or equity interest in the Corporation.

(c) No Adjustment for Accrued Dividends. Upon the conversion of any shares of Class B Preferred Stock into Common Stock there shall be no payment by the Corporation on account of any dividends accrued but unpaid on the shares of Class B Preferred Stock.

(d) Adjustment of Conversion Basis. The Conversion Basis shall be subject to adjustment from time to time in accordance with the following provisions:

(i) Stock Dividends, Subdivisions and Consolidations by Corporation. If the Corporation shall:

(A) issue Common Stock or securities exchangeable for or convertible into Common Stock without further payment pursuant to a stock dividend to all or substantially all of the holders of Common Stock;

(B) make a distribution on its issued and outstanding Common Stock payable in Common Stock or securities exchangeable for or convertible into Common Stock without further payment;

(C) subdivide its issued and outstanding Common Stock into a greater number of shares of Common Stock; or

(D) consolidate its issued and outstanding Common Stock into a smaller number of shares of Common Stock;

(any such event being called a "Common Stock Reorganization"), the Conversion Basis then in effect shall be adjusted effective immediately after the record date on which the holders of Common Stock are determined for the purposes of the Common Stock Reorganization based on the following formula:

$$CB_1 = CB_0 \times (OS_1 / OS_0)$$

CB_1 = the new Conversion Basis in effect immediately after the record date on which the holders of Common Stock are determined for the purposes of the Common Stock Reorganization.

CB_0 = the Conversion Basis in effect immediately prior to the record date on which the holders of Common Stock are determined for the purposes of the Common Stock Reorganization.

OS_1 = the number of shares of Common Stock which will be issued and outstanding after the completion of such Common Stock Reorganization, including in the case where securities exchangeable for or convertible into Common Stock are distributed, the number of shares of Common Stock that would be issued and outstanding had all of such securities been exchanged for or converted into Common Stock on such record date.

OS_0 = the number of shares of Common Stock issued and outstanding on such record date.

(ii) Rights Offerings by Corporation. If the Corporation shall distribute rights, options or warrants exercisable within a period of forty-five (45) days after the record date for such distribution to subscribe for or purchase Common Stock or securities exchangeable for or convertible into Common Stock at a price per share of Common Stock or at an exchange or conversion value per Common Share in the case of securities exchangeable for or convertible into Common Stock equal to or less than ninety percent (90%) of the Current Market Price for the Common Stock determined as of the record date for such distribution, to all or substantially all of the holders of Common Stock (any such event being called a "Rights Offering"), the Conversion Basis then in effect shall be adjusted effective immediately after the record date on which holders of Common Stock are determined for purposes of the Rights Offering based on the following formula:

$$CB_1 = CB_0 \times ((OS_0 + X) / (OS_0 + ((X \times Y)/CMP))$$

CB_1 = the new Conversion Basis in effect immediately after the record date on which the holders of Common Stock are determined for the purposes of the Rights Offering.

CB_0 = the Conversion Basis in effect immediately prior to the record date on which the holders of Common Stock are determined for the purposes of the Rights Offering.

OS_0 = the number of shares of Common Stock issued and outstanding on such record date.

X = the number of shares of Common Stock offered pursuant to the Rights Offering or the maximum number of shares of Common Stock for or into which the securities so offered pursuant to the Rights Offering may be exchanged or converted, as the case may be.

Y = the price at which each one of such shares of Common Stock is offered or the exchange or conversion value of each one of such securities of offered pursuant to the Rights Offering, as the case may be.

CMP = the Current Market Price for the Common Stock determined as of such record date.

To the extent that such options, rights or warrants are not exercised prior to the expiry date thereof, the Conversion Basis shall be readjusted effective immediately after such expiry date to the Conversion Basis which would then have been in effect based upon the number of shares of Common Stock or securities exchangeable for or convertible into shares of Common Stock actually issued on the exercise of such options, rights or warrants.

(iii) Special Distributions by Corporation. If the Corporation shall distribute to all or substantially all of the holders of Common Stock:

(A) shares of any class other than Common Stock;

(B) rights, options or warrants, other than rights, options or warrants referred to in Section 3(d)(ii) hereof and other than rights, options or warrants exercisable within a period of forty-five (45) days after the record date for such distribution to subscribe for or purchase Common Stock or securities exchangeable for or convertible into Common Stock at a price per Common Share or at an exchange or conversion value per Common Share greater than ninety percent (90%) of the Current Market Price for the Common Stock determined as of the record date for such distribution;

(C) evidences of indebtedness; or

(D) any other assets, excluding Common Stock issued by way of stock dividends and cash dividends paid out of earnings including the value of any shares or other property distributed in lieu of such cash dividends at the option of shareholders; and

such issue or distribution does not constitute a Common Stock Reorganization or a Rights Offering (any such event being called a "Special Distribution"), the Conversion Basis then in effect shall be adjusted effective immediately after the record date on which the holders of Common Stock are determined for the purpose of the Special Distribution based on the following formula:

$$CB_1 = CB_0 \times ((OS_0 \times CMP) / ((OS_0 \times CMP) - FV))$$

CB_1 = the new Conversion Basis in effect immediately after the record date on which the holders of Common Stock are determined for the purpose of the Special Distribution.

CB_0 = the Conversion Basis in effect immediately prior to the record date on which the holders of Common Stock are determined for the purpose of the Special Distribution.

OS_0 = the number of shares of Common Stock issued and outstanding on such record date.

CMP = the Current Market Price for the Common Stock determined as of such record date.

FV = the fair value, as determined by the Board, whose determination shall be conclusive, to the holders of Common Stock of the shares, rights, options, warrants, evidences of indebtedness or other assets issued or distributed in the Special Distribution, in the aggregate.

(iv) Other Reorganizations by Corporation. If and whenever there is a capital reorganization of the Corporation not otherwise provided for in this Section 3(d) or a consolidation, merger or amalgamation of the Corporation with or into another body corporate (any such event being called a "Capital Reorganization"), any holder of Class B Preferred Stock who exercises the Conversion Right after the effective date of such Capital Reorganization shall be entitled to receive and shall accept, upon the exercise of such right, in lieu of the number of shares of Common Stock to which such holder was theretofore entitled on conversion, the aggregate number of shares or other securities of the Corporation or of the body corporate resulting from the Capital Reorganization that such holder would have been entitled to receive as a result of such Capital Reorganization if, on the effective date thereof, such holder had been the registered holder of the number of shares of Common Stock to which such holder was theretofore entitled upon conversion, subject to adjustment thereafter in accordance with provisions the same, as nearly as may be possible, as those contained in Section 3(d)(i) – (iii); provided that no such Capital Reorganization shall be made effective unless all necessary steps shall have been taken so that the holders of Class B Preferred Stock shall thereafter be entitled to receive such number of such shares or other securities of the Corporation or of the body corporate resulting from the Capital Reorganization.

(v) Reclassification by Corporation. If the Corporation shall reclassify the issued and outstanding Common Stock (such event being called a "Reclassification"), the Conversion Basis shall be adjusted effective immediately after the record date of such Reclassification so that holders of Class B Preferred Stock who exercise the Conversion Right thereafter shall be entitled to receive the shares that such holders would have received had such shares of Class B Preferred Stock been converted immediately prior to such record date, subject to adjustment thereafter in accordance with provisions the same, as nearly as may be possible, as those contained in Section 3(d)(i) – (iii).

(vi) Adjustment Rules. The following rules and procedures shall be applicable to adjustments of the Conversion Basis made pursuant to this Section 3(d):

(A) No adjustment in the Conversion Basis shall be made in respect of any event described in this Section 3(d) if the holders of the Class B Preferred Stock are entitled to participate in such event on the same terms *mutatis mutandis* as if such holders had converted their shares of Class B Preferred Stock prior to or on the effective date or record date of such event.

(B) No adjustment in the Conversion Basis shall be made pursuant to this Section 3(d) in respect of the issue from time to time of Common Stock to holders of Common Stock who exercise an option to receive substantially equivalent dividends in Common Stock or securities exchangeable for or convertible into Common Stock in lieu of receiving cash dividends, and any such issue shall be deemed not to be a Common Stock Reorganization.

(vii) Disputes. If any question arises with respect to the number of shares of Common Stock to be issued on any exercise of the Conversion Right, it shall be conclusively determined by the auditors of the Corporation or if they are unable or unwilling to act, by such other firm of independent chartered accountants as may be selected by the Board and such determination shall bind the Corporation and all shareholders of the Corporation.

(viii) No Fractions. In any case where a fraction of a share of Common Stock would otherwise be issuable on the conversion of one or more shares of Class B Preferred Stock, the number of shares of Common Stock to be issued to a holder on conversion of shares of Class B Preferred Stock into Common Stock shall be rounded down to the nearest whole number of shares of Common Stock so that no fractional shares are issuable.

Section 4. Dividends.

(a) Payment of Dividends. The holders of Class B Preferred Stock shall, in priority to the Common Stock and the shares of any other class or series ranking junior to the Class B Preferred Stock, be entitled to receive, and the Corporation shall pay thereon, if, as and when declared by the Board, out of monies of the Corporation properly applicable to the payment of dividends, fixed, cumulative, preferential cash dividends at an annual rate (as a percentage of the Stated Value) equal to eight percent (8%) per share of Class B Preferred Stock per annum, payable in equal quarterly installments on each Dividend Payment Date. Subject to Section 3(c), dividends on outstanding shares of Class B Preferred Stock shall accrue from day to day from the Issue Date of such shares of Class B Preferred Stock with the initial dividend to be determined in accordance with Section 4(b), but shall not be payable on a Dividend Payment Date unless declared by the Board. In the event that the Corporation has not paid dividends to the holders of the Class B Preferred Stock for a period greater than two (2) consecutive quarters, the fixed, cumulative, preferential cash dividend payable per share of Class B Preferred Stock will then increase to an annual rate (as a percentage of the Stated Value) equal to eighteen percent (18%) per annum, until such time as the Corporation again becomes current on dividend payments, payable in equal quarterly installments on each Dividend Payment Date on a prospective basis. The holders of Class B Preferred Stock shall not be entitled to any dividends other than or in excess of the fixed, cumulative, preferential cash dividends provided for herein. Additionally, a holder of Class B Preferred Stock shall not be entitled to receive a dividend on any shares of Class B Preferred Stock in respect of which a notice of conversion has been delivered under Section 3(b) if the notice is delivered prior to the date for payment of such dividend (unless the conversion right was exercised following receipt of a notice of redemption in which case such holder will be entitled to such dividends).

(b) Dividends for a Partial Quarter. The amount of the dividend or amount calculated by reference to the dividend for any period which is less than a Dividend Quarter with respect to any share of Class B Preferred Stock:

(i) for the period from the Issue Date of such share of Class B Preferred Stock to the first Dividend Payment Date;

(ii) which is redeemed or purchased during such Dividend Quarter; or

(iii) where assets of the Corporation are distributed to the holders of Class B Preferred Stock pursuant to Section 7 hereof during such Dividend Quarter;

shall be paid on a pro rata basis based on the number of days in such Dividend Quarter that such share of Class B Preferred Stock has been outstanding (excluding the Dividend Payment Date at the beginning of such Dividend Quarter if such share of Class B Preferred Stock was outstanding on that date and including the date of redemption, purchase or distribution or the Dividend Payment Date at the end of such Dividend Quarter if such share of Class B Preferred Stock was outstanding on that date).

(c) Payment Procedure. The Corporation shall pay the dividends on the shares of Class B Preferred Stock (less any tax required to be deducted or withheld by the Corporation) by electronic funds transfer or by check(s) drawn on a chartered bank or trust company and payable in lawful money of the United States at any branch of such bank or trust company in the United States, or in such other manner, not contrary to applicable law, as the Corporation shall reasonably determine. The delivery or mailing of any check to a holder of Class B Preferred Stock (in the manner provided for in Section 12(c)) or the electronic transfer of funds to an account specified by such holder shall be a full and complete discharge of the Corporation's obligation to pay the dividends to such holder to the extent of the sum represented thereby (plus the amount of any tax required to be and in fact deducted and withheld by the Corporation from the related dividends as aforesaid and remitted to the proper taxing authority), unless such check is not honored when presented for payment. Subject to applicable law, dividends which are represented by a check which has not been presented to the Corporation's bankers for payment or that otherwise remain unclaimed for a period of six (6) years from the date on which they were declared to be payable may be reclaimed and used by the Corporation for its own purposes.

(d) Cumulative Payment of Dividends. If on any Dividend Payment Date the dividends accrued to such date are not paid in full on all of the shares of Class B Preferred Stock then outstanding, such dividend, or the unpaid part thereof, shall be paid on a subsequent date or dates determined by the Board on which the Corporation shall have sufficient monies properly applicable to the payment of such dividends.

Section 5. Redemption.

(a) Optional Redemption. After the sale of assets of the Corporation, in one or a series of related transactions (including a sale of equity securities or merger of one or more of the Corporation's subsidiaries), representing more than fifteen percent (15%) of the Corporation's total consolidated revenues in the twelve (12) month period immediately preceding such sale, then subject to the provisions of the DGCL and the Certificate of Incorporation, the Corporation may, at any time or from time to time, upon giving notice as hereinafter provided, redeem twenty five percent (25%) of the total shares of Class B Preferred Stock issued by the Corporation, on payment for each share of Class B Preferred Stock of an amount equal to the Optional Redemption Price (the "Optional Redemption").

(b) Pro-Rata Redemption. In the event the Corporation exercises the Optional Redemption pursuant to Section 5(a), the shares of Class B Preferred Stock shall be redeemed on a *pro rata* basis, disregarding fractions, according to the number of shares of Class B Preferred Stock held by each holder thereof. If only a portion of the shares of Class B Preferred Stock represented by any certificate shall be redeemed, if any, a new certificate representing the balance of such shares of Class B Preferred Stock shall be issued to the holder at the expense of the Corporation.

(c) Mandatory Redemption. Subject to the provisions of the DGCL, the Certificate of Incorporation and the provisions of this Section 5(c), the Corporation shall, upon giving notice as hereinafter provided, redeem on the Mandatory Redemption Date all of the then outstanding shares of Class B Preferred Stock, on payment for each share of Class B Preferred Stock of an amount equal to the Stated Value, together with an amount equal to all dividends, if any, previously accrued but unpaid thereon, up to and including the date specified for redemption (the whole amount constituting and being hereinafter referred to as the "Mandatory Redemption Price").

(d) Method of Redemption. In any case of redemption of shares of Class B Preferred Stock, the Corporation shall, not less than thirty (30) nor more than sixty (60) days before the date specified for redemption, send to each holder of shares of Class B Preferred Stock to be redeemed notice of the intention of the Corporation to redeem such shares of Class B Preferred Stock. Such notice shall set out the number of shares of Class B Preferred Stock held by the holder which are to be redeemed, the Mandatory Redemption Price or Optional Redemption Price, as applicable, the date specified for redemption, and the place at which holders of shares of Class B Preferred Stock may present and surrender such shares of Class B Preferred Stock for redemption, if such shares are certificated. On and after the date specified for redemption, the Corporation shall pay or cause to be paid to or to the order of the holders of the shares of Class B Preferred Stock to be redeemed the Mandatory Redemption Price or Optional Redemption Price, as applicable, for each share of Class B Preferred Stock to be redeemed on presentation and surrender, at the registered office of the Corporation or any other place specified in the notice of redemption, of the certificate or certificates representing the shares of Class B Preferred Stock called for redemption, if any. The Corporation shall have the right at any time after the giving of notice of redemption to deposit the aggregate Mandatory Redemption Price or Optional Redemption Price, as applicable, of the shares of Class B Preferred Stock called for redemption or of such of the shares of Class B Preferred Stock which are represented by certificates which have not at the date of such deposit been surrendered by the holders thereof in connection with such redemption, to a special account in any chartered bank or any trust company named in such notice or in a subsequent notice to the holders of the shares of Class B Preferred Stock in respect of which the deposit is made, to be paid without interest to or to the order of the respective holders of shares of Class B Preferred Stock called for redemption upon presentation and surrender to such bank or trust company of the certificates representing such shares of Class B Preferred Stock. Upon such deposit being made or upon the date specified for redemption, whichever is the later, the shares of Class B Preferred Stock in respect of which such deposit shall have been made shall be and be deemed to be redeemed and the rights of the holders thereof shall be limited to receiving, without interest, their proportionate part of the amount so deposited upon presentation and surrender of the certificate or certificates representing their shares of Class B Preferred Stock being redeemed, if any. Any interest on any such deposit shall belong to the Corporation. From and after the date specified for redemption in any notice of redemption, the shares of Class B Preferred Stock called for redemption shall cease to be entitled to dividends and to participate in the assets of the Corporation and the holders thereof shall not be entitled to exercise any of their other rights as holders in respect thereof unless payment of the Mandatory Redemption Price or Optional Redemption Price, as applicable, shall not be made upon presentation and surrender of the certificates in accordance with this Section 5(c), in which case the rights of the holders thereof shall remain unaffected. Redemption monies which are represented by a check which has not been presented to the drawee for payment or which otherwise remain unclaimed (including monies held on deposit in a special account as provided for above) for a period of six (6) years from the date specified for redemption shall be forfeited to the Corporation. Holders of shares of Class B Preferred Stock receiving a notice of redemption may, if so desired, exercise the Conversion Right in respect of the shares of Class B Preferred Stock to be redeemed at any time prior to the date fixed for redemption of such shares of Class B Preferred Stock unless payment of the Mandatory Redemption Price or Optional Redemption Price, as applicable, shall not be made upon presentation and surrender of the certificates in accordance with this Section 5(c), in which case the rights of the holders shall remain unaffected.

Section 6. Purchase for Cancellation.

(a) Right to Purchase from All. Notwithstanding the provisions of Section 5, but subject to the provisions of the DGCL and the Certificate of Incorporation, the Corporation may at any time or from time to time purchase for cancellation all or any part of the outstanding shares of Class B Preferred Stock at any price by invitation for tenders addressed to all of the holders of shares of Class B Preferred Stock then outstanding or in any other manner provided that the price for each share of Class B Preferred Stock so purchased for cancellation shall not exceed the Mandatory Redemption Price.

(b) Pro Rata Purchase from All. If, in response to an invitation for tenders under the provisions of this Section 6, more shares of Class B Preferred Stock are tendered at a price or prices acceptable to the Corporation than the Corporation is prepared to purchase, then the shares of Class B Preferred Stock to be purchased by the Corporation shall be purchased to the next lowest whole share as nearly as may be pro rata according to the number of shares of Class B Preferred Stock tendered by each holder who submits a tender to the Corporation or as otherwise may be required by applicable law, provided that when shares of Class B Preferred Stock are tendered at different prices, the pro rating shall be effected only with respect to shares of Class B Preferred Stock tendered at the price at which more shares of Class B Preferred Stock are tendered than the Corporation is prepared to purchase after the Corporation has purchased all of the shares of Class B Preferred Stock tendered at lower prices.

(c) Individual Purchases. Without limiting the foregoing and for the avoidance of doubt, nothing herein shall restrict the ability of the Corporation to purchase for cancellation, at any time or from time to time, any shares of Class B Preferred Stock that are tendered to the Corporation by a holder in an individual transaction at a price agreed upon by the parties to such transaction.

Section 7. Liquidation, Dissolution or Winding Up. In the event of the liquidation, dissolution or winding-up of the Corporation or other distribution of the assets of the Corporation among its shareholders for the purpose of winding up its affairs, the holders of Class B Preferred Stock shall be entitled to receive from the assets of the Corporation an amount equal to the Stated Value for each share of Class B Preferred Stock together with an amount equal to all dividends, if any, previously accrued but unpaid thereon, before any amount shall be paid by the Corporation or any assets of the Corporation shall be distributed to holders of the Common Stock or any other shares of the Corporation ranking as to the return of capital junior to the Class B Preferred Stock. After payment to the holders of shares of Class B Preferred Stock of the amounts so payable to them, such holders shall not be entitled to share in any further payment in respect of the distribution of the assets of the Corporation.

Section 8. Modification of Class. The rights, privileges, restrictions and conditions attached to the Class B Preferred Stock may be added to, changed, removed or otherwise amended only with the prior approval of the holders of the Class B Preferred Stock given as specified in Section 9 hereof, in addition to any vote or authorization required by the DGCL or these provisions. Notwithstanding the foregoing, the Board may amend this Certificate of Designations, at any time or from time to time, without the approval of the holders of the Class B Preferred Stock, in order to authorize the issuance of additional shares of Class B Preferred Stock, to the extent permitted by the Certificate of Incorporation.

Section 9. Approval of Holders of Shares of Class B Preferred Stock. The approval of the holders of Class B Preferred Stock with respect to any matters referred to in these provisions may be given as specified below:

(a) Approval and Quorum. Except as otherwise provided herein, any approval required to be given by holders of Class B Preferred Stock may be given in such manner as may then be required by law, subject to a minimum requirement that such approval be given by a resolution signed by all of the holders of the then outstanding shares of Class B Preferred Stock or by a resolution passed by the affirmative vote of at least majority of the votes cast by the holders of Class B Preferred Stock who voted in respect of that resolution at a meeting of the holders of the Class B Preferred Stock called and held for that purpose in accordance with the by-laws of the Corporation at which the holders of at least a majority of the then outstanding shares of Class B Preferred Stock are present in person or represented by proxy; provided that, if at any such meeting a quorum is not present within one half hour after the time appointed for such meeting, the meeting shall be adjourned to the same day in the next week at the same time and to such place as the chairman of the meeting may determine and, subject to the provisions of the DGCL, it shall not be necessary to give notice of such adjourned meeting. At such adjourned meeting, holders of Class B Preferred Stock then present in person or represented by proxy shall constitute a quorum and may transact the business for which the meeting was originally called and a resolution passed thereat by the affirmative vote of not less than a majority of the votes cast at such meeting shall constitute the approval of the holders of Class B Preferred Stock.

(b) Votes. On every poll taken at any meeting of the holders of Class B Preferred Stock, each holder of Class B Preferred Stock shall be entitled to one vote per share of Class B Preferred Stock held of record. Subject to the foregoing, the formalities to be observed with respect to proxies, the giving of notice and the conduct of any such meeting or any adjourned meeting shall be those from time to time prescribed in the DGCL and the bylaws of the Corporation with respect to meetings of shareholders.

Section 10. Voting Rights. The holders of Class B Preferred Stock shall not be entitled as such (except as hereinbefore or hereinafter specifically provided or as otherwise may be required by the DGCL) to receive notice of or to attend any meeting of shareholders of the Corporation and shall not be entitled to vote at any such meeting.

Section 11. Withholding Taxes and Transfer Taxes.

(a) Withholding Taxes. Notwithstanding any other provision of this Certificate of Designations, the Corporation may deduct and withhold from any payment, distribution, issuance or delivery (whether in cash or other property) to be made pursuant to this Certificate of Designations any amounts required or permitted by law to be deducted or withheld from any such payment, distribution, issuance or delivery and shall remit any such amounts to the relevant tax authority as required. If the cash component of any payment, distribution, issuance or delivery to be made pursuant to this Certificate of Designations is less than the amount that the Corporation is so required or permitted to deduct or withhold, the Corporation shall be permitted to deduct and withhold from any non-cash payment, distribution, issuance or delivery to be made pursuant to this Certificate of Designations any amounts required or permitted by law by to be deducted and withheld from any such payment distribution, issuance or delivery and to dispose of such property in order to remit any amount require to be remitted to any relevant tax authority. Notwithstanding the foregoing, the amount of any payment, distribution, issuance or delivery made to a holder of Class B Preferred Stock pursuant to this Certificate of Designations shall be considered to be the amount of the payment, distribution, issuance or delivery received by such holder plus any amount deducted or withheld pursuant to this Section 11. Holders of Class B Preferred Stock shall be responsible for all withholding taxes, and any successor or replacement provision of similar effect, in respect of any payment, distribution, issuance or delivery made or credited to them pursuant to this Certificate of Designations and shall indemnify and hold harmless the Corporation on an after- tax basis for any taxes imposed on any payment, distribution, issuance or delivery made or credited to them pursuant to this Certificate of Designations. Notwithstanding anything herein inconsistent with this Section 11, the Corporation is entitled to deduct and withhold from any dividend or other amount payable to any holder of Class B Preferred Stock such amounts as the Corporation is required to deduct and withhold with respect to such payment under any provision of provincial, federal, territorial, state, local or foreign tax law. Any amounts so deducted and withheld will be treated for all purposes hereof as having been paid to the holder of the Class B Preferred stock in respect of which such deduction and withholding was made.

(b) Transfer Taxes. For greater certainty, and notwithstanding any other provision of this Certificate of Designations, the Corporation shall not be required to pay any tax which may be imposed upon the person or persons to whom shares of Class B Preferred Stock are issued in connection with the conversion of shares of Class B Preferred Stock into Common Stock in respect of the issuance of such Common Stock or the certificates therefor, or which may be payable in respect of any transfer involved in the issuance and delivery of any such certificate in the name or names other than that of the holder of the shares of Class B Preferred Stock, or deliver such certificate unless the person or persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

Section 12. Miscellaneous.

(a) Legends on Shares of Common Stock; Compliance with Securities Laws.

(i)

(A) Each share of Common Stock issued pursuant to this Certificate of Designations shall be in book-entry form, and the holder of Class B Preferred Stock's ownership thereof shall be appropriately evidenced in the stock register of the Corporation, which stock register entry and receipt given to the holder of such shares of Class B Preferred Stock in respect of any such shares of Common Stock shall contain the following notation of restrictions:

"**THE SHARES AND OTHER SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT COVERING THE TRANSFER OR AN OPINION OF COUNSEL OR OTHER EVIDENCE OF COMPLIANCE WITH THE ACT SATISFACTORY TO THE ISSUER THAT REGISTRATION UNDER SAID ACT IS NOT REQUIRED.**"

In addition, such legend or notation shall include the following language:

"**THE SHARES AND CERTAIN OTHER SECURITIES OF KINGSWAY FINANCIAL SERVICES INC. (THE "COMPANY") ARE SUBJECT TO THE SUBSCRIPTION AGREEMENT BETWEEN THE COMPANY AND THE OTHER PARTY THERETO, DATED AS OF SEPTEMBER 24, 2024, AS IT MAY BE AMENDED AND SUPPLEMENTED FROM TIME TO TIME. THE SUBSCRIPTION AGREEMENT CONTAINS, AMONG OTHER THINGS, CERTAIN PROVISIONS RELATING TO THE TRANSFER OF THE SHARES SUBJECT TO THE SUBSCRIPTION AGREEMENT. NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION, GIFT OR OTHER DISPOSITION OF THE SHARES OR OTHER SECURITIES OF THE COMPANY, DIRECTLY OR INDIRECTLY, MAY BE MADE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF SUCH SUBSCRIPTION AGREEMENT. THE HOLDERS OF SHARES AND OTHER SECURITIES AGREE TO BE BOUND BY ALL THE PROVISIONS OF SUCH SUBSCRIPTION AGREEMENT.**"

(ii) The holders of Class B Preferred Stock agree that they will, if requested by the Corporation, deliver at their expense to the Corporation an opinion of reputable U.S. counsel selected by the holder of Class B Preferred Stock and reasonably acceptable to the Corporation, in form and substance reasonably satisfactory to the Corporation:

(A) that any transfer of such shares of Common Stock made, other than in connection with an offering registered under the Securities Act by the Corporation or pursuant to Rule 144 under the Securities Act, does not require registration under the Securities Act; and

(B) at such time as such shares of Common Stock are freely transferable without volume and manner of sale restrictions pursuant to Rule 144 under the Securities Act, and with respect to this clause (B), following receipt of such opinion the Corporation agrees that it will deliver or cause to be delivered to the holder of Class B Preferred Stock (if so requested by the holder and in the discretion of the Corporation) a replacement stock certificate or certificates representing such shares of Common Stock that is free from the legend set forth in clause (i) above, or evidence of ownership in book-entry form free of any notation in book-entry or other arrangement).

(iii) The holder of Class B Preferred Stock understands that the Class B Preferred Stock and shares of Common Stock issued pursuant to this Certificate of Designation are characterized as "restricted securities" under the federal securities laws as they are being acquired from the Corporation in a transaction not involving a public offering and that under such laws and applicable regulations the Class B Preferred Stock and shares of Common Stock may be resold without registration under the Securities Act only in certain limited circumstances. In this connection, the holder of Class B Preferred Stock represents that it is familiar with Rule 144 under the Securities Act, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act. The holder of Class B Preferred Stock represents and covenants that the Class B Preferred Stock has been purchased for investment only and not with a view to distribute or resale, and may not be sold, pledged, hypothecated or otherwise transferred unless the Class B Preferred Stock or the shares of the Common Stock issued pursuant to this Certificate of Designations are registered under the Securities Act, any other applicable securities law, or the Corporation has received an opinion of counsel satisfactory to it that registration is not required.

(b) Uncertificated Shares. The Corporation shall issue the Class B Preferred Stock in uncertificated form. If DTC discontinues providing its services as securities depositary with respect to the shares of Class B Preferred Stock, or if DTC ceases to be registered as a clearing agency under the Exchange Act, in the event that a successor securities depositary is not obtained within ninety (90) days, the Corporation will either print and deliver certificates for the shares of Class B Preferred Stock or provide for the direct registration of the Class B Preferred Stock with the transfer agent for the Class B Preferred Stock.

(c) Notice.

(i) Any notice (which term includes any communication or document) required or permitted to be given, sent, delivered or otherwise served to or upon a holder of Class B Preferred Stock pursuant to this Certificate of Designations shall, unless some other means is specifically required, be sufficiently given, sent, delivered or otherwise served if given, sent, delivered or served by prepaid mail and shall be deemed to be given, sent, delivered, served and received, if sent by prepaid mail, on the date of mailing thereof.

(ii) If there exists any actual or apprehended disruption of mail services in Canada or the United States in which there are holders of Class B Preferred Stock whose addresses appear on the books of the Corporation to be in such jurisdiction, notice may (but need not) be given to the holders in such respective jurisdictions by means of publication once in each of two successive weeks in a newspaper of general circulation published in the cities of Toronto or Chicago, as applicable. Notice given by publication shall be deemed for all purposes to be proper notice and to have been given on the day on which the first publication is completed in the city in which notice is published.

(iii) Accidental failure or omission to give notice to one or more holders of Class B Preferred Stock in any circumstance where notice is required to be given hereunder shall not affect the validity of the action, event or circumstance so concerned, but upon such failure or omission being discovered notice shall be given forthwith to such holder or holders and shall have the same force and effect as if given in due time.

(d) Governing Law. This Certificate of Designations shall be governed by and are subject to the applicable provisions of the DGCL and all other laws binding upon the Corporation and, except as otherwise expressly provided herein, all terms used herein which are defined in the DGCL shall have the respective meanings ascribed thereto in the DGCL.

(e) Record Holders. To the fullest extent permitted by applicable law, the Corporation and the Corporation's transfer agent may deem and treat the record holder of Class B Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor such transfer agent shall be affected by any notice to the contrary.

(f) Status of Converted, Redeemed, Repurchased or Cancelled Shares. If any share of Class B Preferred Stock is converted, redeemed, repurchased or otherwise acquired by the Corporation, in any manner whatsoever, the share of Class B Preferred Stock so converted, redeemed, repurchased or acquired shall, to the fullest extent permitted by applicable law, be retired and cancelled upon such conversion, redemption, repurchase or acquisition. Any share of Class B Preferred Stock so converted, redeemed, repurchased or acquired shall, upon its retirement and cancellation, and upon the taking of any action required by applicable law, become an authorized but unissued share of Class B Preferred Stock.

(g) Business Day. In the event the date on which or by which any action is required to be taken by the Corporation or any holder of Class B Preferred Stock is not a Business Day, then such action shall be required or permitted to be taken on or by the next succeeding date that is a Business Day.

(h) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designations and shall not be deemed to limit or affect any of the provisions hereof.

(i) Severability. The provisions of this Certificate of Designations shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Certificate of Designations, or the application thereof to any person or any circumstance, is found by a court or other governmental authority of competent jurisdiction to be invalid or unenforceable, the remainder of this Certificate of Designations and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction. If any provision of this Certificate of Designations is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as would be enforceable.

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

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designations to be executed by a duly authorized officer this 24th day of September, 2024.

KINGSWAY FINANCIAL SERVICES INC.

By: 

Name: John T. Fitzgerald
Title: Chief Executive Officer and President

[*Signature Page to Certificate of Designation (Class B Preferred)*]

ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF CLASS B CUMULATIVE CONVERTIBLE PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Class B Preferred Stock ("Class B Preferred Stock") indicated below, into shares of Common Stock, par value $0.01 per share (the "Common Stock"), of Kingsway Financial Services Inc., a Delaware corporation (the "Corporation"), according to the conditions set forth in the Certificate of Designations of the Class B Preferred Stock, as of the date written below. The undersigned will pay all transfer taxes payable with respect to a conversion and is delivering herewith such certificates and opinions as reasonably requested by the Corporation in accordance therewith. No fee will be charged to the holder of the Class B Preferred Stock for any conversion, except for such transfer taxes, if any.

Conversion calculations:

Date to Effect Conversion: _____

Number of shares of Common Stock owned prior to Conversion: _____

Number of shares of Class B Preferred Stock to be Converted: _____

Value of shares of Class B Preferred Stock to be Converted: _____

Number of shares of Common Stock to be Issued: _____

Certificate Number of Class B Preferred Stock attached hereto: _____

Number of Shares of Class B Preferred Stock represented by attached certificate: _____

Number of shares of Class B Preferred Stock subsequent to Conversion: _____

[HOLDER]

By: _____
Name:
Title:

Exhibit 10.1

SUBSCRIPTION AGREEMENT – LEGAL ENTITY

This SUBSCRIPTION AGREEMENT (this "**Agreement**") is entered into as of September 17, 2024 by and between _____, a _____ (the "**Subscriber**"), and Kingsway Financial Services Inc., a Delaware corporation (the "**Company**").

WHEREAS, the Company and the Subscriber are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the "**1933 Act**"), and Rule 506 of Regulation D ("**Regulation D**") as promulgated by the United States Securities and Exchange Commission (the "**Commission**") under the 1933 Act; and

WHEREAS, the Company wishes to issue, sell and deliver to the Subscriber, and the Subscriber desires to purchase and acquire from the Company, upon the terms and conditions stated in this Agreement, the number of shares of the Company's Class B Preferred Stock, par value $0.01 per share (the "**Preferred Stock**") set forth on Schedule I to this Agreement, having the voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions and terms and conditions, as specified in the form of Certificate of Designations of Class B Preferred Stock attached hereto as Annex I (the "**Certificate of Designations**").

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and the Subscriber agree as follows:

ARTICLE I

PURCHASE AND SALE/CLOSING

Section 1.01 Purchase and Sale. Subject to the terms and conditions of this Agreement, the Subscriber agrees to purchase from the Company, and the Company agrees to sell and issue to the Subscriber, at the Closing, the number of shares of Preferred Stock set forth on Schedule I (the "**Purchased Stock**") for a purchase price per share of Preferred Stock equal to twenty five dollars ($25.00) and an aggregate purchase price as set forth on Schedule I (the "**Preferred Stock Purchase Price**"). The purchase and sale of the Purchased Stock pursuant to this Section 2.01 is referred to as the "**Purchase**".

Section 1.02 Closing. The closing of the Purchase pursuant to the terms of this Agreement (the "**Closing**") shall occur on September 17, 2024 and shall take place remotely via the electronic exchange of documents and signatures (the date on which the Closing occurs, the "**Closing Date**").

Section 1.03 Payment/Deliverables. On the Closing Date:

(a) the Company shall deliver to the Subscriber (i) the Purchased Stock, free and clear of all liens, charges, claims, encumbrances, security interests or other restrictions (collectively, "**Liens**"), except restrictions imposed by the Certificate of Designations, applicable securities laws and the provisions of this Agreement, and (ii) evidence of the issuance of the Purchased Stock; and

(b) the Subscriber shall pay the Purchase Price to the Company, by wire transfer in immediately available U.S. federal funds, to the account designated by the Company in writing.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01 Representations and Warranties of the Company. The Company hereby represents and warrants as of the date hereof and as of the Closing Date (except for representations and warranties that speak as of a specific date, which shall be made as of such date) to the Subscriber:

(a) Due Organization; Authorization; Enforcement. The Company is an entity duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder. The execution and delivery by the Company of this Agreement and the consummation by it of the transactions contemplated hereunder have been duly authorized by all necessary action on the part of the Company and, other than the filing of the Certificate of Designations with the Secretary of State of the State of Delaware, no further consent or action is required by the Company, or its board of directors or stockholders in order to consummate the Closing. This Agreement has been duly executed by the Company, and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of the Company, enforceable against the Company, in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies (the "**Bankruptcy Exceptions**") and except as rights to indemnification and to contribution may be limited by federal or state securities law.

(b) No Conflicts. The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby do not and will not, upon filing the Certificate of Designations with the Secretary of State of the State of Delaware, (i) conflict with or violate any provision of the Company's certificate of incorporation or bylaws, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement to which the Company is a party or by which any property or asset of the Company is bound or affected, or (iii) result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any U.S. federal, state, provincial, local, non-U.S. or multinational government or any governmental, regulatory, administrative or self-regulatory authority, agency, bureau, board, commission, court, department, official, subdivision, tribunal or other instrumentality thereof, and any entity exercising executive, legislative, judicial, regulatory, Taxing or administrative functions of or pertaining to government, in each case that has jurisdiction over the matter in question (each a "**Governmental Authority**"), to which the Company is subject, or by which any property or asset of the Company is bound or affected; except in the case of clause (ii) or (iii) above, as would not, reasonably be expected to have or result in a material adverse effect on the ability of the Company to consummate the transactions contemplated by this Agreement.

(c) Issuance. The Purchased Stock, when issued, sold and delivered in accordance with the terms of this Agreement for the Purchased Price, will be validly issued, fully paid, and nonassessable. Subject to the accuracy of the representations and warranties of the Subscriber in this Agreement, the offer and issuance by the Company of the Purchased Stock is and will be exempt from registration under the 1933 Act.

(d) Use of Proceeds. The Company has no present intention to use any of the proceeds from the sale of the Purchased Stock other than for general corporate purposes.

Section 2.02 Representations and Warranties of the Subscriber. The Subscriber hereby represents and warrants as of the date hereof and as of the Closing Date (except for representations and warranties that speak as of a specific date, which shall be made as of such date) to the Company as follows:

(a) Due Organization; Authorization; Enforcement. The Subscriber is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has the requisite power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder. The execution and delivery by the Subscriber of this Agreement and the consummation by it of the transactions contemplated hereunder have been duly authorized by all necessary action on the part of the Subscriber and no further consent or action is required by the Subscriber, or its board of directors or stockholders in order to consummate the Closing. This Agreement has been duly executed by the Subscriber, and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of the Subscriber, enforceable against the Subscriber, in accordance with its terms, except as such enforceability may be limited by the Bankruptcy Exceptions.

(b) No Conflicts. The execution, delivery and performance of this Agreement by the Subscriber and the consummation by the Subscriber of the transactions contemplated hereby do not and will not, (i) conflict with or violate any provision of the Subscriber's certificate or articles of incorporation, bylaws, limited liability company agreement, operating agreement or other organizational documents, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Subscriber, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement to which the Subscriber is a party or by which any property or asset of the Subscriber is bound or affected, or (iii) result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any Governmental Authority to which the Subscriber is subject, or by which any property or asset of the Subscriber is bound or affected; except in the case of clause (ii) or (iii) above, as would not, reasonably be expected to prevent, impair or delay the ability of the Subscriber to consummate the transactions contemplated by this Agreement.

(c) Subscriber Status. At the time the Subscriber was offered the Purchased Stock, it was, and at the date hereof and the Closing Date it is and will be, an "accredited investor" as defined in Rule 501(a) under the 1933 Act. The information set forth on Schedule I is true and correct in all respects.

(d) Investment Intent. The Subscriber is acquiring the Purchased Stock as principal for its own account for investment purposes and not with a view to distributing or reselling such Purchased Stock or any part thereof in violation of applicable securities laws. The Subscriber understands that the Preferred Stock has not been registered under the 1933 Act, and therefore the Purchased Stock may not be sold, assigned or transferred unless pursuant to (i) an effective registration statement under the 1933 Act with respect thereto or (ii) an available exemption from the registration requirements of the 1933 Act. The Subscriber has been advised or is aware of the provisions of Rule 144 promulgated under the 1933 Act (or a successor rule thereto) (collectively, "**Rule 144**") as in effect from time to time, which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions. The Subscriber understands that the Company has no duty or obligation to register the Preferred Stock at any time.

(e) Transfer or Resale. The Subscriber understands that: (i) the Preferred Stock has not been and are not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) the Subscriber shall have delivered to the Company (if requested by the Company) an opinion of counsel to the Subscriber, reasonably satisfactory to the Company as to such counsel and to the form of opinion, to the effect that the Purchased Stock may be sold, assigned or transferred without registration under the applicable requirements of the 1933 Act, or (C) the Subscriber provides the Company with assurance reasonably satisfactory to the Company that such Purchased Stock can be sold, assigned or transferred pursuant to Rule 144 or to an accredited investor in a private transaction exempt from the registration requirements of the 1933 Act; (ii) any sale of the Purchased Stock made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144; and (iii) neither the Company nor any other person or entity is under any obligation to register the Purchased Stock under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder.

(f) Reliance on Exemptions. The Subscriber understands that the Purchased Stock is being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying upon the truth and accuracy of, and the Subscriber's compliance with, the representations, warranties, agreements, acknowledgements and understandings of such Subscriber set forth herein in order to determine the availability of such exemptions and the eligibility of the Subscriber to acquire the Purchased Stock.

(g) No Governmental Review. The Subscriber understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Purchased Stock or the fairness or suitability of the investment in the Preferred Stock or an investment in the Company nor have such authorities passed upon or endorsed the merits of the offering of the Preferred Stock.

(h) Risk Factors. The Subscriber has been made aware of and has reviewed and had the opportunity to ask questions about the risks factors that are included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2023 filed with the Commission on March 5, 2024, and any other filings with the Commission.

(i) Legends. The Subscriber understands that the certificates or other instruments representing the Purchased Stock, including any book-entry notation, shall bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

"**THE SHARES AND OTHER SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT COVERING THE TRANSFER OR AN OPINION OF COUNSEL OR OTHER EVIDENCE OF COMPLIANCE WITH THE ACT SATISFACTORY TO THE ISSUER THAT REGISTRATION UNDER SAID ACT IS NOT REQUIRED.**"

In addition, such legend or notation shall include the following language:

"**THE SHARES AND CERTAIN OTHER SECURITIES OF KINGSWAY FINANCIAL SERVICES INC. (THE "COMPANY") ARE SUBJECT TO THE SUBSCRIPTION AGREEMENT BETWEEN THE COMPANY AND THE OTHER PARTY THERETO, DATED AS OF SEPTEMBER 17, 2024, AS IT MAY BE AMENDED AND SUPPLEMENTED FROM TIME TO TIME. THE SUBSCRIPTION AGREEMENT CONTAINS, AMONG OTHER THINGS, CERTAIN PROVISIONS RELATING TO THE TRANSFER OF THE SHARES SUBJECT TO THE SUBSCRIPTION AGREEMENT. NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION, GIFT OR OTHER DISPOSITION OF THE SHARES OR OTHER SECURITIES OF THE COMPANY, DIRECTLY OR INDIRECTLY, MAY BE MADE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF SUCH SUBSCRIPTION AGREEMENT. THE HOLDERS OF SHARES AND OTHER SECURITIES AGREE TO BE BOUND BY ALL THE PROVISIONS OF SUCH SUBSCRIPTION AGREEMENT.**"

(j) Independent Investigation.

(i) The Subscriber is able to bear the economic risk of its investment in the Company and to hold the Purchased Stock for an indefinite period of time.

(ii) The Subscriber is not purchasing the Purchased Stock as a result of any advertisement, article, notice or other communication regarding the Preferred Stock published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or, to the Subscriber's knowledge, any other general solicitation or general advertisement.

(iii) The Subscriber understands the business in which the Company will be engaged. The Subscriber has such knowledge and experience in financial and business matters, that the Subscriber is capable of evaluating the merits and risks of his investment in the Company and of making an informed investment decision with respect thereto. The Subscriber has been provided sufficient information to evaluate the merits and risks of its investment and to make such a decision. The Subscriber has received and reviewed information about the Company and has had an opportunity to discuss the Company's business, management and financial affairs with its management and to review the Company's facilities. The Company has made available to the Subscriber, prior to the sale of the Purchased Stock, the opportunity to ask questions of and receive answers from an executive officer of the Company concerning the terms and conditions of the Preferred Stock and the offering thereof and to obtain any additional information necessary to verify the accuracy of the information contained in this Agreement, the Company's filings with the Commission, or any other information reasonably requested. The Subscriber acknowledges that it has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Purchased Stock and the merits and risks of investing in the Purchased Stock; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment. The Subscriber has sought such accounting, legal and tax advice as it has considered necessary to make an informed decision with respect to its acquisition of the Purchased Stock and has relied solely upon this independent investigation and other than the express representations and warranties of the Company set forth in Section 2.01, the Subscriber is not relying on, any statement, representation or warranty, oral or written, express or implied made by or on behalf of the Company.

ARTICLE III

MISCELLANEOUS

Section 3.01 Amendments; Waivers. No amendment or modification of this Agreement shall be binding or effective for any purpose unless it is made in a writing signed by the Company and the Subscriber. No waiver of this Agreement shall be binding or effective for any purpose unless it is made in a writing signed by the party against whom enforcement of such waiver is sought. No course of dealing between the parties shall be deemed to modify, amend or discharge any provision or term of this Agreement. No delay or failure by any party in the exercise of any of its rights or remedies shall operate as a waiver thereof, and no single or partial exercise by any party of any such right or remedy shall preclude any other or further exercise thereof. A waiver of any right or remedy on any one occasion shall not be construed as a bar to or waiver of any such right or remedy on any other occasion.

Section 3.02 Further Assurances. Each of the parties shall execute and deliver, both before and after the Closing, such further certificates, agreements and other documents and take such other actions as the other party may reasonably request to consummate or implement the transactions contemplated hereby or to evidence such events or matters.

Section 3.03 Governing Law; Consent to Jurisdiction; Waiver of Jury Trial.

(a) THIS AGREEMENT AND THE PERFORMANCE OF THE TRANSACTIONS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT WILL BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE. ANY AND ALL CLAIMS, CONTROVERSIES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, OR STATUTE, SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF DELAWARE, INCLUDING ITS STATUTES OF LIMITATIONS, WITHOUT GIVING EFFECT TO ANY CONFLICT-OF-LAWS OR OTHER RULES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OR STATUTES OF LIMITATIONS OF A DIFFERENT JURISDICTION.

(b) The parties irrevocably submit to the exclusive jurisdiction of the Delaware Chancery Courts located in Wilmington, Delaware, or, if such court shall not have jurisdiction, any federal court of the United States of or other Delaware state court located in Wilmington, Delaware, and appropriate appellate courts therefrom, over any dispute arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, and each party irrevocably agrees that all claims in respect of such dispute may be heard and determined in such courts. The parties irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any dispute arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement brought in such courts or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of the parties consents to process being served by any party to this Agreement in any proceeding of the nature specified in this Section 3.03 in the manner specified by the provisions of Section 3.06.

(c) EACH OF THE PARTIES ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND, THEREFORE, EACH OF THE PARTIES KNOWINGLY AND INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY PROCEEDING UNDER, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

Section 3.04 Counterparts. This Agreement and any amendment hereto or any other agreement (or document) delivered pursuant hereto may be executed in one or more counterparts and by different parties in separate counterparts. All of such counterparts shall constitute one and the same agreement (or other document) and shall become effective (unless otherwise provided therein) when one or more counterparts have been signed by each party and delivered to the other parties. Any signature page hereto delivered by facsimile machine or by e- mail (including in portable document format (pdf), or otherwise) shall be binding to the same extent as an original signature page, with regard to any agreement subject to the terms hereof or any amendment thereto and may be used in lieu of the original signatures for all purposes.

Section 3.05 Severability. If any provision of this Agreement is determined to be invalid, illegal or unenforceable by any Governmental Authority, the remaining provisions of this Agreement to the extent permitted by law shall remain in full force and effect; provided, that the essential terms and conditions of this Agreement for the parties remain valid, binding and enforceable; and provided, further, that the economic and legal substance of the transactions contemplated by this Agreement are not affected in any manner materially adverse to any party. In event of any such determination, the parties agree to negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intents and purposes hereof. To the extent permitted by law, the parties hereby to the same extent waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

Section 3.06 Notices. Any notice or other communication required or permitted hereunder, including service of process, must be given in writing and (a) delivered in person, (b) transmitted by electronic email transmission, (c) mailed by certified or registered mail (postage prepaid), receipt requested or (d) sent by Express Mail, Federal Express or other express delivery service, receipt requested, to the parties and at the addresses specified herein or to such other address or to such other person as either party shall have last designated by such notice to the other party. Each such notice or other communication shall be effective (i) if given by electronic email transmission, when transmitted to the applicable address so specified herein (provided, that no "bounceback" or similar "undeliverable" message is received by the sender thereof), (ii) if given by mail, three (3) days after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid or (iii) if given by any other means, when actually received at such address. Any notice or other communication hereunder shall be delivered as follows:

If to the Company:

Kingsway Financial Services Inc. 10 S. Riverside Plaza, Suite 1520
Chicago, Illinois 60606
Attention: John T. Fitzgerald; Kent Hansen
Email: jfitzgerald@kingsway-financial.com;
khansen@kingsway-financial.com

With a copy to:

Cadwalader, Wickersham & Taft LLP
200 Liberty Street
New York, New York 10281
Attention: Daniel Raglan
Email: daniel.raglan@cwt.com

If to the Subscriber, as set forth on Schedule I.

Section 3.07 Entire Agreement; Integration. This Agreement and the Certificate of Designations (a) constitutes the entire agreement among the parties pertaining to the subject matter hereof and (b) supersedes all prior agreements and understandings of the parties in connection therewith.

Section 3.08 Expenses. Except as otherwise provided herein, each party shall pay its own expenses incident to the negotiation, preparation and performance of this Agreement and the transactions contemplated hereby.

Section 3.09 Successors and Assigns; Benefit. The rights of any party under this Agreement shall not be assignable without the written consent of the other party. This Agreement is for the sole benefit of the parties hereto and nothing herein express or implied shall give or be construed to give to any person, other than the parties, any legal or equitable rights hereunder.

Section 3.10 Specific Performance. The parties agree that (i) in the event of any breach or threatened breach by the other party of any covenant or obligation contained in this Agreement, such non-breaching party shall be entitled to (1) a decree or order of specific performance to enforce the observance and performance of such covenant or obligation and (2) an injunction restraining such breach or threatened breach, and (ii) the right of specific enforcement is an integral part of this Agreement and without that right, no party would have entered into this Agreement. Each party further agrees that (x) it will not raise any objections to the granting of an injunction, specific performance or other equitable relief to prevent or restrain breaches or threatened breaches of, or to enforce compliance with, this Agreement, on the basis that the other party has an adequate remedy at law or an award of specific performance is not an appropriate remedy for any reason at law or equity, (y) no other party or any other person or entity shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 3.10 and (z) each party irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

Section 3.11 Interpretation. Articles, titles and headings to Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. The references herein to Sections, Articles, Exhibits and Schedules, unless otherwise indicated, are references to Sections and Articles of and Exhibits and Schedules to this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires. Any reference to a law shall include any amendment thereof or any successor thereto and any rules and regulations promulgated thereunder. In this Agreement, except to the extent that the context otherwise requires: (a) "days" means calendar days unless otherwise indicated; (b) "$" or "US$" means United States Dollars; (c) whenever the words "include", "includes" or "including" are used in this Agreement, they are deemed to be followed by the words "without limitation"; (d) the words "hereof", "herein" and "hereunder" and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement; (e) all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein; and (f) references to a person or entity are also to its permitted successors and assigns.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.

COMPANY:

Kingsway Financial Services Inc.

By: _____

Name: John T. Fitzgerald
Title: Chief Executive Officer and President

[Signature Page to Subscription Agreement]

SUBSCRIBER:

_____

By: _____
Name:
Title:

[Signature Page to Subscription Agreement – Legal Entity]

SCHEDULE I

PART 1

SUBSCRIBER INFORMATION

Number of Shares of Class B Preferred Stock Subscribed For

Aggregate Purchase Price

Name of Subscriber
(Type or Print)

Mailing Address Street

City State Zip

Signature of Subscriber

Title (if applicable)

Telephone

E-mail Address

Tax ID

PART 2

ACCREDITATION CRITERIA

TO BE COMPLETED BY ALL SUBSCRIBERS

The Company may accept any number of "accredited investors" as defined within the meaning of Rule 50 l (a) of Regulation D promulgated by the Securities and Exchange Commission. An accredited investor is one who fulfills any one of the following Criteria:

Please indicate (by a check) which criteria, if any apply:

☐ (1) A limited liability company, partnership, corporation or trust. .

☐ (2) A bank, savings and loan association or similar institution, as defined in the Securities Act of 1933, whether acting in its individual or fiduciary capacity or a broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934.

☐ (3) An insurance company as defined in the Securities Act of 1933.

☐ (4) An investment company registered under the Investment Company Act of 1940.

☐ (5) A business development company as defined in the Investment Company Act of 1940.

☐ (6) A private business development company as defined in the Investment Advisors Act of 1940.

☐ (7) A Small Business Investment Company licensed by the U.S. Small Business Administration under the Small Business Investment Act of 1958.

☐ (8) An organization described in Section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,000.

☐ (9) A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000.

☐ (10) An employee benefit plan within the meaning of Title I of the Employment Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in such Act, which is either a bank, savings and loan association, insurance company, or registered investment advisor, or if the employee benefit plan has total assets in excess of $5,000,000, or if a self-directed plan, the investment decisions are made solely by persons that are accredited investors.

☐ (11) A trust with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase Is directed by a "sophisticated" person as defined in the Securities Act of 1933.

ANNEX I

Certificate of Designations

Exhibit 10.2

SUBSCRIPTION AGREEMENT - INDIVIDUAL

This SUBSCRIPTION AGREEMENT (this "**Agreement**") is entered into as of September 17, 2024 by and between _____, a resident of _____ (the "**Subscriber**"), and Kingsway Financial Services Inc., a Delaware corporation (the "**Company**").

WHEREAS, the Company and the Subscriber are executing and delivering this Agreement in reliance upon the exemption from securities registration afforded by Section 4(a)(2) of the Securities Act of 1933, as amended (the "**1933 Act**"), and Rule 506 of Regulation D ("**Regulation D**") as promulgated by the United States Securities and Exchange Commission (the "**Commission**") under the 1933 Act; and

WHEREAS, the Company wishes to issue, sell and deliver to the Subscriber, and the Subscriber desires to purchase and acquire from the Company, upon the terms and conditions stated in this Agreement, the number of shares of the Company's Class B Preferred Stock, par value $0.01 per share (the "**Preferred Stock**") set forth on Schedule I to this Agreement, having the voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions and terms and conditions, as specified in the form of Certificate of Designations of Class B Preferred Stock attached hereto as Annex I (the "**Certificate of Designations**").

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company and the Subscriber agree as follows:

ARTICLE I

PURCHASE AND SALE/CLOSING

Section 1.01 Purchase and Sale. Subject to the terms and conditions of this Agreement, the Subscriber agrees to purchase from the Company, and the Company agrees to sell and issue to the Subscriber, at the Closing, the number of shares of Preferred Stock set forth on Schedule I (the "**Purchased Stock**") for a purchase price per share of Preferred Stock equal to twenty five dollars ($25.00) and an aggregate purchase price as set forth on Schedule I (the "**Preferred Stock Purchase Price**"). The purchase and sale of the Purchased Stock pursuant to this Section 2.01 is referred to as the "**Purchase**".

Section 1.02 Closing. The closing of the Purchase pursuant to the terms of this Agreement (the "**Closing**") shall occur on September 17, 2024 and shall take place remotely via the electronic exchange of documents and signatures (the date on which the Closing occurs, the "**Closing Date**").

Section 1.03 Payment/Deliverables. On the Closing Date:

(a) the Company shall deliver to the Subscriber (i) the Purchased Stock, free and clear of all liens, charges, claims, encumbrances, security interests or other restrictions (collectively, "**Liens**"), except restrictions imposed by the Certificate of Designations, applicable securities laws and the provisions of this Agreement, and (ii) evidence of the issuance of the Purchased Stock; and

(b) the Subscriber shall pay the Purchase Price to the Company, by wire transfer in immediately available U.S. federal funds, to the account designated by the Company in writing.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01 Representations and Warranties of the Company. The Company hereby represents and warrants as of the date hereof and as of the Closing Date (except for representations and warranties that speak as of a specific date, which shall be made as of such date) to the Subscriber:

(a) Due Organization; Authorization; Enforcement. The Company is an entity duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power and authority to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out its obligations hereunder. The execution and delivery by the Company of this Agreement and the consummation by it of the transactions contemplated hereunder have been duly authorized by all necessary action on the part of the Company and, other than the filing of the Certificate of Designations with the Secretary of State of the State of Delaware, no further consent or action is required by the Company, or its board of directors or stockholders in order to consummate the Closing. This Agreement has been duly executed by the Company, and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of the Company, enforceable against the Company, in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies (the "**Bankruptcy Exceptions**") and except as rights to indemnification and to contribution may be limited by federal or state securities law.

(b) No Conflicts. The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby do not and will not, upon filing the Certificate of Designations with the Secretary of State of the State of Delaware, (i) conflict with or violate any provision of the Company's certificate of incorporation or bylaws, (ii) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Company, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement to which the Company is a party or by which any property or asset of the Company is bound or affected, or (iii) result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any U.S. federal, state, provincial, local, non-U.S. or multinational government or any governmental, regulatory, administrative or self-regulatory authority, agency, bureau, board, commission, court, department, official, subdivision, tribunal or other instrumentality thereof, and any entity exercising executive, legislative, judicial, regulatory, Taxing or administrative functions of or pertaining to government, in each case that has jurisdiction over the matter in question (each a "**Governmental Authority**"), to which the Company is subject, or by which any property or asset of the Company is bound or affected; except in the case of clause (ii) or (iii) above, as would not, reasonably be expected to have or result in a material adverse effect on the ability of the Company to consummate the transactions contemplated by this Agreement.

(c) Issuance. The Purchased Stock, when issued, sold and delivered in accordance with the terms of this Agreement for the Purchased Price, will be validly issued, fully paid, and nonassessable. Subject to the accuracy of the representations and warranties of the Subscriber in this Agreement, the offer and issuance by the Company of the Purchased Stock is and will be exempt from registration under the 1933 Act.

(d) Use of Proceeds. The Company has no present intention to use any of the proceeds from the sale of the Purchased Stock other than for general corporate purposes.

Section 2.02 Representations and Warranties of the Subscriber. The Subscriber hereby represents and warrants as of the date hereof and as of the Closing Date (except for representations and warranties that speak as of a specific date, which shall be made as of such date) to the Company as follows:

(a) Due Organization; Authorization; Enforcement. The Subscriber has the legal capacity to enter into and to consummate the transactions contemplated by this Agreement and otherwise to carry out his or her obligations hereunder. The execution and delivery by the Subscriber of this Agreement and the consummation by such Subscriber of the transactions contemplated hereunder have been duly authorized by all necessary action on the part of the Subscriber and no further consent or action is required by the Subscriber in order to consummate the Closing. This Agreement has been duly executed by the Subscriber, and, when delivered in accordance with the terms hereof, will constitute the valid and binding obligation of the Subscriber, enforceable against the Subscriber, in accordance with its terms, except as such enforceability may be limited by the Bankruptcy Exceptions.

(b) No Conflicts. The execution, delivery and performance of this Agreement by the Subscriber and the consummation by the Subscriber of the transactions contemplated hereby do not and will not, (i) conflict with, or constitute a default (or an event that with notice or lapse of time or both would become a default) under, result in the creation of any Lien upon any of the properties or assets of the Subscriber, or give to others any rights of termination, amendment, acceleration or cancellation (with or without notice, lapse of time or both) of, any agreement to which the Subscriber is a party or by which any property or asset of the Subscriber is bound or affected, or (ii) result in a violation of any law, rule, regulation, order, judgment, injunction, decree or other restriction of any Governmental Authority to which the Subscriber is subject, or by which any property or asset of the Subscriber is bound or affected; except in the case of clause (ii) above, as would not, reasonably be expected to prevent, impair or delay the ability of the Subscriber to consummate the transactions contemplated by this Agreement.

(c) Subscriber Status. At the time the Subscriber was offered the Purchased Stock, it was, and at the date hereof and the Closing Date it is and will be, an "accredited investor" as defined in Rule 501(a) under the 1933 Act. The information set forth on Schedule I is true and correct in all respects.

(d) Investment Intent. The Subscriber is acquiring the Purchased Stock as principal for its own account for investment purposes and not with a view to distributing or reselling such Purchased Stock or any part thereof in violation of applicable securities laws. The Subscriber understands that the Preferred Stock has not been registered under the 1933 Act, and therefore the Purchased Stock may not be sold, assigned or transferred unless pursuant to (i) an effective registration statement under the 1933 Act with respect thereto or (ii) an available exemption from the registration requirements of the 1933 Act. The Subscriber has been advised or is aware of the provisions of Rule 144 promulgated under the 1933 Act (or a successor rule thereto) (collectively, "**Rule 144**") as in effect from time to time, which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions. The Subscriber understands that the Company has no duty or obligation to register the Preferred Stock at any time.

(e) Transfer or Resale. The Subscriber understands that: (i) the Preferred Stock has not been and are not being registered under the 1933 Act or any state securities laws, and may not be offered for sale, sold, assigned or transferred unless (A) subsequently registered thereunder, (B) the Subscriber shall have delivered to the Company (if requested by the Company) an opinion of counsel to the Subscriber, reasonably satisfactory to the Company as to such counsel and to the form of opinion, to the effect that the Purchased Stock may be sold, assigned or transferred without registration under the applicable requirements of the 1933 Act, or (C) the Subscriber provides the Company with assurance reasonably satisfactory to the Company that such Purchased Stock can be sold, assigned or transferred pursuant to Rule 144 or to an accredited investor in a private transaction exempt from the registration requirements of the 1933 Act; (ii) any sale of the Purchased Stock made in reliance on Rule 144 may be made only in accordance with the terms of Rule 144; and (iii) neither the Company nor any other person or entity is under any obligation to register the Purchased Stock under the 1933 Act or any state securities laws or to comply with the terms and conditions of any exemption thereunder.

(f) Reliance on Exemptions. The Subscriber understands that the Purchased Stock is being offered and sold to it in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying upon the truth and accuracy of, and the Subscriber's compliance with, the representations, warranties, agreements, acknowledgements and understandings of such Subscriber set forth herein in order to determine the availability of such exemptions and the eligibility of the Subscriber to acquire the Purchased Stock.

(g) No Governmental Review. The Subscriber understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Purchased Stock or the fairness or suitability of the investment in the Preferred Stock or an investment in the Company nor have such authorities passed upon or endorsed the merits of the offering of the Preferred Stock.

(h) Risk Factors. The Subscriber has been made aware of and has reviewed and had the opportunity to ask questions about the risks factors that are included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2023 filed with the Commission on March 5, 2024, and any other filings with the Commission.

(i) Legends. The Subscriber understands that the certificates or other instruments representing the Purchased Stock, including any book-entry notation, shall bear a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

"**THE SHARES AND OTHER SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT COVERING THE TRANSFER OR AN OPINION OF COUNSEL OR OTHER EVIDENCE OF COMPLIANCE WITH THE ACT SATISFACTORY TO THE ISSUER THAT REGISTRATION UNDER SAID ACT IS NOT REQUIRED.**"

In addition, such legend or notation shall include the following language:

"**THE SHARES AND CERTAIN OTHER SECURITIES OF KINGSWAY FINANCIAL SERVICES INC. (THE "COMPANY") ARE SUBJECT TO THE SUBSCRIPTION AGREEMENT BETWEEN THE COMPANY AND THE OTHER PARTY THERETO, DATED AS OF SEPTEMBER 17, 2024, AS IT MAY BE AMENDED AND SUPPLEMENTED FROM TIME TO TIME. THE SUBSCRIPTION AGREEMENT CONTAINS, AMONG OTHER THINGS, CERTAIN PROVISIONS RELATING TO THE TRANSFER OF THE SHARES SUBJECT TO THE SUBSCRIPTION AGREEMENT. NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION, GIFT OR OTHER DISPOSITION OF THE SHARES OR OTHER SECURITIES OF THE COMPANY, DIRECTLY OR INDIRECTLY, MAY BE MADE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF SUCH SUBSCRIPTION AGREEMENT. THE HOLDERS OF SHARES AND OTHER SECURITIES AGREE TO BE BOUND BY ALL THE PROVISIONS OF SUCH SUBSCRIPTION AGREEMENT.**"

(j) Independent Investigation.

(i) The Subscriber is able to bear the economic risk of its investment in the Company and to hold the Purchased Stock for an indefinite period of time.

(ii) The Subscriber is not purchasing the Purchased Stock as a result of any advertisement, article, notice or other communication regarding the Preferred Stock published in any newspaper, magazine or similar media or broadcast over television or radio or presented at any seminar or, to the Subscriber's knowledge, any other general solicitation or general advertisement.

(iii) The Subscriber understands the business in which the Company will be engaged. The Subscriber has such knowledge and experience in financial and business matters, that the Subscriber is capable of evaluating the merits and risks of his investment in the Company and of making an informed investment decision with respect thereto. The Subscriber has been provided sufficient information to evaluate the merits and risks of its investment and to make such a decision. The Subscriber has received and reviewed information about the Company and has had an opportunity to discuss the Company's business, management and financial affairs with its management and to review the Company's facilities. The Company has made available to the Subscriber, prior to the sale of the Purchased Stock, the opportunity to ask questions of and receive answers from an executive officer of the Company concerning the terms and conditions of the Preferred Stock and the offering thereof and to obtain any additional information necessary to verify the accuracy of the information contained in this Agreement, the Company's filings with the Commission, or any other information reasonably requested. The Subscriber acknowledges that it has been afforded (i) the opportunity to ask such questions as it has deemed necessary of, and to receive answers from, representatives of the Company concerning the terms and conditions of the offering of the Purchased Stock and the merits and risks of investing in the Purchased Stock; (ii) access to information about the Company and its financial condition, results of operations, business, properties, management and prospects sufficient to enable it to evaluate its investment; and (iii) the opportunity to obtain such additional information that the Company possesses or can acquire without unreasonable effort or expense that is necessary to make an informed investment decision with respect to the investment. The Subscriber has sought such accounting, legal and tax advice as it has considered necessary to make an informed decision with respect to its acquisition of the Purchased Stock and has relied solely upon this independent investigation and other than the express representations and warranties of the Company set forth in Section 2.01, the Subscriber is not relying on, any statement, representation or warranty, oral or written, express or implied made by or on behalf of the Company.

ARTICLE III

MISCELLANEOUS

Section 3.01 Amendments; Waivers. No amendment or modification of this Agreement shall be binding or effective for any purpose unless it is made in a writing signed by the Company and the Subscriber. No waiver of this Agreement shall be binding or effective for any purpose unless it is made in a writing signed by the party against whom enforcement of such waiver is sought. No course of dealing between the parties shall be deemed to modify, amend or discharge any provision or term of this Agreement. No delay or failure by any party in the exercise of any of its rights or remedies shall operate as a waiver thereof, and no single or partial exercise by any party of any such right or remedy shall preclude any other or further exercise thereof. A waiver of any right or remedy on any one occasion shall not be construed as a bar to or waiver of any such right or remedy on any other occasion.

Section 3.02 Further Assurances. Each of the parties shall execute and deliver, both before and after the Closing, such further certificates, agreements and other documents and take such other actions as the other party may reasonably request to consummate or implement the transactions contemplated hereby or to evidence such events or matters.

Section 3.03 Governing Law; Consent to Jurisdiction; Waiver of Jury Trial.

(a) THIS AGREEMENT AND THE PERFORMANCE OF THE TRANSACTIONS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT WILL BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE. ANY AND ALL CLAIMS, CONTROVERSIES, AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, OR STATUTE, SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF DELAWARE, INCLUDING ITS STATUTES OF LIMITATIONS, WITHOUT GIVING EFFECT TO ANY CONFLICT-OF-LAWS OR OTHER RULES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OR STATUTES OF LIMITATIONS OF A DIFFERENT JURISDICTION.

(b) The parties irrevocably submit to the exclusive jurisdiction of the Delaware Chancery Courts located in Wilmington, Delaware, or, if such court shall not have jurisdiction, any federal court of the United States of or other Delaware state court located in Wilmington, Delaware, and appropriate appellate courts therefrom, over any dispute arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, and each party irrevocably agrees that all claims in respect of such dispute may be heard and determined in such courts. The parties irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any dispute arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement brought in such courts or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of the parties consents to process being served by any party to this Agreement in any proceeding of the nature specified in this Section 3.03 in the manner specified by the provisions of Section 3.06.

(c) EACH OF THE PARTIES ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND, THEREFORE, EACH OF THE PARTIES KNOWINGLY AND INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY PROCEEDING UNDER, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT AND FOR ANY COUNTERCLAIM THEREIN.

Section 3.04 Counterparts. This Agreement and any amendment hereto or any other agreement (or document) delivered pursuant hereto may be executed in one or more counterparts and by different parties in separate counterparts. All of such counterparts shall constitute one and the same agreement (or other document) and shall become effective (unless otherwise provided therein) when one or more counterparts have been signed by each party and delivered to the other parties. Any signature page hereto delivered by facsimile machine or by e- mail (including in portable document format (pdf), or otherwise) shall be binding to the same extent as an original signature page, with regard to any agreement subject to the terms hereof or any amendment thereto and may be used in lieu of the original signatures for all purposes.

Section 3.05 Severability. If any provision of this Agreement is determined to be invalid, illegal or unenforceable by any Governmental Authority, the remaining provisions of this Agreement to the extent permitted by law shall remain in full force and effect; provided, that the essential terms and conditions of this Agreement for the parties remain valid, binding and enforceable; and provided, further, that the economic and legal substance of the transactions contemplated by this Agreement are not affected in any manner materially adverse to any party. In event of any such determination, the parties agree to negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intents and purposes hereof. To the extent permitted by law, the parties hereby to the same extent waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

Section 3.06 Notices. Any notice or other communication required or permitted hereunder, including service of process, must be given in writing and (a) delivered in person, (b) transmitted by electronic email transmission, (c) mailed by certified or registered mail (postage prepaid), receipt requested or (d) sent by Express Mail, Federal Express or other express delivery service, receipt requested, to the parties and at the addresses specified herein or to such other address or to such other person as either party shall have last designated by such notice to the other party. Each such notice or other communication shall be effective (i) if given by electronic email transmission, when transmitted to the applicable address so specified herein (provided, that no "bounceback" or similar "undeliverable" message is received by the sender thereof), (ii) if given by mail, three (3) days after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid or (iii) if given by any other means, when actually received at such address. Any notice or other communication hereunder shall be delivered as follows:

If to the Company:

Kingsway Financial Services Inc.
10 S. Riverside Plaza, Suite 1520
Chicago, Illinois 60606
Attention: John T. Fitzgerald; Kent Hansen
Email: jfitzgerald@kingsway-financial.com;
khansen@kingsway-financial.com

With a copy to:

Cadwalader, Wickersham & Taft LLP
200 Liberty Street
New York, New York 10281
Attention: Daniel Raglan
Email: daniel.raglan@cwt.com

If to the Subscriber, as set forth on Schedule I.

Section 3.07 Entire Agreement; Integration. This Agreement and the Certificate of Designations (a) constitutes the entire agreement among the parties pertaining to the subject matter hereof and (b) supersedes all prior agreements and understandings of the parties in connection therewith.

Section 3.08 Expenses. Except as otherwise provided herein, each party shall pay its own expenses incident to the negotiation, preparation and performance of this Agreement and the transactions contemplated hereby.

Section 3.09 Successors and Assigns; Benefit. The rights of any party under this Agreement shall not be assignable without the written consent of the other party. This Agreement is for the sole benefit of the parties hereto and nothing herein express or implied shall give or be construed to give to any person, other than the parties, any legal or equitable rights hereunder.

Section 3.10 Specific Performance. The parties agree that (i) in the event of any breach or threatened breach by the other party of any covenant or obligation contained in this Agreement, such non-breaching party shall be entitled to (1) a decree or order of specific performance to enforce the observance and performance of such covenant or obligation and (2) an injunction restraining such breach or threatened breach, and (ii) the right of specific enforcement is an integral part of this Agreement and without that right, no party would have entered into this Agreement. Each party further agrees that (x) it will not raise any objections to the granting of an injunction, specific performance or other equitable relief to prevent or restrain breaches or threatened breaches of, or to enforce compliance with, this Agreement, on the basis that the other party has an adequate remedy at law or an award of specific performance is not an appropriate remedy for any reason at law or equity, (y) no other party or any other person or entity shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 3.10 and (z) each party irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

Section 3.11 Interpretation. Articles, titles and headings to Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. The references herein to Sections, Articles, Exhibits and Schedules, unless otherwise indicated, are references to Sections and Articles of and Exhibits and Schedules to this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires. Any reference to a law shall include any amendment thereof or any successor thereto and any rules and regulations promulgated thereunder. In this Agreement, except to the extent that the context otherwise requires: (a) “days” means calendar days unless otherwise indicated; (b) “$” or “US$” means United States Dollars; (c) whenever the words “include”, “includes” or “including” are used in this Agreement, they are deemed to be followed by the words “without limitation”; (d) the words “hereof”, “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement; (e) all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein; and (f) references to a person or entity are also to its permitted successors and assigns.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its duly authorized officers as of the day and year first above written.

COMPANY:

Kingsway Financial Services Inc.

By: _____

Name: John T. Fitzgerald
Title: Chief Executive Officer and President

[Signature Page to Subscription Agreement]

SUBSCRIBER:

Name:

[Signature Page to Subscription Agreement – Individual Investor]

SCHEDULE I

PART 1

SUBSCRIBER INFORMATION

Number of Shares of Class B Preferred Stock Subscribed For

Aggregate Purchase Price

Name of Subscriber
(Type or Print)

Residence Address Street

City State Zip

Mailing Address Street

City State Zip

Signature of Subscriber

Telephone

E-mail Address

Signature of Joint Subscriber (if any)

Social Security #

PART 2

ACCREDITATION CRITERIA

TO BE COMPLETED BY ALL SUBSCRIBERS

The Company may accept any number of "accredited investors" as defined within the meaning of Rule 50 l (a) of Regulation D promulgated by the Securities and Exchange Commission. An accredited investor is one who fulfills any one of the following Criteria:

Please indicate (by a check) which criteria, if any, apply:

☐ (1) Individual income in excess of $200,000 in each of the two most recent years or joint income (with such investor's spouse) in excess of $300,000 in each of those years and a reasonable expectation of reaching the same income level in the current year.

☐ (2) Individual net worth, or joint net worth (with such investor's spouse), of $1,000,000 or more (excluding value of primary residence).

☐ (3) A director or executive officer of the Company.

ANNEX I

Certificate of Designations

Exhibit 10.3

MEMBERSHIP INTEREST PURCHASE AGREEMENT

BY AND AMONG

STEEL BRIDGE ACQUISITION LLC,

AS BUYER,

IMAGE SOLUTIONS, LLC,

AS THE COMPANY,

POST IS HOLDINGS, LLC,

AS SELLER,

AND

GARRETT S. WILLIAMS,

AS OWNER,

Dated as of September 26, 2024

NO AGREEMENT, ORAL OR WRITTEN, REGARDING OR RELATING TO ANY OF THE MATTERS COVERED BY THIS DRAFT AGREEMENT HAS BEEN ENTERED INTO BETWEEN OR AMONG ANY OF THE PARTIES IDENTIFIED HEREIN. THIS DOCUMENT, IN ITS PRESENT FORM OR AS IT MAY HEREAFTER BE REVISED BY ANY PARTY, WILL NOT BE OR BECOME A BINDING AGREEMENT OF THE PARTIES (OR ANY OF THEM) UNLESS AND UNTIL (AND THEN ONLY IN THE FORM THAT) IT HAS BEEN SIGNED BY ALL PARTIES HERETO. THE EFFECT OF THIS LEGEND MAY NOT BE CHANGED BY ANY ACTION OF THE PARTIES (OR ANY OF THEM).

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MEMBERSHIP INTEREST PURCHASE AGREEMENT

This **MEMBERSHIP INTEREST PURCHASE AGREEMENT** (this "Agreement"), dated as of September 26, 2024, is made and entered into by and among Steel Bridge Acquisition LLC, a Delaware limited liability company ("Buyer"), Image Solutions, LLC, a North Carolina limited liability company (the "Company"), Post IS Holdings, LLC, a North Carolina corporation ("Seller"), and Garrett S. Williams, an individual residing in the State of North Carolina ("Owner").

RECITALS

WHEREAS, prior to the Reorganization (defined below), Owner was the record and beneficial owner of all of the issued and outstanding equity interests of the Company;

WHEREAS, prior to the Closing, Owner: (i) formed Seller; (ii) subsequent to Seller's formation, contributed all of the issued and outstanding equity interests of the Company to Seller in exchange for all of the issued and outstanding equity interests of Seller (the "Contribution"); and (iii) following the Contribution, caused Seller to file an election on IRS Form 8869 to treat the Company as a "qualified subchapter S subsidiary" within the meaning of Section 1361(b)(3)(B) of the Code and any corresponding elections required under applicable state and local Laws effective as of the date of the Contribution (the "QSub Election") (the transactions described in the foregoing clauses (i) through (iii), collectively, the "Reorganization");

WHEREAS, following the Reorganization, Owner is the record and beneficial owner of all of the issued and outstanding equity interests of Seller and Seller is the record and beneficial owner of all of the issued and outstanding equity interests of the Company, and the Company is now treated as a "qualified subchapter S subsidiary" within the meaning of Section 1361(b)(3)(B) of the Code for federal and applicable state and local income Tax purposes;

WHEREAS, the parties intend that the Reorganization be treated as a reorganization within the meaning of section 368(a)(1)(F) of the Code (an "F Reorganization"); and

WHEREAS, subject to the terms and conditions set forth herein, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, one hundred percent (100%) of the issued and outstanding equity interests of the Company (the "Purchased Interests").

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS

For purposes of this Agreement, the following terms shall have the following meanings:

"Action" means any civil, criminal or administrative action, claim, litigation, arbitration, inquiry, audit, examination, investigation, or other proceeding of any nature by or before any Governmental Authority (including any Tax Contest).

"Actual Cash" has the meaning set forth in Section 2.2(b).

"Actual Indebtedness" has the meaning set forth in Section 2.2(b).

"Actual Transaction Expenses" has the meaning set forth in Section 2.2(b).

"Actual Working Capital" has the meaning set forth in Section 2.2(b).

"Adjustment Escrow Amount" means One Hundred Thousand and 00/100 Dollars ($100,000.00).

"Adjustment Shortfall" has the meaning set forth in Section 2.2(d)(ii).

"Affiliate" means, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified Person, including (a) in the case of Buyer from and after the Closing, the Company and (b) in the case of any natural person, any trust maintained for the benefit of such natural person or such natural person's spouse or descendants (whether natural or adopted). For purposes of this definition, the term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with") means the power to direct or cause the direction of the management and policies of a Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

"Affiliated Group" means any affiliated group of corporations or other entities that files a combined, consolidated, unitary or similar Tax Return that includes (or was or is required to include) the Company, including any affiliated group within the meaning of Section 1504(a) of the Code or any similar group defined under a similar provision of applicable Law.

"Agreed Amount" has the meaning set forth in Section 8.5(b).

"Agreement" has the meaning set forth in the Preamble.

"Allocation" has the meaning set forth in Section 7.4(j).

"Ancillary Agreements" means (a) the Escrow Agreement, (b) the Consulting Agreement, and (c) any other agreements, documents, instruments and/or certificates executed and delivered by the parties hereto or thereto in connection with the consummation of the Contemplated Transactions.

"Annual Financial Statements" has the meaning set forth in Section 5.4.

"Business" means any business activity engaged in by the Company on the Closing Date or in the twenty-four (24) months prior to the Closing Date, as well as any business activity contemplated by the Company as of the Closing Date with respect to which the Company had (at any time prior to the Closing Date) taken tangible steps to effectuate.

"Business Day" means any day other than Saturday, Sunday or any other day on which commercial banks in Chicago, Illinois are authorized or required by applicable Law to be closed.

"Business Personnel" means the employees of, and independent contractors providing services to, the Company.

"Buyer" has the meaning set forth in the Preamble.

"Buyer Indemnified Parties" means (a) Buyer, (b) its Affiliates and Subsidiaries (which, after the Closing, shall include the Company), (c) their respective equityholders, members, partners, and Representatives, and (d) their respective heirs, executors, successors, and permitted assigns.

"Cap" has the meaning set forth in Section 8.4(a).

"CARES Act" means the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116-136), together with all rules and regulations and guidance issued by any Governmental Authority with respect thereto.

"Cash" means the aggregate cash and cash equivalents (including bank account balances, marketable securities, and short term investments), less uncashed checks (including checks in transit) and drafts, security deposits, restricted cash, and any other cash or cash equivalents that are not freely usable, of the Company calculated in accordance with GAAP.

"CERCLIS" has the meaning set forth in Section 5.15(h).

"Chosen Courts" has the meaning set forth in Section 9.12.

"Claimed Amount" has the meaning set forth in Section 8.5(b).

"Claims" has the meaning set forth in Section 7.3(a).

"Closing" has the meaning set forth in Section 3.1.

"Closing Date" has the meaning set forth in Section 3.1.

"Closing Statement" has the meaning set forth in Section 2.2(b).

"Closing Statement Objection Notice" has the meaning set forth in Section 2.2(c).

"Closing Statement Review Period" has the meaning set forth in Section 2.2(c).

"COBRA" means the provisions for the continuation of health care enacted by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and as codified in Section 4980B of the Code and Section 601 et seq. of ERISA, and the rules and regulations promulgated under the applicable provisions of the Code and ERISA.

"Code" means the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

"Company" means Image Solutions, LLC, a North Carolina limited liability company.

"Company Intellectual Property" has the meaning set forth in Section 5.13(b).

"Company IP Registrations" has the meaning set forth in Section 5.13(b).

"Company Securities" has the meaning set forth in Section 5.3(c).

"Confidential Information" means all trade secrets, know-how, and other confidential or proprietary information and data of or relating to the Company or the Business (whether or not expressly identified as confidential or proprietary), including: (a) the Company's business information and materials, including financial information, books and records, business plans, business proposals, customer and vendor contract terms and conditions, pricing and bidding methodologies and sales data, current or prospective customer lists, contact information, preferences, and other business information, supplier lists, contact information, preferences, and other business information, business partner lists, contact information, preferences and other business information, and similar information; (b) the Company's personnel information and materials, including employee lists and contact information, employee performance information, employee compensation information, recruiting sources, contractor, and consulting information, contacts, and costs, and similar information; (c) the Company's information and materials relating to future plans, including marketing strategies, pending projects and proposals, proprietary production processes, research and development strategies, and similar items; (d) the Company's technical information and materials, including computer programs, software, databases, methods, know-how, formulae, compositions, technological data, technological prototypes, processes, discoveries, machines, inventions, and similar items; and (e) any other information or material that gives the Company an advantage with respect to its competitors by virtue of not being known by those competitors.

"Confidentiality Agreement" means that certain Confidentiality and Non-Disclosure Agreement dated on or about March 1, 2023 by and among Generational Equity, LLC and/or Generational Capital Markets, Inc. and Kingsway America Inc.

"Consulting Agreement" means the Consulting Agreement being entered into simultaneously with the Closing between the Company and Seller.

"Contemplated Transactions" means, collectively, (a) the sale and purchase of the Purchased Interests, and (b) the other transactions contemplated by this Agreement and the Ancillary Agreements.

"Contract" means, with respect to any Person, any contract, license, sublicense, mortgage, purchase order, indenture, loan agreement, lease, sublease, agreement, arrangement, or instrument, or any commitment to enter into any of the foregoing (in each case, whether written or oral) to which such Person is a party or by which any of its assets are bound.

"Contribution" has the meaning set forth in the Recitals.

"Current Assets" means, without duplication, the current assets of the Company, determined in accordance with the Working Capital Methodology, excluding any (a) Cash, (b) marketable securities, (c) fixed assets, (d) personal vehicles or other non-core assets, (e) intangible assets, and (f) current or deferred Tax assets.

"Current Liabilities" means, without duplication, the current liabilities of the Company, determined in accordance with the Working Capital Methodology, excluding any (a) Indebtedness to the extent expressly set forth in the Payoff Letters or otherwise paid at or prior to the Closing and included in the calculation of the Estimated Indebtedness, (b) Transaction Expenses to the extent expressly set forth in an invoice and included in the calculation of the Estimated Transaction Expenses, and (c) current or deferred income Tax Liabilities.

"Cyber E&O Policy" has the meaning set forth in Section 7.6.

"Deferred Payroll Taxes" means any Taxes imposed on the Company for all Pre-Closing Tax Periods the payment of which is deferred until after the Closing Date under the provisions of the CARES Act, any COVID-19 relief or similar governmental program.

"Direct Claim" has the meaning set forth in Section 8.5(b).

"Disclosing Party" has the meaning set forth in Section 7.2.

"Effective Time" has the meaning set forth in Section 3.1.

"Election" has the meaning set forth in the Recitals.

"Employee Benefit Plan" means all pension, profit sharing, retirement, stock purchase, stock option, profits interest, phantom equity, bonus, incentive compensation (including equity options or incentives, restricted equity, equity bonus, sale bonus, and deferred bonus plans) and deferred compensation plans, life, health, vision, dental, accident or disability, workers' compensation, personnel policy (including vacation time, holiday pay, bonus programs, moving expense reimbursement programs and sick leave), or other employee welfare benefit plans (insured or self-insured), educational assistance, pretax premium or flexible spending account plans, supplemental or executive benefit plans, non-qualified retirement plans, severance or separation plans, employment agreements, consulting agreements, and any other employee benefit plans, practices, policies, or arrangements of any kind, whether written or oral, which are currently provided, sponsored, maintained or contributed to by the Company or any of its Affiliates for the benefit of any of their respective employees (including former employees), officers, directors, consultants or independent contractors or the dependents of any of them, or under which the Company or any of its Affiliates has any current or potential Liability (whether actual, potential or contingent), including any "employee benefit plan" (as defined in ERISA 3(3)), whether or not such plan is subject to ERISA.

"Employment Loss" has the meaning set forth in the WARN Act.

"Enforceability Exceptions" means (a) any applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium, and other similar laws relating to or affecting creditors' rights generally or (b) any general principles of equity.

"Environmental Laws" means all Laws, common law, and related regulations concerning public health and safety, occupational safety and health hazards, pollution, or protection of the environment, including: all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, Release, threatened Release, control, or cleanup of any Hazardous Materials, substances or wastes, chemical substances or mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, asbestos, polychlorinated biphenyls, noise, or radiation, in each case, as the foregoing Laws have been or may be amended or supplemented and any analogous federal, state, provincial, or local Law promulgated pursuant thereto and such other Laws (domestic or foreign) relating to or addressing similar subject matter of any of the foregoing or amendments to the foregoing.

"Equity Securities" means any (a) units, stock, shares, partnership interests or other equity securities or capital interests, (b) warrants, options or other rights to purchase or otherwise acquire any of the securities described in clause (a) of this definition, (c) equity appreciation rights or profits interests, or (d) obligations, evidences of Indebtedness or other securities or interests convertible into or exchangeable for any securities of the type described in clause (a), (b) or (c) of this definition.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means, with respect to the Company, any other Person that is a member of its controlled group for purposes of Section 4001(a)(14) of ERISA or that is treated as a single employer for purposes of Section 414 of the Code.

"Escrow Agent" means U.S. Bank National Association, a national banking association.

"Escrow Agreement" means the Escrow Agreement being entered into at the Closing by and among Buyer, Seller, and the Escrow Agent.

"Escrow Amount" means the sum of the Adjustment Escrow Amount and the Indemnity Escrow Amount.

"Estimated Cash" has the meaning set forth in Section 2.2(a).

"Estimated Closing Statement" has the meaning set forth in Section 2.2(a).

"Estimated Consideration" means an amount equal to the sum of: (a) the Preliminary Purchase Price; plus (b) the amount, if any, by which the Estimated Working Capital exceeds the Working Capital Target; minus (c) the amount, if any, by which the Working Capital Target exceeds the Estimated Working Capital; minus (d) the Estimated Indebtedness; plus (e) the Estimated Cash; minus (f) the Estimated Transaction Expenses.

"Estimated Indebtedness" has the meaning set forth in Section 2.2(a).

"Estimated Payment" means an amount equal to the sum of: (a) the Estimated Consideration; minus (b) the Escrow Amount.

"Estimated Payment Adjustment" means an amount (which may be positive or negative) equal to the sum of: (a) the Actual Working Capital minus the Estimated Working Capital; plus (b) the Estimated Indebtedness minus the Actual Indebtedness; plus (c) the Estimated Transaction Expenses minus the Actual Transaction Expenses; plus (d) the Actual Cash minus the Estimated Cash.

"Estimated Transaction Expenses" has the meaning set forth in Section 2.2(a).

"Estimated Working Capital" has the meaning set forth in Section 2.2(a).

"F Reorganization" has the meaning set forth in the Recitals.

"Financial Statements" has the meaning set forth in Section 5.4.

"Fraud" means common law fraud under the Laws of the State of Delaware.

"Fundamental Representations" means: (a) of or with respect to Seller or Owner, the representations and warranties of contained in Section 4.1 ("Authorization; Enforceability"), Section 4.3 ("Ownership"), and Section 4.5 ("No Broker"); (b) of or with respect to the Company, Section 5.1 ("Organization; Authorization; Enforceability"), Section 5.2 ("Noncontravention"), Section 5.3 ("Capitalization; Subsidiaries"), Section 5.5 ("No Undisclosed Liabilities; Indebtedness and Liens"), Section 5.9 ("Compliance with Laws") Section 5.11 ("Title to and Sufficiency of Assets; Condition of Assets"), Section 5.14 ("Tax Matters"), Section 5.18 ("Employee Benefit Matters") and Section 5.23 ("No Broker"); and (c) of or with respect to Buyer, the representations and warranties of Buyer contained in Section 6.1 ("Organization; Authorization; Enforceability"), Section 6.2 ("Noncontravention"), and Section 6.5 ("No Broker").

"GAAP" means United States generally accepted accounting principles, consistently applied throughout the periods involved.

"Governmental Authority" means any federal, state, local, or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations, or orders of such organization or authority have the force of Law), or any arbitrator, court, Tax or tribunal of competent jurisdiction.

"Hazardous Materials" means all hazardous substances, as that term is defined under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, any waste or other substance that is listed, defined, designated, or classified as, or otherwise determined to be, hazardous, radioactive, or toxic, or a pollutant or contaminant under or pursuant to any Environmental Law, including petroleum and derivatives thereof, asbestos and asbestos-containing materials, PCBs, perfluoroalkyl substances (PFASs), urea, formaldehyde, pesticides, herbicides, and fertilizers natural gas liquids, lead and lead-based paints and materials, flammable, explosive, or radioactive materials, microbial matter, biological toxins, mycotoxins, mold or mold spores, radon, and any other agriculture chemicals.

"Headquarters Lease" means the Lease Agreement with respect to the real property located at 12 National Avenue, Fletcher, North Carolina that is being entered into at the Closing by and between Landlord and the Company, in form and substance acceptable to Buyer.

"Indebtedness" means, with respect to any Person, as of any time, without duplication, all obligations, including the outstanding principal amount of, accrued and unpaid interest on, and other liquidated payment obligations (including any prepayment penalties, premiums, costs, breakage, or other amounts payable in connection with the prepayment, repayment, or retirement thereof) of such Person consisting of or related to (a) indebtedness for borrowed money or indebtedness issued in substitution or exchange for borrowed money, (b) indebtedness evidenced by any note, bond, debenture, or other debt security (including a purchase money obligation), (c) obligations under leases that are required to be capitalized in accordance with GAAP, (d) obligations for the deferred purchase price of property, goods, or services (other than trade payables or accruals incurred in the Ordinary Course to the extent included within Working Capital (as finally determined in accordance herewith), but including any deferred purchase price Liabilities, contingent payments, earnouts, installment payments, seller notes, promissory notes, or similar Liabilities, in each case, related to past acquisitions and, for the avoidance of doubt, in each case, whether or not contingent), (e) letters of credit (whether drawn or undrawn), (f) all obligations under any currency or interest rate swap, hedge, or similar agreement or arrangement (with respect to the Company and the Business, determined as if such instrument were terminated as of the Closing Date), (g) the Tax Liability Amount and all Deferred Payroll Taxes, (h) with respect to the Company, (i) any and all unpaid salaries, wages, commissions, and bonuses earned by, or owed to, any current or former Business Personnel through the Effective Time, including the pro rata portion of any bonuses for the year in which the Closing occurs that is no less than the bonuses paid in respect of the prior year or, if greater, the target bonus for the current year, (ii) any and all unused vacation and other paid time off earned by, or owed to, any current or former Business Personnel through the Effective Time, (iii) any and all severance, separation, or similar benefits or payments owed to any current or former Business Personnel through the Effective Time, and (iv) any and all unpaid contributions and payments required to be made by the Company under the Employee Benefit Plans through the Effective Time, in each case with respect to this clause (h), including the employer portion of all employment, payroll, or other similar Taxes payable with respect to the payments described in this clause (h), (i) with respect to the Company, any declared or accrued but unpaid dividends or distributions on any of the Equity Securities of the Company, and (j) any and all guarantees of any Liability of a third party of the type described in the foregoing clauses (a) through (i).

"Indemnified Party" has the meaning set forth in Section 8.5(a)(i).

"Indemnified Taxes" means, without duplication: (a) all Taxes of Seller for any Tax period; (b) all Taxes (or non-payment thereof) imposed on, allocated to or incurred or payable by the Company, or for which the Company otherwise may be liable, for any and all Pre-Closing Tax Periods, including attributable, under the principles Section 7.4(a) to the portion of a Straddle Period ending at the close of the Closing Date and including any Taxes that were deferred pursuant to the CARES Act (or any other corresponding or similar provision of other applicable Law with respect to Taxes); (b) any Liabilities of the Company for Taxes of another Person by reason of being (or ceasing to be) or having been a member of (or leaving) an Affiliated Group on or prior to the Closing Date (or being included (or required to be included)) in any Tax Return relating thereto; (c) all Liabilities imposed on the Company for any Taxes as a transferee or successor, by Contract, by Law, or otherwise, to the extent such Taxes relate to an event or transaction occurring on or before the Closing Date; (d) any and all Transfer Taxes; (e) any Taxes, including employment, payroll, withholding or other Taxes with respect to the transactions contemplated by this Agreement and the payments arising therefrom; (f) any Taxes resulting from any election pursuant to Section 108(i) or 965(h) of the Code (or any similar provision of state, local or non-U.S. Tax Law) on or prior to the Closing Date; (g) any Taxes imposed pursuant to Sections 951 or 951A of the Code with respect to all Pre-Closing Tax Periods; and (h) any Taxes resulting from any breach or inaccuracy of any of the representations set forth in Section 5.14 or any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation in Section 7.4.

"Indemnifying Party" has the meaning set forth in Section 8.5(a)(i).

"Indemnity Escrow Amount" means One Hundred Twenty Thousand and 00/100 Dollars ($120,000.00).

"Independent Accounting Firm" has the meaning set forth in Section 2.2(c).

"Intellectual Property" has the meaning set forth in Section 5.13(a).

"Interim Financial Statements" has the meaning set forth in Section 5.4.

"Invoices" has the meaning set forth in Section 3.2(i).

"IRS" means the Internal Revenue Service of the United States.

"Knowledge" means, with respect to a natural Person, the actual knowledge of such Person, and "Knowledge" as it is applied to the Company or Seller means the actual knowledge of Owner.

"Landlord" means Williams Asset Management, LLC.

"Latest Balance Sheet" has the meaning set forth in Section 5.4.

"Latest Balance Sheet Date" has the meaning set forth in Section 5.4.

"Law" means any federal, state, county, provincial, or local, or other foreign law, statute, legislation, constitution, principle of common law, judicial decision, resolution, ordinance, code, judgment, order, decree, treaty, rule, regulation, ruling, directive, determination, charge, direction, or other restriction of any Governmental Authority, as well as any act issued by any competent authority in application thereof.

"Leased Real Property" means all of the real property (i) leased, subleased, or licensed by the Company, (ii) owned, leased or subleased by any other Person and that is used by the Company in the Business or (iii) otherwise subject to a Lease to which the Company is a party.

"Leases" means all written or oral leases, ground leases, subleases and other leasehold interests, licenses, concessions and other agreements (including all amendments, extensions, renewals, guaranties and other agreements with respect thereto) pursuant to which the Company holds, uses, occupies or possesses any Real Property, including the right to all security deposits and other amounts and instruments deposited by or on behalf of the Company thereunder.

"Letter Agreement" the Letter Agreement being entered into in connection with, and to be effective prior to the Closing between the Company and Kimberlie Sutterfield.

"Liability" means any liability, debt, obligation, or commitment of any nature whatsoever (whether direct or indirect, known or unknown, accrued or unaccrued, absolute or contingent or matured or unmatured), including any arising under any Law, License, Action, or Contract and including any and all liabilities for Taxes.

"License" means any permit, license, franchise, approval, authorization, registration, certificate, variance, consent, or similar right required to be obtained from, or otherwise issued by, any Governmental Authority.

"Lien" means any lien, pledge, mortgage, deed of trust, security interest, charge, claim, easement, encroachment, transfer restriction, or other encumbrance of any kind or nature whatsoever.

"Loss" means any loss, damage, Liability, demand, Action, assessment, judgment, deficiency, cost, penalty, fine, Tax, or other cost or expense (including reasonable attorney's and accountant's fees, costs, and expenses incurred in investigating or defending against any Action).

"Material Adverse Effect" means any event, occurrence, fact, development, condition, or change, individually or in the aggregate with any other event, occurrence, fact, development, condition, or change, (a) that has, or is reasonably expected to have, a material adverse effect on the business, operations, results of operations, prospects, earnings, condition (financial or otherwise), assets (including intangible assets), or Liabilities of the Company or (b) that would or could reasonably be expected to impair or delay, in any material respect, the ability of the Company or Seller to consummate the transactions contemplated hereby; provided, however, "Material Adverse Effect" shall not include any event, occurrence, fact, development, condition or change to the extent arising out of or attributable to (except, with respect to the following clauses (i) through (iv), and (vi), to the extent such event, occurrence, fact, development, condition, or change disproportionately affects the Company as compared to other participants in any industry in which the Company operates): (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Company operate; (iii) any changes in financial, banking, or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates; (iv) acts of war (whether or not declared), armed hostilities, or terrorism, or the escalation or worsening thereof; (v) any changes in applicable Law or GAAP or the enforcement, implementation, or interpretation thereof, in each case, after the date hereof; or (vi) any natural disaster (including earthquake, hurricane, tornado, storm, flood, fire, volcanic eruption, or similar occurrence), acts of God, changes in climate or weather conditions, or global health conditions (including any epidemic, pandemic, or disease outbreak, including, but not limited to, COVID-19).

"Material Contracts" has the meaning set forth in Section 5.7(a).

"Material Licenses" has the meaning set forth in Section 5.10.

"Most Recent Year End" has the meaning set forth in Section 5.4.

"Ordinary Course" means the ordinary and usual course of business consistent with past custom and practice (including using reasonable best efforts to preserve intact relationships with customers, suppliers, and key employees) of the Person in question.

"Organizational Documents" means: (a) with respect to a corporation, the certificate or articles of incorporation and bylaws; (b) with respect to any other entity (including any trust), each charter, certificate of formation or organization, partnership agreement, joint venture agreement, operating agreement, trust agreement, and similar document, as applicable, adopted or filed in connection with the creation, formation, or organization of such entity; and (c) any amendment to any of the foregoing.

"Owned Real Property" means the real property owned by the Company, together with all buildings, improvements, structures and facilities located thereon and all right, title, interest, estate, privileges, and obligations of the Company thereto.

"Owner" has the meaning set forth in the Preamble.

"Payoff Letters" has the meaning set forth in Section 3.2(h).

"Permitted Liens" means: (a) statutory Liens for current Taxes that are not due and payable as of the Closing Date; (b) Liens imposed by Law (such as materialmen's, mechanic's, workmen's, carrier's, and repairmen's Liens) that both (i) arise or are incurred in the Ordinary Course to secure amounts that are not due and payable as of the Closing Date or are being contested in good faith by appropriate proceedings and (ii) do not exceed $5,000 in the aggregate; and (c) with respect to the Real Property only, zoning, building or other restrictions, variances, rights of way, easements, or other minor irregularities in title, none of which, individually or in the aggregate, interferes in any material respect with the continued occupancy or use or value of any of the Real Property for the purpose for which it is used as of the Closing Date.

"Person" means an individual, corporation, partnership, joint venture, limited liability company, joint stock company, estate, labor union, Governmental Authority, unincorporated organization, trust, association, or other entity.

"Pre-Closing Period Tax Return" means any Tax Return of or with respect to the Company for a Taxable period ending on or prior to the Closing Date.

"Pre-Closing Tax Period" means (a) any taxable period ending on or before the Closing Date and (b) the portion of any Straddle Period ending on and including the Closing Date.

"Preliminary Purchase Price" means $19,560,469.44.

"Purchased Interests" has the meaning set forth in the Recitals.

"QSub Election" has the meaning set forth in the Recitals.

"R&W Insurance Policy" means the buyer-side Representation and Warranty Insurance Policy bound as of the date hereof in connection with the transactions contemplated hereby.

"Real Property" means, collectively, the Leased Real Property and the Owned Real Property.

"Reimbursable Deductible" means the sum of $5,000 previously advanced by Owner in relation to that certain automobile collision on April 13, 2024, in which Owner's vehicle was struck by another driver's vehicle.

"Related Party" means (a) any officer, director, or equityholder of the Company, (b) any individual related by blood, marriage, or adoption to any individual listed in clause (a) of this definition or to any equityholder of the Company (including Seller), or (c) any Person in which any individual listed in clause (a) or (b) of this definition has a beneficial interest.

"Release" means any spilling, leaking, emitting, discharging, depositing, placing, escaping, leaching, dumping, or other releasing into the environment, or as otherwise specified in the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

"Releasees" has the meaning set forth in Section 7.3(a).

"Releasors" has the meaning set forth in Section 7.3(a).

"Remedial Action" means any action required by any Governmental Authority or Environmental Law to investigate, clean up, remove, treat, monitor, report, remedial, or in any other way address any Hazardous Materials.

"Representative" means, with respect to any Person, such Person's directors, managers, officers, employees, counsel, financial advisors, accountants, agents, consultants, contractors, vendors, and other representatives.

"Restricted Period" has the meaning set forth in Section 7.7(a).

"Reorganization" has the meaning set forth in the Recitals.

"Schedules" means the Schedules delivered by the Company, Seller, and Buyer concurrently with the execution and delivery of this Agreement.

"Securities Act" means the Securities Act of 1933, as amended.

"Seller Indemnified Parties" means (a) Seller, (b) his Affiliates, (c) their respective equityholders, members, partners and Representatives, and (d) their respective heirs, executors, successors and permitted assigns. For the avoidance of doubt, after the Closing the term "Seller Indemnified Parties" shall not include the Company.

"Seller" has the meaning set forth in the Preamble.

"Seller Parties" means the Seller and Owner.

"Specified Entity" has the meaning set forth in Section 4.3(c).

"Straddle Period" means any taxable period beginning before, and ending after, the Closing Date.

"Straddle Period Tax Return" means any Tax Return of or with respect to the Company for a Straddle Period.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association, or other business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association, or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of that Person or a combination thereof, and for this purpose a Person owns a majority ownership interest in such a business entity (other than a corporation) if such Person shall be allocated a majority of such business entity's gains or losses or shall be or control any managing director or general partner of such business entity (other than a corporation). The term "Subsidiary" shall include all Subsidiaries of such Subsidiary.

"Sutterfield Payment" means the cash payment in the amount of $940,197.84, to be made by the Company to Kimberlie Sutterfield pursuant to the Letter Agreement.

"Tax" or "Taxes" means: (a) all federal, state, county, local, foreign, and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, social security, employment, unemployment, estimated, excise, severance, environmental, stamp, capital stock, alternative or add-on minimum, occupation, premium, property (real or personal), unclaimed property, escheat, real property gains, windfall profits, customs, duties, estimated, or other taxes, fees, assessments, or charges of any kind whatsoever (including deficiencies, penalties, additions to tax, and interest attributable thereto), whether disputed or not; (b) any Liability for the payment of any amounts of the type described in clause (a) of this definition for the Taxes of any other Person as a result of being or having been on or before the Closing Date a member of an affiliated, consolidated, combined or unitary group or having been included or required to be included in any Tax Return related thereto (or any comparable provisions under state, local or non-U.S. Law); and (c) any Liability for the payment of any amounts of the type described in clause (a) of this definition as a result of any express or implied obligation to indemnify or otherwise assume or succeed to the Liability of any other Person as a successor or transferee, by Contract, or otherwise.

"Tax Claim Notice" has the meaning set forth in Section 7.4(e)(i).

"Tax Contest" has" the meaning set forth in Section 7.4(e)(i).

"Tax Liability Amount" means, an amount equal to the sum of all unpaid Taxes of the Company attributable to a Pre-Closing Tax Period regardless of when such Taxes are due, calculated on a jurisdiction by jurisdiction basis with zero dollars ($0) being the lowest amount for any particular Tax in a jurisdiction, provided, that such amount shall be determined (a) by including any amounts that the Company will be required to include on or after the Closing Date as a result of any adjustment pursuant to Section 481 of the Code (or any similar provision of state, local or foreign Tax law) and any prepaid amounts and deferred revenue received prior to the Closing that, in each case, would not otherwise be included in taxable income on or prior to the day prior to the Closing Date, (b) by excluding all deferred income Tax liabilities and assets, (c) by including any amounts payable after the Closing under Section 965(h) of the Code, and (d) for any Straddle Periods, in accordance with Section 7.4(a).

"Tax Returns" means all returns, forms, reports and other documents of every nature (including elections, declarations, disclosures, schedules, estimates, and information returns) filed or required to be filed with any Governmental Authority relating to Taxes including any schedule or attachment thereto, and including any amendment thereof.

"Tax Sharing Agreement" means any agreement, Contract, or arrangement (whether written or unwritten) entered into prior to the Closing Date that binds (or purports to bind) the Company and provides for the allocation, apportionment, sharing, indemnification or assignment of any Tax liability or benefit, or the transfer or assignment of income, revenues, receipts or gains for the purpose of determining any Person's Tax liability.

"Territory" has the meaning set forth in Section 7.7(a).

"Third Party Claim" has the meaning set forth in Section 8.5(a)(i).

"Top Customers" has the meaning set forth in Section 5.24(a).

"Top Suppliers" has" the meaning set forth in Section 5.24(b).

"Transaction Expenses" means the aggregate amount of all fees, costs, expenses, and other amounts incurred or otherwise payable by or on behalf of Seller or the Company in connection with the negotiation, preparation, execution, and delivery of this Agreement or any Ancillary Agreement or the consummation of the Contemplated Transactions, including, without limitation: (a) all legal, accounting, investment banking, and financial intermediary fees, costs, and expenses; (b) all transaction bonuses, retention bonuses, change of control payments, phantom or other equity-based compensation payments, severance payments, or other bonuses or payments due or payable, or that may become due or payable, to current or former directors, officers, employees, or independent contractors of the Company as a result of or in connection with the consummation of the Contemplated Transactions (including the employer-paid portion of all employment, payroll or other similar Taxes payable with respect to the payments described in this clause (b)); (c) all fees, costs, and expenses associated with the Company or Seller obtaining the release and termination of any Liens; (d) all fees, costs, and expenses associated with the Company or Seller obtaining any consents, approvals, or waivers from any Governmental Authority or other third party required to consummate the Contemplated Transactions; (e) one-half of the fees, costs and expenses of the Escrow Agent acting in its capacity as such under the Escrow Agreement; (f) one-half of all premiums, underwriting fees and other costs and expenses incurred, paid or payable to the insurers and underwriters in connection with binding of the R&W Insurance Policy; and (g) all premiums and underwriting fees payable to the insurers and underwriters in connection with the purchase of the Cyber E&O Policy.

"Transfer Taxes" means (a) all transfer, documentary, sales, use, excise, good and services, registration, value added, recording, stamp, similar Taxes and fees incurred in connection with or as a result of the consummation of the Contemplated Transactions, and (b) all interest, penalties, fines, and additional amounts imposed by any Governmental Authority with respect to such amounts.

"Treasury Regulations" means the final, temporary, or proposed regulations that have been issued by the United States Department of Treasury pursuant to its authority under the Code, and any successor regulations.

"WARN Act" means the federal Worker Adjustment and Retraining Notification Act of 1988, 29. U.S.C. § 2101, et seq., and similar state, local, and foreign Laws related to plant closings, plant relocations, terminations of operations, transfers of operations, mass layoffs, and employment losses.

"Working Capital" means the Current Assets minus the Current Liabilities, as of the applicable date of determination, in each case, determined in a manner consistent with GAAP and in accordance with the principles, methodologies, and classifications set forth on Schedule 1.1(b) attached hereto (the "Working Capital Methodology"). In the event of any conflict between GAAP and the Working Capital Methodology for purposes of the calculation of Working Capital in accordance with the terms herein, then GAAP shall govern and control.

"Working Capital Target" means an amount equal to $1,230,906.

ARTICLE II
PURCHASE AND SALE

Section 2.1 Purchase and Sale. On the terms and subject to the conditions of this Agreement, at the Closing, Buyer shall purchase from Seller, and Seller shall, and Owner shall cause Seller to, sell, transfer, and assign to Buyer, free and clear of any and all Liens, the Purchased Interests, which Purchased Interests shall constitute one hundred percent (100%) of the issued and outstanding Equity Securities of the Company as of the Closing.

Section 2.2 Purchase Price Adjustment.

(a) Estimated Closing Statement. At least two (2) Business Days prior to the Closing Date, Seller provided Buyer with a statement (the "Estimated Closing Statement") setting forth in reasonable detail Seller's good faith calculations and estimates of: (i) Working Capital as of the Effective Time (the "Estimated Working Capital"); (ii) the aggregate amount of Indebtedness of the Company outstanding as of the Effective Time (the "Estimated Indebtedness"); (iii) the amount of Cash as of the Effective Time (the "Estimated Cash"); and (iv) the aggregate amount of Transaction Expenses unpaid as of the Effective Time (the "Estimated Transaction Expenses"), and based thereon, the resulting Estimated Payment. The Estimated Closing Statement will be prepared in accordance with the Working Capital Methodology.

(b) Closing Statement. No later than sixty (60) days following the Closing Date, Buyer will prepare and deliver to Seller a statement (the "Closing Statement") setting forth in reasonable detail Buyer's good faith calculations of: (i) the actual aggregate amount of Working Capital as of the Effective Time (the "Actual Working Capital"); (ii) the actual aggregate amount of Indebtedness of the Company outstanding as of the Effective Time (the "Actual Indebtedness"); (iii) the actual amount of Cash as of the Effective Time (the "Actual Cash"); and (iv) the actual aggregate amount of Transaction Expenses unpaid as of the Effective Time (the "Actual Transaction Expenses"), and based thereon, the resulting Estimated Payment Adjustment. The Closing Statement will be prepared in accordance with the Working Capital Methodology.

(c) Closing Statement Review Process; Post-Closing Adjustment.

(i) Seller shall have ninety (90) days after receipt of the Closing Statement (the "Closing Statement Review Period") to review the Closing Statement and Buyer's calculations of Actual Working Capital, Actual Indebtedness, Actual Cash, and Actual Transaction Expenses, and the resulting Estimated Payment Adjustment set forth therein. During the Closing Statement Review Period, Seller and his Representatives shall have the right to inspect the Company's books and records and other documents and materials reasonably requested by Seller, during normal business hours at the Company's offices and upon reasonable prior notice, solely for purposes reasonably related to the determination of the Actual Working Capital, Actual Indebtedness, Actual Cash, Actual Transaction Expenses, and the resulting Estimated Payment Adjustment.

(ii) Prior to the expiration of the Closing Statement Review Period, Seller may object to the calculations set forth in the Closing Statement by delivering a written notice of objection (a "Closing Statement Objection Notice") to Buyer. The Closing Statement Objection Notice shall specify the items in the Closing Statement disputed by Seller and shall describe in reasonable detail the basis for each such objection, as well as the amount in dispute (and Seller's proposed calculation thereof in accordance with the definitions of Cash, Current Assets, Current Liabilities, Estimated Payment Adjustment, Indebtedness, Transaction Expenses, and Working Capital herein and the Working Capital Methodology).

(iii) If Seller fails to deliver the Closing Statement Objection Notice to Buyer prior to the expiration of the Closing Statement Review Period, then the calculations set forth in the Closing Statement (including the calculations of Actual Working Capital, Actual Indebtedness, Actual Cash, Actual Transaction Expenses, and the resulting Estimated Payment Adjustment) shall be final, binding, and conclusive on the parties hereto for all purposes herein.

(iv) If Seller delivers a Closing Statement Objection Notice to Buyer prior to the expiration of the Closing Statement Review Period, then Buyer and Seller shall negotiate in good faith to resolve the disputed item(s) set forth therein and agree upon the resulting amounts of Actual Working Capital, Actual Indebtedness, Actual Cash, and Actual Transaction Expenses, and the resulting Estimated Payment Adjustment.

(v) If Buyer and Seller are unable to resolve in writing all such disputes within thirty (30) days after receipt by Buyer of the Closing Statement Objection Notice, then Buyer and Seller shall jointly select an independent and impartial nationally-recognized firm of independent certified public accountants (other than Seller's accountants or Buyer's accountants) mutually agreed upon by Seller and Buyer (the "Independent Accounting Firm") to review any such unresolved disputed item(s) in the Closing Statement Objection Notice and make a final determination with respect to the calculations of Actual Working Capital, Actual Indebtedness, Actual Cash, and Actual Transaction Expenses, and the resulting Estimated Payment Adjustment. Buyer and Seller shall instruct the Independent Accounting Firm to act as an expert (and not as an arbitrator), and Buyer and Seller shall instruct the Independent Accounting Firm to only consider those items that are identified in the Closing Statement Objection Notice as in dispute to the extent not otherwise resolved in writing by Buyer and Seller prior to the engagement of the Independent Accounting Firm under this Section 2.2(c). Buyer and Seller shall instruct the Independent Accounting Firm (i) to make its determination in accordance with the definitions of Cash, Current Assets, Current Liabilities, Estimated Payment Adjustment, Indebtedness, Transaction Expenses, and Working Capital herein and the Working Capital Methodology, (ii) to not assign a value to any item in dispute greater than the greatest value for such item assigned by Buyer in the Closing Statement, on the one hand, or Seller in the Closing Statement Objection Notice, on the other hand, or less than the smallest value for such item assigned by Buyer in the Closing Statement, on the one hand, or Seller in the Closing Statement Objection Notice, on the other hand, and (iii) to make its determination based solely on the presentations by Seller and Buyer and not by independent review. Buyer and Seller shall instruct the Independent Accounting Firm to issue a reasonably detailed report showing its final determination of such disputed item(s) (together with its basis therefor) within thirty (30) days of the engagement of the Independent Accounting Firm under this Section 2.2(c) (or such longer time as is agreed to in writing by Buyer and Seller), and the final determination of such disputed item(s) by the Independent Accounting Firm shall be final, binding, and conclusive on the parties hereto and not subject to any appeal or challenge, absent fraud or manifest error. Buyer and Seller shall make readily available to the Independent Accounting Firm all relevant books and records and any work papers (including those of Buyer's and Seller's respective Representatives) relating to the Closing Statement and Closing Statement Objection Notice (and the calculations therein) and all other items reasonably requested by the Independent Accounting Firm.

(vi) The fees and expenses of the Independent Accounting Firm engaged under this Section 2.2(c) shall be borne by Seller (on the one hand) and Buyer (on the other hand) in proportion to the aggregate amounts by which Seller's and Buyer's proposals differed from the Independent Accounting Firm's final determination under this Section 2.2(c). In connection with the resolution of any such dispute, each of Buyer, on the one hand, and Seller, on the other hand, shall pay their own fees and expenses, including legal, accounting, and consultant fees and expenses. Notwithstanding anything to the contrary in this Agreement, any disputes regarding amounts shown in the Closing Statement shall be resolved as set forth in this Section 2.2(c).

(d) Post-Closing Adjustment. Within five (5) Business Days after the earlier to occur of (x) the expiration of the Closing Statement Review Period, if no Closing Statement Objection Notice is delivered by Seller to Buyer by such date, and (y) the final resolution of all disputes properly and timely asserted by Seller regarding the Closing Statement pursuant to Section 2.2(c) above:

(i) if the Estimated Payment Adjustment is a positive number, then (1) Buyer shall pay to Seller the aggregate amount of the Estimated Payment Adjustment by wire transfer of immediately available funds to an account or accounts designated in advance by Seller and (2) Buyer and Seller shall direct the Escrow Agent in writing to disburse the Adjustment Escrow Amount to Seller by wire transfer of immediately available funds to an account or accounts designated in advance by Seller;

(ii) if the Estimated Payment Adjustment is a negative number, then Buyer and Seller shall direct the Escrow Agent in writing to disburse (1) an amount equal to the Estimated Payment Adjustment from the Adjustment Escrow Amount to Buyer by wire transfer of immediately available funds to an account or accounts designated in advance by Buyer and (2) the remainder of the Adjustment Escrow Amount, if any, to Seller by wire transfer of immediately available funds to an account or accounts designated in advance by Seller, provided, that if the Adjustment Escrow Amount is insufficient to satisfy any Estimated Payment Adjustment due and owing to Buyer (an "Adjustment Shortfall"), then Seller shall pay to Buyer by wire transfer of immediately available funds to an account or accounts designated in advance by Buyer the Adjustment Shortfall; and

(iii) if the Estimated Payment Adjustment is equal to Zero Dollars ($0.00), then no payment shall be due by either Buyer or Seller under this Section 2.2(d) and Buyer and Seller shall direct the Escrow Agent in writing to disburse the Adjustment Escrow Amount to Seller by wire transfer of immediately available funds to an account or accounts designated in advance by Seller.

ARTICLE III
CLOSING

Section 3.1 Closing. Subject to the terms and conditions of this Agreement, the consummation of the Contemplated Transactions (the "Closing") will take place remotely via the exchange of executed documents and other deliverables by the parties hereto on the date of the execution of this Agreement (the "Closing Date"). The Closing will be deemed effective as of 12:01 a.m. Central Time on the Closing Date (the "Effective Time"). All documents delivered and actions taken at the Closing shall be deemed to have been delivered or taken simultaneously at the Effective Time.

Section 3.2 Closing Deliveries of Seller. At the Closing, Seller shall deliver or cause to be delivered to Buyer all of the following:

(a) the original certificates evidencing the Purchased Interests (if any), together with assignments separate from certificate or other transfer documents executed by Seller relating to the Purchased Interests, in form and substance reasonably satisfactory to Buyer;

(b) a certificate of good standing for the Company issued as of a date that is no more than two (2) Business Days before the Closing Date by the Secretary of State of the State of North Carolina and each other jurisdiction listed on Schedule 5.1(a);

(c) a copy of the Company's articles of organization, including all amendments thereto, certified as of a date that is no more than two (2) Business Days before the Closing Date by the Secretary of State of the State of North Carolina;

(d) the Escrow Agreement, duly executed by Seller;

(e) a resignation effective as of the Closing from the officers, managers and directors, as applicable, of the Company, duly executed by each such officer and director, as applicable;

(f) the minute books, equity ledgers and registers, and other corporate records of the Company;

(g) a properly completed and executed IRS Form W-9 from Seller and Owner certifying as to the non-foreign status and claiming complete exemption from U.S. backup withholding and, if so requested, a non-foreign affidavit dated as of the Closing Date and in form and substance required under Section 1.1445-2(b)(2) of the Treasury Regulations;

(h) a payoff, termination, and discharge letter, in form and substance reasonably satisfactory to Buyer, from each holder of the Company's Estimated Indebtedness, which letters: (i) will specify the amount of Estimated Indebtedness owed to each such holder as of the Closing Date; (ii) will provide for the satisfaction and discharge of all obligations in respect of such Estimated Indebtedness (including the termination of all related commitments), the release of all related guarantees and Liens and the filing of all documents necessary or desirable to effectuate, or reflect in the public record, such satisfaction, discharge, and release effective upon the payment of the amount specified in such letter; and (iii) will specify the wire transfer instructions for each such holder (collectively, the "Payoff Letters"), and such other payoff letters, Lien releases, and/or UCC-3 termination statements, in form and substance reasonably satisfactory to Buyer, as Buyer may reasonably request to evidence the release and discharge of all Liens on the Purchased Interests or any assets or properties of the Company;

(i) a properly completed and executed IRS Form W-9 and written invoice, in form and substance reasonably satisfactory to Buyer, from each payee owed a portion of the Estimated Transaction Expenses, which invoices: (i) will specify the portion of the Estimated Transaction Expenses payable to each such payee as of the Closing Date; (ii) will provide that, upon payment of such invoice, all amounts due to such payee for services rendered in connection with this Agreement and the Contemplated Transactions (whether rendered prior to or after the Closing) will be paid in full; and (iii) will specify the wire transfer instructions for each such payee (collectively, the "Invoices");

(j) the consents, waivers and approvals required to be obtained by Seller and/or the Company with respect to the consummation of the Contemplated Transactions that are set forth on Schedule 3.2(j), each in form and substance reasonably satisfactory to Buyer;

(k) a certificate of endorsement, in form and substance reasonably satisfactory to Buyer, evidencing the Cyber E&O Policy for the Company;

(l) evidence, in form and substance satisfactory to Buyer and effective no later than the day immediately prior to the Closing Date, that each of the Contracts set forth on Schedule 3.2(l) shall have been terminated, without any continuing or ongoing Liability to the Company or Buyer;

(m) a tax clearance (or equivalent) certificate for the Company from the State of North Carolina and each other Governmental Authority that may impose Taxes on the Business;

(n) evidence, satisfactory to Buyer in its sole discretion, that the Reorganization has been completed;

(o) the Consulting Agreement, duly executed by Seller;

(p) the Headquarters Lease, duly executed by Landlord; and

(q) the Letter Agreement, duly executed by Kimberlie Sutterfield and the Company.

Section 3.3 Closing Deliveries of Buyer.

(a) At the Closing, Buyer shall deliver or cause to be delivered to Seller the Escrow Agreement, duly executed by Buyer and the Escrow Agent, the Consulting Agreement, duly executed by the Company, and the Headquarters Lease, duly executed by the Company.

(b) At the Closing, Buyer shall pay:

(i) to each of the payees of Estimated Indebtedness to be repaid at the Closing for whom Seller has provided a Payoff Letter at least two (2) Business Days prior to the Closing Date, the Estimated Indebtedness specified in such payee's Payoff Letter, by wire transfer of immediately available funds, on behalf of the Company and/or Seller, as applicable;

(ii) to each of the payees of Estimated Transaction Expenses to be paid at the Closing for whom Seller has provided an Invoice (as applicable) and a properly completed IRS Form W-9 at least two (2) Business Days prior to the Closing Date, the Estimated Transaction Expenses owing to such payee specified in such payee's Invoice, by wire transfer of immediately available funds, on behalf of the Company and/or Seller, as applicable;

(iii) to the Escrow Agent, the Escrow Amount, by wire transfer of immediately available funds, for deposit into an escrow account or accounts established pursuant to the terms of the Escrow Agreement; and

(iv) to Seller, the Estimated Payment, by wire transfer of immediately available funds to the account or accounts specified in writing by Seller at least two (2) Business Days prior to the Closing Date.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE SELLER PARTIES

As a condition and material inducement to Buyer's willingness to enter into this Agreement and each Ancillary Agreements to which it is a party and to consummate the Contemplated Transactions, the Seller Parties, jointly and severally, hereby represent and warrant to Buyer as follows:

Section 4.1 Authorization; Enforceability.

(a) Each Seller Party has the requisite legal capacity, right and authority to execute and deliver this Agreement and each Ancillary Agreement to which such Seller Party is a party, to perform such Seller Party's obligations hereunder and thereunder and to consummate the Contemplated Transactions.

(b) This Agreement and each Ancillary Agreement to which a Seller Party is a party has been duly and validly executed and delivered by such Seller Party, and this Agreement (assuming due authorization, execution, and delivery by Buyer) and each such Ancillary Agreement (assuming due authorization, execution, and delivery by the other parties thereto) constitute the legal, valid, and binding obligation of such Seller Party, enforceable against such Seller Party in accordance with their respective terms, subject to the Enforceability Exceptions. The execution, delivery, and performance of this Agreement and each Ancillary Agreement to which a Seller Party is a party and the consummation of the Contemplated Transactions have been duly and validly authorized by all requisite action of such Seller Party, and no other proceedings on such Seller Party's part are necessary to authorize the execution, delivery, or performance of this Agreement or such Ancillary Agreements.

Section 4.2 Noncontravention.

(a) The execution, delivery, and performance by each Seller Party of this Agreement and each Ancillary Agreement to which such Seller Party is a party, and the consummation by such Seller Party of the Contemplated Transactions, do not and will not: (i) contravene, conflict with, violate, or result in a breach of any Law in any material respect; (ii) subject to the matters referred to on Schedule 4.2(b), require any consent of, notice or payment to, or other action by any Person under, contravene, conflict with, violate, result in a breach of the terms, conditions or provisions of, constitute a default (or an event that with or without notice or lapse of time or both would become a default) under, or give rise to any rights of acceleration, amendment, termination or cancellation, or to a loss of any rights under, any Contract or License to which any Seller Party is a party or by which any Seller Party or any Seller Party's assets or properties is bound; or (iii) result in the creation or imposition of any Lien upon any of the Purchased Interests or other assets of any Seller Party.

(b) Except as set forth on Schedule 4.2(b), no consent, approval, or authorization of, or registration, declaration or filing with, or notice to, any Governmental Authority or any other Person is required to be obtained, made, or given by a Seller Party as a result of or in connection with any Seller Party's execution, delivery, and performance of this Agreement or any Ancillary Agreement to which a Seller Party is a party or consummation of the Contemplated Transactions.

Section 4.3 Ownership.

(a) Seller is the record and beneficial owner of, and has good and valid title to, all of the Purchased Interests, free and clear of any and all Liens other than restrictions on transfer imposed under applicable securities laws. At the Closing, Seller will transfer and deliver to Buyer good and valid title to the Purchased Interests, free and clear of any and all Liens other than restrictions on transfer imposed under applicable securities laws. No Seller Party is a party to or otherwise bound by any Contract that limits or restricts Seller's right to transfer the Purchased Interests to Buyer pursuant to this Agreement.

(b) Schedule 4.3(b) sets forth (i) the number of authorized Equity Securities of Seller, and (ii) the number of issued and outstanding Equity Securities of Seller, all of which are owned by Owner. All of the Equity Securities of Seller (1) have been duly authorized, (2) are validly issued, fully paid, and non-assessable, (3) were issued in compliance with or pursuant to an exemption from all applicable federal and state securities laws, (4) were not issued in violation of any preemptive rights or any purchase option, call option, right of first refusal, or offer or other similar right, and (5) are owned beneficially and of record by Owner as set forth on Schedule 4.3(b), free and clear of all Liens other than restrictions on transfer imposed by applicable securities laws.

(c) Schedule 4.3(c) sets forth (i) each Equity Security held by Seller in any private company that has any operations that are competitive with the Business, or which are a reasonable extension of the business currently conducted by the Company or proposed to be conducted by the Company as of the Closing (each, a "Specified Entity"), (ii) the percentage of the issued and outstanding Equity Securities of any such Specified Entity that is held by Seller and/or any Affiliate of Seller, and (iii) a reasonably detailed description of the business conducted by any such Specified Entity.

Section 4.4 Legal Proceedings. There is no Action pending or, to the Knowledge of Seller, threatened against, or affecting any Seller Party that, if determined or resolved adversely to a Seller Party, would adversely affect any Seller Party's ability to perform its obligations hereunder or under any Ancillary Agreement to which such Seller Party is a party, or to timely consummate the Contemplated Transactions. No Seller Party is subject to or otherwise bound by any order, injunction, judgment, settlement, or decree that prohibits or limits the conduct of the Business or the ownership or use of the Purchased Interests held by Seller or any of the assets or properties of the Company.

Section 4.5 No Broker. Except as set forth on Schedule 4.5, no broker, finder, investment banker, or other intermediary is entitled to, or has claimed to be entitled to, any fee or commission in connection with the Contemplated Transactions based upon arrangements made by or on behalf of any Seller Party.

ARTICLE V
REPRESENTATIONS AND WARRANTIES REGARDING THE COMPANY

As a condition and material inducement to Buyer's willingness to enter into this Agreement and to enter into each Ancillary Agreement to which it is a party and to consummate the Contemplated Transactions, the Seller Parties hereby, jointly and severally, represent and warrant to Buyer as follows:

Section 5.1 Organization; Authorization; Enforceability.

(a) The Company (i) is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of North Carolina; (ii) has the requisite limited liability company power and authority and possesses all Licenses necessary to own, lease, or otherwise hold its assets and properties and to carry on its business as currently conducted; and (iii) is duly qualified or licensed to do business and is in good standing as a foreign entity in each jurisdiction set forth on Schedule 5.1(a), which are the only jurisdictions in which the ownership, leasing, or holding of its assets and properties or the conduct of its business makes such qualification or licensing necessary under appliable Law, except to the extent not being qualified or licensed would not have a Material Adverse Effect on the Company.

(b) The Company has made available to Buyer true, complete and correct copies of (i) the Company's Organizational Documents, each as amended to date, and (ii) the minutes of all meetings of and other limited liability company actions taken by the equityholders, board of directors or other governing body and committees of the board of directors or similar governing bodies of the Company during the past four (4) years. The Company is not in breach of or default under any provision of its Organizational Documents. Schedule 5.1(b) sets forth a correct and complete list of the officers, directors and similar functionaries of the Company.

(c) The execution, delivery, and performance by the Company of each Ancillary Agreement to which the Company is a party and the consummation by the Company of the Contemplated Transactions are within the Company's organizational powers and have been duly and validly authorized and approved by all necessary organizational action on the part of the Company.

(d) Each Ancillary Agreement to which the Company is a party has been duly and validly executed and delivered by the Company, and each such Ancillary Agreement (assuming due authorization, execution, and delivery by the other parties thereto) constitutes the legal, valid, and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to the Enforceability Exceptions.

Section 5.2 Noncontravention.

(a) The execution, delivery, and performance by the Company, Owner or Seller of this Agreement and each Ancillary Agreement to which the Company, Owner or Seller is a party, and the consummation by Seller, Owner and the Company of the Contemplated Transactions, do not and will not: (i) contravene, conflict with, violate, or result in a breach of any provision of the Company's Organizational Documents; (ii) contravene, conflict with, violate, or result in a breach of any Law; (iii) except as set forth on Schedule 5.2(b), require any consent of, notice or payment to, or other action by any Person under, contravene conflict with, violate, result in a breach of the terms, conditions or provisions of, constitute a default (or an event that, with or without notice or lapse of time or both, would become a default) under, or give rise to any rights of acceleration, amendment, termination or cancellation, or to a loss of any rights under, any Contract or License to which the Company is a party or by which the Company or any of its assets or properties is bound; or (iv) result in the creation or imposition of any Lien upon any of the Purchased Interests or any of the assets or properties of the Company.

(b) Except as set forth on Schedule 5.2(b), no consent, approval, or authorization of, or registration, declaration or filing with, or notice to, any Governmental Authority or any other Person is required to be obtained, made, or given by the Company as a result of or in connection with the Company's, Owner's or Seller's execution, delivery, and performance of this Agreement or any Ancillary Agreement to which the Company, Owner or Seller is a party or the consummation of the Contemplated Transactions.

Section 5.3 Capitalization; Subsidiaries.

(a) Schedule 5.3(a) sets forth (i) the number of authorized Equity Securities of the Company, and (ii) the number of issued and outstanding Equity Securities of the Company and the holders thereof, all of which are owned by Seller and constitute the Purchased Interests. All of the Purchased Interests (1) have been duly authorized, (2) are validly issued, fully paid, and non-assessable, (3) were issued in compliance with or pursuant to an exemption from all applicable federal and state securities laws, (4) were not issued in violation of any preemptive rights or any purchase option, call option, right of first refusal, or offer or other similar right, and (5) are owned beneficially and of record by Seller as set forth on Schedule 5.3(a), free and clear of all Liens other than restrictions on transfer imposed by applicable securities laws.

(b) At the Closing, Seller will transfer and deliver to Buyer good and valid title to the Purchased Interests, free and clear of any and all Liens other than restrictions on transfer imposed by applicable securities laws. As of the Closing, the Company has not declared any dividend or other distribution on any of its Equity Securities which has not been paid in full, and the Company is not obligated to pay any distribution or dividend to Seller.

(c) Except for the Purchased Interests, there are no issued, outstanding, or reserved for issuance (i) shares of capital stock or other voting securities or Equity Securities of the Company, (ii) securities of the Company convertible into or exercisable or exchangeable for shares of capital stock or other voting securities or Equity Securities of the Company, (iii) options, warrants, rights, agreements, or commitments of any kind to acquire from the Company, or other obligation of the Company to issue, sell, transfer, repurchase, or redeem, any shares of capital stock or other voting securities or Equity Securities of the Company or securities convertible into or exercisable or exchangeable for shares of capital stock or other voting securities or Equity Securities of the Company, or (iv) stock appreciation rights, performance shares, "phantom" stock, profit participation rights, or other similar rights or securities that are derivative of or provide economic benefits based directly or indirectly on the value or price of any capital stock or other voting security or Equity Security of the Company (the Purchased Interests, together with the items described in the immediately preceding clauses (i), (ii), (iii), and (iv), being referred to, collectively, as the "Company Securities").

(d) Neither the Company, Owner nor Seller is a party to or otherwise bound by any voting trust, proxy, or other agreement with respect to the issuance, sale, voting, transfer, or other disposition of any Company Securities. There are no outstanding bonds, debentures, notes, or other Indebtedness of the Company, the holders of which have the right to vote (or which are convertible into or exercisable or exchangeable for securities having the right to vote) on any matters on which the equityholders of the Company may vote. There are no accrued or unpaid dividends or other distributions with respect to the Purchased Interests.

(e) The Company does not have any Subsidiaries and does not own or hold the right to acquire any stock, membership interest, partnership interest, joint venture interest, or other Equity Securities of, or otherwise have any ownership interest in, any other Person.

Section 5.4 Financial Statements; Books and Records. Attached to Schedule 5.4 are true, correct, and complete copies of: (i) the unaudited balance sheets of the Company as of December 31, 2023 (the "Most Recent Year End") and December 31, 2022, and the related statements of income, owners' equity, and cash flows for the years then ended (collectively, the "Annual Financial Statements"); and (ii) the unaudited balance sheet of the Company as of July 31, 2024 (the "Latest Balance Sheet Date", and such balance sheets, the "Latest Balance Sheet") and the related statements of income, owners' equity, and cash flows for the seven (7)-month period then ended (collectively, the "Interim Financial Statements"). The Annual Financial Statements and the Interim Financial Statements are herein collectively referred to as the "Financial Statements". Each of the Financial Statements was prepared on the basis of and in accordance with the books and records of the Company kept in the Ordinary Course, and fairly presents in all material respects the financial condition of the applicable Company as of its respective date and the results of operations and cash flows of the Company for the periods related thereto, in each case, in accordance with GAAP, using the same accounting methods, policies, practices, and procedures, with consistent classifications, judgments, and estimation methodology, as were used in the preparation of the Annual Financial Statements for the Most Recent Year End, except in the case of the Interim Financial Statements for the absence of footnote disclosures and year-end adjustments, none of which would be material, individually or in the aggregate. The accounting practices of the Company have been consistently applied for all periods represented by the Financial Statements. The Company's books and records are complete and correct and accurately reflect all of the assets, Liabilities, transactions, and results of operations of the Business, and the Financial Statements have been prepared and presented based upon and in conformity therewith.

Section 5.5 No Undisclosed Liabilities. The Company does not have any Liabilities, other than (a) Liabilities reflected or accrued for on the face of the Latest Balance Sheets in accordance with GAAP, and (b) Liabilities similar in nature and amount to those reflected or accrued for on the face of the Latest Balance Sheets that (1) have been incurred since the Latest Balance Sheet Date in the Ordinary Course and do not relate to any breach of contract, breach of warranty, tort, infringement, or violation of Law and did not arise out of any Action, (2) are not, individually or in the aggregate, material to the Business, and (3) will be reflected or accrued for on the Closing Statement (as finally determined in accordance herewith).

Section 5.6 Absence of Certain Changes. Since the Most Recent Year End, the Company has conducted its business and operations in the Ordinary Course and there has not been any event, occurrence, fact, development, condition, or change that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Without limiting the generality of the foregoing, since the Most Recent Year End, other than as set forth on Schedule 5.6, the Company has not:

(a) sold, leased, transferred, or assigned any of its assets, tangible or intangible, other than in the Ordinary Course;

(b) accelerated, terminated, modified, or canceled any Contract (or series of related Contracts) either involving more than $10,000 or otherwise outside the Ordinary Course;

(c) canceled, compromised, waived, or released any debt, right, or claim (or series of related rights and claims) either involving more than $10,000 (in the aggregate) or otherwise outside the Ordinary Course;

(d) experienced any damage, destruction, or loss to its property in excess of $10,000 in the aggregate (whether or not covered by insurance);

(e) entered into any transaction, arrangement, or contract with, or distributed or transferred any property or other assets to, any Related Party or Affiliate of the Company or Seller (other than salaries and employee benefits in the Ordinary Course);

(f) made or committed to make any capital expenditures or entered into any other material transaction outside the Ordinary Course or involving an expenditure in excess of $10,000;

(g) entered into, amended, or modified in any respect any Employee Benefit Plan, or announced or otherwise committed to any such entry, amendment, or modification;

(h) entered into any employment agreement or collective bargaining agreement, made any general wage or salary increase or granted any increase in excess of $10,000 in the salary of any Business Personnel or paid or committed to pay any bonus to any officer or employee, or announced or otherwise committed to any such entry, increase, or payment;

(i) changed the manner in which the Business has been conducted, including collection of accounts receivable, purchases of raw materials and other inventory, payment of accounts payable, and changes in the payment terms of any Top Customer or Top Supplier;

(j) changed the accounting principles, methods, or practices or any change in the depreciation or amortization policies or rates;

(k) (i) made, rescinded, revoked, or changed any election in respect of Taxes, (ii) adopted or changed any accounting method in respect of Taxes, (iii) signed or entered into any closing agreement or settlement, (iv) settled any claim or assessment in respect of Taxes, (vi) acted or omitted to act where such action or omission to act could reasonably be expected to have the effect of increasing any present or future Liability for any Tax or decreasing any present or future Tax benefit for the Company, Buyer or any of their respective Affiliates, (vii) consented to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes, (viii) filed a Tax Return in any jurisdiction where the Company did not file a Tax Return of the same type in the immediately preceding Tax period; (ix) prepared any Tax Return in a manner that is inconsistent with past practice, or taken any other similar action relating to the filing of any Tax Return or the payment of any Tax, other than, in all cases, as required by applicable Law; or (x) filed any amended Tax Returns or surrendered any right to claim a refund offset or other reduction in liability;

(l) acquired by merger or consolidation with, or by purchase of a material portion of the assets, capital stock or other Equity Securities of, or by any other manner, any business or any Person or any division thereof;

(m) delayed or postponed the payment of any accounts payable when due (other than amounts contested in good faith), or accelerated the collection of or failed to use commercially reasonable efforts to collect any accounts receivable when due;

(n) committed (orally or in writing) to any of the foregoing; or

(o) made or declared any dividend, payments or other distribution on or with respect to any Company Security.

Section 5.7 Material Contracts.

(a) Except as set forth on Schedule 5.7(a), the Company is not a party to or otherwise bound by any of the following Contracts (collectively, the "Material Contracts"):

(i) any Lease or sublease of real property;

(ii) any lease or sublease of personal property providing for either (1) annual payments by the Company in excess of $10,000 or (2) aggregate payments by the Company in excess of $20,000;

(iii) any Contract for capital expenditures or the purchase of goods, services, materials, supplies, or equipment providing for either (1) annual payments by the Company in excess of $10,000 or (2) aggregate payments by the Company in excess of $20,000;

(iv) any Contract relating to the sharing of revenue, commissions or fees, rebating, or any other similar arrangement;

(v) any Contract granting any Person "most favored nation" status or "exclusivity" or similar rights;

(vi) any Contract granting any Person a right of first refusal, right of first offer, or other preferential right to purchase or acquire any of the Company Securities or any of the assets, properties, or business of the Company;

(vii) any Contract for any partnership, joint venture, strategic alliance, or other similar arrangement;

(viii) any Contract requiring the Company to make any advance, loan, extension of credit, or capital contribution to, or other investment in, any Person;

(ix) any Contract with any Governmental Authority;

(x) any Contract relating to the acquisition or divestiture of any business or assets (whether by merger, sale of Equity Securities, sale of assets, or otherwise), including any Contract pursuant to which the Company is, or may become, obligated to pay any amount in respect of an "earn-out" or other form of deferred or contingent consideration;

(xi) any Contract (1) relating to the incurrence, assumption, or guarantee of any Indebtedness (including all loan agreements, notes, bonds, debentures, indentures, or guarantees) or (2) creating or granting a Lien (other than Permitted Liens) on any of the assets or properties of the Company or any of the Purchased Interests;

(xii) any agreement with any officer, manager, individual employee, consultant, independent contractor, former employee or independent contractor whose employment or engagement ended in the last three (3) years), or other Person that (1) describes any terms or conditions of employment or engagement of such Person, including any employment agreement, retention agreement, severance agreement, compensation agreement, change of control agreement, consulting agreement, and independent contractor agreement, (2) imposes upon any officer, manager, individual employee, consultant, independent contractor, or other Person any obligation with respect to the assignment of inventions or the nondisclosure or confidentiality of proprietary or confidential information or trade secrets, or (3) restricts the activities of any officer, manager, individual employee, consultant, independent contractor, former employee or independent contractor whose employment or engagement ended in the last three (3) years), or other Person during or after his or her employment or engagement by the Company, including any agreement that restricts any such Person's ability to compete with any Person, provide services to any Person, solicit any Person's employees or engaged independent contractors, solicit any Person's actual or prospective customers, suppliers or vendors, or interfere with any Person's employment, independent contractor, customer, prospective customer or vendor relationships;

(xiii) any contract with a professional employer organization (PEO), employee leasing company, employee staffing company or temporary labor company;

(xiv) any Contract that limits or purports to limit the ability of the Company (or would limit the ability of Buyer after the Closing) (1) to engage in any line of business, (2) to compete with any Person, (3) to operate in any geographic area, (4) to solicit or accept business from the clients or prospective clients of any Person, or (5) to solicit for employment or hire any Person;

(xv) any Contract providing for or relating to the settlement or compromise of any Action by or against the Company in excess of $10,000;

(xvi) any Contract entered into by the Company and any current employee or independent contractor or former employee or independent contractor whose employment or engagement ended in the last three (3) years), providing for a general or limited release in favor of the Company or the current or former employee or independent contractor;

(xvii) any collective bargaining agreement, labor contract, or other agreement or understanding with any labor organization or labor union;

(xviii) any Contract with any Top Customer or Top Supplier;

(xix) any Contract requiring indemnification of another Person;

(xx) any Contract whereby the Company is obligated to pay royalties or license fees to another Person; and

(xxi) any other Contract of a type that is not covered by the other clauses of this Section 5.7(a) that is material to the operation of the Business or the absence of which would have a Material Adverse Effect.

(b) The Company has made available to Buyer a true, complete, and correct copy of each Material Contract, including all amendments thereto.

(c) Each Material Contract (i) is a legal, valid, and binding obligation of the Company that is a party thereto and, to the Knowledge of the Company, the other parties thereto, (ii) is in full force and effect in accordance with its terms and (iii) will continue in full force and effect without penalty or other adverse consequence upon consummation of the Contemplated Transactions, subject to obtaining the consents and approvals, giving the notices, or taking the other actions referred to on Schedule 5.2(b). Neither Company nor, to the Knowledge of the Company, any other party to a Material Contract is in breach of or default under, or has provided or received any notice alleging any breach of or default under, any Material Contract. No event has occurred that (with or without notice, lapse of time, or both) would constitute a breach of or default under any Material Contract by either Company or, to the Knowledge of the Company, by any other party thereto. None of the counterparties to any Material Contract has notified either Company or Seller that it intends to terminate, cancel, or not renew such Material Contract.

Section 5.8 Legal Proceedings.

(a) Schedule 5.8(a) sets forth in reasonable detail all Actions involving the Company, any Company Securities, or the Business in the past four (4) years and all Actions that are pending, threatened in writing or, to the Knowledge of the Company, otherwise threatened against, or affecting the Company, any Company Securities or the Business, and the Company has made available to Buyer true, complete, and correct copies of all pleadings, correspondence, and other material documents relating to each such Action. None of the Actions set forth (or required to be set forth) on Schedule 5.8(a) (i) could reasonably be expected to result in any material Liability for the Company or (ii) in any manner challenges the validity of this Agreement or seeks to prevent, enjoin, alter, or delay in any material respect the consummation of the Contemplated Transactions.

(b) The Company is not subject to or otherwise bound by any order, injunction, judgment, settlement, writ or decree that prohibits or limits the conduct of the Business or the ownership or use of any of the assets or properties of the Company, nor is there any claim or other Action pending, or to the Knowledge of the Company, threatened with respect thereto.

Section 5.9 Compliance with Laws. The Company and the conduct of the Business are in compliance in all material respects with all, and have not in the past four (4) years violated in any material respect any, applicable Law. Neither the Company nor Seller has received any notice or other communication from any Governmental Authority or other Person alleging or asserting any such violation. The Company is not subject (and the Company has not, within the four (4)-year period ending on the Closing Date, been subject) to any adverse inspection, finding of deficiency, finding of non-compliance, compelled recall, investigation, penalty, fine, sanction, assessment, audit, request for corrective or remedial action, or other compliance or enforcement action by any Governmental Authority, in each case, relating to the products or services provided by the Company.

Section 5.10 Material Licenses. The Company holds or possesses, and is in compliance with, and has timely sought the renewal of, all material Licenses required for the lawful conduct of the Business as currently conducted (the "Material Licenses"). Schedule 5.10 sets forth a true, complete, and correct list of all such Material Licenses, including with respect to each the type of License, the License number, the jurisdiction issuing such License, and the expiration date of such License. Except as set forth on Schedule 5.10: (a) each Material License is valid and in full force and effect; (b) neither the Company nor Seller has received any notice or other communication alleging, or is in, any breach of or default under any Material License; (c) no Material License will be terminated or impaired as a result of the Contemplated Transactions; and (d) the consummation of the Contemplated Transactions will not result in the termination or impairment of any of the Material Licenses.

Section 5.11 Title to and Sufficiency of Assets; Condition of Assets.

(a) The Company has good, valid, and marketable title to, or in the case of leased assets and properties a valid leasehold interest in, all of the personal property and assets reflected on its Latest Balance Sheet or acquired by it after the Latest Balance Sheet Date, free and clear of all Liens (other than Permitted Liens and those set forth on Schedule 5.11(a)), except for assets which have been sold since the Latest Balance Sheet Date in the Ordinary Course for fair consideration. There is no Contract granting any Person or recognizing with respect to any Person any ownership or vesting right in, or any right of first refusal, right of first offer, or other preferential right to purchase, any of the assets or properties of the Company or any portion thereof or interest therein. Except as set forth on Schedule 5.11(a), neither Seller nor any employees, officers, managers, directors, or independent contractors of the Company, nor any of their respective Affiliates, owns any rights in any assets, tangible or intangible, which are used in the operation of the Business.

(b) The personal property and assets shown on the Latest Balance Sheets or acquired after the Latest Balance Sheet Date, the lease rights under the leases of personal property, and the Company Intellectual Property owned or used by the Company under valid license constitute all the assets and services used by the Company in operating the Business as it is currently operated by the Company. Such assets will enable Buyer to operate the Business after the Closing in the same manner as operated by the Company immediately prior to the Closing. All personal property owned by the Company, is in good operating condition and repair (ordinary wear and tear excepted) and fit for its intended purposes in the Business, except as specifically stated in Schedule 5.11(b).

(c) All of the Company's equipment and other tangible personal property and assets are in good condition and repair, except for ordinary wear and tear not caused by neglect, misuse or abuse, and are usable in the Ordinary Course and have been properly maintained and serviced.

Section 5.12 Real Property.

(a) The Company has sole and exclusive, good and valid title to, or a valid leasehold interest in, all Real Property reflected on its Latest Balance Sheet or acquired by it after the Latest Balance Sheet Date, free and clear of all Liens, except for assets which have been sold since the Latest Balance Sheet Date in the Ordinary Course for fair consideration.

(b) Except as set forth on Schedule 5.12(b), the Company is not a party to any Lease and does not have any interest in Leased Real Property. The Leased Real Property set forth on Schedule 5.12(b) constitutes all of the Real Property used, managed or occupied by the Company or used in connection with the operation of the Business. The Company does not own, nor has it ever owned, any Owned Real Property.

(c) Schedule 5.12(b) lists: (i) the street address of each parcel of Real Property; (ii) if such property is leased or subleased by the Company, the landlord under the lease, the rental amount currently being paid, and the expiration of the term of such lease or sublease for each leased or subleased property; and (iii) the current use of such property. With respect to leased Real Property, Seller have delivered or made available to Buyer true, complete and correct copies of any leases, subleases or licenses affecting the Real Property.

(d) The Company is not a sublessor or grantor under any sublease or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any leased real property other than the Real Property, and the Company is not a party to any agreement or option to purchase, sell, lease or sublease any real property or interest therein.

(e) Neither the existing buildings, structures and other improvements nor the use occupancy and operation of the Real Property in the conduct of the Business constitute a nonconforming use or structure under, and are not in breach or violation of, or default under, any applicable building, zoning, subdivision or other land use or any other Law, or violate any Law, covenant, condition, restriction, easement, license, permit or agreement.

(f) No material buildings, structures and other improvements constituting a part of the Real Property encroach on real property owned or leased by a Person other than the Company.

(g) There are no Actions pending nor, to the Knowledge of the Company, threatened against or affecting the Real Property or any portion thereof or interest therein in the nature of, or in lieu of, condemnation or, eminent domain or similar proceedings. There has been no material destruction, damage, casualty or taking with respect to the Real Property within the prior thirty-six month period.

(h) The Company is not delinquent in payment of any real estate taxes or assessments, material utility charges, maintenance charges, or other material charges relating to or arising from any Real Property. The Real Property is adequately served by electrical, gas, storm sewer, sanitary sewer, water, internet, telecommunications and other utilities as necessary or appropriate to operate the Business in a manner consistent with past practice. All such utilities are active, connected and in the name of the Company.

Section 5.13 Intellectual Property.

(a) The term "Intellectual Property" means any and all of the following in any jurisdiction throughout the world: (i) issued patents and patent applications; (ii) trademarks, service marks, trade names, and other similar indicia of source or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications for registration, and renewals of, any of the foregoing; (iii) copyrights, including all applications and registrations; (iv) trade secrets, know-how, inventions (whether or not patentable), technology, and other confidential and proprietary information and all rights therein; (v) internet domain names and social media accounts and pages; and (vi) other intellectual or industrial property and related proprietary rights, interests, and protections.

(b) Schedule 5.13(b) lists all issued patents, registered trademarks, domain names and copyrights, and pending applications for any of the foregoing and all material unregistered Intellectual Property that are owned by the Company (the "Company IP Registrations"). The Company owns or has the valid and enforceable right to use all Intellectual Property used or held for use in or necessary for the conduct of the Business as currently conducted (the "Company Intellectual Property"), free and clear of all Liens. All of the Company Intellectual Property is valid and enforceable, and all Company IP Registrations are subsisting and in full force and effect. The Company has taken all steps necessary to maintain and enforce the Company Intellectual Property.

(c) The conduct of the Business as currently and formerly conducted has not infringed, misappropriated, or otherwise violated the Intellectual Property or other rights of any Person. No Person has infringed, misappropriated, or otherwise violated any Company Intellectual Property.

Section 5.14 Tax Matters. Except as set forth on Schedule 5.14:

(a) All Tax Returns required to be filed by or with respect to the Company have been duly and timely filed (after giving effect to any valid extensions obtained), and all Taxes required to be paid or withheld by the Company, whether or not shown as due on such Tax Returns, have been paid or withheld as required by applicable Law. All such Tax Returns are true, correct, and complete in all material respects, and were prepared in compliance with applicable Laws. The Company is not currently the beneficiary of any extension of time within which to file any Tax Return.

(b) The Company has established reserves in accordance with GAAP that are adequate for the payments of all Taxes not yet due and payable. Since the Most Recent Year End, the Company has not incurred any Liability for Taxes other than in the Ordinary Course. The unpaid Taxes of, or with respect to, the Company (i) did not exceed any Taxes payable or any Liability for Taxes, plus any reserve for Liabilities for Taxes (other than a reserve for deferred Taxes), in each case as set forth on the face of the Latest Balance Sheet (rather than in any notes thereto) and (ii) do not exceed any Taxes payable or any Liability for Taxes, plus any such reserve as adjusted for the passage of time from the Latest Balance Sheet Date through the Closing Date in accordance with the past custom and practice of the Company.

(c) No claim has ever been made by any Governmental Authority in a jurisdiction where the Company does not file Tax Returns for a particular type of Tax that the Company is required to file Tax Returns for such jurisdiction or that it is or may be subject to taxation by or filing requirements with that jurisdiction for such particular type of Tax.

(d) The Company has delivered to Buyer true, correct, and complete copies of all income and other material Tax Returns, ruling requests, private letter rulings, closing agreements, settlement agreements, and statements of deficiencies sent or received by the Company with respect to taxable periods ending on or after December 31, 2019.

(e) All estimated Taxes required to be paid by or with respect to the Company have been timely paid to the proper Governmental Authority.

(f) The Company has timely withheld and paid over to the appropriate Governmental Authority all Taxes which it is required to withhold from amounts paid or owing to any employee, shareholders, creditor, holder of securities, or other third party, and has complied with all information reporting (including IRS Form 1099) and backup withholding requirements, including maintenance of required records with respect thereto.

(g) There are no Liens relating or attributable to Taxes encumbering (and no Governmental Authority has threatened to encumber) the assets of the Company, except for Permitted Liens. There are no Liens relating or attributable to Taxes encumbering (and no Governmental Authority has threatened to encumber) the Purchased Interests.

(h) No claim, proposed adjustment, assessment, audit, examination, or other administrative or court Action is pending or, to the Knowledge of the Company, threatened against or with respect to the Company in respect of any Tax. No deficiency or adjustment with respect to Taxes of the Company is outstanding, or has been proposed, asserted, assessed or threatened, the resolution of which is still pending, and all Tax deficiencies asserted and assessments against the Company have been fully paid.

(i) The Company has not waived any statute of limitations for the period of assessment or collection of Taxes, or agreed to or requested any extension of time for the period with respect to a Tax assessment or deficiency, which period (after giving effect to such extension or waiver) has not yet expired.

(j) Neither Buyer nor the Company will be required to include any item of income in, or exclude any item of deduction from, taxable income for any period ending after the Closing Date as a result of any: (i) change in method of accounting for any period beginning on or prior to the Closing Date pursuant to Section 481 of the Code (or any similar provision of state, local, or foreign Law); (ii) use of an improper method of accounting for a taxable period ending on or prior to the Closing Date; (iii) Tax ruling or agreement entered with a Governmental Authority, including a "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local, or non-U.S. income Tax Law) executed on or prior to the Closing Date; (iv) installment sale or open transaction disposition made on or prior to the Closing Date; (v) prepaid amount or deferred revenue paid or received on or prior to the Closing Date; (vi) use of a method of accounting other than the accrual method; (vii) income arising or accruing prior to the Closing and includible after the Closing under Subchapter K or Sections 951, 951A, 956 or 965 of the Code; or (viii) any "long-term contracts" that are subject to a method of accounting provided for in Section 460 of the Code or any deferred income pursuant to Sections 451(c), 455, or 456 of the Code or any corresponding provision of applicable Law.

(k) The Company (i) is not a party to, is not bound by, nor has any obligation under, any Tax Sharing Agreement, and (ii) does not have any potential liability or obligation (for Taxes or otherwise) to any Person as a result of, or pursuant to, any such Tax Sharing Agreement.

(l) The Company (i) is not a party to, is not bound by, nor has any obligation under, any closing or similar agreement, Tax abatement or similar agreement, or any other agreements with any Governmental Authority with respect to any period for which the statute of limitations has not expired or (ii) does not have any potential liability or obligation (for Taxes or otherwise) to any Person as a result of, or pursuant to, any such agreement.

(m) The Company does not have any liability for the Taxes of any Person under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local, or foreign Law), as a transferee, successor or as a result of similar liability, operation of Law, by Contract (including any Tax Sharing Agreement), or otherwise. The Company has not been included in any Affiliated Group under the United States or any non-U.S. jurisdiction or any state.

(n) The Company has not (i) taken a reporting position on a Tax Return that, if not sustained, could be reasonably likely to give rise to a penalty for substantial understatement of federal income Tax under Section 6662 of the Code (or any similar provision of state, local, or foreign law), (ii) entered into any transaction identified as a (A) "reportable transaction," within the meaning of Treasury Regulations Sections 1.6011-4(b), (B) a "transaction of interest," within the meaning of Treasury Regulations Section 1.6011-4(b)(6), or (C) any transaction that is "substantially similar" (within the meaning of Treasury Regulations Section 1.6011-4(c)(4)) to a "reportable transaction" or "transaction of interest," or (iii) entered into any other transaction that required or will require the filing of an IRS Form 8886. All positions taken by the Company on any Tax Return are supportable on at least a "more likely than not" basis.

(o) The Company has no pending ruling requests, request for administrative relief, requests for a change of any method of accounting, or request for technical advice filed by it or on its behalf, with any Governmental Authority. No power of attorney granted by the Company with respect to any Taxes is currently in force.

(p) At all times since January 1, 2020 and until immediately prior to consummation of the Reorganization, the Company had been a validly electing "S corporation" within the meaning of Sections 1361 and 1362 of the Code and in accordance with the Laws of each state and other jurisdiction in which the Company conducted business or could otherwise be subject to income Taxes. At all times prior to January 1, 2020, the Company had been validly treated as a partnership for U.S. federal and applicable state income Tax purposes. No event has occurred (or fact has existed) that would preclude the Company from initially qualifying as an S corporation under Section 1361(a) of the Code or which would terminate the Company's S corporation status (other than the Reorganization). No Governmental Authority has challenged the effectiveness of any of these elections. From the effective time of the QSub Election until the transfer of the Purchased Interests pursuant to Section 2.1 the Company has been validly treated as a qualified subchapter S subsidiary pursuant to Section 1361(b)(3)(B) of the Code and the Laws of each state and other jurisdiction in which the Company conducted business or could otherwise be subject to income Taxes. No event has occurred (or fact has existed) that would preclude the Company from initially qualifying as qualified subchapter S subsidiary under Section 1361(b) of the Code or which would terminate the Company's status as a qualified subchapter S subsidiary. No Governmental Authority has challenged the effectiveness of any of these elections.

(q) The Company has never been for the five-year period ending at the Closing, a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code or owns an interest in "United States real property" within the meaning of Section 897 of the Code.

(r) The Company is not subject to Tax in any foreign jurisdiction outside of the United States, and the Company does not have a permanent establishment (within the meaning of an applicable Tax treaty or convention between the United States and such foreign country), in any foreign jurisdiction; The Company is not engaged in, nor has it ever engaged in, a trade or business through a "permanent establishment" or through an office or a fixed place of business in any country other than the United States.

(s) The Company does not own any interest in (i) a "controlled foreign corporation" as defined in Code Section 957(A) or (ii) a "passive foreign investment company" within the meaning of Code Section 1297.

(t) The Company is not a party to any joint venture, partnership or other arrangement or Contract which could be treated as a partnership for U.S. federal income Tax purposes.

(u) The Company has never (i) deferred the employer's share of any "applicable employment taxes" under Section 2302 of the CARES Act, (ii) otherwise deferred any Taxes (including the employee portion of any payroll Taxes) pursuant to the Presidential Memorandum described in IRS Notice 2020-65 or changed any material Tax practice or filed an amended Tax Return under, or in response to, any legislation or executive order enacted or issued in response to COVID-19, (iii) claimed any Tax credits under Sections 7001 through 7005 of the Families First Coronavirus Response Act or Section 2301 of the CARES Act, or (iv) sought (nor has any Affiliate that would be aggregated with the Company and treated as one employer for purposes of Section 2301 of the CARES Act sought) a covered loan under paragraph (36) of Section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by Section 1102 of the CARES Act.

(v) All transactions entered into by the Company with any Affiliate or Related Party have been carried out at arm's length terms and the Company has properly and timely documented their transfer pricing methodology in compliance with Sections 482 and 6662 of the Code and corresponding or similar provisions of foreign Law.

(w) The Company has collected all sales and use Taxes required to be collected, and has timely remitted such amounts to the appropriate Governmental Authority, or has furnished or collected properly completed exemption certificates required to qualify for any claimed exemption from the collection of sale and use Taxes and has retained all such records and supporting documents in the manner required by all applicable sales and use Tax Laws.

(x) The Company has never commenced any voluntary disclosure proceeding.

(y) There are no Tax holidays, credits, grants or similar amounts previously received by or awarded to the Company that are or could be subject to "clawback" or recapture as a result of (i) the transactions contemplated by this Agreement or (ii) a failure to satisfy any requirements on which the credit, grant or similar amount is or was conditioned.

(z) The Company does not pay any income Taxes in any state or local or non-U.S. jurisdiction and the Company is not obligated, nor has it agreed, to pay any income Taxes of any of its equity-holders (direct or indirect) (by means of withholding, electing to file composite returns in any jurisdiction, or otherwise). No equity-holder (direct or indirect) of the Company has any right to any distributions with respect to Taxes from the Company that will survive the Closing.

(aa) Since the date of the Interim Financial Statements, the Company has not (i) incurred any Taxes with respect to events or transactions outside the ordinary course of business, (ii) changed a method of accounting for Tax purposes, (iii) entered into any agreement with any Governmental Authority (including a "closing agreement" under Section 7121 of the Code) with respect to any Tax matter, (iv) surrendered any right to a Tax refund, (v) changed an accounting period with respect to Taxes, (vi) filed an amended Tax Return, (vii) changed or revoked any election with respect to Taxes or (viii) made any Tax election inconsistent with past practices.

(bb) The Company has not distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported to be governed by Sections 355 or 361 of the Code.

(cc) There is no unclaimed property or escheat obligation with respect to property or other assets held or owned by the Company.

Section 5.15 Environmental Matters.

(a) (i) The Company currently conducts, and has conducted, its business in material compliance with all applicable Environmental Laws; (ii) neither the Company nor Seller has received any notice or other communication from any Person alleging that the Company is not in compliance with or has any Liability under any applicable Environmental Law or demanding payment, contribution, indemnification, remedial action, removal action, financial assurance, or any other action or inaction with respect to any actual or alleged environmental damage, condition, or event or injury to persons, property, or natural resources; and (iii) no notification, demand, request for information, citation, summons or order has been received, no complaint has been filed, no penalty has been assessed and no investigation, action, claim, suit, proceeding or review is pending, or, to the Knowledge of the Company, threatened by any Governmental Authority or other Person with respect to any matters relating to the Company and relating to or arising out of any Environmental Law.

(b) The Company holds all environmental Licenses required for the conduct of its business as presently conducted, and the Company is, and has been for the last five (5) years in material compliance with such environmental Licenses, including timely possessing, renewing and complying in all material respects with the terms and conditions of all environmental Licenses required for the conduct of the business. Schedule 5.15(b) provides a true, correct and complete list of all environmental Licenses held by the Company. All such environmental Licenses are valid and in full force and effect, and there are no pending or threatened actions or conditions that exist that, with notice or lapse of time or both, would constitute a default under any License issued pursuant to any Environmental Law, or that would seek the revocation, cancellation, suspension or adverse modification of any environmental License, in whole or in part.

(c) There are no underground storage tanks operated or formerly operated by the Company at any of the Real Property locations, and no underground storage tanks are otherwise present at any of the Real Property locations for which the Company has any responsibility or Liability under applicable Environmental Laws.

(d) The Company has not generated, manufactured, sold, handled, treated, recycled, stored, transported, disposed of, arranged for the disposal of, Released, or placed any Hazardous Material in a manner which could reasonably be expected to give rise to any material Liability under Environmental Laws. There is no Remedial Action pending or, to the Knowledge of the Company, threatened against the Company.

(e) There has not been any Release or threatened Release of any Hazardous Materials by the Company or, to the Knowledge of the Company, by any other Person on, upon, under, into, or from any of the Real Property locations or any property currently occupied or previously owned, leased, or occupied by the Company, and, to the Knowledge of the Company, there are no Releases of Hazardous Materials on, upon, under, into, or from any of the Real Property locations or any property currently occupied or previously owned, leased, or occupied by the Company which require Remedial Action or for which the Company could have any Liability under any applicable Environmental Laws.

(f) The Company has not assumed by contract, or otherwise provided any contractual indemnity with respect to, any Liability of any other Person pursuant to Environmental Law, and there are no facts, conditions, or circumstances which could reasonably be expected to result in or form the basis for any such Liability.

(g) The Company and Seller have provided Buyer with true, correct, and complete copies of all material environmental reports, investigations, audits, inspections, studies, records, sampling data, site assessments, risk assessments, and other similar documents in the possession, custody or control of the Company or Seller pertaining or relating to (i) Hazardous Material in connection with any real property now or previously owned, leased or occupied by the Company, (ii) compliance with Environmental Laws, or (iii) the operations, business, and facilities of the Company.

(h) Neither the Company nor Seller has received any written notice that any property now or previously owned, operated, or leased by the Company is listed or is proposed for listing on the National Priorities List pursuant to CERCLA, the Comprehensive Environmental Response, Compensation and Liability Information System List ("CERCLIS"), any registry of contaminated land sites or on any similar state or foreign list of sites requiring investigation or cleanup, and no Lien (other than Permitted Liens) has been filed against either the personal or real property of the Company under Environmental Law.

(i) There are no current or proposed requirements under Environmental Law which would require material capital expenditures in the next twelve (12) months which are not shown on the Latest Balance Sheets.

Section 5.16 Business Personnel.

(a) Schedule 5.16(a)(i) sets forth a true, complete, and correct list of the following information with respect to each current Business Personnel rendering services as an employee (including those individuals where the Company is a co-employer or joint employer): (i) name; (ii) title or position held; (iii) date of hire; (iv) total length of employment or service, including any prior service credit that would affect the calculation of years of service for any purpose; (v) classification as exempt or non-exempt from all applicable overtime pay Laws; (vi) status as full- or part-time; (vii) active or inactive status (including on an approved leave of absence other than routine vacation time and, if inactive, the expected date of return to service); (viii) work location; (viii) annual base salary if salaried or hourly rate if hourly; (ix) commission arrangement, incentive arrangements, and bonus potential; (x) and deferred compensation; (xi) accrued bonus, if any, as of the date hereof; (xii) earned but unused vacation and other paid-time-off entitlements as of the date hereof; and (xiii) whether the individual is authorized to work through a visa and, if so, the expiration date of the work authorization; and (xiv) the number of hours the individual was scheduled to work per week, on average over the prior three (3) years. Each of the Business Personnel is employed or engaged as a contractor by the Company. Schedule 5.16(a)(ii) sets forth a true, complete, and correct list of the following information with respect to each current Business Personnel rendering services as an independent contractor or employee or contractor of a third party contracted to provide labor or services to the Company: (i) name; (ii) the entity employing or engaging the individual; (iii) the services being rendered to the Company; (iv) the remuneration arrangement with the individual; (iv) total remuneration paid to the individual in 2022, 2023 and year to date 2024; (v) the date services first began to be rendered to the Company; and (vi) the number of hours of service rendered per week to the Company on average over the prior three (3) years.

(b) Except as set forth on Schedule 5.16(b), each Business Personnel is an "at-will" employee or an independent contractor whose employment or engagement, respectively, may be terminated at any time without advance notice by or liability to the Company. Each Business Personnel is, and at all times in the past four (4) years has been, properly classified as an employee or non-employee and as "exempt" or "non-exempt" from overtime pay requirements for all purposes (including with respect to eligibility for minimum wage and overtime under the Fair Labor Standards Act and applicable state and local wage and hour Laws, and for purposes of taxation and tax reporting and under the Employee Benefit Plans). All employees classified as non-exempt under the Fair Labor Standards Act or any applicable state and local wage and hour Laws at all times in the past four (4) years have been fully and properly paid all overtime premiums due under such Laws. Except as set forth on Schedule 5.16(a), (i) none of the Business Personnel is on a paid or unpaid medical, disability, family, or other leave of absence, and (ii) none of the Business Personnel has given notice of termination of his or her employment or engagement, or has indicated to the Company an intention to terminate his or her employment or engagement within the nine (9)-month period prior to the Closing Date.

(c) All salaries, wages, commissions, bonuses, vacation pay, withholdings, remittances, and other Liabilities related to the employment or engagement of the Business Personnel that are earned or accrued or due to be paid on or before the Closing Date have been fully paid as of the Effective Time.

(d) The Company has not, within the past four (4) years, received any "cease and desist" letter or similar communication alleging that any Business Personnel is, and to the Knowledge of the Company no Business Personnel is, performing any job duties or engaging in other activities on behalf of the Company that would violate any employment, non-competition, non-solicitation, non-disclosure, or other similar agreement between such individual and any former employer or any Law.

Section 5.17 Labor Matters.

(a) The Company is, and for the past four (4) years has been, in compliance in all material respects with all Laws relating to employment and employment practices, including the terms and conditions of employment, termination of employment, hiring practices and procedures, immigration and employment verification matters, work authorization, workplace health and safety, workers' compensation, human rights, applicable paid and unpaid leave Laws, paid and unpaid sick time Laws, wages and hours (including minimum wage requirements, overtime pay requirements, meal and rest period requirements), worker classification, wage payment, vacation and other paid time off, pay equity and equal pay, affirmative action, fair employment practices, discrimination, harassment, retaliation and whistleblowing, accommodation (disability, religious beliefs and practices, pregnancy, childbirth, conditions related to pregnancy or childbirth), background checks, privacy, biometric information, genetic information, the National Labor Relations Act, layoffs and plant closings, and payroll tax withholding and remittance (collectively, "Employment Laws"). No current officer, director, manager, or other executive of the Company or any other Business Personnel has been the subject of any complaint of sexual harassment, sexual assault, or sexual discrimination during his or her tenure at the Company. The Company has promptly and thoroughly investigated all internal and external complaints of unlawful harassment and, where a complaint was determined to have merit, promptly taken remedial measures reasonably calculated to end the unlawful harassment.

(b) The Company has not ever been nor is it currently a party to or otherwise bound by any collective bargaining agreement or other agreement with a labor union or equivalent organization, and there is no organizational campaign or other effort to cause a labor union or equivalent organization to be recognized or certified as a representative on behalf of the Business Personnel in dealing with the Company. There is no pending or, to the Knowledge of the Company, threatened labor strike, labor dispute, or work stoppage involving the Business Personnel.

(c) The Company has not, within the past four (4) years, effectuated (i) a "plant closing" or a "mass layoff" (as such terms are defined in the WARN Act and analogous applicable state laws) or (ii) such other transaction, layoff, reduction in force, or employment terminations sufficient in number to trigger application of the WARN Act or analogous applicable state law. Schedule 5.17(c) lists each Business Personnel who suffered an Employment Loss with the Company in the ninety (90) calendar days ending on the Closing Date, including each such employee's name, employer as of the Employment Loss, age as of the Employment Loss, job title as of the Employment Loss, work location as of the Employment Loss, date of the Employment Loss, and type of Employment Loss (termination, layoff, or reduction in work hours).

(d) The Company has fully complied with all applicable Laws, including but not limited to all applicable federal, state, and local statutes, regulations, and orders related to employee leave, workplace safety, and employee accommodations, related to, or in response to, COVID-19. Additionally, the Company has complied with all social distancing guidelines and other recommendations applicable to employers promulgated by all applicable healthcare and regulatory authorities, including the Centers for Disease Control and Prevention, related to COVID-19.

(e) The Company has not, within the past twelve (12) months, effectuated (i) layoffs, (ii) furloughs, or (iii) worksite shutdowns due to or otherwise related to COVID-19.

(f) There are no currently pending and in the prior three (3) years there have been no Actions (including administrative charges or complaints) filed with the Equal Employment Opportunity Commission, the U.S. Department of Labor, the National Labor Relations Board or similar state or local governmental authorities against the Company or any of its directors, officers, managers or supervisors

(g) There are no currently pending and in the prior three (3) years there have been no Actions filed against the Company or any of its directors, officers, managers or supervisors alleging a violation of any Employment Laws.

Section 5.18 Employee Benefit Matters.

(a) Schedule 5.18(a) sets forth a true, complete, and correct list of all Employee Benefit Plans. With respect to each Employee Benefit Plan, the Company has made available to Buyer true, complete, and correct copies of the following documents, to the extent applicable: (i) the current plan document, including all amendments thereto, and in the case of unwritten Employee Benefit Plans written descriptions thereof; (ii) each insurance contract, trust agreement, or other funding arrangement; (iii) the most recent summary plan description and summary of material modifications thereto; (iv) the most recent determination or opinion letter issued by the IRS with respect to each such Employee Benefit Plan intended to be "qualified" within the meaning of Section 401(a) of the Code; (v) the three (3) most recent annual reports on Form 5500 (including any applicable schedules and attachments thereto); (vi) the coverage and nondiscrimination testing results for the four (4) most recent plan years; (vii) the two (2) most recent financial statements and/or actuarial valuation reports; and (viii) all material correspondence within the past four (4) years with the IRS, the Department of Labor, or any other Governmental Authority regarding the operation or administration of any Employee Benefit Plan.

(b) Each Employee Benefit Plan has been established, maintained, administered, and funded in compliance with, and complies with, its terms and all applicable Laws (including ERISA and the Code) in all material respects, and there has not been any notice issued by any Governmental Authority questioning or challenging such compliance. The Company has timely paid or made all contributions, distributions, reimbursements, and premium payments required under or with respect to each Employee Benefit Plan, including accruing in accordance with GAAP and the Ordinary Course for any incurred but not reported liabilities for all periods ending on or before the Closing Date.

(c) No act or omission has occurred and no condition exists with respect to any Employee Benefit Plan that would subject either Company, Buyer, or any of their respective Affiliates to any fine, penalty, Tax, or other Liability imposed under ERISA, the Code, or other applicable Law.

(d) Each Employee Benefit Plan that is intended to be "qualified" within the meaning of Section 401(a) of the Code is so qualified and has received a favorable and current determination letter from the IRS, or is a preapproved plan that is entitled, under applicable IRS guidance, to rely on a favorable opinion letter issued by the IRS to the preapproved plan sponsor (of which it has timely received from the IRS), as to the tax qualification of such Employee Benefit Plan under Section 401(a) of the Code and the exemption of the related trust from Federal income taxation under Section 501(a) of the Code. No fact or event has occurred since the date of such letter that would reasonably be expected to adversely affect such qualified status or tax exempt status or result in any penalty or other Liability to the Company or any fiduciary of such Employee Benefit Plan.

(e) Each Employee Benefit Plan that is subject to Section 409A of the Code is in operational and documentary compliance with Section 409A and all applicable IRS regulations, rulings, and notices promulgated thereunder. The Company does not have any obligations to gross up, indemnify, or otherwise reimburse any Person for any Taxes (or potential Taxes) imposed (or potentially imposed) pursuant to Section 409A or 4999 of the Code.

(f) Each Employee Benefit Plan may be amended, terminated, or otherwise discontinued as of the Effective Time in accordance with its terms without any liability to Buyer or its ERISA Affiliates. None of the Employee Benefit Plans is operated, or subject to the laws of any jurisdiction, outside the United States.

(g) No Employee Benefit Plan, other than a consulting agreement providing for fees for services, provides benefits to any individual who is not (i) an eligible employee of the Company, (ii) an eligible former employee of the Company (to the extent coverage of such former employee is required by Law), or (iii) an eligible spouse or dependent of any person covered by clause (i) or (ii). For purposes of each Employee Benefit Plan, the Company has correctly classified those individuals performing services for the Company as common law employees, leased employees, or independent contractors.

(h) Neither Company nor any of its ERISA Affiliates sponsors, maintains, administers, or contributes to, or has ever sponsored, maintained, administered, or contributed to, or has had or could have any Liability with respect to, (i) any plan subject to Title IV of ERISA, Section 302 of ERISA, or Section 412 of the Code, (ii) any "multiemployer plan" (as defined in Section 3(37) of ERISA), (iii) any "multiple employer plan" (as defined in Section 413(c) of the Code), (iv) any "multiple employer welfare arrangement" (as defined in Section 3(40) of ERISA), (v) any tax-qualified "defined benefit plan" (as defined in Section 3(35) of ERISA), or (vi) any self-insured plan (including any plan pursuant to which a stop loss policy or contract applies). With respect to any Employee Benefit Plan that is a multiple employer plan (as defined in Section 413(c) of the Code) or is provided by or through a professional employer organization, such Employee Benefit Plan complies with the requirements of the Code and ERISA and neither Company nor any of its ERISA Affiliates has any Liabilities other than the payment and/or remittance of premiums and/or required contributions on behalf of enrolled individuals.

(i) There are no Actions (including any audit or investigation by the IRS, United States Department of Labor, or Pension Benefit Guaranty Corporation) pending or, to the Knowledge of the Company, threatened involving any Employee Benefit Plan or the assets thereof, other than routine claims for benefits payable in the Ordinary Course.

(j) There have been no non-exempt "prohibited transactions" (within the meaning of Section 406 of ERISA or Section 4975 of the Code) and no breach of fiduciary duty, in each case with respect to any Employee Benefit Plan.

(k) Except as required by COBRA or any similar applicable state law, the costs of which are paid solely by the participant, the Company does not have any current or projected Liability for, and no Employee Benefit Plan provides or promises, any benefits or coverage following retirement or other termination of service. Schedule 5.18(k) sets forth a true, complete, and correct list of all Liabilities of the Company to provide "continuation coverage" to former employees of the Company and their covered dependents with respect to all qualifying events under COBRA and similar state Law that occurred prior to the Closing. With respect to all periods prior to the Closing, the Company and its ERISA Affiliates have complied in all material respects with all requirements of COBRA and any similar state Law. The Company does not have any current obligations to make any severance payments to any former Business Personnel.

(l) Except as set forth on Schedule 5.18(l), neither the execution and delivery of this Agreement nor the consummation of the Contemplated Transactions will (either alone or in combination with any other event) (i) result in, (ii) accelerate the time of payment, vesting, or funding of, or (iii) increase the amount or value of, any payment or benefit to any current or former Business Personnel, employee, officer, manager, or director of or consultant to the Company. There is no Contract covering any current or former employee or independent contractor of the Company that, individually or collectively, could give rise to (or already has resulted in) the payment of any amount or provision of any benefit (including accelerated vesting) that could constitute an "excess parachute payment" within the meaning of Section 280G of the Code or would not be deductible under Section 280G of the Code or could be subject to an excise tax under Section 4999 of the Code.

Section 5.19 Insurance Matters. Schedule 5.19 accurately and completely sets forth the following information with respect to each insurance policy (including policies providing property, casualty, liability, and workers' compensation coverage and bond and surety arrangements) to which the Company is a party, a named insured, or otherwise the beneficiary of coverage: (a) the name of the insurer, the name of the policyholder, and the name of each covered insured and loss payee; (b) the policy number and the period of coverage; and (c) the scope (including an indication of whether the coverage is on a claims made, occurrence, or other basis) and amount (including a description of how deductibles and ceilings are calculated and operate) of coverage. With respect to each such insurance policy: (i) the policy is legal, valid, binding, enforceable, and in full force and effect; (ii) the policy will continue to be legal, valid, binding, enforceable, and in full force and effect on identical terms immediately following the consummation of the Contemplated Transactions; (iii) neither the Company nor, to the Knowledge of the Company, any other party to the policy is in breach or default of, and no event has occurred which, with notice or the lapse of time, or both, would constitute such a breach or default of or permit any termination or modification of or acceleration under, the policy; and (iv) no party to the policy has repudiated any provision thereof. Schedule 5.19 sets forth true, correct, and complete descriptions of all claims submitted by or on behalf of the Company pursuant to such insurance policies (as in effect on the date hereof), and the Company has provided proper and timely notice of all such claims in accordance with the terms of all such policies.

Section 5.20 Related Party Transactions; Potential Conflicts of Interest. Except as set forth on Schedule 5.20, no Affiliate of the Company nor any Related Party (including Seller), (a) has any direct or indirect interest, as director, officer, partner, equityholder, or otherwise, in any Person that does business with the Company, or in any property, asset, or right that is used by the Company in the conduct of the Business, (b) is party to any Contract with the Company, other than an employment agreement entered into with the Company in the Ordinary Course, each of which is set forth on Schedule 5.20, (c) has any loan outstanding to or Action (or cause to initiate an Action) against the Company, except for claims in the Ordinary Course for accrued salary, bonus, vacation pay, and benefits under Employee Benefit Plans in effect as of the Closing, or (d) has made, on behalf of or for the benefit or in the name of the Company, any payment or commitment to pay any commission, fee or other amount to, or to purchase or obtain or otherwise contract to purchase or obtain any goods or services from, any Person of which Seller or any officer, director, or senior employee of the Company, or any relative of any of the foregoing, is a partner, equityholder or otherwise has a financial interest (other than an interest solely resulting from his, her or its status as an employee thereof).

Section 5.21 Unlawful Payments. No payments of either cash or other consideration have been made to any Person by the Company or Seller or any Related Party or on behalf of the Company or Seller by any Representative or equityholder of the Company or any other Person, that were unlawful under any applicable Law.

Section 5.22 Bank Accounts; Powers of Attorney. Schedule 5.22 sets forth a true, complete, and correct list of the following information with respect to the Company: (a) all bank accounts and safe deposit boxes of the Company and all persons authorized to sign or otherwise act with respect thereto as of the date hereof; and (b) all persons holding a general or special power of attorney granted by the Company and a true, complete, and correct copy thereof.

Section 5.23 No Broker. Except as set forth on Schedule 5.23, no broker, finder, investment banker, or other intermediary is entitled or has claimed to be entitled to any fee or commission in connection with the Contemplated Transactions based upon arrangements made by or on behalf of the Company or Seller.

Section 5.24 Top Customers and Top Suppliers.

(a) Schedule 5.24(a) sets forth a true, correct, and complete list of the top ten (10) customers of the Company (by amounts paid to the Company during each of the twelve (12)-month periods December 31, 2023 and December 31, 2022 and during the seven (7)-month period ending July 31, 2024) (the "Top Customers"), together with the revenue received from the Top Customers during the twelve (12)-month periods ending December 31, 2023 and December 31, 2022 and during the seven (7)-month period ending July 31, 2024. No Top Customer has canceled, terminated, or otherwise materially reduced (on a year-over-year basis) its relationship with the Company, and no Top Customer has advised the Company of any intention to do so, and to the Knowledge of the Company no such Top Customer intends or has a reason to do so. There are no pending or, to the Knowledge of the Company, threatened disputes with or by any Top Customer.

(b) Schedule 5.24(b) sets forth a true, correct, and complete list of the top ten (10) vendors of the Company (by amounts paid by the Company during each of the twelve (12)-month periods ending December 31, 2023 and December 31, 2022 and during the seven (7)-month period ending July 31, 2024) (the "Top Suppliers"), together with the amounts paid to the Top Suppliers during such periods. No Top Supplier has canceled, terminated, or otherwise materially reduced (on a year-over-year basis) its relationship with the Company, and no Top Supplier has advised the Company of any intention to do so, and to the Knowledge of the Company no such Top Customer intends or has a reason to do so. There are no pending or, to the Knowledge of the Company, threatened disputes with or by any Top Supplier.

Section 5.25 Inventory and Accounts Receivable.

(a) All inventory of the Company, whether or not reflected on the Latest Balance Sheet, consists of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. All such inventory is owned by the Company free and clear of all Liens, and no inventory is held on a consignment basis. The quantities of each item of inventory (whether raw materials, work-in-process or finished goods) are not excessive, but are reasonable in the present circumstances of the Company.

(b) The accounts receivable reflected on the Latest Balance Sheet and the accounts receivable arising after the Latest Balance Sheet Date (i) have arisen from bona fide transactions entered into by the Company involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice, (b) constitute only valid, undisputed claims of the Company not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice, and (c) subject to a reserve for bad debts shown on the Latest Balance Sheet or, with respect to accounts receivable arising after the Latest Balance Sheet Date, on the accounting records of the Company, are collectible in full within sixty (60) days after billing. The reserve for bad debts shown on the Latest Balance Sheet or, with respect to accounts receivable arising after the Latest Balance Sheet Date, on the accounting records of the Company have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes.

Section 5.26 Full Disclosure. No representation or warranty made by Seller in this Agreement and no statement contained in the Disclosure Schedules to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

Section 5.27 No Other Representations or Warranties. None of Seller or any other Person has made, or shall be deemed to have made, and none of Seller or any of its agents or representatives is liable for or bound in any manner by, any express or implied representations, warranties, guaranties, promises or statements pertaining to the Company, Seller or the Purchased Interests, except as specifically set forth in this Agreement.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES OF BUYER

As a condition and material inducement to Seller's willingness to enter into this Agreement and consummate the Contemplated Transactions, Buyer represents and warrants to the Seller Parties as follows:

Section 6.1 Organization; Authorization; Enforceability.

(a) Buyer is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware. The execution, delivery, and performance by Buyer of this Agreement and each Ancillary Agreement to which Buyer is a party and the consummation by Buyer of the Contemplated Transactions are within Buyer's limited liability company powers and have been duly and validly authorized and approved by all necessary limited liability company action on the part of Buyer.

(b) This Agreement and each Ancillary Agreement to which Buyer is a party have been duly and validly executed and delivered by Buyer, and this Agreement (assuming due authorization, execution, and delivery by the other parties thereto) and each such Ancillary Agreement (assuming due authorization, execution, and delivery by the other parties thereto) constitute the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, subject to the Enforceability Exceptions.

Section 6.2 Noncontravention.

(a) The execution, delivery, and performance by Buyer of this Agreement and each Ancillary Agreement to which Buyer is a party, and the consummation by Buyer of the Contemplated Transactions, do not and will not: (i) contravene, conflict with, violate, or result in a breach of any provision of Buyer's Organizational Documents; (ii) contravene, conflict with, violate, or result in a breach of any Law; or (iii) require any consent of, notice or payment to, or other action by any Person under, contravene, conflict with, violate, result in a breach of the terms, conditions, or provisions of, constitute a default (or an event that with or without notice or lapse of time or both would become a default) under, or give rise to any rights of acceleration, amendment, termination, or cancellation or to a loss of any rights under, any material Contract to which Buyer is a party or by which Buyer or any of its material assets or properties is bound, other than, in the case of clause (ii) or (iii) above, any such items that have not had and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Buyer's ability to perform its obligations hereunder or to timely consummate the Contemplated Transactions.

(b) No consent, approval or authorization of, or registration, declaration, or filing with, or notice to, any Governmental Authority or any other Person is required to be obtained, made or given by Buyer as a result of or in connection with its execution, delivery, and performance of this Agreement or its consummation of the Contemplated Transactions, other than any items the failure of which to obtain, make or give would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Buyer's ability to perform its obligations hereunder or to timely consummate the Contemplated Transactions.

Section 6.3 Legal Proceedings. There is no Action pending or, to the Knowledge of Buyer, threatened against or affecting Buyer that, if determined or resolved adversely to Buyer, would have a material adverse effect on Buyer's ability to perform its obligations hereunder or to timely consummate the Contemplated Transactions.

Section 6.4 Investment Intent. Buyer is acquiring the Purchased Interests for its own account, for investment only, and not with a view to any resale or public distribution thereof in violation of applicable securities laws. Buyer is an "Accredited Investor" within the meaning of Rule 501 of Regulation D promulgated under the Securities Act. Buyer acknowledges and understands that the Purchased Interests have not been registered under the Securities Act or qualified under the securities or "blue sky" Laws of applicable states in reliance upon exemptions from registration or qualification thereunder and the Purchased Interests may not be sold, offered, transferred, assigned, pledged, hypothecated or otherwise disposed of or encumbered, except in compliance with the Securities Act and such other applicable Law.

Section 6.5 No Broker. No broker, finder, investment banker, or other intermediary is entitled or has claimed to be entitled to any fee or commission in connection with the Contemplated Transactions based upon arrangements made by or on behalf of Buyer.

Section 6.6 Inspections; Non-Reliance. Buyer is an informed and sophisticated purchaser and has engaged advisors experienced in the evaluation and purchase of businesses such as its acquisition of the Purchased Interests as contemplated by this Agreement. Seller has given Buyer reasonable access to the employees, documents and facilities of the Company, and Buyer has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed decision with respect to the execution, delivery and performance of this Agreement. Buyer acknowledges that (a) none of the Company, Seller, or any Person on behalf of the Company or Seller is making any representations or warranties whatsoever, express or implied, beyond those expressly made by Seller or the Company in this Agreement, and (b) Buyer has not been induced by, or relied upon, any representations, warranties, or statements (written or oral), whether express or implied, made by any Person that are not expressly set forth in this Agreement. Buyer agrees to accept the Purchased Interests on the Closing Date based upon its own inspection, examination and determination with respect thereto as to all matters and without reliance upon any expressed or implied representations or warranties of any nature made by Seller or the Company or any of their respective directors, officer, employees, stockholders, partners, members, advisors, or other representatives, except as specifically and expressly set forth in this Agreement. Without limiting the generality of the foregoing, Buyer specifically acknowledges that no representations or warranties are made with respect to any projections, forecasts, estimates, budgets or prospective information that may have been made available to Buyer, its Affiliates or any of their representatives, except those, if any, expressly made by Seller or the Company in this Agreement.

Section 6.7 No Other Representations or Warranties. None of Buyer or any other Person has made, or shall be deemed to have made, and none of Buyer or any of its agents or representatives is liable for or bound in any manner by, any express or implied representations, warranties, guaranties, promises or statements pertaining to Buyer, except as specifically set forth in this Agreement.

ARTICLE VII
COVENANTS

Section 7.1 Public Announcements. Unless otherwise required by applicable Law (based upon the reasonable advice of counsel), no party hereto shall make any public announcements or press releases in respect of this Agreement or the Contemplated Transactions or otherwise communicate with any news media without the prior written consent of the other parties hereto (which consent will not be unreasonably conditioned, withheld, or delayed), and the parties hereto will cooperate as to the timing and contents of any such announcement. Notwithstanding the foregoing, following the Closing, Buyer and its Affiliates shall be freely permitted to make any public announcements or disclosures without the consent of any other party hereto.

Section 7.2 Confidentiality. From and after the Closing Date, Seller shall, and shall cause his Affiliates and, as applicable, their respective Representatives to, keep confidential and not disclose or use any Confidential Information, other than to disclose Confidential Information to Buyer. Notwithstanding the foregoing, if Seller or any of his Affiliates or, as applicable, any of their respective Representatives (collectively, the "Disclosing Party") is requested or required by Law to disclose any Confidential Information, Seller shall (and if Seller is not the Disclosing Party, Seller shall cause the Disclosing Party to) provide Buyer with notice of such request or requirement as promptly as practicable (unless prohibited by Law) so that Buyer may seek a protective order or other appropriate remedy and/or waive compliance with the foregoing provisions of this Section 7.2. Seller shall (and if Seller is not the Disclosing Party, Seller shall cause the Disclosing Party to) cooperate reasonably with Buyer in connection with Buyer's efforts to seek such an order or remedy. If Buyer does not obtain such an order or other remedy, or waives compliance with the provisions of this Section 7.2, Seller shall (and if Seller is not the Disclosing Party, Seller shall cause the Disclosing Party to) furnish only that portion of the applicable Confidential Information that is legally required, and will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such disclosed information. Effective upon the Closing, the obligations of Buyer and its Affiliates under the Confidentiality Agreement shall terminate and the obligations of Seller with respect to the confidentiality of the Confidential Information shall be governed by this Section 7.2. From and after the Closing, Seller shall, and shall cause his Affiliates and, as applicable, their respective Representatives, successors and assigns to, provide reasonable cooperation to Buyer, any of Buyer's Affiliates, and their respective counsel in connection with any Action (and/or any appeal from any Action) which relates to events occurring prior to the Closing or of which Seller has relevant information, communications, documents, or other materials.

Section 7.3 Release of Claims.

(a) Release. For good and valuable consideration, effective upon the Closing, Seller, on behalf of himself and his heirs, executors, beneficiaries, administrators, legal representatives, successors, and assigns (collectively, the "Releasors"), hereby unconditionally and irrevocably waives, releases, and forever discharges Buyer, the Company, their respective Affiliates and Subsidiaries, each of their respective predecessors, successors, and assigns, and each of their respective current and former equityholders, partners, members, directors, managers, officers, employees, agents and other Representatives (collectively, the "Releasees") of and from any and all claims, demands, charges, complaints, obligations, causes of action, suits, Liabilities, Indebtedness, sums of money, covenants, agreements, instruments, Contracts (written or oral, express or implied), controversies, promises, fees, expenses (including reasonable attorneys' fees, costs, and expenses), damages, other Losses, and judgments, at law or in equity, in contract or tort, in every United States federal, state, foreign, or other judicial, administrative, arbitration, or other proceedings, of any nature whatsoever, known or unknown, suspected or unsuspected, previously, now or hereafter arising (collectively, the "Claims"), that the Releasors ever had, now have, or hereafter shall or may have for or by reason of, or in any way arising out of or relating to, any cause, matter, act, omission, or thing whatsoever from the beginning of time through and including the Closing Date, including any Claims arising out of or relating to Seller's ownership of any Purchased Interests or service as a director, officer, employee, agent, or other Representative of the Company. Except as expressly set forth in Section 7.3(b), Seller acknowledge and understand that the foregoing is a full and final release of all Claims that could have been asserted in any legal or equitable proceeding against the Releasees, including any right to recover against the Releasees for any indemnification or contribution claims made against or paid by Seller pursuant to ARTICLE VIII. To the maximum extent permitted by Law, Seller expressly waives all rights afforded by any statute that limits the effect of a release with respect to unknown claims in connection with the release expressly granted by this Section 7.3(a).

(b) Exceptions. Nothing in Section 7.3(a) shall constitute a release of (i) any rights or obligations arising under this Agreement or any of the Ancillary Agreements or (ii) any right to file an administrative charge or complaint with the Equal Employment Opportunity Commission, or other similar federal or state administrative agencies, although Seller waive any right to monetary relief related to such a charge or administrative complaint.

(c) No Commencement of Released Claims. Each Releasor further covenants and agrees, effective upon the Closing Date and to the fullest extent permitted by Law, not to commence, join, assist, or aid in any manner whatsoever the making of any claim or the bringing of any Action against the Releasees based upon any of the Claims that are released pursuant to Section 7.3(a).

(d) No Assignment. Seller, on behalf of himself and any Person claiming by, through or under Seller, (i) represents and warrants that neither Seller nor any of such other Persons has assigned and (ii) covenants that neither Seller nor any of such other Persons will assign, to any other Person any Claim or potential Claim released by Section 7.3(a).

Section 7.4 Tax Matters.

(a) Computation of Liabilities. Whenever it is necessary to determine the Liability for Taxes for a Straddle Period relating to:

(i) Taxes of the Company imposed on a periodic basis, the determination of the Taxes of the Company for the portion of the Straddle Period ending on and including and the portion of the Straddle Period beginning and ending after, the Closing Date shall be calculated by allocating to the periods before and after the Closing Date pro rata, based on the number of days of the Straddle Period in the period before and ending on the Closing Date, on the one hand, and the number of days in the Straddle Period in the period after the Closing Date, on the other hand; and

(ii) Taxes of the Company not described in Section 7.4(a)(i) (such as (1) Taxes based on the income or receipts of the Company for a Straddle Period, (2) Taxes imposed in connection with any sale or other transfer or assignment of property (including all sales and use Taxes) for a Straddle Period, other than Transfer Taxes described in Section 7.4(d), and (3) withholding and employment Taxes relating to a Straddle Period), the determination of the Taxes of the Company for the portion of the Straddle Period ending on and including, and the portion of the Straddle Period beginning and ending after, the Closing Date shall be calculated by assuming that the Straddle Period consisted of two (2) taxable periods, (i) one (1) which ended at the close of the Closing Date and (ii) the other which began at the beginning of the day following the Closing Date and items of income, gain, deduction, loss, or credit of the Company for the Straddle Period shall be allocated between such two (2) taxable years or periods on a "closing of the books basis" by assuming that the books of the Company were closed at the close of the Closing Date (and for such purpose, the taxable period of any partnership or other pass-through entity in which the Company holds a beneficial interest shall be deemed to terminate at such time).

(b) Preparation and Filing of Tax Returns.

(i) Seller shall, at Seller's cost and expense, prepare, or cause to be prepared all Pre-Closing Period Tax Returns (excluding, for the avoidance of doubt, Pre-Closing Period Tax Returns related to a Straddle Period) required to be filed by or on behalf of the Company the initial due date of which is after the Closing Date. All such Pre-Closing Period Tax Returns shall be prepared and filed in a manner that is consistent with the prior practice of the Company (and without a change of any election or any accounting method), except as may be required by applicable Law. Seller shall deliver or cause to be delivered drafts of all such Pre-Closing Period Tax Returns to Buyer for its review and comment at least thirty (30) days (or, in the case of non-income Tax Returns, such shorter period as is reasonably practicable under the circumstances) prior to the due date of any such Pre-Closing Period Tax Return and shall consider in good faith any comments received from Buyer at least five (5) days (or, in the case of non-income Tax Returns, such shorter period as is reasonably practicable under the circumstances) prior to filing of such Pre-Closing Period Tax Return. Seller shall pay all Taxes due and payable in respect of all Pre-Closing Period Tax Returns of the Company; provided, however, if any Pre-Closing Period Tax Return is due after the Closing and is to be filed (or caused to be filed) by Buyer, Seller shall pay (in immediately available funds) to Buyer the amount of all Taxes due and payable with respect to such Pre-Closing Period Tax Return (determined pursuant to this Section 7.4) no later than three (3) Business Days prior to the earlier of the date such Pre-Closing Period Tax Return is filed or the due date of such Pre-Closing Period Tax Return (except to the extent such Taxes were paid prior to the Closing Date or were included in Indebtedness or Working Capital, as finally determined).

(ii) Buyer shall, at the Company's expense, prepare and timely file, or cause to be prepared and timely filed, all Straddle Period Tax Returns required to be filed by the Company. All Straddle Period Tax Returns shall be prepared and filed in a manner that is consistent with the prior practice of the Company, except as may be required by applicable Law. Buyer shall deliver or cause to be delivered drafts of all Straddle Period Tax Returns to Seller for its review at least thirty (30) days (or, in the case of non-income Tax Returns, such shorter period as is reasonably practicable under the circumstances) prior to the due date of any such Straddle Period Tax Return with an allocation of Seller's portion of the Straddle Period Taxes due with respect to such Tax Returns (determined pursuant to this Section 7.4) and shall consider in good faith any comments received from Seller at least five (5) days (or, in the case of non-income Tax Returns, such shorter period as is reasonably practicable under the circumstances) prior to filing of such Straddle Period Tax Return. Seller shall pay (in immediately available funds) to Buyer Seller's portion of the Stradde Period Taxes due and payable with respect to any such Straddle Period Tax Return no later than three (3) Business Days prior to the earlier of the date such Straddle Period Tax Return is filed or the due date of such Straddle Period Tax Return (except to the extent such Taxes were paid prior to the Closing Date or were included in Indebtedness or Working Capital, as finally determined). The preparation and filing of any Tax Return of the Company that does not relate to a Tax period ending on or before the Closing Date or to a Straddle Period shall be exclusively within the control of Buyer.

(c) Cooperation and Records Retention. Seller and Buyer shall (i) each provide the other, and Buyer shall cause the Company to provide Seller, with such assistance as may be reasonably requested by any of them in connection with the preparation of any Tax Return in accordance with Section 7.4(b), audit, or other examination by any Governmental Authority or judicial or administrative proceedings relating to Liability for Taxes, in each case for any Pre-Closing Tax Period or Straddle Period, (ii) each retain and provide the other, and Buyer shall cause the Company to retain and provide Seller with, any records or other information that may be relevant to such Tax Return, audit or examination, proceeding, or determination, and (iii) each provide the other with any final determination of any such audit or examination, proceeding, or determination that affects any amount required to be shown on any Tax Return of the Company for any Pre-Closing Tax Period or Straddle Period. Without limiting the generality of the foregoing, Buyer shall retain, and shall cause the Company to retain, and Seller shall retain, until the applicable statutes of limitations (including any extensions) have expired, copies of all Tax Returns, supporting work schedules and other records or information that may be relevant to such returns for all Tax periods or portions thereof ending before or including the Closing Date.

(d) Transfer Taxes. Seller shall timely pay, and shall indemnify, defend, and hold harmless the Buyer Indemnified Parties from and against any and all Losses incurred by Buyer Indemnified Parties to the extent arising out of, resulting from, or in connection with, any Transfer Taxes imposed as a result of the Contemplated Transactions and Seller will, at Seller's cost and expense, file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes and if required by Law, Buyer will (and will cause its Affiliates to) join in the execution of any such returns or filings. The parties hereto shall cooperate in timely providing each other with such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns with respect to, any Transfer Taxes.

(e) Tax Proceedings.

(i) Buyer and Seller shall deliver a written notice to each other promptly following any demand, claim, or notice of commencement of a claim, proposed adjustment, assessment, audit, examination, or other administrative or court Action with respect to Taxes of the Company (each, a "Tax Contest") for any Pre-Closing Tax Period or a Straddle Period (the "Tax Claim Notice"); provided, however, Buyer's failure or delay to so notify Seller shall not relieve Seller of any obligation or Liability that Seller may have to Buyer.

(ii) With respect to Tax Contests for Taxes of the Company solely relating to a taxable period ending on or prior to the Closing Date (the "Seller Tax Contest"), Seller may elect to assume and control the defense of the Seller Tax Contest by written notice to Buyer within thirty (30) days after Seller becomes aware of the Seller Tax Contest (whether through a receipt of the Tax Claim Notice by Buyer or otherwise). If Seller timely elects to assume and control the defense of Seller Tax Contest, Seller (1) shall bear its own costs and expenses, (2) shall be entitled to engage its own counsel reasonably acceptable to Buyer, and (3) may (A) pursue or forego any and all administrative appeals, proceedings, hearings, and conferences with any Governmental Authority, (B) either pay the Tax claimed or sue for refund where applicable Law permits such refund suit, or (C) contest, settle, or compromise the Seller Tax Contest in any permissible manner; provided, however, Seller shall not settle or compromise (or take other actions described herein with respect to) any Seller Tax Contest without the prior written consent of Buyer (such consent not to be unreasonably withheld, delayed, or conditioned). If Seller elects to assume the defense of a Seller Tax Contest, Seller shall (x) keep Buyer reasonably informed of all material developments and events relating to the Seller Tax Contest (including promptly forwarding copies to Buyer of any related correspondence, and shall provide Buyer with an opportunity to review and comment on any material correspondence before Seller sends such correspondence to any Governmental Authority), (y) consult with Buyer in connection with the defense or prosecution of the Seller Tax Contest, and (z) provide such cooperation and information as Buyer may reasonably request, and Buyer shall have the right to participate in (but not control) the defense of the Seller Tax Contest (including participating in any discussions with the applicable Governmental Authorities regarding the Seller Tax Contests).

(iii) In connection with any Seller Tax Contest that (1) Seller does not timely elect to control pursuant to Section 7.4(e)(ii) or (2) Seller fails to diligently defend, such Seller Tax Contest shall be controlled by Buyer (and Seller shall reimburse Buyer for all reasonable costs and expenses incurred by Buyer relating to such Seller Tax Contest described in this Section 7.4(e)(iii)) and Seller agrees to cooperate with Buyer in pursuing such Seller Tax Contest.

(iv) In connection with any Tax Contest for any Pre-Closing Tax Period or a Straddle Period that is not Seller Tax Contest (the "Buyer Tax Contest"), such Buyer Tax Contest shall be controlled by Buyer, provided, that Buyer shall not settle or compromise any Buyer Tax Contest without the prior written consent of Seller (such consent not to be unreasonably withheld, conditioned, or delayed). Buyer shall (1) keep Seller informed of all material developments and events relating to such Buyer Tax Contest (including promptly forwarding copies to Seller of any related correspondence) and shall provide Seller with an opportunity to review and comment on any material correspondence before Buyer sends such correspondence to any Governmental Authority, (2) consult with Seller in connection with the defense or prosecution of any such Buyer Tax Contest, and (3) provide such cooperation and information as Seller may reasonably request, and Seller shall have the right to participate in (but not control) the defense of such Buyer Tax Contest (including participating in any discussions with the applicable Governmental Authorities regarding such Buyer Tax Contests) at its own cost and expense.

(v) Notwithstanding anything to the contrary contained in this Agreement, the procedures for all Tax Contests shall be governed exclusively by this Section 7.4(e) (and not Section 8.5(a)).

(f) Withholding. Notwithstanding any other provision in this Agreement to the contrary, Buyer, the Company and any other withholding agent shall have the right to deduct and withhold any amounts from any payments to be made hereunder as it deems reasonably necessary to comply with any applicable Law. To the extent that amounts are so withheld and deducted, such withheld and deducted amounts shall be treated for all purposes of this Agreement as having been delivered and paid to the applicable recipient of payment in respect of which such deduction and withholding was made. Buyer shall not be liable for any excess Taxes withheld, and in the event of an over withholding, the recipient's sole recourse shall be to apply for a refund from the appropriate Governmental Authority.

(g) Adjustments to Purchase Price. The parties hereto agree to treat any amounts payable after the Closing Date by Seller to Buyer (or by Buyer to Seller) pursuant to this Agreement as an adjustment to the purchase price payable hereunder, unless otherwise required by Law.

(h) Tax Sharing Agreements. All Tax Sharing Agreements and similar Contracts to which the Company is a party or otherwise with respect to or involving the Company shall be terminated by Seller and the Company as of immediately prior to the Closing and, after the Closing, the Company shall not be bound thereby or have any Liability thereunder. Seller shall take all actions necessary to terminate such Contracts.

(i) Reorganization. Each party agrees that it shall (i) treat and report the Reorganization for U.S. federal, state and local Tax purposes (as applicable) as an F Reorganization and shall comply with the filing and recordkeeping requirements of Treasury Regulations Section 1.368-3 and (ii) treat the sale of the Purchased Interests as a taxable sale of all of the assets of the Company.

(j) Allocation of Purchase Price. No later than sixty (60) days following the determination of the Estimated Payment Adjustment, Buyer shall prepare and provide to Seller a proposed allocation of the purchase price for the Purchased Interests as finally determined (along with other items of consideration for United States federal income Tax purposes) for income Tax purposes among the assets of the Company in accordance with Section 1060 of the Code and the principles set forth in Exhibit A (as finally determined, and subject to any further amendment, in each case pursuant to this Section 7.4(j), the "Allocation") for Seller's review and comment. Seller shall have thirty (30) days to review the determinations set forth in the Allocation. If Seller disagrees with any determinations set forth on the Allocation (the sole permissible basis of which shall be that the Allocation was not prepared pursuant to this Section 7.4(j)), Seller shall deliver a written notice to Buyer setting forth its objections. Unless Seller delivers such notice to Buyer within the thirty (30) day review period, Seller shall be deemed to have accepted the determinations set forth in the Allocation. If Seller delivers the notice to Buyer within the thirty (30) day review period, Buyer and Seller shall, during the thirty (30) days following such delivery or any mutually agreed extension thereof, use their commercially reasonable efforts to reach agreement on the disputed determinations. Any dispute among Buyer and Seller shall be resolved by the Independent Accounting Firm (whose determination shall be limited to whether the Buyer's or Seller's position with respect to any remaining amounts reflects the provisions of this Section 7.4(j) in accordance with the dispute resolution mechanism set forth in Section 2.2(c)(v). In case of any adjustment to the purchase price for the Purchased Interest (or any other item of consideration for United States federal income Tax purposes), requiring an amendment to the Allocation, Buyer shall amend the Allocation in accordance with the principles set forth in this Section 7.4(j) and provide such amended allocation to Seller (which, subject to the dispute resolution provisions set forth in this Section 7.4(j), shall become the Allocation). The parties agree not to take any position, in connection with any Tax Return, audit or similar proceeding related to Taxes, that is inconsistent with this Section 7.4(j) except as otherwise required by a "determination" (as defined in Section 1313(a) of the Code).

Section 7.5 Cyber E&O Policy. Prior to the Closing, the Company shall purchase and pay in full the premium for a "run-off" policy providing cyber and technology errors and omissions insurance coverage to the Company on terms reasonably satisfactory to Buyer and with coverage for a period of at least three (3) years after the Closing (the "Cyber E&O Policy") with respect to matters, acts or omissions existing or occurring on or prior to the Closing Date, in an aggregate amount at least equal to $1,000,000. The cost of obtaining the Cyber E&O Policy and the premiums due thereunder shall be borne by Seller hereunder as a Transaction Expense.

Section 7.6 Non-Competition; Non-Solicitation.

(a) For a period of five (5) years commencing on the Closing Date (the "Restricted Period"), Seller shall not, and Seller shall not permit any of his Affiliates to, directly or indirectly, (i) engage in or assist others in engaging in the Business in the United States (the "Territory"); (ii) have an interest in any Person that engages directly or indirectly in the Business in the Territory in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee or consultant; or (iii) intentionally interfere in any material respect with the business relationships (whether formed prior to or after the date of this Agreement) between the Company and customers or suppliers of the Company. Notwithstanding the foregoing, Seller may own, directly or indirectly, solely as an investment, securities of any Person traded on any national securities exchange if Seller is not a controlling Person of, or a member of a group which controls, such Person and does not, directly or indirectly, own five percent (5%) or more of any class of securities of such Person.

(b) During the Restricted Period, Seller shall not, and Seller shall not permit any of his Affiliates to, directly or indirectly, hire or solicit any employee of the Company or encourage any such employee to leave such employment or hire any such employee who has left such employment, except pursuant to a general solicitation which is not directed specifically to any such employees, provided, that nothing in this Section 7.8(b) shall prevent Seller or any of his Affiliates from hiring (i) any employee whose employment has been terminated by the Company or Buyer or (ii) after one hundred eighty (180) days from the date of termination of employment, any employee whose employment has been terminated by the employee.

(c) During the Restricted Period, Seller shall not, and Seller shall not permit any of his Affiliates to, directly or indirectly, solicit or entice, or attempt to solicit or entice, any clients or customers of the Company or potential clients or customers of the Company for purposes of diverting their business or services from the Company.

(d) Seller acknowledges that a breach or threatened breach of this Section 7.7 would give rise to irreparable harm to Buyer and the Company, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by a Seller of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(e) Seller acknowledges that the restrictions contained in this Section 7.7 are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this Section 7.7 should ever be adjudicated to exceed the time, geographic, product or service, or other limitations permitted by applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service, or other limitations permitted by applicable Law. The covenants contained in this Section 7.7 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

Section 7.7 R&W Insurance Policy. Concurrently with the execution and delivery of this Agreement, Buyer has obtained and bound the R&W Insurance Policy attached hereto as Exhibit B with respect to the representations and warranties of the Seller Parties in this Agreement and the other matters covered by such policy. Buyer shall not amend, waive, or otherwise modify, or consent to any amendment, waiver or modification of, the R&W Insurance Policy with respect to the subrogation provisions thereunder or in any manner that is materially adverse to Seller without the prior written consent of Seller. In accordance with and pursuant to the terms of the R&W Insurance Policy, Buyer, on the one hand, and the Seller Parties (jointly and severally), on the other hand, shall share equally and pay or cause to be paid, all costs and expenses related to the R&W Insurance Policy, including the total premium, underwriting costs, brokerage commissions, Taxes related to such policy and other fees and expenses of such policy, provided that, for avoidance of doubt, the parties hereto acknowledge and agree that the retention under the R&W Insurance Policy shall be borne exclusively by the Seller Parties (jointly and severally).

Section 7.8 Reimbursable Deductible. Within five (5) business days of Company's or Buyer's receipt of the Reimbursable Deductible, Buyer shall (or shall cause Company to) deliver such proceeds to Owner, in full repayment of Owner's advance of the Reimbursable Deductible out of his personal funds.

ARTICLE VIII
INDEMNIFICATION

Section 8.1 Survival.

(a) Except as otherwise set forth in this Section 8.1, the representations and warranties of the parties hereto contained in or made pursuant to this Agreement, any of the Ancillary Agreements or in any certificate delivered pursuant hereto or thereto will survive the Closing and continue in full force and effect until the date that is fifteen (15) months after the Closing Date.

(b) Each of the Fundamental Representations of the parties hereto contained in or made pursuant to this Agreement or in any certificate delivered pursuant hereto will survive the Closing and continue in full force and effect until the date that is sixty (60) days after the expiration of the applicable statute of limitations therefor (giving effect to any tolling, waiver, mitigation, or extension thereof).

(c) All covenants and agreements that contemplate performance after the Closing Date will survive the Closing in accordance with their express terms plus sixty (60) days, and if no time periods are specified therein, then such covenants and agreements shall survive indefinitely or until the latest date permitted by Law.

(d) Notwithstanding anything in this Section 8.1 to the contrary: (i) if written notice of a claim for indemnification shall have been given in accordance with, as applicable, Section 8.1(a) through Section 8.1(c) on or prior to the expiration of the applicable survival period specified therein, the representations, warranties, covenants, and agreements that are the subject of such claim will survive (with respect to such claim) until such time as such claim has been fully and finally resolved; and (ii) any claim for indemnification based on Fraud will survive the Closing indefinitely.

Section 8.2 Indemnification by Seller Parties. Subject to the other terms and conditions of this ARTICLE VIII, the Seller Parties shall, jointly and severally, indemnify each of the Buyer Indemnified Parties against, and shall hold each of the Buyer Indemnified Parties harmless from and against, any and all Losses incurred or sustained by, or imposed upon, any of the Buyer Indemnified Parties based upon, arising out of, with respect to, or by reason of:

(a) any inaccuracy in, or breach of, any of the representations or warranties contained in ARTICLE IV or ARTICLE V of this Agreement (or any certificate required hereunder to be delivered in respect of any such representations or warranties);

(b) any breach or non-fulfillment of any covenant, agreement, or obligation to be performed by the Company or Seller contained in this Agreement; and

(c) any and all Indemnified Taxes, any and all Indebtedness of the Company and any and all Transaction Expenses.

Section 8.3 Indemnification by Buyer. Subject to the other terms and conditions of this ARTICLE VIII, Buyer shall indemnify each of the Seller Indemnified Parties against, and shall hold each of the Seller Indemnified Parties harmless from and against, any and all Losses incurred or sustained by, or imposed upon, any of the Seller Indemnified Parties, arising out of, with respect to, or by reason of:

(a) any inaccuracy in, or breach of, any of the representations or warranties of Buyer contained in ARTICLE VI of this Agreement (or any certificate required hereunder to be delivered by Buyer in respect of the representations or warranties of Buyer contained in ARTICLE VI of this Agreement); or

(b) any breach or non-fulfillment of any covenant, agreement, or obligation to be performed by Buyer pursuant to this Agreement.

Section 8.4 Certain Limitations and Provisions. The indemnification obligations of Seller in Section 8.2 and the indemnification obligations of Buyer in Section 8.3 are subject to the following limitations and provisions, as applicable:

(a) The maximum aggregate Liability of Seller to the Buyer Indemnified Parties for indemnification under Section 8.2(a) (other than in respect of any Fundamental Representation of the Company or Seller) shall not exceed $120,000 (the "Cap"). For the avoidance of doubt, the limitations set forth in this Section 8.4(a) shall not (i) apply to Losses based upon, arising out of, with respect to, or by reason of any claim under Section 8.2(a) (in respect of any Fundamental Representation of the Company or Seller), Section 8.2(b), or Section 8.2(c), or (ii) affect or otherwise limit any claim made or available under the R&W Insurance Policy. Notwithstanding anything in this Section 8.4(a) to the contrary, the limitations set forth in this Section 8.4(a) shall not apply to any claim based upon, arising out of, with respect to, or by reason of Fraud.

(b) The maximum aggregate Liability of Buyer to the Seller Indemnified Parties for indemnification under Section 8.3(a) (other than in respect of any Fundamental Representation of Buyer) will not exceed the Cap, provided, that the maximum aggregate Liability of Buyer to the Seller Indemnified Parties for indemnification under Section 8.3 (including in respect of the Fundamental Representations of Buyer) will not exceed the Preliminary Purchase Price. Notwithstanding anything in this Section 8.4(b) to the contrary, the limitations set forth in this Section 8.4(b) shall not apply to any claim based upon, arising out of, with respect to, or by reason of Fraud.

(c) Notwithstanding anything to the contrary herein, for the purpose of determining the amount of Losses that are the subject matter of a claim for indemnification by any Buyer Indemnified Party hereunder, each representation, warranty, covenant, and agreement made by Seller hereunder shall be read without regard and without giving effect to the term(s) "material", "Material Adverse Effect", "material adverse effect", "in all material respects", or similar qualifiers (but not in the case of "Material Contract(s)" or "Material License(s)") as if such words and surrounding related words (e.g., "reasonably be expected to", "could have", "would have", and similar restrictions and qualifiers) were deleted from such representation, warranty covenant, or agreement.

(d) Each party hereto acknowledges and agrees that the representations and warranties in this Agreement are the product of negotiations among the parties hereto and represent an agreed allocation of risk among the parties hereto, regardless of the knowledge of any party hereto. Each party hereto shall be entitled to rely upon, and shall be deemed to have relied upon, all of the representations, warranties, covenants, and agreements of each other party hereto set forth herein (as qualified by the Schedules hereto). Accordingly, notwithstanding anything in this Agreement to the contrary, the rights to indemnification and payment of Losses under this ARTICLE VIII based on a breach of any of the representations, warranties, covenants, or agreements set forth in this Agreement or any Ancillary Agreement shall not be affected by any investigation conducted at any time, or any knowledge or information acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, by or on behalf of any of the parties hereto with respect to the accuracy or inaccuracy of or compliance with any such representations, warranties, covenants, or agreements.

(e) Notwithstanding anything in this Agreement to the contrary and for the avoidance of doubt, none of the limitations on indemnification set forth in this Section 8.4 shall apply to any indemnification claims arising out of, relating to, or resulting from Fraud.

Section 8.5 Indemnification Procedures.

(a) Third Party Claims.

(i) If any third party shall notify any party hereto (the "Indemnified Party") with respect to any matter (a "Third Party Claim") which may give rise to a claim by such Indemnified Party for indemnification against any other party hereto (the "Indemnifying Party") under this ARTICLE VIII, the Indemnified Party shall give the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party demonstrates that the Indemnifying Party's ability to defend or resolve such Third Party Claim is materially and adversely affected thereby. Such written notice by the Indemnified Party shall describe in reasonable detail (based on information then available to the Indemnified Party) the Third Party Claim and the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party.

(ii) The Indemnifying Party will have the right to defend the Indemnified Party against the Third Party Claim with counsel of its choice, reasonably satisfactory to the Indemnified Party, so long as (1) the Indemnifying Party notifies the Indemnified Party, within ten (10) Business Days after the Indemnified Party has given notice of the Third Party Claim to the Indemnifying Party (or by such earlier date as may be necessary under applicable procedural rules in order to file a timely appearance and response or other responsive pleading) that the Indemnifying Party is assuming the defense of such Third Party Claim, provided, that if the Indemnifying Party assumes control of such defense the Indemnifying Party must first acknowledge in such notice its indemnification obligations hereunder without qualification or reservation of rights, subject to the limitations and other provisions of this ARTICLE VIII, (2) the Indemnifying Party conducts the defense of the Third Party Claim actively, diligently, in good faith and at its own cost and expense, (3) the Third Party Claim (A) does not involve injunctive, equitable, or other non-monetary relief against the Indemnified Party, (B) is not one in which the Indemnified Party reasonably determines, after consultation with its counsel, that use of the counsel selected by the Indemnifying Party to represent the Indemnified Party would be reasonably likely to present such counsel with a conflict of interest, (C) does not involve monetary damages in excess of the Cap, (D) does not relate to or otherwise arise in connection with any criminal or regulatory Action or any Action by any Governmental Authority (including any Action in respect of Taxes), (E) is not one in which an adverse judgment would, in the good faith judgment of the Indemnified Party, likely be materially adverse to the Indemnified Party's business, (F) does not involve, in the case of Seller as the Indemnifying Party, a customer, supplier or vendor to the Company, (4) the assumption of defense of the Third Party Claim by the Indemnifying Party is not reasonably likely to cause a Buyer Indemnified Party to lose coverage under the R&W Insurance Policy, and (5) a Buyer Indemnified Party or the insurer is not required to assume the defense of such Third Party Claim pursuant to the R&W Insurance Policy.

(iii) The Indemnified Party may retain separate co-counsel at its sole cost and expense (except that the Indemnifying Party will be responsible for the fees and expenses of such separate co-counsel (x) to the extent the Indemnified Party reasonably concludes that the counsel the Indemnifying Party has selected has an actual or potential conflict of interest or (y) to the extent incurred (1) prior to the date the Indemnifying Party effectively assumes control of the defense of such Third Party Claim) or (2) during the pendency of such Third Party Claim if the Indemnifying Party requests any cooperation or assistance from the Indemnified Party or the Indemnified Party is otherwise requested or required to participate in any aspect of such Third Party Claim).

(iv) The Indemnifying Party will not consent to the entry of any judgment or enter into any compromise or settlement with respect to any Third Party Claim without the prior written consent of the Indemnified Party (which such consent may not be unreasonably withheld, conditioned, or delayed) unless such judgment, compromise, or settlement (1) includes, as a condition to any settlement or other resolution, a complete and irrevocable general release of the Indemnified Party and its Affiliates from all Liabilities in respect of such Third Party Claim and (2) involves no admission of wrongdoing by the Indemnified Party or any of its Affiliates and, without limiting the generality of the forgoing, no finding or admission of any violation of any Law or the rights of any Person by the Indemnified Party or any of its Affiliates.

(v) In the event that the Indemnifying Party fails to assume the defense of a Third Party Claim in accordance with Section 8.5(a)(ii) or following the Indemnifying Party's assumption of the defense of a Third Party Claim in accordance with Section 8.5(a)(ii) any of the conditions set forth in Section 8.5(a)(ii) becomes unsatisfied with respect to such Third Party Claim, then the Indemnified Party may assume control of the defense of such Third Party Claim to the entire exclusion (including with respect to the settlement or compromise of, or entry of judgment in, such Third Party Claim) and at the entire expense of the Indemnifying Party.

(b) Direct Claims. If an Indemnified Party has a claim for indemnification hereunder that does not involve a Third Party Claim (a "Direct Claim"), the Indemnified Party shall give the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party demonstrates that the Indemnifying Party's ability to defend or resolve such Direct Claim is materially and adversely affected thereby. Such notice by the Indemnified Party shall describe in reasonable detail (based on information then available to the Indemnified Party) the Direct Claim and the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party (the "Claimed Amount"). Within thirty (30) days after delivery of such notice, the Indemnifying Party shall deliver to the Indemnified Party a written response in which the Indemnifying Party shall (i) agree that the Indemnified Party is entitled to receive all of the Claimed Amount (in which case such response shall be accompanied by a payment by the Indemnifying Party of the Claimed Amount), (ii) agree that the Indemnified Party is entitled to receive part, but not all, of the Claimed Amount (the "Agreed Amount") (in which case such response shall be accompanied by payment by the Indemnifying Party of the Agreed Amount), or (iii) in good faith dispute that the Indemnified Party is entitled to receive any of the Claimed Amount. If the Indemnifying Party timely disputes the payment of all or part of the Claimed Amount, then the Indemnifying Party and the Indemnified Party may assert all rights available to such party hereunder.

Section 8.6 No Contribution. The Seller Parties acknowledge and agree that the Seller Parties' obligations to indemnify, defend, and hold harmless Buyer Indemnified Parties pursuant to this ARTICLE VIII is an obligation solely of the Seller Parties. Neither Seller Party nor any other Seller Indemnified Party shall have any legal or equitable right of contribution against Buyer, the Company, or any other Buyer Indemnified Party with respect to any Losses required to be indemnified by the Seller Parties hereunder. Each Seller Party hereby agrees that it shall not make any claim for indemnification against Buyer or any other Buyer Indemnified Party by reason of the fact that any Seller Party or any of its agents or other Representatives was a controlling person, equityholder, director, officer, manager, employee, agent, or other Representative of the Company or was serving as such for another Person at the request of the Company (whether such claim is for Losses of any kind or otherwise and whether such claim is pursuant to any Law, Organizational Document, contractual obligation, or otherwise) with respect to any claim brought by any Buyer Indemnified Party against such Person (whether such claim is pursuant to this Agreement, applicable Law, or otherwise).

Section 8.7 Right of Set-Off. The Seller Parties agree that subject to the applicable limitations of this ARTICLE VIII (if any), all or any portion of any Losses incurred or suffered or alleged to be incurred or suffered by any Buyer Indemnified Party and for which the Seller Parties may be liable under this ARTICLE VIII may, in any such case, at Buyer's option upon at least five (5) days' prior written notice from Buyer to the Seller Parties describing in reasonable detail the nature and basis for such Losses, be set-off against any amount otherwise due and payable by Buyer to any Seller Party whether pursuant to this Agreement or otherwise. The right of set-off provided in this Section 8.7 is not intended to be, and shall not be, the exclusive means of collecting any Losses incurred or suffered by any Buyer Indemnified Party in connection with this Agreement.

Section 8.8 Exclusive Remedy. Except for (a) the remedies of specific performance or injunctive or other equitable relief, (b) claims for Fraud, (c) other remedies expressly provided in this Agreement (including Section 2.2 with respect to any adjustment to the Preliminary Purchase Price and with respect to the enforcement of any Ancillary Agreement and Section 7.4(e)), and (d) claims under the R&W Insurance Policy, the indemnification rights set forth in this ARTICLE VIII and the rights of Buyer under the Escrow Agreement shall be the sole and exclusive monetary remedy of the parties hereto for any claim arising out of this Agreement or the Contemplated Transactions. Notwithstanding anything to the contrary contained herein, no limitations (including any survival limitations and other limitations set forth in this Article VIII), qualifications or procedures in this Agreement shall be deemed to limit or modify the ability of Buyer to make claims under or recover under the R&W Insurance Policy, it being understood that any matter for which there is coverage available under the R&W Insurance Policy shall be exclusively subject to the terms, conditions and limitations, if any, set forth in the R&W Insurance Policy.

Section 8.9 No Double Counting. Payments by any party pursuant to this ARTICLE VIII shall be limited to the amount of any liability or damage that remains after deducting therefrom: (a) any indemnity, contribution or other similar payment actually recovered by the Indemnified Party from any third party with respect thereto, less any cost actually incurred by the Indemnified Party in the collection of any such proceeds, indemnity, contribution or other similar payment (it being acknowledged and agreed that increased premiums under applicable policies of insurance shall constitute costs incurred by the Indemnified Party in the collection of any proceeds under any such policy of insurance); (b) amounts specifically taken into account in the final and binding determination of the Estimated Payment Adjustment pursuant to and in accordance with the procedures set forth in Section 2.2; (c) any Tax savings actually realized by the Indemnified Party as a result of such event; and (d) any proceeds actually received by the Indemnified Party from any insurance policies with respect thereto (provided that increased premiums under applicable policies of insurance shall constitute indemnifiable losses hereunder and, provided further that, amounts recovered under the R&W Insurance Policy after satisfaction of the Cap shall not reduce the liability of the Seller Parties hereunder). In addition, any amounts actually recovered by an Indemnified Party from third parties with respect to a Loss which has already been indemnified by an Indemnifying Party shall be promptly paid by the Indemnified Party to the Indemnifying Party. For avoidance of doubt, and notwithstanding anything to the contrary contained herein, no Indemnified Party shall be obligated to make or pursue any claim against any third party (including any applicable insurer) prior to seeking to enforce its rights to indemnification hereunder.

ARTICLE IX
MISCELLANEOUS

Section 9.1 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third (3rd) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties hereto at the following addresses (or at such other address for a party hereto as shall be specified in a notice given in accordance with this Section 9.1):

If to Seller:

Garrett S. Williams
26 Bonnies Cove Trail
Mills River, NC 28759
E-mail: Garrett71@icloud.com

with a copy (which will not constitute notice) to:

Van Winkle, Buck, Wall, Starnes and Davis, P.A.
11 N. Market St.
Asheville, NC 28801
Attention: Ryan W. Coffield
E-mail: rcoffield@vwlawfirm.com

If to Buyer or, after the Closing, the Company:

Steel Bridge Acquisition LLC
c/o Kingsway Search Xcelerator Inc.
10 South Riverside Plaza, Suite 1520
Chicago, Illinois 60606
Attention:
E-mail:

with a copy (which will not constitute notice) to:

Holland & Knight LLP
150 North Riverside Plaza, Suite 2700
Chicago, Illinois 60606
Attention: Paul R. Hogan
E-mail: Paul.Hogan@hklaw.com

Section 9.2 Expenses. Except as otherwise expressly set forth herein (including in the definition of "Transaction Expenses"), each party hereto shall be responsible for and shall pay all of its own costs and expenses (including the fees and expenses of its attorneys, accountants, investment bankers and other advisors) incurred in connection with this Agreement and the Contemplated Transactions. Notwithstanding the foregoing, the fees and expenses (other than legal and accounting fees and expenses) of (a) the Escrow Agreement and (b) the R&W Insurance Policy (including the total premium, underwriting costs, brokerage commissions, Taxes related to such policy and other fees and expenses of such policy), shall be borne equally between Buyer, on the one hand, and the Seller Parties (jointly and severally), on the other hand.

Section 9.3 Interpretation. For purposes of this Agreement: (a) the definition of terms herein shall apply equally to the singular and the plural; (b) any pronoun shall include the corresponding masculine, feminine, and neuter forms; (c) the words "include", "includes", and "including" shall be deemed to be followed by the words "without limitation"; (d) the word "or" is not exclusive; (e) the words "herein", "hereof", "hereby", "hereto", and "hereunder" refer to this Agreement as a whole; and (f) the words "will" and "shall" have equal force and effect. Unless the context otherwise requires, references herein: (i) to Articles, Sections, Schedules, and Exhibits mean the Articles and Sections of, and Schedules, and Exhibits attached to and/or made a part of, this Agreement; (ii) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (iii) to a Law means such Law as amended from time to time and includes any successor legislation thereto and any rules and regulations promulgated thereunder. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of the authorship of any provision of this Agreement. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, and all accounting determinations shall be made, in accordance with GAAP. Where it is stated that a document, instrument, agreement or other item has been "provided to" or "made available to" Buyer (or any phrase of similar import is used herein), the same shall be interpreted as a representation and warranty that such document, instrument, agreement or other item has been uploaded to the virtual data room being maintained in connection with the Contemplated Transactions and has been readily and continuously accessible by Buyer and its Representatives for the period commencing on or prior to the date that is five (5) Business Days prior to the Closing Date and ending on the Closing Date.

Section 9.4 Schedules and Exhibits. All Schedules and Exhibits attached hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any modifications, qualifications, or exceptions to any representation or warranty disclosed on one Schedule will be deemed to be disclosed and incorporated under each such other applicable Schedule, without requiring a specific cross-reference to such disclosure made on another Schedule, if such disclosure would be appropriate and the relevance of such disclosure is readily apparent on the face of the disclosure (without any independent review or knowledge). Nothing contained in the Schedules will be deemed to constitute an admission against a party's interest to a third party, including, without limitation, with respect to any violation of Law or breach of Contract or the existence or occurrence of any such violation or breach. In disclosing the information in the Schedules, with respect to third parties, no party expressly waives any attorney-client privileges or attorney work product protections as a result of disclosing information relating to pending, threatened or potential litigation herein, regardless of whether such party has asserted, or is or may be entitled to assert, such privileges and protections.

Section 9.5 Tables and Headings. The table of contents, table of defined terms, and headings set forth in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 9.6 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties hereto as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 9.7 Entire Agreement. This Agreement and the Ancillary Agreements constitute the sole and entire agreement of the parties hereto with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter in any way. In the event of any inconsistency between the statements in the body of this Agreement and those in the Ancillary Agreements, the Exhibits, and Schedules (other than an exception expressly set forth as such in the Schedules), the statements in the body of this Agreement will control.

Section 9.8 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. None of the parties hereto may assign its rights or obligations hereunder without the prior written consent of the other parties hereto, which consent shall not be unreasonably withheld, conditioned, or delayed. No assignment shall relieve the assigning party hereto of any of its obligations hereunder. Notwithstanding the foregoing, Buyer (a) may assign and delegate, in whole or in part, its rights and obligations pursuant to this Agreement to its Affiliates, (b) may assign and delegate this Agreement and its rights and obligations under this Agreement in connection with a merger or consolidation involving Buyer, in connection with a sale of substantially all of the Equity Securities or assets of Buyer, or in connection with another disposition of substantially all of the Business, and (c) may assign any or all of its respective rights pursuant to this Agreement or any of the Ancillary Agreements to any of its lenders as collateral security.

Section 9.9 No Third Party Beneficiaries. Except as provided in Section 7.3 and ARTICLE VIII, this Agreement is for the sole benefit of the parties hereto and their respective heirs, legal representatives, successors, and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

Section 9.10 Amendment and Modification; Waiver. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party hereto of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party hereto so waiving. No waiver by any party hereto shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege

Section 9.11 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).

Section 9.12 Consent to Jurisdiction and Service of Process. Subject to the dispute resolution procedures set forth in Section 2.2 and ARTICLE VII and to each party hereto's right to seek equitable relief as contemplated by Section 9.14, each of the parties hereto irrevocably and unconditionally: (a) agrees that any action, suit, or proceeding arising out of or relating to this Agreement or any of the transactions contemplated hereby, whether based in contract, tort, or any other legal theory, shall be brought exclusively in the Court of Chancery of the State of Delaware or, if the foregoing court does not have subject matter jurisdiction, the United States District Court for the District of Delaware and the appellate courts having jurisdiction of appeals in such courts or, if none of the foregoing courts has subject matter jurisdiction, the Superior Court of the State of Delaware and the appellate courts having jurisdiction of appeals in such court (collectively, the "Chosen Courts"); (b) consents and submits to the exclusive personal jurisdiction and venue of the Chosen Courts in any such action, suit, or proceeding; (c) waives, to the fullest extent permitted by applicable Law, and agrees not to assert, any claim, defense, or objection to the venue of the Chosen Courts (whether on the basis of *forum non conveniens* or otherwise); (d) agrees that it will not attempt the removal or transfer of any such action, suit, or proceeding to any court other than the Chosen Courts; and (e) consents to service of process on such party in the manner provided in Section 9.1 (provided, that nothing in this clause (e) shall affect the right of any party hereto to serve legal process in any other manner permitted by applicable Law).

Section 9.13 **WAIVER OF RIGHT TO JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE OUT OF OR RELATE TO THIS AGREEMENT OR THE CONTEMPLATED TRANSACTIONS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES. ACCORDINGLY, EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY, UNCONDITIONALLY AND VOLUNTARILY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE CONTEMPLATED TRANSACTIONS.

Section 9.14 **Specific Performance.** The parties hereto agree that irreparable and ongoing damages, for which monetary damages (even if available) would not be an adequate remedy, would occur in the event that any provision of this Agreement were not performed in accordance with its specific terms or otherwise were breached. Accordingly, each party hereto agrees that in the event of any actual or threatened breach of this Agreement by any other party hereto, the non-breaching party shall be entitled, in addition to all other rights and remedies that it may have, to obtain injunctive or other equitable relief (including a temporary restraining order, a preliminary injunction, and a final injunction) to prevent any actual or threatened breach of any of such provisions and to enforce such provisions specifically, without the necessity of posting a bond or other security or of proving actual damages. In furtherance of the foregoing, each the parties hereto agrees that it will not oppose the granting of an injunction, specific performance, or other equitable relief as provided herein on the basis that any other party hereto has an adequate remedy at law or an award of specific performance is not an appropriate remedy for any reason at law or in equity

Section 9.15 **Attorneys' Fees.** Except as otherwise expressly set forth herein, in the event of any litigation or other action at law or suit in equity to enforce this Agreement or the rights of any party hereunder, the prevailing party in such litigation, action or suit shall be entitled to receive from the other party(ies) hereto its reasonable attorneys' fees and other reasonable costs and expenses incurred therein.

Section 9.16 **Entire Agreement.** This Agreement (including the Exhibits, Schedules and Annexes hereto) and the Ancillary Agreements constitute the entire agreement and understanding, and supersede any and all prior and/or contemporaneous agreements and understandings, both written and oral, among the parties hereto with respect to the subject matter hereof.

Section 9.17 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission shall have the same legal effect as delivery of an original signed copy of this Agreement.

Section 9.18 **Attorney-Client Privilege.** It is acknowledged by each of the parties that Van Winkle, Buck, Wall, Starnes and Davis, P.A. ("Counsel") has represented Owner, Seller and the Company in connection with the transactions contemplated by this Agreement. Buyer agrees that any attorney-client privilege, attorney-work product protection, and expectation of client confidence attaching as a result of Counsel's representation of Seller and the Company in connection with the transactions contemplated by this Agreement, and all information and documents covered by such privilege or protection, shall belong to and be controlled by Seller and may be waived only by Seller, and not by the Company, and shall not pass to or be claimed by Buyer or the Company.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first set forth above.

"**BUYER**"

Steel Bridge Acquisition LLC

By: _____

Printed: _____

Title: _____

"**COMPANY**"

Image Solutions, LLC

By: _____

Printed: _____

Title: _____

"**SELLER**"

Post IS Holdings, LLC

By: _____

Printed: _____

Title: _____

"**OWNER**"

_____
Garrett S. Williams

EXHIBIT A

Purchase Price Allocation

Asset Class	**Allocation Methodology**
Class I	The amount of Class I Assets included in the final calculation of Actual Cash
Class II	None
Class III	The amount of Class III Assets included in the final calculation of Actual Working Capital
Class IV	The amount of Class IV Assets included in the final calculation of Actual Working Capital
Class V	The adjusted tax basis of Class V Assets as of the Closing Date
Class VI & VII	Any remaining amount

EXHIBIT B

R&W Insurance Policy

[Exhibit B]

CREDIT AGREEMENT

dated as of

September 26, 2024

IMAGE SOLUTIONS, LLC,
a North Carolina limited liability company,
as Borrower 1,

STEEL BRIDGE ACQUISITION LLC,
a Delaware limited liability company,
as Borrower 2

and

AVIDBANK,
a California banking corporation,
as Bank

$8,250,000

TABLE OF CONTENTS

Annexes, Exhibits and Schedules

SUMMARY OF CREDIT TERMS		
Credit Agreement Section	**Credit Terms**	
Section 1.1 – Revolving Credit Commitment	**$500,000.00**	
Section 1.1 – Revolving Loans Maturity Date	**September 26, 2026**	
Section 1.2(a) – Term Loan Commitment	**$7,750,000.00**	
Section 1.2(b) – Term Loan Amortization Payments	**Loan Year**	**Monthly Principal Payment**
	1	**$64,583.33**
	2	**$64,583.33**
	3	**$96,875.00**
	4	**$96,875.00**
	5	**$129,166.67**
	6	**$129,166.67**
Section 1.2(b) – Term Loan Maturity Date	**September 26, 2030**	
Section 1.4(a)(i) – Prime Lending Rate for Revolving Loans	**The greater of (a) the Prime Rate plus 0.50% (50 basis points) per annum, or (b) 7.25% (725 basis points) per annum**	
Section 1.4(a)(ii) – Prime Lending Rate for the Term Loan	**The greater of (a) the Prime Rate plus 0.50% (50 basis points) per annum, or (b) 7.25% (725 basis points) per annum**	
Section 1.13(a) – Revolving Credit Commitment Fee	**$5,000.00**	
Section 1.13(b) – Term Loan Commitment Fee	**$77,500.00**	
Section 2.1(a) – Letter of Credit Sublimit	**$0.00**	

SUMMARY OF CREDIT TERMS - CONTINUED		
Section 6.15(a) – Fixed Charge Coverage Ratio	**Fiscal Quarter Ending:**	**Minimum Fixed Charge Coverage Ratio:**
	September 30, 2024 and each Fiscal Quarter ending thereafter	1.15:1.00
Section 6.15(b) – Senior Leverage Ratio	**Fiscal Month or Quarter Ending**	**Maximum Senior Leverage Ratio:**
	From September 30, 2024 through August 31, 2025*	3:00:1.00
	From September 30, 2025 through August 31, 2026*	2:75:1.00
	September 30, 2026 and the end of each Fiscal Month thereafter*	2.50:1.00
	*If the Senior Leverage Ratio, measured as of the end of any Fiscal Month, is less than or equal to 2.50:1.00, then the next test will be on the last day of the current or next Fiscal Quarter, as applicable	

This CREDIT AGREEMENT, dated as of September 26, 2024, is entered into between IMAGE SOLUTIONS, LLC, a North Carolina limited liability company ("*Borrower 1*"), STEEL BRIDGE ACQUISITION LLC, a Delaware limited liability company ("*Borrower 2*", and, together with Borrower 1, individually and collectively, "*Borrower*"), and AVIDBANK, a California banking corporation ("*Bank*"). All initially capitalized terms used in this Agreement have the meanings given to such terms in **Annex 1** attached to this Agreement and incorporated herein by reference. Additionally, interpretation of UCC terms, accounting terms, and other matters of construction are set forth in **Annex 1.**

A. Borrower and Post IS Holdings, LLC, a North Carolina limited liability company ("*Seller*"), are entering into that certain Membership Interest Purchase Agreement, dated as of September 26, 2024 (as defined below, the "*Purchase Agreement*"), pursuant to which Borrower 2 will acquire 100% of the Ownership Interests of Borrower 1 pursuant to the terms and conditions of the Purchase Agreement (the "*Subject Transaction*").

B. Borrower has requested that Bank provide financing for a portion of the purchase price due under the Purchase Agreement and for ongoing working capital, and Bank has agreed with such request, subject to the terms and conditions of this Agreement.

The parties hereto hereby agree as follows:

ARTICLE I

LOAN FACILITIES

1.1 *Revolving Loans*. Provided that no Event of Default or Default has occurred and is continuing, and subject to the other terms and conditions hereof, Bank agrees to make revolving loans ("*Revolving Loans*") to Borrower, upon notice in accordance with Section 1.5(b), from the Closing Date up to but not including the Revolving Loans Maturity Date, the proceeds of which shall be used only for the purposes allowed in Section 6.1(a), subject to the following conditions and limitations:

(a) the aggregate principal amount of Revolving Loans outstanding after giving effect to any proposed Borrowing of a Revolving Loan plus the Letter of Credit Usage on such date shall not exceed the lesser of the Borrowing Base or the Revolving Credit Commitment;

(b) Borrower shall not be permitted to borrow, and Bank shall not be obligated to make, any Revolving Loans to Borrower, unless and until all of the conditions for a Borrowing set forth in Section 3.2 have been met to the satisfaction of Bank in its sole discretion; and

(c) if, at any time or for any reason, the amount of Revolving Loans outstanding plus the Letter of Credit Usage exceeds the lesser of the Borrowing Base or Revolving Credit Commitment (an "*Overadvance*"), Borrower shall immediately pay to Bank, upon Bank's election and demand, in cash, the amount of such Overadvance to be used by Bank to repay outstanding Revolving Loans.

Borrower may repay and, subject to the other terms and conditions hereof, reborrow Revolving Loans. All such repayments shall be without penalty or premium, except as otherwise required under Section 1.13(d). On the Revolving Loans Maturity Date, Borrower shall pay to Bank the entire unpaid principal balance of the Revolving Loans together with all accrued but unpaid interest thereon.

1.2 *Term Loan*.

(a) *Term Loan*. Provided that no Event of Default or Default has occurred and is continuing, and subject to the other terms and conditions hereof, Bank agrees to make a term loan ("*Term Loan*") to Borrower on or about the Closing Date, in an original principal amount equal to the Term Loan Commitment, the proceeds of which shall only be used for the purposes allowed in Section 6.1(b). Bank shall make the proceeds of the Term Loan available to Borrower on the Closing Date by transferring same day funds pursuant to the Flow of Funds Agreement.

(b) *Amortization*. Borrower shall pay monthly principal reduction payments on the Term Loan, in the amounts set forth in Section 1.2(b) of the Summary of Credit Terms. Each such payment shall be due and payable on the first Business Day of each month commencing on the first Business Day of the first month following the Closing Date and continuing on the first Business Day of each succeeding month. On the Term Loan Maturity Date, Borrower shall pay to Bank the entire unpaid principal balance of the Term Loan together with all accrued but unpaid interest thereon.

(c) *Voluntary Prepayments*. On or prior to September 26, 2027, Borrower may prepay the Term Loan at any time in whole or in part, provided that concurrent with any such prepayment, Borrower shall pay the Early Termination Fee in accordance with Section 1.13(e). After September 26, 2027, Borrower may prepay the Term Loan at any time, in whole or in part, without penalty or premium. All such principal amounts repaid or prepaid may not be reborrowed. Borrower shall give Bank at least three (3) Business Days' prior written notice of any prepayment. All prepayments shall be applied toward scheduled principal reduction payments owing under Section 1.2(b) in inverse order of maturity.

1.3 *Reserved.*

1.4 *Interest Rates; Payments of Interest*.

(a) *Interest Rates*.

(i) *Revolving Loans*. Subject to the terms and conditions hereof, all Revolving Loans shall bear interest at the Prime Lending Rate for Revolving Loans.

(ii) *Term Loan*. Subject to the terms and conditions hereof, the Term Loan shall bear interest at the Prime Lending Rate for the Term Loan.

(b) *Default Rate*. Upon the occurrence and during the continuance of an Event of Default, in addition to and not in substitution of any of Bank's other rights and remedies with respect to such Event of Default, at the option of Bank, the outstanding Obligations shall bear interest at the otherwise applicable rate(s) plus three percent (3%).

(c) *Computation of Interest*. All computations of interest shall be calculated on the basis of a year of three hundred sixty (360) days for the actual days elapsed. In the event that the Prime Rate announced is, from time to time, changed, adjustment in the Prime Lending Rate shall be made as of 12:01 a.m. (Pacific time) on the effective date of the change in the Prime Rate. Interest shall accrue from the Closing Date to the date of repayment of the Loans in accordance with the provisions of this Agreement; provided, however, if a Loan is repaid on the same day on which it is made, then one (1) day's interest shall be paid on that Loan. Any and all interest not paid when due shall be added to the principal balance of the applicable Loan and shall bear interest thereafter as provided for in Section 1.4(b).

(d) *Maximum Interest Rate*. Under no circumstances shall the interest rate and other charges hereunder exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such a court determines that Bank has received interest and other charges hereunder in excess of the highest rate applicable hereto, such excess shall be deemed received on account of, and shall automatically be applied to reduce, FIRST, the Obligations, other than interest and Bank Product Obligations, in the inverse order of maturity, and SECOND, the Bank Product Obligations, and the provisions hereof shall be deemed amended to provide for the highest permissible rate. If there are no Obligations or Bank Product Obligations outstanding, Bank shall refund to Borrower such excess.

(e) *Payments of Interest.* All accrued but unpaid interest on the Loans, calculated in accordance with this Section 1.4, shall be due and payable, in arrears, on each and every Interest Payment Date.

1.5 *Borrowing Procedures*.

(a) Each Borrowing shall be made on a Business Day.

(b) Each Borrowing shall be made upon email or fax notice given by an Authorized Officer. Bank shall be given such notice no later than 11:00 a.m., (Pacific time), one (1) Business Day prior to the day on which such Borrowing is to be made, and such notice shall state the amount thereof.

(c) So long as all of the conditions for a Borrowing of a Loan set forth herein have been satisfied, Bank shall credit the proceeds of such Loan on the applicable Borrowing date into Borrower's Account, or as otherwise directed in writing by an Authorized Officer.

1.6 *Reserved.*

1.7 *Increased Costs.*

(a) *Increased Costs Generally*. If any Change in Law shall:

(i) impose, modify, or deem applicable any reserve, special deposit, compulsory loan, insurance charge, or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, Bank;

(ii) subject any Recipient to any Taxes (other than Indemnified Taxes, Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on Bank any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by Bank or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to Bank or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by Bank or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of Bank or other Recipient, Borrower will pay to Bank or other Recipient, as the case may be, such additional amount or amounts as will compensate Bank or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

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

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

(d) *Delay in Requests*. Failure or delay on the part of Bank to demand compensation pursuant to this Section shall not constitute a waiver of Bank's right to demand such compensation; provided that Borrower shall not be required to compensate Bank pursuant to this Section 1.7 for any increased costs incurred or reductions suffered more than six (6) months prior to the date that Bank notifies Borrower of the Change in Law giving rise to such increased costs or reductions, and of Bank's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six (6)-month period referred to above shall be extended to include the period of retroactive effect thereof). Borrower shall not be liable for any compensation arising from a Change in Law that becomes effective after the termination of this Agreement.

1.8 *Reserved*.

1.9 *Reserved*.

1.10 *Statements of Obligations*. The Loans and Borrower's obligation to repay the same shall be evidenced by this Agreement and the books and records of Bank. Bank shall render monthly statements of the Loans to Borrower, including statements of all principal and interest owing on the Loans, and all Fees and Expenses owing, and such statements shall be presumed to be correct and accurate and constitute an account stated between Borrower and Bank unless, within thirty (30) days after receipt thereof by Borrower, Borrower delivers to Bank, at the address specified in Section 8.1, written objection thereof specifying the error or errors, if any, contained in any such statement.

1.11 *Holidays*. Any principal or interest in respect of the Loans which would otherwise become due on a day other than a Business Day, shall instead become due on the next succeeding Business Day and such adjustment shall be reflected in the computation of interest; provided, however, that in the event that such due date shall, subsequent to the specification thereof by Bank, for any reason no longer constitute a Business Day, Bank may change such specified due date in accordance with this Section 1.11.

1.12 *Time and Place of Payments*.

(a) All payments due hereunder shall be made available to Bank in immediately available Dollars, not later than 12:00 p.m., Pacific time, on the day of payment, to the following address or such other address as Bank may from time to time specify by notice to Borrower:

AVIDBANK
1732 N 1st Street, 6th Floor
San Jose, California 95112

(b) Borrower hereby authorizes Bank to charge Borrower's Account, or any other demand deposit account maintained by Borrower with Bank, for the amount of any payment due or past due hereunder or under any Loan Document, for the full amount thereof. Should there be insufficient funds in any such demand deposit account to pay all such sums when due, the full amount of such deficiency shall be immediately due and payable in cash by Borrower.

(c) In addition, Borrower hereby authorizes Bank at its option, without prior notice to Borrower, to advance a Revolving Loan for any payment that is more than five (5) Business Days past due hereunder, including principal and interest owing on the Loans, the Fees and all Expenses, and to pay the proceeds of such Revolving Loan to Bank for application toward such past due payment.

1.13 *Fees*. Borrower shall pay to Bank:

(a) Revolving Credit Commitment fees (collectively, the "*Revolving Credit Commitment Fee*") in the amount set forth in Section 1.13(a) of the Summary of Credit Terms. The Revolving Credit Commitment Fee shall be fully earned and nonrefundable, and shall be due and payable, on (i) the Closing Date and (ii) each anniversary of the Closing Date prior to the Revolving Loans Maturity Date. In the event that Bank shall agree to extend the Revolving Loans Maturity Date, in its sole and absolute discretion, then the Revolving Credit Commitment Fee shall be again due and payable again as provided in any amendment to this Agreement executed by Borrower and Bank to document any such extension.

(b) A Term Loan Commitment fee (the "*Term Loan Commitment Fee*") in the amount set forth in Section 1.13(b) of the Summary of Credit Terms. The Term Loan Commitment Fee shall be fully earned and nonrefundable, and shall be due and payable on the Closing Date.

(c) Reserved.

(d) If any payment due hereunder, whether for principal, interest, or otherwise, is not paid on or before the tenth (10^{th}) day after the date such payment is due, in addition to and not in substitution of any of Bank's other rights and remedies with respect to such nonpayment, Borrower shall pay to Bank a late payment fee (the "*Late Payment Fee*") equal to three percent (3%) of the amount of such overdue payment. The Late Payment Fee shall be due and payable on the eleventh (11^{th}) day after the due date of the overdue payment with respect thereto, unless such day is not a Business Day, in which case such Late Payment Fee shall be due on the next succeeding Business Day.

(e) If, (i) on or prior to September 26, 2025, Borrower voluntarily prepays the Term Loan, then Borrower shall pay to Bank, as prepayment premium, a prepayment fee in an amount equal to one and one quarter of one percent (1.25%) of the amount so prepaid, (ii) after September 26, 2025, but on or prior to September 26, 2026, Borrower voluntarily prepays the Term Loan, then Borrower shall pay to Bank, as prepayment premium, a prepayment fee in an amount one percent (1.00%) of the amount so prepaid, or (iii) after September 26, 2026, but on or prior to September 26, 2027, Borrower voluntarily prepays the Term Loan, then Borrower shall pay to Bank, as prepayment premium, a prepayment fee in an amount equal to three quarters of one percent (0.75%) of the amount so prepaid, (collectively, the "*Early Termination Fee*"). The Early Termination Fee shall be due and payable concurrent with any prepayment of the Term Loan on or prior to September 26, 2024, provided that no Early Termination Fee shall be due in connection with (A) voluntary prepayments of the Term Loan in a Loan Year to the extent that (x) the sum of the amount of such prepayment plus the amount of any other voluntary prepayments of the Term Loan made during such Loan Year plus the scheduled payments of principal of the Term Loan during such Loan Year, would exceed (y) the product of the total amount advanced pursuant to the Term Loan as of the date of determination multiplied by fifteen percent (15%), or (B) voluntary prepayments of the Term Loan in connection with a refinancing by Bank.

1.14 *Mandatory Principal Reductions*.

(a) *Dispositions*. Except as otherwise provided in Section 1.4(e), Borrower shall pay to Bank, on the first Business Day following Borrower's receipt thereof, one hundred percent (100%) of the Net Proceeds derived from each and all of its Dispositions other than Permitted Dispositions; *provided*, *however*, in accordance with Section 6.7, Borrower shall not conduct or consummate any Dispositions other than Permitted Dispositions. Bank shall apply such Net Proceeds in accordance with Section 1.14(f).

(b) *Reserved.*

(c) *Issuance of Subordinate Debt and/or Ownership Interests*. If requested by Bank, Borrower shall also pay to Bank one hundred percent (100%) of the Net Proceeds from the issuance of any additional Subordinate Debt issued after the Closing Date, including pursuant to Section 7.3 *provided* that Borrower shall not issue any additional Subordinate Debt or Ownership Interests without the prior written consent of Bank or pursuant to Section 7.3, and execution and delivery of a Subordination Agreement with respect thereto, in form and substance satisfactory to Bank in its Permitted Discretion. Bank shall apply such Net Proceeds in accordance with Section 1.14(f).

(d) *Extraordinary Receipts*. Except as otherwise provided in Section 1.14(e), Borrower shall also pay to Bank promptly (but in any event, not later than the third Business Day following Borrower's receipt thereof), one hundred percent (100%) of the proceeds from all Extraordinary Receipts in excess of $125,000 in the aggregate in any Fiscal Year; *provided, however,* that if an Event of Default shall have occurred and be continuing, Borrower shall pay to Bank one hundred percent (100%) of the proceeds from all Extraordinary Receipts. Bank shall apply such Extraordinary Receipts in accordance with Section 1.14(f).

(e) *Reinvestment*. Notwithstanding the foregoing, if Borrower shall deliver to Bank a certificate of an Authorized Officer to the effect that Borrower intends to apply the Net Proceeds from a Disposition or Extraordinary Receipts (or a portion thereof specified in such certificate), within two hundred seventy (270) days after receipt of such Net Proceeds, to acquire Equipment or other tangible Assets to be used in the business of Borrower, and certifying that no Event of Default has occurred and is continuing, then no prepayment shall be required pursuant to this Section 1.14 in respect of the Net Proceeds specified in such certificate; provided, further, that to the extent of any such Net Proceeds therefrom that have not been so applied by the end of such two hundred seventy (270) day period, a prepayment shall be required in an amount equal to such Net Proceeds that have not been so applied.

(f) *Application of Net Proceeds and Extraordinary Receipts.* Except as otherwise required under Section 12.9 of the Security Agreement, all Net Proceeds and payments of Extraordinary Receipts received by Bank pursuant to this Section 1.14 shall be applied:

(i) FIRST toward principal payments owing on the Term Loan in inverse order of maturity until paid in full, and

(ii) SECOND toward outstanding Revolving Loans until paid in full.

1.15 *Protective Advances*. Borrower hereby authorizes Bank, from time to time in Bank's sole discretion, after the occurrence and during the continuance of an Event of Default or Default, to preserve or protect the Collateral, or any portion thereof, to enhance the likelihood of repayment of the Obligations, or to pay any other amount chargeable to Borrower pursuant to the terms of this Agreement and/or any Loan Document, including Expenses (any of the Revolving Loans described in this Section 1.15 shall be referred to as "*Protective Advances*"). Each Protective Advance shall be deemed to be a Revolving Loan hereunder. The Protective Advances shall be repayable on demand, secured by the Collateral, constitute Obligations hereunder, and bear interest at the Prime Lending Rate for Revolving Loans. The provisions of this Section 1.15 are for the exclusive benefit of Bank and are not intended to benefit Borrower in any way.

1.16 *Taxes*.

(a) *Defined Terms*. For purposes of this Section 1.16 the term "applicable law" includes FATCA.

(b) *Payments Free of Taxes*. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) *Status of the Recipients.* Any Recipient that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower, at the time or times reasonably requested by Borrower, such properly completed and executed documentation reasonably requested by Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Recipient, if reasonably requested by Borrower, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower as will enable the Borrower to determine whether or not Bank is subject to backup withholding or information reporting requirements. Without limiting the generality of the foregoing,

(i) a Recipient that is a U.S. Person shall deliver to Borrower on or prior to the Closing Date or later date on which such Recipient becomes a lender under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), executed originals of IRS Form W-9 certifying that such Recipient is exempt from U.S. federal backup withholding Tax; and

(ii) a Recipient that is not a U.S. Person shall, deliver to Borrower (in such number of copies as shall be requested by the Borrower) on or prior to the Closing Date or later date on which Bank becomes Bank under this Agreement (and from time to time thereafter upon the reasonable request of Borrower), whichever of the following is applicable, to establish that Recipient is exempt from U.S. federal withholding tax: in the case such Recipient is claiming the benefits of an income Tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN-E establishing an exemption from U.S. federal withholding Tax pursuant to the "interest" article of such Tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E establishing an exemption from U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such Tax treaty, and establishing compliance with FATCA; executed originals of IRS Form W-8ECI; in the case such Recipient is claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate to the effect that Bank is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Internal Revenue Code and (y) executed originals of IRS Form W-8BEN-E, and establishing compliance with FATCA; or if such Recipient is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by any certifications or documents required by Section 1.16(c)(i) or (ii) with respect to the beneficial owner, and establishing compliance with FATCA. Each Recipient agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower in writing of its legal inability to do so.

(iii) any Recipient that is not a U.S. Person shall, to the extent it is legally entitled to do so, deliver to the Borrower (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Recipient becomes a Recipient under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or to determine the withholding or deduction required to be made; and

(iv) if a payment made to a Recipient under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Recipient were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Recipient shall deliver to the Borrower at the time or times prescribed by law and at such time or times reasonably requested by the Borrower such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower as may be necessary for the Borrower to comply with their obligations under FATCA and to determine that such Recipient has complied with such Recipient's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (iv), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(d) *Payment of Other Taxes by Borrower*. Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Bank timely reimburse it for the payment of, any Other Taxes.

(e) *Indemnification by Borrower*. Loan Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) 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 Borrower by Bank shall be conclusive absent manifest error.

(f) *Evidence of Payments*. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 1.16, such Loan Party shall deliver to Bank 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 Bank.

(g) *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 1.16 (including by the payment of additional amounts pursuant to this Section 1.16), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) *Survival*. Each party's obligations under this Section 1.16 shall survive the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document for a period of six (6) months.

1.17 *Termination of Commitments*.

(a) *Revolving Credit Commitment.* The Revolving Credit Commitment shall terminate on the Revolving Loans Maturity Date. Borrower may terminate the Revolving Credit Commitment at any time, upon three (3) Business Days' written notice to Bank. In the event of any termination of the Revolving Credit Commitment, Borrower shall, concurrent with such termination, pay to Bank, in immediately available funds, the entire outstanding balance of the Obligations (other than L/C Obligations and Bank Product Obligations that have been Cash Collateralized, and inchoate indemnification obligations).

(b) Reserved.

1.18 *Collections From Account Debtors*.

(a) *Bancontrolled Account.* Prior to the Closing Date, Borrower shall have established the Bancontrolled Account. Except as set forth in clause (ii) below, Borrower shall instruct all Account Debtors to make payments directly to the Bancontrolled Account, or instruct them to deliver such payments to Bank by wire transfer, ACH, or other means as Bank may direct for deposit to the Bancontrolled Account. If Borrower receives a payment of the Proceeds of Collateral directly, Borrower will promptly deposit the payment or Proceeds into the Bancontrolled Account. Until so deposited, Borrower will hold all such payments and Proceeds in trust for Bank without commingling with other funds or property.

(b) *Crediting Payments*. Unless otherwise agreed between Borrower and Bank, each payment shall be deposited into Borrower's Account on the first Business Day following the Business Day of deposit to the Bancontrolled Account of immediately available funds or other receipt of immediately available funds by Bank; provided such payment is received in accordance with Bank's usual and customary practices as in effect from time to time.

ARTICLE II

LETTERS OF CREDIT

2.1 *Letters of Credit*.

(a) Provided that no Event of Default or Default is continuing and subject to the other terms and conditions hereof, Bank agrees to issue letters of credit ("*Letters of Credit*") for the account of Borrower in such form as may be approved from time to time by Bank, subject to the following limitations:

(i) The face amount of the Letter of Credit if and when issued must not cause the sum of the aggregate principal amount outstanding of all Revolving Loans plus the Letter of Credit Usage to exceed the lesser of the Borrowing Base or the Revolving Credit Commitment;

(ii) The face amount of the Letter of Credit if and when issued must not cause the Letter of Credit Usage to exceed the Letter of Credit Sublimit;

(iii) The Letter of Credit may not have an expiry date or draw period which extends beyond the date which is 30 days prior to the Revolving Loans Maturity Date; and

(iv) The conditions specified in Section 3.2 shall have been satisfied on the date of issuance of such Letter of Credit.

(b) Each Letter of Credit shall be denominated in Dollars, and be a standby or documentary letter of credit issued to support obligations of Borrower or any Subsidiary, contingent or otherwise, to finance the working capital and business needs of Borrower or such Subsidiary in the ordinary course of business.

(c) Each Letter of Credit shall be subject to the Uniform Customs or the ISP, as determined by Bank, in its Permitted Discretion, and, to the extent not inconsistent therewith, the laws of the State of California.

(d) Bank shall not at any time be obligated to issue any Letter of Credit hereunder if such issuance would conflict with, or cause Bank to exceed any limits imposed by its organizational or governing documents or by any Applicable Law or determination of an arbitrator or a court or other Governmental Authority to which Bank is subject.

2.2 *Procedure for Issuance of Letters of Credit*. Borrower may request that Bank issue a Letter of Credit at any time prior to the date that is thirty (30) days prior to the Revolving Loans Maturity Date by delivering to Bank a Letter of Credit Application at its address for notices specified herein therefor, completed to the satisfaction of Bank, together with such other certificates, documents and other papers and information as Bank may reasonably request. Upon receipt of any Letter of Credit Application, Bank will process such Letter of Credit Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall promptly issue the Letter of Credit requested thereby (but in no event shall Bank be required to issue any Letter of Credit earlier than three (3) Business Days after its receipt of the Letter of Credit Application therefor and all such other certificates, documents and other papers and information relating thereto) by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed by Bank and Borrower. Bank shall furnish a copy of such Letter of Credit to Borrower promptly following the issuance thereof.

2.3 *Fees, Commissions and Other Charges.*

(a) With respect to each and every standby Letter of Credit, Borrower shall pay to Bank a fee in an amount equal to the face amount of such standby Letter of Credit times two percent (2%) per annum, pro-rated for the tenor of such standby Letter of Credit on the basis of a year of three hundred sixty (360) days (the "*Standby Letter of Credit Fee*"). The Standby Letter of Credit Fee shall be due and payable upon issuance of the applicable standby Letter of Credit, and if applicable, upon each renewal thereof.

(b) With respect to each and every documentary Letter of Credit, Borrower shall pay to Bank a fee in an amount equal to the greater of the product of (x) the face amount of such documentary Letter of Credit times (y) 0.375%, or $300, pro-rated for the tenor of such documentary Letter of Credit on the basis of a year of 360 days (the "*Documentary Letter of Credit Fee*"). The Documentary Letter of Credit Fee shall be due and payable upon issuance of the applicable documentary Letter of Credit, and if applicable, upon each renewal thereof.

(c) In addition to the foregoing, Borrower shall pay or reimburse Bank for such normal and customary costs and expenses as are reasonably incurred or charged by Bank in issuing, effecting payment under, amending or otherwise administering any Letter of Credit.

2.4 *Reimbursement Obligations*.

(a) Borrower shall reimburse Bank on the same Business Day on which a draft is presented under any Letter of Credit and paid by Bank, provided that Bank provides notice to Borrower prior to 11:00 a.m., Pacific time, on such Business Day and otherwise Borrower shall reimburse Bank on the next succeeding Business Day; provided, further, that the failure to provide such notice shall not affect Borrower's absolute and unconditional obligation to reimburse Bank when required hereunder for any draft paid under any Letter of Credit. Bank shall provide notice to Borrower on such Business Day as a draft is presented and paid by Bank indicating the amount of such draft so paid and any taxes, fees, charges or other costs or expenses (other than Excluded Taxes) incurred by Bank in connection with such payment. Each such payment shall be made to Bank at its address specified on the signature pages hereof in Dollars and in immediately available funds.

(b) Interest shall be payable on any and all amounts remaining unpaid by Borrower under this Section from the date such amounts become payable (whether at stated maturity, by acceleration or otherwise) until payment in full at the rate which would be payable on any outstanding Revolving Loans, subject to Section 1.4(b), if applicable.

(c) Each drawing under any Letter of Credit shall constitute a request by Borrower to Bank for a Borrowing of a Revolving Loan. The date of such drawing shall be deemed the date on which such Borrowing is made.

2.5 *Obligations Absolute.*

(a) Borrower's obligations under this Article II shall be absolute and unconditional under any and all circumstances and irrespective of any set off, counterclaim or defense to payment which Borrower may have or have had against Bank or any beneficiary of a Letter of Credit.

(b) Borrower agrees with Bank that Borrower's Reimbursement Obligations under Section 2.4 shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of Borrower against the beneficiary of such Letter of Credit or any such transferee.

(c) Bank shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except for errors or omissions caused by Bank's gross negligence or willful misconduct.

(d) Borrower agrees that any action taken or omitted by Bank under or in connection with any Letter of Credit or the related drafts or documents, if done in the absence of gross negligence or willful misconduct and in accordance with the standards of care specified in the UCC, shall be binding on Borrower and shall not result in any liability of Bank to Borrower.

2.6 *Letter of Credit Payments*. If any draft shall be presented for payment under any Letter of Credit, the responsibility of Bank to Borrower in connection with such draft shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment are in conformity with such Letter of Credit. In determining whether to pay under any Letter of Credit, only Bank shall be responsible for determining that the documents and certificates required to be delivered under the Letter of Credit have been delivered and that they comply on their face with the requirements of such Letter of Credit.

2.7 *Outstanding Letters of Credit Following Event of Default or on the Revolving Loans Maturity Date.*

(a) With respect to all Letters of Credit outstanding upon the occurrence and during the continuance of an Event of Default, Borrower shall either replace such Letters of Credit, whereupon such Letters of Credit shall be canceled, with letters of credit issued by another issuer acceptable to the beneficiary of such Letter of Credit, or Cash Collateralize such Letters of Credit for so long as such Letters of Credit remain outstanding during the continuance of such Default or Event of Default.

(b) With respect to all Letters of Credit outstanding on .the Revolving Loans Maturity Date, Borrower shall either replace such Letters of Credit, whereupon such Letters of Credit shall be canceled, with letters of credit issued by another issuer acceptable to the beneficiary of such Letter of Credit, or Cash Collateralize such Letters of Credit until such time as no Letters of Credit remain outstanding, all draw periods with respect to all Letters of Credit have expired, and all Reimbursement Obligations with respect thereto have been paid in full in cash.

(c) Borrower hereby grants to Bank a security interest in all cash collateral provided pursuant to Sections 2.7(a) and (b) to secure the Obligations. Amounts held in such cash collateral account shall be applied by Bank to the payment of drafts drawn under such Letters of Credit and the payment of customary costs and expenses charged or incurred by Bank in connection therewith, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other Obligations. After all such Letters of Credit shall have expired or been fully drawn upon, all Reimbursement Obligations shall have been satisfied and all other Obligations shall have been paid in full in cash, and the obligations of Bank hereunder have terminated, the balance, if any, in such cash collateral account shall be returned to Borrower. Borrower shall execute and deliver to Bank, such further documents and instruments as Bank may request to evidence the creation and perfection of the within security interest in such cash collateral account.

2.8 *Letter of Credit Applications*. In the event of any conflict between the terms of this Article II and the terms of any Letter of Credit Application, the terms of such Letter of Credit Application shall govern and control any such conflict.

ARTICLE III

CONDITIONS PRECEDENT AND SUBSEQUENT TO CLOSING

3.1 *Conditions to Initial Loans or Letter of Credit*. Bank's obligation to make the initial Loans and/or to issue the initial Letter of Credit is subject to and contingent upon the fulfillment of each of the conditions set forth in **Annex 2** to the satisfaction of Bank and its counsel.

3.2 *Conditions to all Loans and Letters of Credit*. Bank's obligation hereunder to make any Loans (including the initial Loans), and/or to issue any Letters of Credit (including the initial Letter of Credit), is further subject to and contingent upon the fulfillment of each of the following conditions to the satisfaction of Bank:

(a) in the case of a Borrowing of a Revolving Loan, receipt by Bank of notice as required by Section 1.5(b), and in the case of a Letter of Credit, receipt by Bank of a Letter of Credit Application and the other papers and information required under Section 2.2;

(b) immediately before and after such Borrowing or issuance of Letter of Credit, as the case may be, no Event of Default or Default shall have occurred or be continuing; and

(c) the representations and warranties of Loan Parties contained in the Loan Documents shall be true and correct in all material respects on and as of the date of such Borrowing, or issuance of Letter of Credit, as the case may be, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects, and except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects as of such earlier date.

3.3 *Conditions Subsequent to all Loans and Letters of Credit*. Bank's obligation hereunder to make any Loans to Borrower, and Bank's obligation to issue any Letters of Credit, is further subject to and contingent upon the fulfillment of the following conditions subsequent to the satisfaction of Bank:

(a) Borrower shall deliver to Bank, no later than October 26, 2024 (or such later date as determined by Bank in its Permitted Discretion), additional insured, lender's loss payee and waiver of subrogation endorsements to the insurance certificates required by Section 5.5, in form and substance reasonably satisfactory to Bank.

(b) Borrower shall deliver to Bank, no later than October 26, 2024 (or such later date as determined by Bank in its Permitted Discretion), an executed Landlord Waiver Agreement for the property located at 12 National Avenue, Fletcher, NC 28732.

In the event that Borrower shall fail to fulfill the condition subsequent set forth in this Section 3.3 on or before the due date indicated above to the satisfaction of Bank, in its sole and absolute discretion, such failure shall constitute an Event of Default.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

In order to induce Bank to enter into this Agreement and to make Loans and/or issue any Letters of Credit, Borrower represents and warrants to Bank that on the Closing Date and on the date of each Borrowing or issuance of a Letter of Credit:

4.1 *Legal Status*. Each Corporate Loan Party is the type of organization indicated in **Schedule 4.1**, and is duly organized and existing under the laws of the state of its organization, as indicated in **Schedule 4.1**. Each Corporate Loan Party has the power and authority to own its own Assets and to transact the business in which it is engaged, and is properly licensed, qualified to do business and in good standing in every jurisdiction in which it is doing business where failure to so qualify could reasonably be expected to have a Material Adverse Effect, as set forth in **Schedule 4.1**. Each Corporate Loan Party has delivered to Bank accurate and complete copies of its Governing Documents which are operative and in effect as of the Closing Date.

4.2 *No Violation; Compliance*. The execution, delivery and performance of the Loan Documents and the Purchase Documents to which each Corporate Loan Party is a party, and the consummation of the transactions contemplated hereby and thereby, are within such Corporate Loan Party's powers, are not in conflict with the terms of the Governing Documents of such Corporate Loan Party, and do not result in a breach of or constitute a default under any contract, obligation, indenture or other instrument to which such Corporate Loan Party is a party or by which such Corporate Loan Party is bound or affected, which breach or default could reasonably be expected to have a Material Adverse Effect. There is no law, rule or regulation (including Regulations T, U and X of the Federal Reserve Board), nor is there any judgment, decree or order of any court or Governmental Authority binding on any Corporate Loan Party which would be contravened by the execution, delivery, performance or enforcement of the Loan Documents and the Purchase Documents to which any Corporate Loan Party is a party.

4.3 *Authorization; Enforceability*. Each Corporate Loan Party has taken all corporate, partnership or limited liability company, as applicable, action necessary to authorize the execution and delivery of the Loan Documents and the Purchase Documents to which such Corporate Loan Party is a party, and the consummation of the transactions contemplated hereby and thereby. Upon their execution and delivery in accordance with the terms hereof, the Loan Documents and the Purchase Documents to which each Loan Party is a party will constitute legal, valid and binding agreements and obligations of such Loan Party enforceable against such Loan Party in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, and similar laws and equitable principles affecting the enforcement of creditors' rights generally.

4.4 *Approvals; Consents*. No approval, consent, exemption or other action by, or notice to or filing with, any Governmental Authority is necessary in connection with the execution, delivery, performance or enforcement of the Loan Documents or the Purchase Documents except those that have been obtained or which the failure to obtain could not reasonably be expected to have a Material Adverse Effect. All requisite Governmental Authorities and third parties have approved or consented to the transactions contemplated by the Loan Documents and the Purchase Documents, and all applicable waiting periods have expired, to the extent the failure to obtain such approval or consent, or satisfy such waiting period, could reasonably be likely to have a Material Adverse Effect, and all applicable waiting periods have expired and there is no governmental or judicial action, actual or threatened in writing, that has or could reasonably be expected to restrain, prevent or impose materially burdensome conditions on the transactions contemplated by the Loan Documents and/or the Purchase Documents.

4.5 *Liens*. Each Corporate Loan Party and each of its Subsidiaries has good and marketable title to, or valid leasehold interests in, all of its Assets, free and clear of all Liens, except for Permitted Liens.

4.6 *Debt*. Each Corporate Loan Party and each of its Subsidiaries has no Debt other than Permitted Debt.

4.7 *Litigation*. Except as set forth in **Schedule 4.7**, there are no suits, proceedings, claims or disputes pending or, to the Knowledge of Borrower, threatened, against or affecting any Loan Party or any of any Loan Party's Assets, or any Subsidiary or any of such Subsidiary's Assets, which are not fully covered by applicable insurance, and as to which no reservation of rights has been taken by the insurer thereunder, or which seek injunctive relief. No Loan Party or any of any Loan Party's Assets, or any Subsidiary or any of such Subsidiary's Assets, is subject to any injunction, writ, temporary restraining order or any other order of any court or other Governmental Authority.

4.8 *No Default.* No Event of Default or Default has occurred and is continuing or would result from the incurring of obligations by any Loan Party or any Subsidiary under this Agreement or the Loan Documents.

4.9 *Capitalization.*

(a) Set forth on **Schedule 4.9(a)** is a complete and accurate list showing the number of shares of each class of Ownership Interests of Borrower 2 authorized, the number outstanding on the Closing Date, the number and percentage of the outstanding shares of each such class owned (directly or indirectly) by each Owner of Borrower 2 (except for any such Ownership Interests that are publicly-traded). Except as set forth on **Schedule 4.9(a)**, all of the outstanding Ownership Interests of Borrower 2 have been validly issued, are fully paid and non-assessable, and are owned by the Owner indicated on **Schedule 4.9(a)**, free and clear of all Liens (other than Permitted Liens), options, warrants, rights of conversion or purchase or any similar rights. Except as set forth on **Schedule 4.9(a)**, neither Borrower 2 nor any Owner of Borrower 2 is a party to, or has Knowledge of, any agreement restricting the transfer or hypothecation of any Ownership Interests of Borrower 2, other than the Loan Documents.

(b) Set forth on **Schedule 4.9(b)** is a complete and accurate list showing all Subsidiaries of Borrower 2 and, as to each such Subsidiary, the jurisdiction of its organization, the number of shares of each class of Ownership Interests authorized (if applicable), the number outstanding, and the number and percentage of the outstanding shares of each such class owned (directly or indirectly) by its Owner(s). Except as set forth on **Schedule 4.9(b)**, all of the outstanding Ownership Interests of each Subsidiary of Borrower 2 owned (directly or indirectly) by Borrower 2 have been validly issued, are fully paid and non-assessable (to the extent applicable) and are owned by Borrower 2 or a Subsidiary of Borrower 2, free and clear of all Liens (other than Permitted Liens), options, warrants, rights of conversion or purchase or any similar rights. Except as set forth on **Schedule 4.9(b)**, neither Borrower 2 nor any such Subsidiary of Borrower 2 is a party to, or has Knowledge of, any agreement restricting the transfer or hypothecation of any Ownership Interests of any such Subsidiary, other than the Loan Documents. Neither Borrower 2 nor any Subsidiary of Borrower 2 owns or holds, directly or indirectly, any Ownership Interests of any Person other than such Subsidiaries and Permitted Investments.

4.10 *Taxes*. All tax returns required to be filed by each Corporate Loan Party and each of its Subsidiaries in any jurisdiction have in fact been filed. All taxes, assessments, fees and other governmental charges upon each Corporate Loan Party and each of its Subsidiaries or upon any of their Assets, income or franchises, which are due and payable have been paid, other than such taxes, assessments, fees and other governmental charges being contested in good faith by appropriate proceedings, and for which adequate reserves have been set aside with respect thereto as required by GAAP and, by reason of such contest or nonpayment, no property is subject to a material risk of loss or forfeiture. The provisions for taxes on the books of each Corporate Loan Party and each of its Subsidiaries are adequate for all open years, and for each Corporate Loan Party's and each of its Subsidiaries current fiscal period.

4.11 *Correctness of Financial Statements*. The Quality of Earnings Report for the trailing twelve (12) month period ended June 30, 2024, delivered to Bank by Borrower is correct and complete copy of the Quality of Earnings Report prepared for Borrower. Each Financial Statement delivered to Bank pursuant to Section 5.3 is complete and correct and fairly presents in all material respects Borrower's and its Subsidiaries' financial condition and results of operations for the period of such statement, in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes, subject to the proviso regarding comparative statements with respect to financial conditions or results of operations prior to the Closing Date as set forth in Section 5.3(b). Any forecasts of future financial performance delivered by Borrower to Bank have been made in good faith by Borrower and are based on assumptions that Borrower believed to be reasonable at the time made by Borrower. To Knowledge of the Borrower, since June 30, 2024, there has been no change in the Loan Parties' financial condition or results of operations, taken as a whole, sufficient to have a Material Adverse Effect. No Loan Party has any contingent obligations, liabilities for taxes or other outstanding financial obligations which are material in the aggregate, except as disclosed in such statements, information and data.

4.12 *ERISA*. Borrower does not maintain or contribute to or have any liability with respect to any Plan or Multiemployer Plan, other than those listed on **Schedule 4.12**. Borrower and each member of the ERISA Group has satisfied the minimum funding standards of ERISA and the Internal Revenue Code with respect to each Plan and Multiemployer Plan to which it is obligated to contribute. No ERISA Event has occurred nor has any other event occurred that may result in an ERISA Event that would be reasonably expected to result in a Material Adverse Effect. No litigation or governmental administrative proceeding, audit or other proceeding (other than those relating to routine claims for benefits) is pending or, to the Knowledge of the Borrower, threatened with respect to any Plan or Multiemployer Plan maintained or contributed to by Borrower or any fiduciary or service provider thereof, and, to the Knowledge of the Borrower, there is no reasonable basis for any such litigation or proceeding. Neither Borrower nor any member of the ERISA Group has failed to satisfy the requirements of Section 401(a)(29) of the Internal Revenue Code. To the Knowledge of Borrower, each Plan will be able to fulfill its benefit obligations as they come due in accordance with the Plan documents and under GAAP.

4.13 *Full Disclosure*. Each Loan Party has disclosed to Bank all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect. All information furnished in writing by or on behalf of any Loan Party and delivered to Bank in connection with this Agreement or the consummation of the transactions contemplated hereunder or thereunder (such information taken as a whole) does not, as of the time of delivery of such information, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein or herein not misleading in light of the circumstances under which they were made (excluding projections made by Borrower in good faith and used by Borrower internally which are forwarded to Bank for which Borrower may represent and warrant that the same were prepared on the basis of information and estimates that Borrower believed to be reasonable at the time made, and such projections do not constitute a representation or warranty that the results set forth therewith be met; it being acknowledged and agreed by Bank that uncertainty is inherent in any forecasts, projections and other forward-looking information, projections as to future events or conditions are not to be viewed as facts, and the actual results during the period or periods covered by such forecasts may differ materially from the projected results).

4.14 *Other Obligations*. Neither any Loan Party nor any Subsidiary is in default on any Debt or any other lease, commitment, contract, instrument or obligation which is material to the operation of its business, other than defaults which individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

4.15 *Investment Company Act*. No Loan Party is required to register as an investment company, or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940, as amended.

4.16 *Patents, Trademarks, Copyrights, and Intellectual Property, etc*. Except as set forth in **Schedule 4.16**, each Loan Party has all necessary patents, patent rights, licenses, trademarks, trademark rights, trade names, trade name rights, copyrights, permits, and franchises in order for it to conduct its business and to operate its Assets, without known conflict with the rights of third Persons, and all of same are valid and subsisting. The consummation of the transactions contemplated by this Agreement will not alter or impair any of such rights of any Loan Party or any Subsidiary. Except as set forth in **Schedule 4.16**, each Loan Party and each Subsidiary has not been charged or, to the best of Borrower's Knowledge, threatened to be charged with any infringement or, after due inquiry, infringed on any, unexpired trademark, trademark registration, trade name, patent, copyright, copyright registration, or other proprietary right of any Person.

4.17 *Environmental Condition*. None of any Loan Party's or any Subsidiary's Assets has ever been used by any Loan Party or such Subsidiary or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, except in material compliance with federal, state or local environmental codes, ordinances, rules and regulations ("*Environmental Laws*"); to the Loan Party's knowledge, none of any Loan Party's or any Subsidiary's Assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a Hazardous Materials disposal site, or a candidate for closure pursuant to any environmental protection statute; no Lien arising under any environmental protection statute has attached to any revenues or to any real or personal property owned or operated by any Loan Party or any Subsidiary; and neither any Loan Party nor any Subsidiary has received a summons, citation, notice, or directive from the Environmental Protection Agency or any other federal or state Governmental Authority concerning any action or omission by any Loan Party or any Subsidiary resulting in the releasing or disposing of Hazardous Materials into the environment that could reasonably be expected to result in a Material Adverse Effect.

4.18 *Solvency*. Borrower is Solvent, and the Loan Parties, taken as a whole, are Solvent. No transfer of property is being made by any Loan Party or any Subsidiary and no obligation is being incurred by any Loan Party or any Subsidiary in connection with the transactions contemplated by this Agreement or the Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of any Loan Party or any Subsidiary.

4.19 *Labor Matters*. There are no strikes, lockouts, slowdowns or other material labor disputes against Borrower pending or, to the Knowledge of Borrower, threatened. The hours worked by and payments made to employees of Borrower comply with the Fair Labor Standards Act and any other applicable federal, state, local or foreign law dealing with such matters. Borrower has not incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state law which remains unpaid or unsatisfied. All payments due from Borrower, or for which any claim may be made against Borrower, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of Borrower. Except as set forth on **Schedule 4.19**, Borrower is not a party to or bound by any collective bargaining agreement. There are no representation proceedings pending or, to Borrower's Knowledge, threatened to be filed with the National Labor Relations Board, and no labor organization or group of employees of Borrower has made a pending demand for recognition. There are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against Borrower pending or, to the Knowledge of Borrower, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of Borrower,. The consummation of the transactions contemplated by this Agreement and the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which Borrower is bound.

4.20 *No Material Adverse Effect*. Since the Closing Date, there has been no event, change, circumstance or occurrence that, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

4.21 *Brokers*. Except as set forth on **Schedule 4.21**, no broker or finder brought about the obtaining, making or closing of the Loans or transactions contemplated by the Loan Documents, and neither Borrower nor any Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

4.22 *Customer and Trade Relations.* There exists no actual or, to the Knowledge of Borrowers, threatened, termination or cancellation of, or any material adverse modification or change in the business relationship of Borrowers with any supplier material to its operations which either individually or in the aggregate would reasonably be expected to have a Material Adverse Effect.

4.23 *Material Contracts.* Set forth on **Schedule 4.23** is a reasonably detailed description of the Material Contracts of each Loan Party and each of its Subsidiaries. Each Material Contract (other than those that have expired at the end of their normal terms) is in full force and effect and is binding upon and enforceable against the applicable Loan Party or the applicable Subsidiary and, to Borrowers' Knowledge, each other Person that is a party thereto in accordance with its terms, has not been otherwise amended or modified, and is not in default due to the action or inaction of the applicable Loan Party or the applicable Subsidiary.

4.24 *Casualty.* Neither the businesses nor the Assets of Borrower or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

4.25 *Eligible Accounts.* Each Account included in the Borrowing Base is an "Eligible Account" as defined herein, and conforms to the definition thereof.

4.26 *Reserved.*

4.27 *Compliance with Sanctions and Anti-Terrorism Laws.* As of the Closing Date and in the three years prior thereto, none of the Loan Parties nor any Subsidiary, either directly or through a third party acting on its behalf, nor, to the Knowledge of the Loan Parties, any of their respective directors, officers or employees has or has had any of its assets in a country (a "*Sanctioned Country*") that is subject to a sanctions program (a "*Sanctions Program*") maintained by the U.S. Treasury Department/Office of Foreign Asset Control, the U.S. Treasury Department/Financial Crimes Enforcement Network, the U.S. State Department/Directorate of Defense Trade Controls, the U.S. Commerce Department/Bureau of Industry and Security or the U.S. Justice Department, does or has done business with or derives or has derived any of its operating income from investments in or transactions with any individual, entity, group or regime subject to, or specially designated under, any Sanctions Program (each, a "*Sanctioned Person*"), uses or has used any of its assets to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Country or is or was in violation of the USA Patriot Act, the Bank Secrecy Act of 1970, as amended, the Trading with the Enemy Act, the Racketeer Influenced and Corrupt Organizations Act, the U.S. Foreign Corrupt Practices Act of 1977, the UK Bribery Act of 2010 or the Iran Threat Reduction and Syria Human Rights Act of 2012, any other applicable Anti-Terrorism Law, any foreign asset control regulations of the United States Treasury Department or any enabling legislation or executive orders related to any of the foregoing (including, without limitation, Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) and Executive Order 13382 of June 28, 2005 Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters (70 Fed. Reg. (2005))) and the transactions contemplated hereby and use of the proceeds of the Loans will not violate any such law. The Loan Parties and its Subsidiaries have instituted and maintain appropriate policies, procedures and internal controls designed to ensure continued compliance with such laws.

4.28 *OFAC.* No Loan Party is a Person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), or Executive Order 13382 of June 28, 2005 Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters (70 Fed. Reg. (2005)), engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise, to the Knowledge of the Loan Parties, associated with any such Person in any manner violative of such Section 2 of such executive order, or is a Person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other OFAC regulation or executive order.

4.29 *Patriot Act.* Each Loan Party is in compliance with the Patriot Act. No part of the proceeds of the Loans or the Letters of Credit will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

4.30 *Purchase Agreement.* Borrower has provided to Bank true and correct copies of the Purchase Agreement and the Purchase Documents, including true and correct copies of the final disclosure schedules referenced in and/or attached thereto. All of the conditions precedent to the "Closing" as defined in the Purchase Agreement have been fulfilled (or waived) other than the payment of the purchase price due at such Closing. Immediately upon the funding of the initial Loans, the "Closing" under the Purchase Agreement shall be consummated in accordance with the terms and conditions thereof and all material Applicable Laws, without material waiver of any term or condition thereof which has not been consented to by Bank.

ARTICLE V

AFFIRMATIVE COVENANTS

Borrower covenants and agrees that from the Closing Date and thereafter until the payment, performance and satisfaction in full, in cash, of the Obligations, all of Bank's obligations hereunder have been terminated and no Letters of Credit are outstanding (other than L/C Obligations and Bank Product Obligations that have been Cash Collateralized, and inchoate indemnification obligations), Borrower shall:

5.1 *Punctual Payments*. Pay when due the interest and principal on the Loans, the Fees and all Expenses and any other fees and liabilities due and owing under this Agreement and the Loan Documents at the times and place and in the manner specified in this Agreement or the Loan Documents.

5.2 *Books and Records; Collateral Audits; Appraisals; Account Verification*.

(a) Maintain, and cause each of its Subsidiaries to maintain, adequate books and records in accordance with GAAP, and permit any officer, employee or agent of Bank, at any time and from time to time, to inspect and examine such books and records, and to make copies of the same; *provided* that, so long as no Event of Default exists, such inspections and examinations shall occur during normal business hours and upon three (3) Business Day's prior notice, Bank shall not conduct more than 1 such inspection and examination in any Loan Year and shall not unreasonably disrupt the Borrower's operations, and such inspections and examinations shall be conducted concurrent with any audit conducted pursuant to Section 5.2(b).

(b) Permit Bank (through any of its officers, employees, or agents), from time to time hereafter, to audit the Accounts in order to verify Borrower's financial condition or the amount, quality, value, condition of, or any other matter relating to, the Accounts; provided that such audit shall not unreasonably disrupt the Borrower's operations. In connection therewith, Borrower shall pay to Bank its standard and customary audit fee ("*Audit Fee*") for each audit plus all Expenses in connection therewith, payable upon demand; *provided* that, so long as no Event of Default exists, Borrower shall not be responsible for reimbursing Bank for more than 1 such audit per Loan Year.

(c) Reserved.

(d) Whether or not a Default or Event of Default exists, permit Bank at any time and from time to time, in the name of Bank or Borrower, to verify the validity, amount or any other matter relating to any Accounts of Borrower by mail, telephone or otherwise. Borrower shall cooperate fully with Bank in an effort to facilitate and promptly conclude any such verification process.

5.3 *Collateral Reporting and Financial Statements*. Deliver to Bank the following, all in form and detail satisfactory to Bank:

(a) as soon as available, but not later than thirty (30) days after the end of each Fiscal Month, (w) a detailed aging, by total, of the Accounts, (x) a detailed aging, by vendor, of Borrowers' accounts payable and any book overdraft, (y) a Borrowing Base Certificate, and (z) inventory reports and upon Bank's request, copies of invoices in connection with the Accounts, customer statements, credit memos, remittance advices, reports and deposit slips;

(b) as soon as available but not later than thirty (30) days after the end of each Fiscal Month, a Consolidating and Consolidated internally prepared Financial Statement for Borrower and its Subsidiaries which shall include Borrower's and its Subsidiaries' Consolidating and Consolidated balance sheet as of the close of such period, and Borrower's and its Subsidiaries' Consolidating and Consolidated statement of income and retained earnings and statement of cash flow for such period and year to date, in each case setting forth in comparative form, as applicable, (A) commencing with the Fiscal Month ending November 30, 2024, the figures for the corresponding Fiscal Month of the previous Fiscal Quarter and (B) commencing with the Fiscal Quarter ending March 31, 2025, the figures for the corresponding portion of the previous Fiscal Year, all in reasonable detail, certified by the Chief Executive Officer, Chief Financial Officer, or President of Borrower, as being complete and correct and fairly presenting in all material respects Borrower's and its Subsidiaries' financial condition and results of operations for such period (provided, that, with respect to this Section 5.3, notwithstanding anything to the contrary, any such certification by the Chief Executive Officer, Chief Financial Officer or President of Borrower shall only date back to the Closing Date, and no such representations are made with respect to the financial condition or results of operations for any times prior to the Closing Date), in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes, provided that, if, as of the last day of any Fiscal Month ending on or before November 30, 2024, Borrower's books and records are not yet in compliance with GAAP, Borrower shall deliver, in lieu of Financial Statements for such month, a roll-forward Quality of Earnings Report for the trailing twelve (12) month period ended on the last day of such month, and an updated listing of all rights each Corporate Loan Party has obtained to any new registered Intellectual Property;

(c) as soon as available but not later than thirty (30) days after the end of each Fiscal Month, a Compliance Certificate from the Chief Executive Officer, Chief Financial Officer, or President of Borrower, stating, among other things, that they have reviewed the provisions of this Agreement and the Loan Documents and that, there exists no Event of Default or Default, and containing the calculations and other details necessary to demonstrate compliance with Section 6.15;

(d) as soon as available but not later than thirty (30) days following the beginning of each Fiscal Year, projections and annual operating plan of the Borrower for such Fiscal Year, in each case approved by the Borrower's board, board of managers, or similar governing body;

(e) as soon as available but not later than one hundred fifty (150) days after the end of each Fiscal Year commencing with the Fiscal Year ending December 31, 2024, a complete copy of Borrower's and its Subsidiaries' Consolidated and Consolidating (to the extent prepared) audited Financial Statement, which shall include at least Borrower's and its Subsidiaries' balance sheet as of the close of such Fiscal Year, and Borrower's and its Subsidiaries' statement of income and retained earnings and statement of cash flow for such Fiscal Year, commencing with Fiscal Year ending December 31, 2026, setting forth in each case in comparative form, as applicable, the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, accompanied by a report and opinion certified by a certified public accountant selected by Borrower and satisfactory to Bank, which report and opinion shall not be subject to any "*going concern*" or like qualification or exception or any qualifications or exceptions as to the scope of such review;

(f) as soon as available but not later than ninety (90) days after the Closing Date, a complete copy of Borrower's and its Subsidiaries' consolidated opening balance sheet as of the close of the Subject Transaction, in reasonable detail and prepared in accordance with GAAP;

(g) promptly upon receipt by Borrower, copies of any and all reports and management letters submitted to Borrower or any Subsidiary by any certified public accountant but solely in connection with any examination limited to the financial records of Borrower or any Subsidiary financial records made by such accountant;

(h) to the extent applicable, as soon as available copies of all press releases that are not otherwise posted on the Kingsway Financial Services, Inc. website;

(i) as soon as available but not later than thirty (30) days after the end of each Fiscal Quarter, bookings reports and logo/revenue churn data related to all recurring revenue streams; and

(j) from time to time, operating statistics, operating plans and any other information as Bank may reasonably request, promptly upon such request.

5.4 *Existence; Preservation of Licenses; Compliance with Law*. Preserve and maintain, and (other than as permitted pursuant to Section 6.4) cause each Subsidiary to preserve and maintain, its existence and good standing in the state of its organization, qualify and remain qualified, and cause each Subsidiary to qualify and remain qualified, as a foreign entity in every jurisdiction; and preserve, and cause each of its Subsidiaries to preserve, all of its licenses, permits, governmental approvals, rights, privileges and franchises required for its operations; and comply, and cause each of its Subsidiaries to comply, with the provisions of its Governing Documents; and comply, and cause each of its Subsidiaries to comply, with the requirements of all Applicable Laws of any Governmental Authority having authority or jurisdiction over it; and comply, and cause each of its Subsidiaries to comply, with all requirements for the maintenance of its business, insurance, licenses, permits, governmental approvals, rights, privileges and franchises.

5.5 *Insurance*.

(a) Maintain, at Borrower's expense, and cause each Subsidiary to maintain at its expense, insurance respecting its Assets wherever located, covering loss or damage by fire, theft, explosion, and all other hazards and risks as ordinarily are insured against by other Persons engaged in the same or similar businesses. Borrower also shall maintain, and cause each Subsidiary to maintain, business interruption, public liability, as well as insurance against larceny, embezzlement, and criminal misappropriation. All such policies of insurance shall be in such amounts and with such insurance companies as are reasonably satisfactory to Bank. Borrower shall deliver copies of all such policies to Bank with a satisfactory lender's loss payable endorsements (but only in respect of Collateral) and additional insured endorsements (with respect to general liability coverage), and shall contain a waiver of warranties. Each policy of insurance or endorsement shall contain a clause requiring the insurer to give at least thirty (30) days' (or ten (10) days in the case of non-payment) prior written notice to Bank in the event of cancellation of the policy, and the insurer's agreement that any loss payable thereunder shall be payable notwithstanding any act or negligence of Borrower or Bank which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment.

(b) Copies of policies or certificates thereof satisfactory to Bank evidencing such insurance shall be delivered to Bank at least thirty (30) days prior to the expiration of the existing or preceding policies. Borrower shall give Bank prompt notice of any loss covered by such insurance. Bank shall have the exclusive right to adjust any losses payable under any such insurance policies, without any liability to Borrower whatsoever in respect of such adjustments. Any monies received as payment for any loss under any insurance policy mentioned above (other than liability insurance policies) or as payment of any award or compensation for condemnation or taking by eminent domain, shall be paid over to Bank in accordance with Section 1.14(d). Borrower shall, concurrently with the annual Financial Statements required to be delivered by Borrower pursuant to Section 5.3(e), deliver to Bank, as Bank may request, copies of certificates describing all insurance of Borrower and its Subsidiaries then in effect.

5.6 *Assets*. Maintain, keep and preserve, and cause each Subsidiary to maintain, keep and preserve, all of its Assets (tangible or intangible) which are necessary to its business in good repair and condition (normal wear and tear, obsolescence and casualty excepted), and from time to time make necessary repairs, renewals and replacements thereto so that such Assets shall be fully and efficiently preserved and maintained. This Section 5.6 shall not limit Borrower's ability to make Permitted Restricted Payments.

5.7 *Taxes and Other Liabilities*. Pay and discharge when due, and cause each Subsidiary to pay and discharge when due, any and all assessments and taxes, both real or personal and including federal and state income taxes, and any and all other Permitted Debt, other than such taxes or indebtedness as Borrower is reasonably contesting, so long as Borrower establishes adequate reserves for such amount being contested.

5.8 *Notices to Bank*. Promptly, upon Borrower acquiring Knowledge thereof, give written notice to Bank of any of the following; provided that with respect to clauses (a) through (e) such occurrence would give rise to a liability of the Borrower an amount in excess of $150,000:

(a) all litigation affecting any Loan Party or any Subsidiary;

(b) any dispute which may exist between any Loan Party or any Subsidiary, on the one hand, and any Governmental Authority, on the other;

(c) any labor controversy resulting in or threatening to result in a strike against any Loan Party or any Subsidiary;

(d) any proposal by any Governmental Authority to acquire the Assets or business of any Loan Party or any Subsidiary, or to compete with Borrower or any Subsidiary;

(e) any reportable event under Section 4043(c)(5), (6) or (13) of ERISA with respect to any Plan, any decision to terminate or withdraw from a Plan, any finding made with respect to a Plan under Section 4041(c) or (e) of ERISA, the commencement of any proceeding with respect to a Plan under Section 4042 of ERISA, or any material increase in the actuarial present value of unfunded vested benefits under all Plans over the preceding year;

(f) any written notice of a discharge of Hazardous Materials or environmental complaint received by a Loan Party from any Governmental Authority or any other Person;

(g) any material hazardous discharge from or affecting its premises not in compliance in all material respects with applicable Environmental Laws;

(h) any Event of Default or Default; and

(i) any other matter which has resulted or could reasonably be expected to result in a Material Adverse Effect.

5.9 *Specified Laws*. Comply, and cause its Subsidiaries to comply, in all material respects, with all Applicable Laws relating to data collection, use, privacy, or protection (collectively, "Data Laws") and all applicable payment card industry standards regarding data security, and maintain, and cause its Subsidiaries to maintain, written policies and procedures reasonably designed to protect the privacy of all personally identifiable information, and implement commercially reasonable security procedures, including physical and electronic safeguards, to protect all such personally identifiable information stored or transmitted in electronic form, in each case in compliance with all applicable Data Laws.

5.10 *Further Assurances*. Execute and deliver, or cause to be executed and delivered, upon the request of Bank in its Permitted Discretion and at Borrower's expense, such additional documents, instruments and agreements as Bank may reasonably determine to be necessary or advisable to carry out the provisions of this Agreement and the Loan Documents, and the transactions and actions contemplated hereunder and thereunder.

5.11 *Cash Management Services*. Within sixty (60) days after the Closing Date (or such later date as determined by Bank in its Permitted Discretion), maintain and cause its Subsidiaries to maintain their primary Cash Management Services with Bank.

5.12 *Environment*. Be and remain, and cause each Subsidiary and each operator of any of Borrower's or any Subsidiary's Assets to be and remain, in compliance in all material respects with the provisions of all applicable Environmental Laws; promptly contain or remove any discharge of Hazardous Materials from or affecting its premises not in compliance in all material respects with applicable Environmental Laws, to the extent required by applicable Environmental Laws; promptly pay any fine or penalty assessed in connection therewith other than such fines or penalties being contested in good faith by appropriate proceedings, and for which adequate reserves have been set aside with respect thereto as required by GAAP and, by reason of such contest or nonpayment, no property is subject to a material risk of loss or forfeiture; permit Bank to inspect the premises, to conduct tests thereon, and to inspect all books, correspondence, and records pertaining thereto; and at Bank's reasonable request, and at Borrower's expense, provide a report of a qualified environmental engineer, satisfactory in scope, form and content to Bank, and such other and further assurances reasonably satisfactory to Bank that the condition has been corrected.

5.13 *Additional Collateral*. With respect to any Assets (or any interest therein) acquired after the Closing Date by Borrower or any Loan Party that are of a type covered by the Lien created by any of the Loan Documents but which are not so subject, promptly (and in any event within thirty (30) days after the acquisition thereof): execute and deliver, or cause such Loan Party to execute and deliver, to Bank such amendments to the relevant Loan Documents or such other documents as Bank shall deem in its Permitted Discretion necessary or advisable to grant to Bank a Lien on such Assets (or such interest therein), take all actions, or cause such Loan Party to take all actions, requested by Bank in its Permitted Discretion to cause such Lien to be duly perfected in accordance with all Applicable Laws (to the extent that the same are required to be perfected pursuant to the terms of the Loan Documents), including, without limitation, the filing of financing statements in such jurisdictions as may be reasonably requested by Bank, if reasonably requested by Bank, deliver to Bank legal opinions relating to the matters described in the immediately preceding clauses (i) and (ii), which opinions shall be in form and substance, and from counsel, reasonably satisfactory to Bank, and if reasonably requested by Bank, deliver to Bank evidence of insurance as required by Section 5.5.

5.14 *Guarantors*. Cause each and every now existing and hereafter acquired or formed Subsidiary to become a Guarantor, and execute and deliver to Bank each of the following, concurrent with any such acquisition or formation.

(a) a Facility Guaranty;

(b) a joinder to the Security Agreement in the form of **Annex 2** thereto;

(c) a supplement to the Intercompany Subordination Agreement in the form of **Annex 1** thereto; and

(d) such other agreements, instruments and documents as Bank may reasonably request in connection therewith.

5.15 *Material Contracts.* Maintain, and cause each of its Subsidiaries to maintain, all Material Contracts in full force and effect and not default in the payment or performance of any obligations thereunder.

ARTICLE VI

NEGATIVE COVENANTS

Borrower further covenants and agrees that from the Closing Date and thereafter until the payment, performance and satisfaction in full, in cash, of the Obligations, all of Bank's, obligations hereunder have been terminated and no Letters of Credit are outstanding (other than L/C Obligations and Bank Product Obligations that have been Cash Collateralized, and inchoate indemnification obligations), Borrower shall not without the written consent of the Bank:

6.1 *Use of Funds; Margin Regulation*.

(a) Use any proceeds of the Revolving Loans for any purpose other than (i) for working capital, or (ii) for general corporate purposes;

(b) Use any proceeds of the Term Loan for any purpose other than to pay amounts owing to Seller on the Closing Date in accordance with the Purchase Agreement and for related costs, fees and expenses; or

(c) Use any portion of the proceeds of the Loans in any manner which might cause the Loans, the application of the proceeds thereof, or the transactions contemplated by this Agreement to violate Regulation T, U, or X of the Board of Governors of the Federal Reserve System, or any other regulation of such board, or to violate the Securities and Exchange Act of 1934, as amended or supplemented.

6.2 *Debt*. Create, incur, assume or suffer to exist, or permit any Subsidiary to create, incur, assume or suffer to exist, any Debt except Permitted Debt.

6.3 *Liens*. Create, incur, assume or suffer to exist, or permit any Subsidiary to create, incur, assume or suffer to exist, any Lien (including the Lien of an attachment, judgment or execution) on any of its Assets, whether now owned or hereafter acquired, except Permitted Liens; or authorize, or permit any Subsidiary to authorize, the filing under the UCC as adopted in any jurisdiction, a financing statement which names Borrower or such Subsidiary as a debtor, except with respect to Permitted Liens, or sign, or permit any Subsidiary to sign, any security agreement authorizing any secured party thereunder to file such a financing statement, except with respect to Permitted Liens.

6.4 *Merger, Consolidation, Transfer of Assets*. Wind up, liquidate, terminate or dissolve, reorganize, reincorporate, merge or consolidate with or into any other Person (including in each case, pursuant to a Delaware LLC Division), or divide into two or more Persons, including becoming a Delaware Divided LLC (whether or not the original Person survives such division), or create or reorganize into one or more series pursuant to a Delaware LLC Division or otherwise, or acquire all or substantially all of the Assets or the business of any other Person, or permit any Subsidiary to do so (other than the Subject Transaction); provided that (i) Borrower may merge or consolidate with any Subsidiary, so long as the Borrower is the surviving entity, and (ii) any Subsidiary may merge or consolidate with any other Subsidiary, so long as any Subsidiary which is a Loan Party is the surviving entity.

6.5 *Reserved.*

6.6 *Sales and Leasebacks*. Sell, transfer, or otherwise dispose of, or permit any Subsidiary to sell, transfer, or otherwise dispose of, any real or personal property to any Person, and thereafter directly or indirectly leaseback the same or similar property.

6.7 *Dispositions*. Conduct, or permit any Subsidiary to conduct, any Dispositions, other than Permitted Dispositions, subject to Section 1.14(a).

6.8 *Investments*. Make, or permit any Subsidiary to make, directly or indirectly, any Investment or incur any liabilities (including contingent obligations) for or in connection with any Investment, other than Permitted Investments.

6.9 *Character of Business*. Engage in any business activities or operations substantially different from or unrelated to its present business activities and operations, or permit any Subsidiary to do so.

6.10 *Restricted Payments*. Declare or pay, or permit any Subsidiary to declare or pay, any Distributions, or pay any other Restricted Payments, other than Permitted Restricted Payments.

6.11 *Guarantee*. Except for Permitted Debt or any Guarantee of Permitted Debt, assume, Guarantee, endorse (other than checks and drafts received by Borrower in the ordinary course of business), or otherwise be or become directly or contingently responsible or liable, or permit any Subsidiary to assume, Guarantee, endorse, or otherwise be or become directly or contingently responsible or liable (including, any agreement to purchase any obligation, stock, Assets, goods, or services or to supply or advance any funds, Assets, goods, or services, or any agreement to maintain or cause such Person to maintain, a minimum working capital or net worth, or otherwise to assure the creditors of any Person against loss) for the obligations of any other Person; or pledge or hypothecate, or permit any Subsidiary to pledge or hypothecate, any of its Assets as security for any liabilities or obligations of any other Person.

6.12 *Reserved*.

6.13 *Transactions with Affiliates*. Enter into any transaction, including borrowing or lending and the purchase, sale, or exchange of property or the rendering of any service (including management services), with any Affiliate, or permit any Subsidiary to enter into any transaction, including borrowing or lending and the purchase, sale, or exchange of property or the rendering of any service (including management services), with any Affiliate, other than in the ordinary course of business or pursuant to the reasonable requirements of Borrower's or such Subsidiary's business and upon fair and reasonable terms no less favorable to Borrower or such Subsidiary than would obtain in a comparable arm's length transaction with a Person not an Affiliate, reasonable and customary director, officer, contractor and employee compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans and indemnification arrangements approved by the relevant board of directors, board of managers, or equivalent corporate body, and transactions among Corporate Loan Parties otherwise permitted hereunder.

6.14 *Stock Issuance*. Issue, or permit any Pledged Company to issue, any additional Ownership Interests, except Permitted Issuances.

6.15 *Financial Condition*. Permit or suffer:

(a) the Fixed Charge Coverage Ratio, measured as of the end of each Fiscal Quarter, commencing with the Fiscal Quarter ending September 30, 2024, at any time to be less than the ratio set forth in the table set forth in Section 6.15(a) of the Summary of Credit Terms opposite the applicable Fiscal Quarter end.

(b) the Senior Leverage Ratio, measured as of the end of each Fiscal Month, commencing with the Fiscal Month ending September 30, 2024, at any time to be greater than the ratio set forth in the table set forth in Section 6.15(b) of the Summary of Credit Terms opposite the applicable Fiscal Month end; provided, however, if, at any time the Senior Leverage Ratio, tested as of the end of a Fiscal Month (including the last Fiscal Month of any Fiscal Quarter), prior to the exercise of any Cure Right pursuant to Section 7.3, is less than or equal to 2.50:1.00 (the "*Quarterly Testing Threshold*"), the Senior Leverage Ratio shall not be measured again until the last day of such Fiscal Quarter (or, with respect to the satisfaction of the Quarterly Testing Threshold in the last Fiscal Month of a Fiscal Quarter, the next test shall be the last day of the next Fiscal Quarter).

6.16 *OFAC*. Permit or cause any of its Subsidiaries to, become a Person whose property or interests in property are blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit or Support Terrorism (66 Fed. Reg. 49079(2001), engage in any dealings or transactions prohibited by Section 2 of such executive order, or be otherwise, to the knowledge of Borrower, associated with any such person in any manner violative of such Section 2 of such executive order, or otherwise become a Person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other OFAC regulation or executive order.

6.17 *Reserved*.

6.18 *Fiscal Year*. Change its Fiscal Year.

6.19 *Intercompany Services Agreement*. Amend the Intercompany Services Agreement in order to modify the manner in which Charges (as such term is defined therein) are calculated; pay any Charges, if an Event of Default then exists or would result from the payment of such Charges or other amounts on a Pro Forma Basis; provided, however, no such Event of Default will limit or prevent the payment of Out-of-Pocket Costs (as such term is defined in the Intercompany Services Agreement); Amend the Intercompany Services Agreement in order to increase payments for Shared Services (as such term is defined therein) to an amount greater than $250,000 in any Fiscal Year; pay any Charges (as such term is defined in the Intercompany Services Agreement) to the extent prohibited under the terms of the Services Fee Subordination Agreement.

6.20 *Burdensome Agreements*. Except as otherwise permitted under this Agreement, enter into or permit to exist any contractual obligation (other than this Agreement or any other Loan Document) that: limits the ability of any Subsidiary to make Restricted Payments or other Distributions to any Corporate Loan Party or to otherwise transfer property to or invest in a Corporate Loan Party, of any Subsidiary to Guarantee the Obligations, of any Subsidiary to make or repay loans to a Loan Party, or (iv) of the Loan Parties or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person in favor of Bank; or requires the grant of a Lien (other than a Permitted Lien) to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

6.21 *Borrower 2 as a Holding Company*. Borrower 2 to engage in any business or activity other than the ownership of all outstanding Ownership Interests in Borrower 1 and the other Loan Parties; maintaining its limited liability company existence; participating in tax, accounting, management and other administrative activities as the parent of the consolidated group of companies, including the Loan Parties; the execution and delivery of the Loan Documents to which it is a party and the performance of its obligations thereunder; and activities incidental to the businesses or activities described in clauses (a) through (d) of this Section 6.21.

6.22 *Amendments of Certain Documents*. Amend or otherwise modify, or waive any rights under any provisions of any Subordinate Debt (other than as expressly permitted by the applicable Subordination Agreement), or any Purchase Document or Governing Document other than amendments, modifications and waivers that would not reasonably be deemed to be materially adverse to the interests of Bank.

6.23 *Material Contracts*. Directly or indirectly, amend, modify, or change any of the terms or provisions of any Material Contract except to the extent that such amendment, modification, or change could not, individually or in the aggregate, reasonably be expected to be materially adverse to the interests of Bank.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

7.1 *Events of Default*. The occurrence of any one or more of the following events, acts or occurrences shall constitute an event of default (an "*Event of Default*") hereunder:

(a) Borrower fails to pay when due any payment of principal or interest due on the Loans, the Fees, any Expenses, or any other amount payable hereunder or under any Loan Document;

(b) Borrower fails to observe or perform any of the covenants and agreements set forth in Section 1.18(a), 3.3 (if applicable), 5.2, or 5.3, or any Section within Article VI;

(c) Any Loan Party fails to observe or perform any covenant or agreement set forth in this Agreement or the Loan Documents (other than those covenants and agreements described in Sections 7.1(a) and 7.1(b)), and such failure continues for fifteen (15) days after the earlier to occur of Borrower obtaining Knowledge of such failure or Bank's delivery of notice to Borrower of such failure, provided that, if such failure is not capable of being cured within fifteen (15) days, and Borrower is diligently working toward curing such failure, Borrower shall have an additional fifteen (15) days to cure such failure;

(d) Any representation, warranty or certification made by any Loan Party or any officer or employee of any Loan Party in any Loan Document, in any certificate, financial statement or other document delivered pursuant to any Loan Document proves to have been misleading or untrue in any material respect when made or if any such representation, warranty or certification is withdrawn;

(e) Any Loan Party fails to pay when due (taking into account any applicable grace or cure period) any payment in respect of its Debt (other than under this Agreement) in a principal amount in excess of $250,000;

(f) Any event or condition occurs that: results in the acceleration of the maturity of any of any Loan Party's Debt (other than under this Agreement); or permits (or, with the giving of notice or lapse of time or both, would permit) the holder or holders of such Debt or any Person acting on behalf of such holder or holders to accelerate the maturity thereof;

(g) Any Loan Party commences a voluntary Insolvency Proceeding seeking liquidation, reorganization or other relief with respect to itself or its Debt or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official over it or any substantial part of its property, or consents to any such relief or to the appointment of or taking possession by any such official in an involuntary Insolvency Proceeding or fails generally to pay its Debt as it becomes due, or takes any action to authorize any of the foregoing;

(h) An involuntary Insolvency Proceeding is commenced against any Loan Party seeking liquidation, reorganization or other relief with respect to it or its Debt or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property and any of the following events occur: the petition commencing the Insolvency Proceeding is not timely controverted; the petition commencing the Insolvency Proceeding is not dismissed within sixty (60) calendar days of the date of the filing thereof; an interim trustee is appointed to take possession of all or a substantial portion of the Assets of, or to operate all or any substantial portion of the business of, such Loan Party; or (iv) an order for relief shall have been issued or entered therein;

(i) Any one or more Loan Parties suffers one or more judgments in excess of $150,000 which are not otherwise covered by insurance, or one or more writs, warrant of attachment, or similar process in excess of $150,000 which are not released, vacated or fully bonded within fifteen (15) days of its issue or levy;

(j) A judgment creditor obtains possession of any of the Assets of any one or more Loan Parties by levy, distraint, replevin, or similar judicial proceedings;

(k) Any order, judgment or decree is entered decreeing the dissolution of any Loan Party;

(l) Any Loan Party is enjoined, restrained or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or any Loan Party voluntarily ceases to conduct its business as a going concern;

(m) A notice of lien, levy or assessment is filed of record with respect to any or all of any one or more Loan Party's Assets by any Governmental Authority, or any taxes or debts owing at any time hereafter to any Governmental Authority becomes a Lien, whether inchoate or otherwise, upon any or all of any one or more Loan Party's Assets and the same is not paid on the payment date thereof;

(n) Any Loan Party makes any payment on account of any Subordinate Debt except as otherwise permitted under the terms of the applicable Subordination Agreement;

(o) Any Reportable Event, which Bank reasonably determines constitutes grounds for the termination of any Plan by the PBGC or for the appointment by the appropriate United States District Court of a trustee to administer any such Plan, shall have occurred and be continuing thirty (30) days after written notice of such determination shall have been given to Borrower by Bank, or any such Plan shall be terminated within the meaning of Title IV of ERISA (other than in a standard termination for which Plan Assets are sufficient to satisfy all benefit liabilities as reasonably determined by Bank), or a trustee shall be appointed by the appropriate United States District Court to administer any such Plan, or the PBGC shall institute proceedings to terminate any Plan if any such ERISA Event or Events or action or actions, individually or in the aggregate, would reasonably be expected to result in a claim against or liability of Borrower or any of its Subsidiaries;

(p) Any event occurs that would permit the Pension Benefit Guaranty Corporation to terminate any Plan;

(q) Any Change of Control occurs;

(r) (i) Any of the Loan Documents fails to be in full force and effect for any reason, or (ii) Bank fails to have a perfected, first priority Lien (subject only to Permitted Liens) in and upon all of the Collateral;

(s) Any Guarantor revokes or disputes the validity of, or liability under, his, her or its Facility Guaranty;

(t) Borrower or a member of the ERISA Group sustains a complete or partial withdrawal within the meaning of ERISA sections 4203 or 4205 from a Multiemployer Plan which could reasonably be expected to have a Material Adverse Effect;

(u) A breach or an event of default occurs under any Bank Product Agreement, including without limitation, any Swap; or

(v) There occurs any Material Adverse Effect.

7.2 *Remedies*. Upon the occurrence of any Event of Default described in Section 7.1(g) or 7.1(h), the Commitments shall immediately terminate, Bank's obligation hereunder to make Loans to Borrower and/or Bank's obligation to issue Letters of Credit shall immediately terminate, and the Obligations (other than Swap Obligations) shall become immediately due and payable without any election or action on the part of Bank, without presentment, demand, protest or notice of any kind, all of which Borrower hereby expressly waives, and Borrower shall immediately Cash Collateralize all outstanding L/C Obligations and Bank Product Obligations. Upon the occurrence and continuance of any other Event of Default, either or both of the following actions may be taken: Bank may without notice of its election and without demand, immediately terminate the Commitments, whereupon Bank's obligation to make Loans to Borrower and/or to issue Letters of Credit shall immediately terminate; Bank may, without notice of its election and without demand, declare the Obligations to be due and payable in full, whereupon the Obligations (other than Swap Obligations) shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which Borrower hereby expressly waives, and Borrower shall Cash Collateralize all outstanding L/C Obligations and Bank Product Obligations. Any demand in respect of any Swap Obligation shall be made in accordance with the terms of the Swap Documents relating thereto.

7.3 *Equity Cure*

(a) Notwithstanding anything to the contrary contained in this Article VII, in the event that Borrower fails to comply with the requirements of either Section 6.15(a) or 6.15(b) as of the end of any Fiscal Quarter or Fiscal Month or Borrower projects that it will fail to comply with the requirements of either Sections 6.15(a) or 6.15(b) as of the end of such Fiscal Quarter or Fiscal Month (in either case, a "*Subject Covenant Default*"), Borrower shall have the right, subject to the terms and conditions of this Section 7.3, to effect a "cure" of the Subject Covenant Default(s) (the "*Cure Right*"), provided that Bank will have the option to reject such cure if the Cure Amount (hereinafter defined) is greater than or equal to $500,000. Subject to Sections (a) and (b), Borrower may exercise the Cure Right at any time during the period commencing on the first day of the Fiscal Quarter or Fiscal Month during which the Subject Covenant Default(s) occurred or is projected to occur and continuing up to and including the expiration of the tenth (10th) day following the date on which the Compliance Certificate with respect to such Fiscal Quarter or Fiscal Month (or the Fiscal Year ended on the last day of such Fiscal Quarter) is due in accordance with Section 5.3(c) (the "*Cure Right Exercise Period*"); provided that the Cure Right Exercise Period for a Subject Covenant Default shall immediately terminate upon Bank's receipt of written notice from Borrower that it is not electing to exercise the Cure Right for such Subject Covenant Default. The Cure Right may be effected only during the Cure Right Exercise Period by Borrower 2 or, subject to Section 3.1 of the Security Agreement, Borrower issuing Ownership Interests that are Permitted Issuances and using the Net Proceeds of such issuance to make a cash contribution to the capital of Borrower, which amount, for covenant compliance purposes, shall be treated as a dollar-for-dollar increase in Consolidated Adjusted EBITDA with respect to the applicable Fiscal Quarter or Fiscal Month in the amount sufficient to cause Borrower to be in compliance with the requirements of Sections 6.15(a) or 6.15(b) as of the end of the applicable Fiscal Quarter or Fiscal Month on a Pro Forma Basis (such amount, the "*Cure Amount*"). Upon Borrower's receipt of the Cure Amount, and Bank's receipt of a Compliance Certificate giving effect to such Cure Amount and evidencing that the Subject Covenant Default(s) have been "cured" on a Pro Forma Basis ("*Cure Date*"), Borrower shall be deemed to have satisfied the requirements of Sections 6.15(a) or 6.15(b) as of the end of the applicable Fiscal Quarter or Fiscal Month (and any 4 Fiscal Quarter period that contains such Fiscal Quarter or twelve (12) Fiscal Month period that contains such Fiscal Month), with the same effect as though there had been no failure to comply therewith at such date, and the Subject Covenant Default(s) shall be deemed cured and no longer continuing; provided that the Cure Date shall in no event occur after the expiration of the Cure Right Exercise Period, and any attempted exercise of the Cure Right that does not result in the Cure Date occurring on or prior to the expiration of the Cure Right Exercise Period shall be ineffective for purposes of waiving the Subject Covenant Defaults. Prior to the Cure Date in accordance with the foregoing, any Event of Default that has occurred as a result of the Subject Covenant Defaults shall be deemed to be continuing and, as a result, Bank shall have no obligation to make additional Revolving Loans, issue any additional Letters of Credit, or otherwise extend additional credit hereunder; provided that during the Cure Right Exercise Period, except as otherwise set forth in this sentence before this proviso, Bank shall forbear from exercising any of its other rights and remedies available to it that arise solely from the existence of the Subject Covenant Defaults. In the event Borrower does not cure all financial covenant violations as provided in this Section 7.3, the Subject Covenant Defaults shall continue unless waived in writing by Bank in accordance herewith.

(b) Notwithstanding anything herein to the contrary, Borrower shall notify Bank of the exercise of any Cure Right not less than five (5) Business Days prior to the issuance of the applicable Ownership Interests, in the case of any financial covenant measured on a Fiscal Quarter basis, in each 4 consecutive Fiscal Quarter period there shall be at least 2 Fiscal Quarters in which the Cure Right is not exercised, in the case of any financial covenant measured on a Fiscal Month basis, in each twelve (12) consecutive Fiscal Month period there shall be at least six (6) Fiscal Months in which the Cure Right is not exercised, the Cure Right shall not be exercised in consecutive Fiscal Months or consecutive Fiscal Quarters, as applicable, during the term of this Agreement, the Cure Right shall not be exercised more than four (4) times, the amount added to Consolidated Adjusted EBITDA pursuant to the exercise of the Cure Right shall be no greater than the product of (y) Cure Amount, times (z) one hundred and ten percent (110%), and any amounts in excess thereof shall not increase Consolidated Adjusted EBITDA with respect to the applicable Fiscal Quarter, and in no event may any Cure Right be exercised if such Cure Right would result in a Change of Control.

7.4 *Power of Attorney*. Borrower hereby appoints Bank (and all Persons designated by Bank) as Borrower's true and lawful attorney (and agent-in-fact) for the purposes provided in this section. Bank, or Bank's designee, may, without notice and in either its or Borrower's name, but at the cost and expense of Borrower:

(a) Endorse Borrower's name on any payment item or other proceeds of Collateral (including proceeds of insurance) that come into Bank's possession or control; and

(b) notify any Account Debtors of the assignment of their Accounts, demand and enforce payment of Accounts by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to Accounts; settle, adjust, modify, compromise, discharge or release any Accounts or other Collateral, or any legal proceedings brought to collect Accounts or Collateral; sell or assign any Accounts and other Collateral upon such terms, for such amounts and at such times as Bank deems advisable; collect, liquidate and receive balances in deposit accounts or investment accounts, and take control, in any manner, of proceeds of Collateral; prepare, file and sign Borrower's name to a proof of claim or other document in a bankruptcy of an Account Debtor, or to any notice, assignment or satisfaction of Lien or similar document; receive, open and dispose of mail addressed to Borrower, and notify postal authorities to deliver any such mail to an address designated by Bank; endorse any Chattel Paper, Document, Instrument, bill of lading, or other document or agreement relating to any Accounts, Inventory or other Collateral; use Borrower's stationery and sign its name to verifications of Accounts and notices to Account Debtors; use information contained in any data processing, electronic or information systems relating to Collateral; make and adjust claims under insurance policies; take any action as may be necessary or appropriate to obtain payment under any letter of credit, banker's acceptance or other instrument for which Borrower is a beneficiary; and take all other actions as Bank reasonably deems appropriate to fulfill Borrower's obligations under this Agreement and the Loan Documents.

7.5 *Appointment of Receiver or Trustee*. Borrower hereby irrevocably agrees that Bank, has the right under this Agreement, upon the occurrence and continuance of an Event of Default, to seek the appointment of a receiver, trustee or similar official over Borrower to effect the transactions contemplated by this Agreement, and that Bank is entitled to seek such relief. Borrower hereby irrevocably agrees not to object to such appointment on any grounds.

7.6 *Remedies Cumulative*. The rights and remedies of Bank herein and in the Loan Documents are cumulative, and are not exclusive of any other rights, powers, privileges, or remedies, now or hereafter existing, at law, in equity or otherwise.

ARTICLE VIII

MISCELLANEOUS

8.1 *Notices*. All notices, requests and other communications to any party hereunder shall be in writing (including facsimile or other electronic transmission or similar writing) and shall be given to such party at its address or facsimile number set forth on the signature pages hereof or such other address or facsimile number as such party may hereafter specify by notice to the other party in accordance with this Section 8.1. Each such notice, request or other communication shall be effective if delivered in person, when delivered, if delivered by facsimile transmission, on the date of transmission if transmitted on a Business Day before 4:00 p.m., (Pacific time), otherwise on the next Business Day, if delivered electronically, upon receipt thereof by the recipient; if delivered by overnight courier, one (1) Business Day after delivery to the courier properly addressed and if mailed, upon the third (3rd) Business Day after the date deposited into the U.S. Mail, certified or registered; provided that actual notice, however and from whomever given or received, shall always be effective on receipt; provided further that notices to Bank pursuant to Article I and Article II shall not be effective until received by the loan officer of Bank designated as the relationship manager for Borrower; provided further that notices sent by Bank in connection with Bank’s exercise of its enforcement rights against any of its collateral shall be deemed given when deposited in the mail or personally delivered, or, where permitted by law, transmitted by facsimile.

8.2 *No Waivers*. No failure or delay by Bank in exercising any right, power or privilege hereunder or under any Loan Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

8.3 *Expenses; Documentary Taxes; Indemnification*.

(a) Borrower shall pay all Expenses on demand.

(b) Borrower shall pay all and indemnify Bank against any and all transfer taxes, documentary taxes, assessments, or charges made by any Governmental Authority and imposed by reason of the execution and delivery of this Agreement, any of the Loan Documents, or any other document, instrument or agreement entered into in connection herewith.

(c) Borrower shall and hereby agrees to indemnify, protect, defend and hold harmless Bank and its directors, officers, agents, employees and attorneys (collectively, the "*Indemnified Persons*" and individually, an "*Indemnified Person*") from and against any and all losses, claims, damages, liabilities, deficiencies, judgments, costs and expenses (including reasonable attorneys' fees and attorneys' fees incurred pursuant to proceedings arising under the Bankruptcy Code) incurred by any Indemnified Person (except to the extent that it is finally judicially determined to have resulted from the gross negligence or willful misconduct of any Indemnified Person) arising out of or by reason of any litigations, investigations, claims or proceedings (whether administrative, judicial or otherwise), including discovery, whether or not such Indemnified Person is designated a party thereto, which arise out of or are in any way related to this Agreement, the Loan Documents or the transactions contemplated hereby or thereby, any actual or proposed use by Borrower of the proceeds of the Loans, or Bank's entering into this Agreement, the Loan Documents or any other agreements and documents relating hereto; any such losses, claims, damages, liabilities, deficiencies, judgments, costs and expenses arising out of or by reason of the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal or presence on, under or about Borrower's operations or property or property leased by Borrower of any material, substance or waste which is or becomes designated as Hazardous Materials; and any such losses, claims, damages, liabilities, deficiencies, judgments, costs and expenses incurred in connection with any remedial or other action taken by Borrower or Bank in connection with compliance by Borrower with any federal, state or local environmental laws, acts, rules, regulations, orders, directions, ordinances, criteria or guidelines (except to the extent that it is finally judicially determined to have resulted from the gross negligence or willful misconduct of any Indemnified Person). If and to the extent that the obligations of Borrower hereunder are unenforceable for any reason, Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations to Bank which is permissible under Applicable Law. This Section 8.3(c) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(d) To the fullest extent permitted by Applicable Law, Borrower shall not assert, and hereby waives, any claim against any Indemnified Person, 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 the Loan Documents or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnified Person shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnified Person through telecommunications, electronic or other information transmission systems in connection with the Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnified Person as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Borrower's obligations under this Section 8.3 and Section 1.16 shall survive any termination of the Loan Documents and the payment in full of the Obligations, and are in addition to, and not in substitution of, any other of its obligations set forth in this Agreement.

8.4 *Amendments and Waivers*. Neither this Agreement nor any Loan Document (other than Bank Product Agreements), nor any terms hereof or thereof may be amended, supplemented or modified except in accordance with the provisions of this Section 8.4. Bank may from time to time, enter into with Borrower or any other applicable Person written amendments, supplements or modifications hereto and to the Loan Documents or waive, on such terms and conditions as Bank may specify in such instrument, any of the requirements of this Agreement or the Loan Documents or any Event Default or Default and its consequences, if, but only if, such amendment, supplement, modification or waiver is in writing and is signed by the party asserted to be bound thereby, and then such amendment, supplement, modification or waiver shall be effective only in the specific instance and the specific purpose for which given. Any such waiver and any such amendment, supplement or modification shall be binding upon Borrower, Bank and all future holders of the Loans.

8.5 *Successors and Assigns; Participations; Disclosure; Register*.

(a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that Borrower may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Bank and any such prohibited assignment or transfer by Borrower shall be void.

(b) Bank may make, carry or transfer the Loans at, to or for the account of, any of its branch offices or the office of an Affiliate of Bank or to any Federal Reserve Bank, all without Borrower's consent.

(c) Bank may at its own expense, assign to one or more banks or other financial institutions all or a portion of its rights (including voting rights) and obligations under this Agreement and the Loan Documents. In the event of any such assignment by Bank pursuant to this Section 8.5(c), Bank's obligations under this Agreement arising after the effective date of such assignment shall be released and concurrently therewith, transferred to and assumed by Bank's assignee to the extent provided for in the document evidencing such assignment. The provisions of this Section 8.5 relate only to absolute assignments (whether or not arising as the result of foreclosure of a security interest) and that such provisions do not prohibit assignments creating security interests, including, without limitation, any pledge or assignment by Bank of any Loan or any Note to any Federal Reserve Bank in accordance with Applicable Law.

(d) Bank may at any time sell to one or more banks or other financial institutions (each a "*Participant*") participating interests in the Loans, the Letters of Credit, and in any other interest of Bank hereunder. In the event of any such sale by Bank of a participating interest to a Participant, Bank's obligations under this Agreement shall remain unchanged, Bank shall remain solely responsible for the performance thereof, and Borrower shall continue to deal solely and directly with Bank in connection with Bank's rights and obligations under this Agreement. Borrower agrees that each Participant shall, to the extent provided in its participation agreement, be entitled to the benefits of Section 1.16 with respect to its participating interest (but with respect to any particular Participant, to no greater extent than Bank would be entitled to).

(e) Borrower authorizes Bank to disclose to any assignee under Section 8.5(c) or any Participant (either, a "*Transferee*") and any prospective Transferee any and all financial information in such Bank's possession concerning Borrower that has been delivered to Bank by Borrower pursuant to this Agreement or that has been delivered to Bank by Borrower in connection with Bank's credit evaluation prior to entering into this Agreement.

(f) Bank, acting solely for this purpose as an agent of Borrower, shall maintain at its office in San Jose, California, a register for the recordation of the names and addresses of Bank and its successors and assigns, and the commitments of, and principal amounts of the loans owing to Bank and its successors and assigns pursuant to the terms hereof from time to time (the "*Register*"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and Borrower and Bank shall treat the Person whose name is recorded in the Register pursuant to the terms hereof as a lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower and lenders at any reasonable time and from time to time upon reasonable prior notice. The obligations of Borrower under this Agreement and the Loan Documents are registered obligations and the right, title and interest of Bank and its assignees in and to such obligations shall be transferable only upon notation of such transfer in the Register. This Section 8.5(f) shall be construed so that such obligations are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Internal Revenue Code and any related regulations (and any other relevant or successor provisions of the Internal Revenue Code or such regulations). Bank shall maintain, as a non-fiduciary agent of the Borrower, a register as to the participations granted and transferred under Section 8.5(d) containing the same information specified in this Section on the Register as if each participant were a lender hereunder.

(g) Borrower agrees that Bank may use Borrower's and its Subsidiaries' name(s) in advertising and promotional materials.

8.6 *Confidentiality*. Bank agrees that non-public information regarding Loan Parties and their Subsidiaries, their operations, assets, and existing and contemplated business plans ("*Confidential Information*") shall be treated by Bank in a confidential manner, and shall not be disclosed by Bank to Persons who are not Loan Parties or investors therein, except: to attorneys for and other advisors, accountants, auditors, and consultants to Bank ("*Bank Representatives*"), to Subsidiaries and Affiliates of Bank (including Bank Product Providers), *provided* that any such Subsidiary or Affiliate shall have agreed in writing to receive such information hereunder subject to the terms of this Section 8.6, as may be required by regulatory authorities so long as such authorities are informed of the confidential nature of such information, as may be required by statute, decision, or judicial or administrative order, rule, or regulation; *provided* that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Borrower with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrower pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation, and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, as may be agreed to in advance by Borrower or as requested or required by any Governmental Authority pursuant to any subpoena or other legal process, *provided*, that, (x) prior to any disclosure under this clause (v) the disclosing party agrees to provide Borrower with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrower pursuant to the terms of the subpoena or other legal process, and (y) any disclosure under this clause (v) shall be limited to the portion of the Confidential Information as may be required by such governmental authority pursuant to such subpoena or other legal process, as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by Bank or Bank Representatives), in connection with any assignment, prospective assignment, sale, prospective sale, participation, prospective participation, pledge or prospective pledge of Bank's interest under this Agreement, *provided* that any such Transferee or prospective Transferee shall have agreed in writing to receive such information hereunder subject to the terms of this Section, in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents; *provided*, that, prior to any disclosure to any Person (other than any Loan Party, Bank, any of their respective Affiliates, or their respective counsel) under this clause (viii) with respect to litigation involving any Person (other than any Loan Party, Bank, any of their respective Affiliates, or their respective counsel), the disclosing party agrees to provide Borrower with prior notice thereof, and in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Loan Document.

8.7 *Counterparts; Integration*. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic transmission shall be as effective as delivery of an original counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile or other electronic transmission also shall deliver a manually executed counterpart of this Agreement but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. This Agreement constitutes the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

8.8 *Severability*. The provisions of this Agreement are severable. The invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity or enforceability of any other of its provisions. If one or more provisions hereof shall be declared invalid or unenforceable, the remaining provisions shall remain in full force and effect and shall be construed in the broadest possible manner to effectuate the purposes hereof.

8.9 *Knowledge*. For purposes of this Agreement, an individual will be deemed to have knowledge of a particular fact or other matter if: such individual is actually aware of such fact or other matter; or a prudent individual would reasonably be expected to discover or otherwise become aware of such fact or other matter in the course of conducting a reasonably comprehensive investigation concerning the existence of such fact or other matter. Borrower will be deemed to have knowledge of a particular fact or other matter if the president, chief executive officer, chief operating officer, chief financial officer, controller, treasurer, president, or other Authorized Officer of Borrower has, or at any time while holding such office had, knowledge of such fact or other matter.

8.10 *Additional Waivers*.

(a) Borrower agrees that checks and other instruments received by Bank in payment or on account of the Obligations constitute only conditional payment until such items are actually paid to Bank and Borrower waives the right to direct the application of any and all payments at any time or times hereafter received by Bank on account of the Obligations and Borrower agrees that Bank shall have the continuing exclusive right to apply and reapply such payments in any manner as Bank may deem advisable, notwithstanding any entry by Bank upon its books.

(b) Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, documents, instruments, chattel paper, and guarantees at any time held by Bank on which Borrower may in any way be liable.

(c) So long as Bank complies with its obligations, if any, under the UCC, Bank shall not in any way or manner be liable or responsible for (x) the safekeeping of the Collateral; (y) any loss or damage thereto occurring or arising in any manner or fashion from any cause; (z) any diminution in the value thereof; or (aa) any act or default of any carrier, warehouseman, bailee, forwarding agency or other person whomsoever; and all risk of loss, damage or destruction of the Collateral shall be borne by Borrower.

(d) Borrower waives the right and the right to assert a confidential relationship, if any, it may have with any accountant, accounting firm and/or service bureau or consultant in connection with any information requested by Bank pursuant to or in accordance with this Agreement, and agrees that Bank may contact directly any such accountants, accounting firm and/or service bureau or consultant in order to obtain such information.

8.11 *Destruction Of Borrower's Documents*. Any documents, schedules, invoices or other papers delivered to Bank (other than any stock certificates, promissory notes or other possessory collateral) may, be destroyed or otherwise disposed of by Bank six (6) months after they are delivered to or received by Bank, unless Borrower requests, in writing, the return of the said documents, schedules, invoices or other papers and makes arrangements, at Borrower's expense, for their return.

8.12 *CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; CLASS ACTION WAIVER.*

(a) **THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD FOR PRINCIPLES OF CONFLICTS OF LAWS.**

(b) **THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT BANK'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE BANK ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. BORROWER AND BANK WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF *FORUM NON CONVENIENS* OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 8.12.**

(c) **EACH LOAN PARTY AND BANK (EACH BY ITS ACCEPTANCE OF THIS AGREEMENT) HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO ANY OBLIGATION OF ANY LOAN PARTY OR THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR OTHERWISE ARISING OUT OF OR RELATING TO THE RELATIONSHIP BETWEEN ANY LOAN PARTY AND BANK, WHETHER ARISING IN CONTRACT, TORT, EQUITY, FROM STATE OR FEDERAL STATUTE OR LAW, OR OTHERWISE. EACH LOAN PARTY AND BANK REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

(d) **IF PERMITTED BY APPLICABLE LAW, EACH PARTY ALSO WAIVES THE RIGHT TO LITIGATE IN COURT OR AN ARBITRATION PROCEEDING ANY DISPUTE AS A CLASS ACTION, EITHER AS A MEMBER OF A CLASS OR AS A REPRESENTATIVE, OR TO ACT AS A PRIVATE ATTORNEY GENERAL. EACH PARTY (I) CERTIFIES THAT NO ONE HAS REPRESENTED TO SUCH PARTY THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE JURY AND CLASS ACTION WAIVERS IN THE EVENT OF SUIT, AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS, AGREEMENTS, AND CERTIFICATIONS IN THIS SECTION.**

8.13 *Reference Provision*. If the waiver of the right to a trial by jury set forth in Section 8.12(c) is not enforceable, all disputes or controversies as to which the jury trial waiver above would apply if enforceable shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the presiding judge of the Santa Clara County, California Superior Court or, if the proceeding is pending in federal court, by a District Court judge in the Northern District of California) appointed in accordance with California Code of Civil Procedure Section 638 ("*Section 638*") (or pursuant to comparable provisions of federal law if the proceeding is pending in federal court and the Court determines that it will not proceed in accordance with Section 638), sitting without a jury, in accordance with Section 8.12(b). The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure Sections 638 through 645.1, inclusive (or comparable provisions if the referee is appointed in accordance with federal law). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against Collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this Section 8.13.

8.14 *Updating Disclosure Schedules*. Concurrent with the delivery of each Compliance Certificate pursuant to Section 5.3(c), Borrower shall update in writing any Schedules provided for in Article IV to the extent it has Knowledge of any circumstance which may have the effect of making any representation or warranty contained in Article IV untrue or incomplete in any material respect as of the end of the Fiscal Month to which such Compliance Certificate pertains. The requirement of Borrower to update the Schedules provided for herein shall not have the effect of a cure of any Event of Default occurring prior to any such update or existing at the time of any such update without the written waiver of such Event of Default by Bank.

8.15 *Revival and Reinstatement of Obligations*. If the incurrence or payment of the Obligations by any Loan Party or the transfer to Bank or any Bank Product Provider of any property should for any reason subsequently be asserted, or declared, to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (each, a "*Voidable Transfer*"), and if Bank or such Bank Product Provider is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that Bank or such Bank Product Provider is required or elects to repay or restore, and as to all reasonable costs, Expenses, and reasonable attorneys' fees of Bank and such Bank Product Provider related thereto, the liability of each Loan Party automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

8.16 *Patriot Act Notification*. Bank is subject to the Patriot Act and hereby notifies Borrower that pursuant to the requirements of the Patriot Act, Bank is required to obtain, verify and record information that identifies Borrower, which information includes the names and addresses of Borrower and other information that will allow Bank to identify Borrower in accordance with the Patriot Act.

8.17 *License to Use Borrower's Logo.* At Borrower's request, Bank has affixed Borrower's logo to this Agreement and certain of the Loan Documents. Borrower hereby grants a royalty-free, non-exclusive license or other right to use Borrower's logo and any of Borrower's intellectual property related thereto on this Agreement and such Loan Documents until such time as the Obligations are indefeasibly paid in full and this Agreement is terminated.

8.18 *Debtor-Creditor Relationship.* The relationship between Bank, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. Bank has no (nor shall be deemed to have any) fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between Bank, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

ARTICLE IX

JOINT AND SEVERAL LIABILITY; SINGLE LOAN ACCOUNT

9.1 *Joint and Several Liability.* Each Borrower agrees that it is jointly and severally, directly and primarily liable to Bank for payment, performance and satisfaction in full of the Obligations and that such liability is independent of the duties, obligations, and liabilities of the other Borrowers. Bank may bring a separate action or actions on each, any, or all of the Obligations against any Borrower, whether action is brought against the other Borrowers or whether the other Borrowers are joined in such action. In the event that any Borrower fails to make any payment of any Obligations on or before the due date thereof, the other Borrowers immediately shall cause such payment to be made or each of such Obligations to be performed, kept, observed, or fulfilled.

9.2 *Primary Obligation; Waiver of Marshaling.* The Loan Documents to which Borrowers are a party are a primary and original obligation of each Borrower, are not the creation of a surety relationship, and are an absolute, unconditional, and continuing promise of payment and performance which shall remain in full force and effect without respect to future changes in conditions, including any change of law or any invalidity or irregularity with respect to the Loan Documents to which Borrowers are a party. Each Borrower agrees that its liability under the Loan Documents to which Borrowers are a party shall be immediate and shall not be contingent upon the exercise or enforcement by Bank of whatever remedies they may have against the other Borrowers, or the enforcement of any lien or realization upon any security Bank may at any time possess. Each Borrower consents and agrees that Bank shall be under no obligation to marshal any assets of any Borrower against or in payment of any or all of the Obligations.

9.3 *Financial Condition of Borrowers.* Each Borrower acknowledges that it is presently informed as to the financial condition of the other Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Borrower hereby covenants that it will continue to keep informed as to the financial condition of the other Borrowers, the status of the other Borrowers and of all circumstances which bear upon the risk of nonpayment. Absent a written request from any Borrower to Bank for information, each Borrower hereby waives any and all rights it may have to require Bank to disclose to such Borrower any information which Bank may now or hereafter acquire concerning the condition or circumstances of the other Borrowers.

9.4 *Continuing Liability.* The liability of each Borrower under the Loan Documents to which Borrowers are a party includes Obligations arising under successive transactions continuing, compromising, extending, increasing, modifying, releasing, or renewing the Obligations, changing the interest rate, payment terms, or other terms and conditions thereof, or creating new or additional Obligations after prior Obligations have been satisfied in whole or in part. To the maximum extent permitted by law, each Borrower hereby waives any right to revoke its liability under the Loan Documents as to future indebtedness, and in connection therewith, each Borrower hereby waives any rights it may have under Section 2815 of the California Civil Code.

9.5 *Additional Waivers.* Each Borrower absolutely, unconditionally, knowingly, and expressly waives:

(a) notice of acceptance hereof; notice of any Loans or other financial accommodations made or extended under the Loan Documents to which Borrowers are a party or the creation or existence of any Obligations; notice of the amount of the Obligations, subject, however, to each Borrower's right to make inquiry of Bank to ascertain the amount of the Obligations at any reasonable time; notice of any adverse change in the financial condition of the other Borrowers or of any other fact that might increase such Borrower's risk hereunder; notice of presentment for payment, demand, protest, and notice thereof as to any instruments among the Loan Documents to which Borrowers are a party; and all other notices (except if such notice is specifically required to be given to Borrowers hereunder or under the Loan Documents to which Borrowers are a party) and demands to which such Borrower might otherwise be entitled;

(b) its right, under Sections 2845 or 2850 of the California Civil Code, or otherwise, to require Bank to institute suit against, or to exhaust any rights and remedies which Bank has or may have against, the other Borrowers or any third party, or against any collateral for the Obligations provided by the other Borrowers, or any third party. Each Borrower further waives any defense arising by reason of any disability or other defense (other than the defense that the Obligations shall have been fully and finally performed and indefeasibly paid) of the other Borrowers or by reason of the cessation from any cause whatsoever of the liability of the other Borrowers in respect thereof;

(c) any rights to assert against Bank any defense (legal or equitable), set-off, counterclaim, or claim which such Borrower may now or at any time hereafter have against the other Borrowers or any other party liable to Bank; any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of the Obligations or any security therefor; any defense such Borrower has to performance hereunder, and any right such Borrower has to be exonerated, provided by Sections 2819, 2822, or 2825 of the California Civil Code, or otherwise, arising by reason of: the impairment or suspension of Bank' rights or remedies against the other Borrowers; the alteration by Bank of the Obligations; any discharge of the other Borrowers' obligations to Bank by operation of law as a result of Bank' intervention or omission; or the acceptance by Bank of anything in partial satisfaction of the Obligations; and the benefit of any statute of limitations affecting such Borrower's liability hereunder or the enforcement thereof, and any act which shall defer or delay the operation of any statute of limitations applicable to the Obligations shall similarly operate to defer or delay the operation of such statute of limitations applicable to such Borrower's liability hereunder;

(d) any defense arising by reason of or deriving from any claim or defense based upon an election of remedies by Bank including any defense based upon an election of remedies by Bank under the provisions of Sections 580a, 580b, 580d, and 726 of the California Code of Civil Procedure or any similar law of California or any other jurisdiction; or any election by Bank under Section 1111(b) of the Bankruptcy Code to limit the amount of, or any collateral securing, its claim against Borrowers. Pursuant to California Civil Code Section 2856(b):

(i) each Borrower waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed such Borrower's rights of subrogation and reimbursement against the other Borrowers by the operation of Section 580(d) of the California Code of Civil Procedure or otherwise; and

(ii) each Borrower waives all rights and defenses that such Borrower may have because the Obligations are secured by real property. This means, among other things: (1) Bank may collect from such Borrower without first foreclosing on any real or personal property collateral pledged by the other Borrowers; and (2) if Bank forecloses on any real property collateral pledged by the other Borrowers: (A) the amount of the Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) Bank may collect from such Borrower even if Bank, by foreclosing on the real property collateral, has destroyed any right such Borrower may have to collect from the other Borrowers. This is an unconditional and irrevocable waiver of any rights and defenses each Borrower may have because the Obligations are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure;

(e) any right of subrogation such Borrower has or may have as against the other Borrowers with respect to the Obligations; any right to proceed against the other Borrowers or any other Person, now or hereafter, for contribution, indemnity, reimbursement, or any other suretyship rights and claims, whether direct or indirect, liquidated or contingent, whether arising under express or implied contract or by operation of law, which such Borrower may now have or hereafter have as against the other Borrowers with respect to the Obligations; and any right to proceed or seek recourse against or with respect to any property or asset of the other Borrowers; and

(f) WITHOUT LIMITING THE GENERALITY OF ANY OTHER WAIVER OR OTHER PROVISION SET FORTH IN THIS AGREEMENT, EACH BORROWER HEREBY ABSOLUTELY, KNOWINGLY, UNCONDITIONALLY, AND EXPRESSLY WAIVES AND AGREES NOT TO ASSERT ANY AND ALL BENEFITS OR DEFENSES ARISING DIRECTLY OR INDIRECTLY UNDER ANY ONE OR MORE OF CALIFORNIA CIVIL CODE SECTIONS 2799, 2808, 2809, 2810, 2815, 2819, 2820, 2821, 2822, 2825, 2839, 2845, 2848, 2849, AND 2850, CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 580a, 580b, 580c, 580d, AND 726, CALIFORNIA UNIFORM COMMERCIAL CODE SECTIONS 3116, 3118, 3119, 3419, 3605, 9504, 9505, AND 9507, AND CHAPTER 2 OF TITLE 14 OF PART 4 OF DIVISION 3 OF THE CALIFORNIA CIVIL CODE.

9.6 *Settlements or Releases.* Each Borrower consents and agrees that, without notice to or by such Borrower, and without affecting or impairing the liability of such Borrower hereunder, Bank may, by action or inaction:

(a) compromise, settle, extend the duration or the time for the payment of, or discharge the performance of, or may refuse to or otherwise not enforce the Loan Documents, or any part thereof, with respect to the other Borrowers or any Guarantor;

(b) release the other Borrowers or any Guarantor or grant other indulgences to the other Borrowers or any Guarantor in respect thereof;

(c) amend or modify in any manner and at any time (or from time to time) any of the Loan Documents; or

(d) release or substitute any Guarantor, if any, of the Obligations, or enforce, exchange, release, or waive any security for the Obligations or any other guaranty of the Obligations, or any portion thereof.

9.7 *No Election.* Bank shall have the right to seek recourse against each Borrower to the fullest extent provided for herein, and no election by Bank to proceed in one form of action or proceeding, or against any party, or on any obligation, shall constitute a waiver of Bank's right to proceed in any other form of action or proceeding or against other parties unless Bank has expressly waived such right in writing. Specifically, but without limiting the generality of the foregoing, no action or proceeding by Bank under the Loan Documents shall serve to diminish the liability of any Borrower under the Loan Documents to which Borrowers are a party except to the extent that Bank finally and unconditionally shall have realized indefeasible payment by such action or proceeding.

9.8 *Indefeasible Payment.* The Obligations shall not be considered indefeasibly paid unless and until all payments to Bank are no longer subject to any right on the part of any Person, including any Borrower, any Borrower as a debtor in possession, or any trustee (whether appointed pursuant to the Bankruptcy Code, or otherwise) of any Borrower's Assets to invalidate or set aside such payments or to seek to recoup the amount of such payments or any portion thereof, or to declare same to be fraudulent or preferential. Upon such full and final performance and indefeasible payment of the Obligations, Bank shall have no obligation whatsoever to transfer or assign its interest in the Loan Documents to any Borrower. In the event that, for any reason, any portion of such payments to Bank is set aside or restored, whether voluntarily or involuntarily, after the making thereof, then the obligation intended to be satisfied thereby shall be revived and continued in full force and effect as if said payment or payments had not been made, and any Borrower shall be liable for the full amount Bank is required to repay plus any and all costs and expenses (including attorneys' fees and attorneys' fees incurred in proceedings brought under the Bankruptcy Code) paid by Bank in connection therewith.

9.9 *Single Loan Account.* At the request of Borrowers to facilitate and expedite the administration and accounting processes and procedures of the Loans and Borrowings, Bank have agreed, in lieu of maintaining separate loan accounts on Bank' books in the name of each of the Borrowers, that Bank may maintain a single loan account under the name of all of both Borrowers (the "*Loan Account*"). All Loans shall be made jointly and severally to Borrowers and shall be charged to the Loan Account, together with all interest and other charges as permitted under and pursuant to this Agreement. The Loan Account shall be credited with all repayments of Obligations received by Bank, on behalf of Borrowers, from any Borrower pursuant to the terms of this Agreement.

9.10 *Apportionment of Proceeds of Loans.* Each Borrower expressly agrees and acknowledges that Bank shall have no responsibility to inquire into the correctness of the apportionment or allocation of or any disposition by any of Borrowers of the Loans or any Borrowings, or any of the expenses and other items charged to the Loan Account pursuant to this Agreement. The Loans and all such Borrowings and such expenses and other items shall be made for the collective, joint, and several account of Borrowers and shall be charged to the Loan Account.

9.11 *Borrower 2 as Agent for Borrowers.* Borrower 1 hereby irrevocably appoints Borrower 2 as the borrowing agent and attorney-in-fact for all Borrowers ("*Administrative Borrower*") which appointment shall remain in full force and effect unless and until Bank shall have received prior written notice signed by each Borrower that such appointment has been revoked and that another Borrower has been appointed Administrative Borrower. Each Borrower hereby irrevocably appoints and authorizes the Administrative Borrower to provide Bank with all notices with respect to Loans and Letters of Credit obtained for the benefit of any Borrower and all other notices and instructions under the Loan Documents and to take such action as the Administrative Borrower deems appropriate on its behalf to obtain Loans and Letters of Credit and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of the Loan Documents. It is understood that the handling of the Loans and Collateral of Borrowers in a combined fashion, as more fully set forth herein, is done solely as an accommodation to Borrowers in order to utilize the collective borrowing powers of Borrowers in the most efficient and economical manner and at their request, and that Bank shall not incur liability to any Borrower as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of the Loans and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group. To induce Bank to do so, and in consideration thereof, each Borrower hereby jointly and severally agrees to indemnify Bank, and hold Bank harmless against, any and all liability, expense, loss or claim of damage, or injury, made against Bank by any Borrower or by any third Person whosoever, arising from or incurred by reason of the handling of the Loans and Collateral of Borrowers as herein provided, Bank's relying on any instructions of the Administrative Borrower, or any other action taken by Bank hereunder or under the other Loan Documents, except that Borrowers will have no liability to Bank under this Section 9.11 with respect to any liability that has been finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of Bank.

* * *

[Remainder of this page intentionally left blank.]

* * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

BORROWER:

IMAGE SOLUTIONS, LLC
a North Carolina limited liability company

By: _____
Name: Kent Hansen
Title: Vice President

STEEL BRIDGE ACQUISITION LLC,
a Delaware limited liability company

By: _____
Name: Kent Hansen
Title: Vice President

Address for notices:

Kingsway Financial Services Inc.
150 Pierce Road, Suite 600
Itasca, IL 60143
Attn: Kent Hansen
Email: khansen@kingswayfinancial.com

BANK:

AVIDBANK,
a California banking corporation

By: _____
Name: Anthony Rodriguez
Title: Senior Vice President

Address for notices:

AVIDBANK
135 Main Street Suite 2150
San Francisco, California 94105
Attn: Anthony Rodriguez, Senior Vice President
Telephone: (415) 525-8768
Email: arodriguez@avidbank.com

with a copy to:

AVIDBANK
1732 N 1st Street, 6th Floor
San Jose, California 95112

Annex 1
To
Credit Agreement

Defined Terms and Construction

1. Defined Terms. The following terms, as used herein, shall have the following meanings:

"Acceptable Letter of Credit" means a standby letter of credit, issued by a bank or financial institution acceptable to Bank in its Permitted Discretion, in form and substance satisfactory to Bank in its Permitted Discretion, in an amount equal to one hundred three percent (103%) of the Letter of Credit Usage, naming Bank as beneficiary to reimburse payments of drafts drawn under outstanding Letters of Credit.

"Account" and "*Account Debtor*" have the meanings set forth in the UCC.

"ACH Transactions" means any cash management or related services (including the Automated Clearing House processing of electronic fund transfers through the direct Federal Reserve Fedline system) provided by a Bank Product Provider for the account of Borrower.

"Administrative Borrower" has the meaning set forth in Section 9.11.

"Affiliate" means, with respect to any Person, any other Person (i) that, directly or indirectly, controls, is controlled by or is under common control with such Person; (ii) that directly or indirectly beneficially owns or controls ten percent (10%) or more of any class of Ownership Interests of such Person; or (iii) ten percent (10%) or more of the voting stock of which is directly or indirectly beneficially owned or held by such Person. For purposes of the foregoing, control (including controlled by and under common control with) shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Bank shall not be deemed an Affiliate of any Loan Party or any Subsidiary.

"Agreement" means this Credit Agreement, as amended, restated, amended and restated, supplemented, extended or otherwise modified from time to time in accordance with its terms.

"Allocation Agreement" means that certain Third Amended and Restated Kingsway Affiliated Group Tax Allocation Agreement dated as of December 1, 2016 by and among Kingsway America II Inc., a Delaware corporation, and the subsidiaries party thereto, as may be amended, restated, amended and restated, supplemented, extended or otherwise modified from time to time in accordance with its terms.

"Anti-Terrorism Laws" means all Applicable Laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering, or bribery, including, without limitation, all laws, regulations and executive orders expressly referenced in Section 4.27.

"Applicable Laws" means all applicable laws, rules, regulations and orders of any Governmental Authority, including without limitation, regulations issued by the Office of the Comptroller of the Currency, Credit Protection Laws, the Fair Labor Standards Act, and the Americans With Disabilities Act.

"Appraisal Fee" has the meaning set forth in Section 5.2(c).

"Asset" means any interest of a Person in any kind of property or asset, whether real, personal, or mixed real and personal, and whether tangible or intangible.

"Attributable Indebtedness" means, on any date, (a) in respect of any Finance Lease Obligation of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease, agreement or instrument were accounted for as a finance lease.

"Audit Fee" has the meaning set forth in Section 5.2(b).

"Authorized Officer" means, with respect to Borrower, any officer of Borrower authorized by specific resolution of Borrower to execute the Loan Documents, and to request Loans as set forth in Borrower's resolutions delivered to Bank on the Closing Date (and updated from time to time as necessary), and with respect to any Guarantor, any officer of such Guarantor authorized by specific resolution of such Guarantor to execute the Loan Documents as set forth in such Guarantor's resolutions delivered to Bank on the Closing Date (and updated from time to time as necessary).

"Availability Reserve" means, as of any date of determination, such amounts (expressed as either a specified amount or as a percentage of a specified category or item) as Bank may from time to time establish and adjust in reducing the Borrowing Base (a) to reflect events, conditions, contingencies or risks which, as reasonably determined by Bank in its Permitted Discretion, do or may affect (i) the Collateral or its value, (ii) the Assets, business or prospects of Borrowers, or (iii) the security interests and other rights of Bank in the Collateral (including the enforceability, perfection and priority thereof), or (b) to reflect Bank's judgment in its Permitted Discretion that any collateral report or financial information furnished by or on behalf of Borrowers to Bank is or may have been incomplete, inaccurate or misleading in any material respect, or (c) in respect of any state of facts that Bank determines in its Permitted Discretion constitutes an Event of Default or Default.

"Bancontrolled Account" means deposit account number 140052481 maintained with Bank.

"Bank" is defined in the Preamble.

"Bank Product" means the following financial accommodation extended to Borrower by a Bank Product Provider (other than pursuant to the Agreement): (a) credit cards, (b) credit card processing services, (c) debit cards, (d) stored value cards, (e) purchase cards (including so-called "*procurement cards*" or "*P-cards*"), (f) Cash Management Services, and (g) Swaps.

"Bank Product Agreements" means those agreements entered into from time to time by Borrower with a Bank Product Provider in connection with the obtaining of any of the Bank Products.

"Bank Product Obligations" means all obligations, liabilities, contingent reimbursement obligations, fees, and expenses owing by Borrower to any Bank Product Provider pursuant to or evidenced by the Bank Product Agreements and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising.

"Bank Product Provider" means Bank or any of its Affiliates.

"Bank Product Reserve" means a reserve against the Borrowing Base established by Bank from time to time in its Permitted Discretion in respect of Bank Product Obligations.

"Bank Representatives" has the meaning set forth in Section 8.6.

"Bankruptcy Code" means title 11 of the United States Code, as in effect from time to time, or any successor statute, and any and all rules and regulations issued or promulgated in connection therewith.

"Borrower" is defined in the Preamble.

"Borrower's Account" means Borrower's general deposit account number 140052473 maintained with Bank.

"Borrowing" means a borrowing of Revolving Loans from Bank pursuant to the terms and conditions hereof.

"Borrowing Base" means, as of the date of determination, eighty-five percent (85%) of the Eligible Accounts minus the Reserves; provided, however, Bank may reduce the advance rates, in its sole and absolute discretion, without declaring an Event of Default if it reasonably determines that there has occurred a Material Adverse Effect; provided, further, that Bank may also decrease or increase the advance rates, in its Permitted Discretion, to address the results of any audit or appraisal performed by Bank from time to time after the Closing Date.

"Borrowing Base Certificate" means Bank's standard form of Borrowing Base Certificate.

"Business Day" means any day other than a Saturday, a Sunday, or a day on which commercial banks in the City of San Jose, California, are authorized or required by law or executive order or decree to close.

"Capital Expenditures" means expenditures made in cash, or financed with long term debt, by any Person for the acquisition of any fixed Assets or improvements, replacements, substitutions, or additions thereto that have a useful life of more than 1 year, including the direct or indirect acquisition of such Assets by way of increased product or service charges, offset items, or otherwise, and the principal portion of payments with respect to Finance Lease Obligations, calculated in accordance with GAAP and excluding (A) any capitalized interest, (B) expenditures financed with the proceeds of any sale, transfer or other disposition (including pursuant to a sale and leaseback transaction) or 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, (C) expenditures made to fund the purchase price for capital assets acquired in the Subject Transaction and (D) expenditures during such period that, pursuant to a written agreement, are reimbursable by a third Person (excluding any Loan Party) during such period.

"Cash Collateralize" means the delivery of cash or an Acceptable Letter of Credit to Bank, as security for the payment of Obligations, in an amount equal to (a) with respect to the L/C Obligations, one hundred three percent (103%) of the L/C Obligations, and (b) with respect to any inchoate, contingent or other Obligations (including Bank Product Obligations), Bank's good faith estimate of the amount due or to become due, including all fees and other amounts relating to such Obligations. "*Cash Collateralization*" has a correlative meaning.

"Cash Management Services" means any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including ACH Transactions) and other cash management arrangements.

"Change in Law" means the occurrence after the date of this Agreement, of any of the following: (a) the adoption or effectiveness of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation, judicial ruling, judgment or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance by any Governmental Authority of any request, rule, guideline or directive, whether or not having the force of law; provided that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and Basel III, and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives concerning capital adequacy promulgated by Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case, shall in each case be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

"Change of Control" means the time at which (i) any Person (including a Person's Affiliates and associates) or group (within the meaning of Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934) (other than the Owners of Parent on the Closing Date) becomes the beneficial owner (as defined in Rule 13d-3 under the Securities Exchange Act of 1934) of a percentage of the Ownership Interests of Parent equal to at least fifty percent (50%), (ii) there shall be consummated any consolidation or merger of any Loan Party pursuant to which such Loan Party's Ownership Interests would be converted into cash, securities or other property, other than a merger or consolidation of such Loan Party in which the holders of the majority of such Ownership Interests immediately prior to the merger have at least a majority ownership, directly or indirectly, of Ownership Interests of the surviving Person immediately after the merger as it had immediately prior to such merger, (iii) all or substantially all of any Loan Party's Assets shall be sold, leased, conveyed or otherwise disposed of as an entirety or substantially as an entirety to any Person (including any Affiliate or associate of such Loan Party) in one or a series of transactions, or (iv) Borrower 2 ceases to be a wholly-owned Subsidiary of Parent.

"Closing Date" means the date when all of the conditions set forth in Section 3.1 have been fulfilled to the satisfaction of Bank and its counsel.

"Collateral" has the meaning set forth in any Loan Document.

"Collateral Access Agreement" means a landlord waiver, mortgagee waiver, bailee letter, or acknowledgement agreement of any warehouseman, processor, lessor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in the Collateral, in each case, in form and substance satisfactory to Bank in its Permitted Discretion.

"Collateral Assignment of Purchase Agreement" means that certain Collateral Assignment of Rights Under Purchase Agreement, dated as of even date herewith, between Borrower and Bank.

"Collections" means all cash, checks, notes, instruments, and other items of payment (including insurance Proceeds, cash Proceeds of asset sales, rental Proceeds, and tax refunds).

"Commitments" means the Revolving Credit Commitment and the Term Loan Commitment.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Compliance Certificate" means Bank's standard form of Compliance Certificate in the form of Exhibit 5.3(c), to be delivered in accordance with Section 5.3(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.

"Confidential Information" has the meaning set forth in Section 8.6.

"Consolidated" means the consolidation in accordance with GAAP of the accounts or other items as to which such term applies. "*Consolidating*" has a correlative meaning.

"Consolidated Adjusted EBITDA" means, with respect to any period, the sum of (without duplication):

(a) Consolidated Net Income for such period (excluding extraordinary gains and losses);

(b) Consolidated Interest Expense during such period;

(c) federal and state income taxes reported by Borrower and its Subsidiaries pursuant to the Allocation Agreement during such period which are included in the determination of Consolidated Net Income;

(d) Borrower's and its Subsidiaries' Consolidated depreciation and amortization during such period; in each case calculated in accordance with GAAP;

(e) non-recurring costs, fees, charges and expenses incurred in connection with the closing of the Subject Transaction;

(f) (A) business interruption insurance proceeds and (B) to the extent covered by insurance proceeds, losses in connection with casualty events, in each case to the extent actually received in cash;

(g) non-cash charges for goodwill write offs and write downs;

(h) non-cash compensation expense (including deferred non-cash compensation expense), or other non-cash expenses or charges, arising from the sale or issuance of Ownership Interests, the granting of stock options, and the granting of stock appreciation rights and similar arrangements (including any repricing, amendment, modification, substitution, or change of any such Ownership Interests, stock option, stock appreciation rights, or similar arrangements) minus the amount of any such expenses or charges when paid in cash to the extent not deducted in the computation of net earnings (or loss);

(i) expenses and payments that are covered by indemnification or purchase price adjustment provisions in any agreement entered into in connection with a Permitted Investment or proposed acquisition that was reasonably expected to be a Permitted Investment, in each case, to the extent actually received in cash;

(j) fees and expenses related to, or incurred in connection with, the Loan Documents, the Subject Transaction and the transactions contemplated thereby that are (A) paid or incurred by Borrower or any Subsidiary prior to or on or about the Closing Date or (B) paid by Borrower or any Subsidiary after the Closing Date which are incurred not later than six (6) months after the Closing Date in an aggregate amount not to exceed $25,000;

(k) any extraordinary, unusual or non-recurring losses, expenses or charges not to exceed, with respect to any such unusual or non-recurring losses, expenses, or charges paid in cash, $50,000 in the aggregate for such period; *provided* that such losses, expenses or charges are confirmed as an extraordinary, unusual or non-recurring item by a certified public accountant selected by Borrower and reasonably acceptable to Bank;

(l) any other non-cash charges (other than the write-down of current assets), non-cash impairments and non-cash expenses for such period (including, without limitation, (A) amortization of loan acquisition costs, (B) unrealized losses on hedge agreements, (C) losses on foreign exchange (including in respect of intercompany notes), (D) expenses arising from or related to stock option grants, stock appreciation rights and similar arrangements, and (E) purchase accounting adjustments including, without limitation, reductions to deferred revenue);

(m) extraordinary or unusual one-time losses, expenses or charges approved by Bank in its sole discretion; plus

(n) addbacks as contained in the deemed Consolidated Adjusted EBITDA set forth below applicable to time periods following the date hereof; plus

(o) out-of-pocket expenses and fees associated with general accounting transitions necessary for reporting in accordance with GAAP in an amount not to exceed $25,000; plus

(p) costs and expenses on account of any consulting agreement with Seller or any affiliate thereof which are incurred not later than twelve (12) months after the Closing Date in an aggregate amount not to exceed $100,000; plus

(q) all amounts paid in cash pursuant to the Intercompany Services Agreement, in an amount not to exceed $250,000 in the aggregate in each Fiscal Year; plus

(r) any other one-time or extraordinary items approved by Bank in its sole discretion; minus

(s) to the extent added in determining Consolidated Net Income, any gain on the sale of Assets during such period;

each determined in accordance with GAAP on a consistent basis with all prior periods. For the avoidance of doubt, Consolidated Adjusted EBITDA for the below periods shall be as follows:

Period	**Consolidated Adjusted EBITDA**
Fiscal quarter ended December 31, 2023	$641,108
Fiscal quarter ended March 31, 2024	$925,047
Fiscal quarter ended June 30, 2024	$879,131

"Consolidated Cash Interest Expense" means, for any period of determination, the interest paid in cash during such period on the aggregate amount of Borrower's and its Subsidiaries' Consolidated Debt, including the interest portion of Borrower's and its Subsidiaries' Consolidated Finance Lease Obligations.

"Consolidated Interest Expense" means, for any period of determination, the current interest accrued during such period in accordance with GAAP on the aggregate amount of Borrower's and its Subsidiaries' Consolidated Debt, including the interest portion of Borrower's and its Subsidiaries' Consolidated Finance Lease Obligations.

"Consolidated Net Income" means, with respect to the rolling 4 Fiscal Quarter period ending on the date of determination the Consolidated net income of Borrower and its Subsidiaries after all federal, state and local income taxes reflected on Borrower's Consolidated Financial Statement for such period, calculated in accordance with GAAP.

"Corporate Loan Party" means each Loan Party other than any Loan Party who is an individual (collectively, "*Corporate Loan Parties*").

"Cure Amount" has the meaning set forth in Section 7.3(a).

"Cure Date" has the meaning set forth in Section 7.3(a).

"Cure Right" has the meaning set forth in Section 7.3(a).

"Cure Right Exercise Period" has the meaning set forth in Section 7.3(a).

"Debt" means, as of the date of determination, the sum, but without duplication, of any and all of a Person's: (i) indebtedness heretofore or hereafter created, issued, incurred or assumed by such Person (directly or indirectly) for or in respect of money borrowed; (ii) Attributable Indebtedness; (iii) obligations evidenced by bonds, debentures, notes, or other similar instruments; (iv) obligations for the deferred purchase price of property or services (other than trade payables which are not more than ninety (90) days past due incurred in the ordinary course of business); (v) current liabilities in respect of unfunded vested benefits under any Plan; (vi) contingent obligations under letters of credit; (vii) contingent obligations under acceptance facilities; (viii) Guarantees; (ix) obligations secured by any Lien on any Asset of such Person, whether or not such obligations have been assumed; and (x) the net obligations under Swaps (the net obligation shall be deemed to be the Swap Termination Value of such Swap); and (xi) obligations to purchase, redeem, retire, defease or otherwise make any payment in respect of any Ownership Interests in such Person or any other Person, or any warrant, right or option to acquire such Ownership Interests, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends.

"Debt Service" means the sum of:

(a) the scheduled principal payments on the Term Loan for the twelve (12) months following the date of determination, plus

(b) Consolidated Interest Expense with respect to clause (a) above, plus

(c) principal payments on Borrower's Consolidated long-term Debt (excluding the Term Loan but including the Subordinate Debt, and the principal portion of the Borrower's and Subsidiaries Consolidated Finance Lease Obligations) (i) for the first three (3) Fiscal Quarters after the Closing Date, annualized based on the period between the Closing Date and the date of determination, and (ii) thereafter for the rolling 4 Fiscal Quarter period ended on the date of determination, plus

(d) Consolidated Cash Interest Expense with respect to clause (c) above and with respect to the Revolving Loans (i) for the first three (3) Fiscal Quarters after the Closing Date, annualized based on the period between the Closing Date and the date of determination, and (ii) thereafter for the rolling 4 Fiscal Quarter period ended on the date of determination, plus

(e) Non-Financed Capital Expenditures (i) for the first three (3) Fiscal Quarters after the Closing Date, annualized based on the period between the Closing Date and the date of determination, and (ii) thereafter for the rolling 4 Fiscal Quarter period ended on the date of determination, plus

(f) all federal, state, and local taxes payable (without duplication of Tax Distributions pursuant to section (g) of this definition) (i) for the first three (3) Fiscal Quarters after the Closing Date, annualized based on the period between the Closing Date and the date of determination, and (ii) thereafter for the rolling 4 Fiscal Quarter period ended on the date of determination, plus

(g) Non-Financed Distributions paid during (i) for the first three (3) Fiscal Quarters after the Closing Date, the period between the Closing Date and the date of determination and annualized, and (ii) thereafter, the rolling 4 Fiscal Quarter period ended on the date of determination, plus

(h) to the extent included in Consolidated Adjusted EBITDA, Charges (as defined in the Intercompany Services Agreement) paid during (i) for the first three (3) Fiscal Quarters after the Closing Date, the period between the Closing Date and the date of determination and annualized, and (ii) thereafter, the rolling four (4) Fiscal Quarter period ended on the date of determination, plus

(i) Non-Financed Earnouts paid during (i) for the first three (3) Fiscal Quarters after the Closing Date, the period between the Closing Date and the date of determination and annualized, and (ii) thereafter, the rolling 4 Fiscal Quarter period ended on the date of determination.

"Default" means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"Delaware LLC" means any limited liability company organized or formed under the laws of the State of Delaware.

"Delaware Divided LLC" means any Delaware LLC which has been formed upon the consummation of a Delaware LLC Division.

"Delaware LLC Division" means the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act, as amended from time to time.

"Dilution" means, as of any date of determination, a percentage that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, deductions, or other dilutive items as determined by Bank with respect to the Accounts, by (b) Borrowers' billings with respect to Accounts.

"Dilution Reserve" means, as of any date of determination, an amount sufficient to reduce the advance rate against Eligible Accounts by 1 percentage point for each percentage point by which Dilution is in excess of five percent (5%).

"Disposition" means the sale, transfer, license, lease or other disposition (whether in one transaction or in a series of transactions, and including any sale and leaseback transaction and any sale, transfer, license or other disposition) of any property (including, without limitation, any Ownership Interests) by any Person (or the granting of any option or other right to do any of the foregoing), 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.

"Distributions" means dividends or distributions of earnings made by a Person to its Owners.

"Documentary Letter of Credit Fee" has the meaning set forth in Section 2.3(b).

"Dollars" or "*$*" means lawful currency of the United States of America.

"Early Termination Fee" has the meaning set forth in Section 1.13(d).

"ECP" means, with respect to any Swap Obligation, an "*eligible contract participant*" as defined in the Commodity Exchange Act and the regulations thereunder at the time this Agreement, or any Facility Guaranty of, or the grant of a security interest to secure, becomes effective with respect to such Swap Obligation.

"Eligible Accounts" means those Accounts created by any Borrower in the ordinary course of business, that arise out of such Borrower's sale of goods or rendition of services, that strictly comply with each and all of the representations and warranties respecting Eligible Accounts made by Borrowers to Bank in this Agreement and the Loan Documents; provided, however, that standards of eligibility may be fixed and revised from time to time by Bank in Bank's Permitted Discretion to address the results of any audit or appraisal performed by Bank from time to time after the Closing Date. In determining the amount to be included, Eligible Accounts shall be calculated net of customer deposits and unapplied cash remitted to Borrowers. Eligible Accounts shall not include the following:

(a) Accounts that the Account Debtor has failed to pay within ninety (90) days of invoice date;

(b) Accounts owed by an Account Debtor or any of its Affiliates where thirty-five percent (35%) or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) above;

(c) Accounts with credit balances over ninety (90) days from invoice date;

(d) Accounts with respect to which the Account Debtor or any of its Affiliates is an officer, director, shareholder, employee, Affiliate, or agent of Borrowers;

(e) Accounts with respect to which goods are placed on consignment, guaranteed sale, sale or return, sale on approval, bill and hold, or other terms by reason of which the payment by the Account Debtor may be conditional;

(f) Accounts that are not payable in Dollars or with respect to which the Account Debtor: does not maintain its chief executive office in the United States or Canada (excluding the Province of Quebec), or is not organized under the laws of the United States, any State thereof, or the District of Columbia, or Canada or any Province thereof (excluding the Province of Quebec), or is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, unless (y) the Account is supported by an irrevocable letter of credit satisfactory to Bank (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Bank and is directly drawable by Bank, or (z) the Account is covered by credit insurance in form and amount, and by an insurer, satisfactory to Bank;

(g) Accounts with respect to which the Account Debtor is either the United States or any department, agency, or instrumentality of the United States (exclusive, however, of Accounts with respect to which the applicable Borrower has complied, to the reasonable satisfaction of Bank, with the Assignment of Claims Act, 31 USC § 3727), or any state of the United States (exclusive, however, of (y) Accounts owed by any state that does not have a statutory counterpart to the Assignment of Claims Act, or (z) Accounts owed by any state that does have a statutory counterpart to the Assignment of Claims Act as to which the applicable Borrower has complied to Bank's satisfaction),

(h) Accounts with respect to which the Account Debtor or any of its Affiliates is a creditor of the applicable Borrower, has or has asserted a right of setoff, has disputed its liability, or has made any claim with respect to the Account, to the extent of such setoff, dispute or claim;

(i) Accounts with respect to an Account Debtor and its Affiliates whose total obligations owing to Borrowers exceed thirty-five percent (35%) of all Accounts, to the extent of the obligations owing by such Account Debtor and its Affiliates in excess of such percentage;

(j) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent, has gone out of business, or as to which Borrowers have received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor, or whose credit standing is unacceptable to Bank;

(k) Accounts the collection of which Bank, in its reasonable credit judgment, believes to be doubtful by reason of the Account Debtor's financial condition;

(l) Accounts not supported by any electronic or written record;

(m) Accounts which are in default or collection;

(n) Accounts on C.O.D. terms;

(o) Accounts with respect to which the goods giving rise to such Account have not been shipped and billed to the Account Debtor, the services giving rise to such Account have not been performed and accepted by the Account Debtor, or the Account otherwise does not represent a final sale;

(p) Accounts that are not subject to a valid and perfected first priority Lien in favor of Bank;

(q) bonded Accounts;

(r) Accounts that represent progress payments or other advance billings that are due prior to the completion of performance by Borrowers of the subject contract for goods or services;

(s) Accounts subject to contractual arrangements between Borrower and an Account Debtor where payments shall be scheduled or due according to completion or fulfillment requirements (sometimes called contracts accounts receivable, progress billings, milestone billings, or fulfillment contracts);

(t) Accounts owing from an Account Debtor the amount of which may be subject to withholding based on the Account Debtor's satisfaction of Borrower's complete performance (sometimes called retention billings);

(u) Accounts evidenced by Chattel Paper or an Instrument (as such terms are defined in the Security Agreement) unless such Chattel Paper or Instrument has been duly assigned and delivered to Bank, in accordance with the terms of the Security Agreement; and

(v) any other Accounts that Bank in its Permitted Discretion deems ineligible.

Provided, however, that notwithstanding the foregoing, any Account covered by credit insurance in form and amount, and by an insurer, satisfactory to Bank, may be, at Bank's sole discretion, an Eligible Account.

"Environmental Laws" has the meaning set forth in Section 4.17.

"Equipment" is defined in the Security Agreement.

"*ERISA*" means the Employee Retirement Income Security Act of 1974, as amended from time to time, or any successor statute, and any and all regulations thereunder.

"*ERISA Event*" means (a) a Reportable Event with respect to a Plan or Multiemployer Plan, (b) the withdrawal of a member of the ERISA Group from a Plan during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA), (c) the providing of notice of intent to terminate a Plan in a distress termination (as described in Section 4041(c) of ERISA), (d) the institution by the PBGC of proceedings to terminate a Plan or Multiemployer Plan, (e) any event or condition (i) that provides a basis under Section 4042(a)(1), (2), or (3) of ERISA for the termination of or the appointment of a trustee to administer, any Plan or Multiemployer Plan, or (ii) that may result in termination of a Multiemployer Plan pursuant to Section 4041A of ERISA, (f) the partial or complete withdrawal within the meaning of Sections 4203 and 4205 of ERISA of a member of the ERISA Group from a Multiemployer Plan, or (g) providing any security to any Plan under Section 401(a)(29) of the Internal Revenue Code by a member of the ERISA Group.

"*ERISA Group*" means Borrower and all members of a controlled group of corporations and all trades or business (whether or not incorporated) under common control which, together with Borrower are treated as a single employer under Section 414 of the Internal Revenue Code.

"Event of Default" has the meaning set forth in Section 7.1.

"Excluded Swap Obligation" means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of this Agreement (or the Facility Guaranty of such Loan Party of), or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any Facility Guaranty thereof, including pursuant to this Agreement) 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 Loan Party's failure for any reason to constitute an ECP. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which this Agreement or such Facility Guaranty or security interest is or becomes illegal.

"Excluded Taxes" means (a) any federal, state or local income Taxes, franchise Taxes, branch profits Taxes or similar Taxes imposed on Bank, (b) any withholding Taxes imposed on amounts payable to or for the account of Bank pursuant to a law in effect on the date on which (i) Bank acquires an interest in the Loans or (ii) Bank changes its lending office, (c) any Taxes attributable to Bank's failure to comply with Section 1.16(c) and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Expenses" means (i) all reasonable, documented out-of-pocket expenses of Bank paid or incurred in connection with its due diligence of Loan Parties, including appraisal, filing, recording, documentation, and search fees and other such expenses, and all reasonable attorneys' fees and expenses (including reasonable attorneys' fees incurred pursuant to proceedings arising under the Bankruptcy Code) incurred in connection with the structuring, negotiation, drafting, preparation, execution and delivery of this Agreement, the Loan Documents, and any and all other documents, instruments and agreements entered into in connection herewith; (ii) all reasonable, documented out-of-pocket expenses of Bank, including reasonable attorneys' fees and expenses (including attorneys' fees incurred pursuant to proceedings arising under the Bankruptcy Code) paid or incurred in connection with the negotiation, preparation, execution and delivery of any waiver, forbearance, consent, amendment or addition to this Agreement or any Loan Document, or the termination hereof and thereof; (iii) all reasonable, documented out-of-pocket costs or expenses paid or advanced by Bank which are required to be paid by Borrower under this Agreement or the Loan Documents, including taxes and insurance premiums of every nature and kind of Bank; and (iv) if an Event of Default occurs, all reasonable, documented out-of-pocket expenses paid or incurred by Bank, including reasonable attorneys' fees and expenses (including reasonable attorneys' fees incurred pursuant to proceedings arising under the Bankruptcy Code), costs of collection, suit, arbitration, judicial reference and other enforcement proceedings, and any other expenses incurred in connection therewith or resulting therefrom, whether or not suit is brought, or in connection with any refinancing or restructuring of the Obligations and the liabilities of Borrower under this Agreement, any of the Loan Documents, or any other document, instrument or agreement entered into in connection herewith in the nature of a workout.

"Extraordinary Receipt" means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), condemnation awards (and payments in lieu thereof), indemnity payments and any purchase price adjustments net of any taxes paid or payable in connection with such receipt and any cash expense relating to the collection of such Extraordinary Receipts.

"Facilitation Account" means Bank's deposit account number 140052424 at Bank.

"Facility Guaranties" and "*Facility Guaranty*" means, individually or collectively as the context requires, each certain Continuing Guaranty executed by a Guarantor in favor of Bank.

"FATCA" means Sections 1471 through 1474 of the Internal Revenue 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, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code, and any applicable intergovernmental agreements with respect thereto and any current or future regulations or official interpretations thereof.

"Fees" means the Revolving Credit Commitment Fee, the Term Loan Commitment Fee, the Late Payment Fee, the Documentary Letter of Credit Fees, the Standby Letter of Credit Fees, and the Audit Fees.

"Finance Lease" means any lease of an Asset by a Person as lessee which would, in conformity with GAAP, be classified as a finance lease under GAAP; *provided* that for the purposes of this definition GAAP shall have the meaning as in effect as of the date hereof.

"Finance Lease Obligations" of a Person means the amount of the obligations of such Person under all Finance Leases in accordance with GAAP.

"Financial Statement(s)" means, with respect to any accounting period of any Person, statements of income and statements of cash flows of such Person for such period, and balance sheets of such Person as of the end of such period, setting forth in each case in comparative form figures for the corresponding period in the preceding Fiscal Year or, if such period is a full Fiscal Year, corresponding figures from the preceding annual audit, all prepared in reasonable detail and in accordance with GAAP, subject to year-end adjustments and the absence of footnotes in the case of monthly or quarterly Financial Statements. Financial Statement(s) shall include the schedules thereto and annual Financial Statements shall also include the footnotes thereto.

"Fiscal Month" means any of the monthly accounting periods of Borrower.

"Fiscal Quarter" means any of the quarterly accounting periods of Borrower.

"Fiscal Year" means the twelve (12)-Fiscal Month period of Borrower ending December 31 of each year. Subsequent changes of the Fiscal Year of Borrower shall not change the term "*Fiscal Year*" unless Bank shall consent in writing to such change.

"Fixed Charge Coverage Ratio" means, as of the date of determination, the ratio of (a) Consolidated Adjusted EBITDA for the rolling 4 Fiscal Quarter period ending on the date of determination, to (b) Debt Service for such period.

"Flow of Funds Agreement" means that certain Flow of Funds Agreement, dated as of even date herewith, entered into by and between Bank and Borrower.

"GAAP" means generally accepted accounting principles in the United States of America, consistently applied, which are in effect as of the date of this Agreement. If any changes in accounting principles from those in effect on the date hereof are hereafter occasioned by promulgation of rules, regulations, pronouncements or opinions by or are otherwise required by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants (or successors thereto or agencies with similar functions), and any of such changes results in a change in the method of calculation of, or affects the results of such calculation of, any of the financial covenants, standards or terms found herein, then the parties hereto agree to enter into and diligently pursue negotiations in order to amend such financial covenants, standards or terms so as to equitably reflect such changes, with the desired result that the criteria for evaluating financial condition and results of operations of Borrower and its Subsidiaries shall be the same after such changes as if such changes had not been made.

"Governing Documents" means the certificate or articles or certificate of incorporation, by-laws, articles or certificate of organization, operating agreement, the Allocation Agreement, or other organizational or governing documents of any Person.

"Governmental Authority" means any federal, state, local or other governmental department, commission, board, bureau, agency, central bank, court, tribunal or other instrumentality or authority or subdivision thereof, domestic or foreign, exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

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

"Guarantor(s)" means, individually or collectively as the context requires, all Subsidiaries, and every other Person who now or hereafter executes a Facility Guaranty in favor of Bank with respect to the Obligations, including without limitation, the Swap Obligations under the Swap Documents, but excluding all Excluded Swap Obligations.

"Hazardous Materials" means all or any of the following: (a) substances that are defined or listed in, or otherwise classified pursuant to, any Environmental Laws as hazardous substances, hazardous materials, hazardous wastes, toxic substances, or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or EP toxicity or are otherwise regulated for the protection of persons, property or the environment; (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources; (c) any flammable substances or explosives or any radioactive materials; and (d) asbestos in any form or electrical equipment which contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million.

"Indemnified Person(s)" has the meaning set forth in Section 8.3(c).

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

"Initial Audit" is Bank's inspection of the Collateral (including Borrower's Accounts and Inventory), with results satisfactory to Bank in its sole discretion.

"Insolvency Proceeding" means any proceeding commenced by or against any Person, under any provision of the Bankruptcy Code, or under any other bankruptcy or insolvency law, including, but not limited to, assignments for the benefit of creditors, formal or informal moratoriums, compositions, or extensions with some or all creditors.

"Intellectual Property" means all present and future: trade secrets, know-how and other proprietary information; trademarks, trademark applications, internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; copyrights and copyright applications; (including copyrights for computer programs) and all tangible and intangible property embodying the copyrights, unpatented inventions (whether or not patentable); patents and patent applications; industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom; books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

"Intellectual Property Security Agreement" means each certain Copyright Security Agreement, Patent Security Agreement, and Trademark Security Agreement (as each of such terms are defined in the Security Agreement).

"Intercompany Services Agreement" means that certain Intercompany Services Agreement, dated as of even date herewith, by and between Borrower and Parent.

"Intercompany Subordination Agreement" means that certain Intercompany Subordination Agreement, dated as of even date herewith, among Corporate Loan Parties and Bank.

"Interest Payment Date" means (a) with respect to the Revolving Loans, the first day of each and every month, and the Revolving Loans Maturity Date, and (b) with respect to the Term Loan, the first day of each and every month, and the Term Loan Maturity Date.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute, and any and all regulations thereunder.

"Inventory" is defined in the Security Agreement.

"Investment" means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, Guarantees, advances, capital contributions, and any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP.

"ISP" means the International Standby Practices (1998 version), and any subsequent versions or revisions approved by a Congress of the International Chamber of Commerce Publication 590 and adhered to by Bank.

"Knowledge" has the meaning set forth in Section 8.9.

"L/C Obligations" means the sum (without duplication) of (a) all Reimbursement Obligations; and (b) the Letter of Credit Usage.

"Letter(s) of Credit" means any standby or documentary letter(s) of credit issued by Bank, pursuant to Section 2.1(a).

"Letter of Credit Application" means Bank's standard form of Letter of Credit Application.

"Letter of Credit Sublimit" has the meaning set forth in Section 2.1(a) of the Summary of Credit Terms.

"Letter of Credit Usage" means, on any date of determination, the aggregate maximum amounts available to be drawn under all outstanding Letters of Credit, without regard to whether any conditions to drawing could then be met.

"Lien" means any mortgage, deed of trust, pledge, security interest, hypothecation, assignment, deposit arrangement or other preferential arrangement, charge or encumbrance (including, any conditional sale or other title retention agreement, or finance lease) of any kind.

"Loan Document(s)" means this Agreement and each of the following documents, instruments, and agreements individually or collectively, as the context requires:

(a) the Flow of Funds Agreement;

(b) the Security Agreement;

(c) the Intellectual Property Security Agreements;

(d) the Letter of Credit Applications;

(e) the Subordination Agreements;

(f) the Intercompany Subordination Agreement;

(g) the Collateral Access Agreements;

(h) the Collateral Assignment of Purchase Agreement;

(i) all Bank Product Agreements (other than any Bank Product Agreement providing for a Swap);

(j) such other documents, instruments, and agreements, control agreements, financing statements and fixture filings) as Bank may reasonably request in connection with the transactions contemplated hereunder or to perfect or protect the liens and security interests granted to Bank in connection herewith.

"Loan Parties" means individually and collectively, Borrower and Guarantors (each a "*Loan Party*").

"Loans" means the Revolving Loans and the Term Loan (each, a "*Loan*").

"Loan Year" means each three hundred sixty-five (365) day period (or three hundred sixty-six (366) day period in the case of any such period that includes February 29) commencing on the Closing Date, and each anniversary of the Closing Date.

"Material Adverse Effect" means a material adverse effect on (i) the business, Assets, condition (financial or otherwise), or results of operations of Borrower and the Guarantors, taken as a whole; (ii) the ability of the Loan Parties, taken as a whole, to perform their obligations under the Loan Documents to which they are a party, (iii) the validity or enforceability of the Loan Documents, or the rights or remedies of Bank hereunder and thereunder, (iv) the value of the Collateral, or (v) the priority of Bank's Liens with respect to the Collateral.

"Material Contract" means, with respect to any Person, (i) each contract or agreement to which such Person or any of its Subsidiaries is a party involving aggregate consideration payable to or by such Person or such Subsidiary of $100,000 or more (other than purchase orders in the ordinary course of the business of such Person or such Subsidiary), and (ii) all other contracts or agreements, the loss of which could reasonably be expected to result in a Material Adverse Effect.

"Quarterly Testing Threshold" has the meaning set forth in Section 6.15(b).

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA or Section 3(37) of ERISA to which Borrower has contributed, or was obligated to contribute, within the preceding six plan years or with respect to which Borrower could reasonably be expected to incur liability (including by reason of having been in the ERISA Group with any other Person) including for these purposes any Person which ceased to be a member of the ERISA Group during such six year period.

"Net Proceeds" means (a) with respect to any Disposition by any Loan Party or any of its Subsidiaries, or any Extraordinary Receipt received or paid to the account of any Loan Party or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and cash equivalents received in connection with such transaction (including any cash or cash equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Debt that is secured by a Lien permitted hereunder on the applicable Asset which is senior to Bank's Lien on such Asset and that is required to be repaid (or to establish an escrow for the future repayment thereof) in connection with such transaction (other than Debt under the Loan Documents), and (B) the reasonable and customary expenses incurred by such Loan Party or such Subsidiary in connection with such transaction (including, without limitation, appraisals, and brokerage, legal, title and recording or transfer tax expenses, other taxes paid in cash in connection with the consummation of such transaction, including any cash distributions for U.S. federal, state or local income tax owed by Borrower's direct or indirect owners as a result of the flow-through income tax treatment of Borrower, and commissions) paid by any Loan Party to third parties (other than Affiliates); and (b) with respect to the sale or issuance of any Ownership Interests by any Loan Party or any of its Subsidiaries, or the incurrence or issuance of any Debt by any Loan Party or any of its Subsidiaries, the excess of (i) the sum of the cash and cash equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary expenses, incurred by such Loan Party or such Subsidiary in connection therewith.

"Non-Financed Capital Expenditures" means, for any period, (a) Capital Expenditures minus (b) the portion of Capital Expenditures financed under Finance Leases or other Debt (excluding Revolving Loans).

"Non-Financed Distributions" means, for any period, the difference of (a) Distributions (including, but not limited to, Tax Distributions), minus (b) the portion of Distributions (including, but not limited to, Tax Distributions) financed by Debt.

"Non-Financed Earnouts" means, for any period, the difference of (a) deferred purchase price obligations pursuant to the Subject Transaction (including, but not limited to, earnouts), minus (b) the portion of deferred purchase price obligations pursuant to the Subject Transaction (including, but not limited to, earnouts) financed by Debt.

"Obligations" means (i) any and all obligations of Borrower to Bank with respect to the Loans, including without limitation all principal, interest, and other amounts, costs and Fees and Expenses payable under this Agreement and the Loan Documents; excluding, however, all Excluded Swap Obligations; (ii) any and all obligations of Borrower to any Bank Product Provider arising under or in connection with any transaction now existing or hereafter entered into between Borrower and such Bank Product Provider which is a Swap; excluding, however, all Excluded Swap Obligations; and (iii) all other indebtedness, liabilities, and obligations of Borrower owing to Bank, and/or the Bank Product Providers, and to their successors and assigns, previously, now, or hereafter incurred, and howsoever evidenced, whether direct or indirect, absolute or contingent, joint or several, liquidated or unliquidated, voluntary or involuntary, due or not due, legal or equitable, whether incurred before, during, or after any Insolvency Proceeding and whether recovery thereof is or becomes barred by a statute of limitations or is or becomes otherwise unenforceable or unallowable as claims in any Insolvency Proceeding, together with all interest thereupon (including interest under Section 1.14(b) and including any interest that, but for the provisions of the Bankruptcy Code, would have accrued during the pendency of an Insolvency Proceeding). The Obligations shall include, without limiting the generality of the foregoing, all principal and interest and other payment obligations owing under the Loans, all Reimbursement Obligations, all Bank Product Obligations, all Expenses, the Fees, any other fees and expenses due hereunder and under the Loan Documents (including any fees or expenses that, but for the provisions of the Bankruptcy Code, would have accrued during the pendency of an Insolvency Proceeding), and all other indebtedness evidenced by this Agreement, the Loan Documents, and/or the Bank Product Agreements; excluding, however, all Excluded Swap Obligations.

"OFAC" means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

"Other Taxes" means 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.

"Overadvance" has the meaning set forth in Section 1.1(c).

"Owner" means, with respect to any Person, any other Person owning Ownership Interests of such Person.

"Ownership Interests" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants or options to purchase any of the foregoing.

"Parent" means Kingsway Search Xcelerator Inc., a Delaware corporation, the sole Owner of Borrower 2.

"Participant" has the meaning set forth in Section 8.5(d).

"Patriot Act" means the USA PATRIOT Act, Title III of Pub. L. 107-56, signed into law October 26, 2001.

"Permitted Debt" means:

(a) Debt owing to Bank in accordance with the terms of the Loan Documents or Bank Product Obligations;

(b) (i) unsecured Debt to trade creditors incurred in the ordinary course of business and (ii) other unsecured Debt in an aggregate amount not to exceed $100,000 at any one time;

(c) Debt in an aggregate amount outstanding not to exceed $150,000 at any time secured by Purchase Money Liens;

(d) Subordinate Debt;

(e) Debt incurred as a result of endorsing negotiable instruments received in the ordinary course of business;

(f) Debt that otherwise constitutes a Permitted Investment;

(g) Debt owing from any Loan Party to any other Loan Party;

(h) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Debt (b) through (g) above, *provided* that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be;

(i) Debt existing on the Closing Date and listed on Schedule 6.2; and

(j) Debt incurred in respect of the purchase or lease of motor vehicles used in the ordinary course of business in an amount not to exceed $50,000.

"Permitted Discretion" means a determination made in the exercise of reasonable (from the perspective of a secured commercial lender) business judgment.

"Permitted Dispositions" means:

(a) Dispositions in the ordinary course of business of equipment that is substantially worn, damaged, or obsolete or no longer useful;

(b) sales of inventory to buyers in the ordinary course of business;

(c) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business;

(d) Permitted Liens and Permitted Investments, to the extent constituting a Disposition; and

(e) the use or transfer of cash or cash equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents.

"Permitted Investments" means:

(a) Investments in cash and cash equivalents maintained at Bank or otherwise permitted hereunder;

(b) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of the Borrower's business;

(c) Investments consisting of deposit accounts permitted hereunder;

(d) Permitted Dispositions to the extent constituting an Investment;

(e) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of the Borrower or its Subsidiary pursuant to employee stock purchase plans or agreements approved by Borrower's member or other governing body, not to exceed $50,000 in the aggregate for (i) and (ii) in any Fiscal Year;

(f) Investments (including Debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(g) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; *provided* that this clause (g) shall not apply to Investments of Borrower or its Subsidiaries;

(h) Investments by Borrower in any Subsidiary which is a Loan Party;

(i) Investments by Borrower in any Subsidiary which is not a Loan Party, not to exceed $100,000 in the aggregate; and

(j) Investments by any Subsidiary which is not a Loan Party in another Subsidiary which is not a Loan Party.

"Permitted Issuances" means issuances of Ownership Interests of Borrower 2.

"Permitted Liens" means:

(a) Liens for current taxes, assessments or other governmental charges which are not delinquent or remain payable without any penalty, or are being contested in good faith by appropriate proceedings, *provided* that, if delinquent, adequate reserves have been set aside with respect thereto as required by GAAP and, by reason of nonpayment, no property is subject to a material risk of loss or forfeiture;

(b) Liens in favor of Bank;

(c) statutory Liens, such as inchoate mechanics', inchoate materialmen's, landlord's, warehousemen's, and carriers' liens, and other similar liens, other than those described in clause (a) above, arising in the ordinary course of business with respect to obligations which are not delinquent or are being contested in good faith by appropriate proceedings, *provided* that, if delinquent, adequate reserves have been set aside with respect thereto as required by GAAP and, by reason of nonpayment, no property is subject to a material risk of loss or forfeiture;

(d) Purchase Money Liens securing Debt described in clause (c) of the definition of "Permitted Debt" above;

(e) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security;

(f) any interest or title of a lessor or sublessor, licensor or sublicensor under any lease or license permitted hereunder;

(g) non-exclusive licenses or sublicenses of Intellectual Property granted by Borrower or its Subsidiaries in the ordinary course of business;

(h) Liens consisting of judgment or judicial attachment liens not giving rise to an Event of Default; and

(i) Liens existing on the Closing Date and listed on Schedule 6.3.

"Permitted Restricted Payments" means:

(a) Distributions payable solely in Ownership Interests of a Loan Party (other than of any Pledged Company);

(b) payments on the Subordinate Debt to the extent permitted by the applicable Subordination Agreement;

(c) Tax Distributions, including those payable to Parent;

(d) Distributions by Borrower to Parent for the sole purpose of payment (i) for Shared Services (as defined in the *Intercompany Services Agreement*) with Parent in an aggregate amount not to exceed $250,000.00 in any Fiscal Year, and (ii) for Out-of-Pocket Costs (as defined in the Intercompany Services Agreement) to third parties for services rendered to the Borrowers, including without limitation health insurance premiums and claims expenses, other employee benefit costs, technology and software related expenses, insurance expenses, tax professional expenses, and audit expenses;

(e) Distributions by Borrower to Parent, which may be further distributed to Parent's ultimate equity holders, so long as the following conditions are satisfied: both immediately before and immediately after giving effect to such payment, no Event of Default has occurred and is continuing, or would result therefrom on a Pro Forma Basis and Borrower shall be in compliance with the financial covenants set forth in Section 6.15 on a Pro Forma Basis after giving effect to such payment;

(f) Distributions by any Subsidiary to Borrower;

(g) other Distributions, including but not limited to earnouts and other deferred purchase price obligations, provided that (i) no Default or Event of Default has occurred and is continuing, or would result from such Distribution, and (ii) before and after such Distribution, Borrower would be in compliance with the terms and conditions of this Agreement on a pro forma basis; or

(h) fees and expense reimbursements of the board of directors of Sponsor, Parent, and its Subsidiaries in an aggregate amount not to exceed $10,000 per Fiscal Year and any indemnities to the board of directors of Parent and its Subsidiaries.

"Person" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

"Plan" means an employee benefit plan as defined in Section 3(3) of ERISA and subject to Title IV of ERISA or Section 412 of the Internal Revenue Code or Section 302 of ERISA in which any personnel of Borrower participate or from which any such personnel may derive a benefit or with respect to which Borrower would reasonably be expected to incur liability (including by reason of having been in the ERISA Group with any other Person), excluding any Multiemployer Plan.

"Pledged Company" means any Loan Party the Ownership Interests of which has been pledged to Bank to secure the Obligations pursuant to the terms and conditions of any Loan Document.

"Prime Lending Rate" (a) with respect to the Revolving Loans, has the meaning set forth in Section 1.4(a)(i) of the Summary of Credit Terms, and (b) with respect to the Term Loan, has the meaning set forth in Section 1.4(a)(ii) of the Summary of Credit Terms.

"Prime Rate" means that variable interest rate which is subject to change from time to time based upon changes in the independent index which is the Prime Rate as published in the Money Rates Section of the Western Edition of the Wall Street Journal (the "*Index*"). The Index is not necessarily the lowest rate charged by Bank on its commercial loans. If the Index becomes unavailable during the term of this loan, Bank may designate a substitute index after notice to Borrower. Bank will advise Borrower of the current Index rate upon request. Interest changes shall not occur more often than daily. Adjustment shall become effective the next Business Day after publication or announcement of the Index change. Borrower understands that Bank may make loans based upon other rates and indexes as well.

"Proceeds" is defined in the Security Agreement.

"Pro Forma Basis" means for purposes of paying Permitted Restricted Payments of the type described in clause (g) of the definition thereof, the calculation of all financial covenants set forth in Section 6.15 on a pro forma basis after giving effect to such Permitted Restricted Payments as if such Permitted Restricted Payments had been paid on the first day of the Fiscal Month most recently ended for which the Financial Statements are available, determined by Borrower in good faith.

"Protective Advances" has the meaning set forth in Section 1.15.

"Purchase Agreement" has the meaning set forth in Recital A.

"Purchase Documents" means the Purchase Agreement together with any and all bills of sale, assignments and any and all other agreements, instruments and documents evidencing or executed in connection with the sale of Ownership Interests or Assets from Seller to Borrower.

"Purchase Money Lien" means a Lien on any item of equipment of Borrower; provided that (i) such Lien attaches only to that item of equipment, and (ii) the purchase-money obligation secured by such item of equipment does not exceed one hundred percent (100%) of the purchase price of such item of equipment.

"Quarterly Testing Threshold" has the meaning set forth in Section 6.15(b).

"Recipient" means (a) Bank and (b) any assignee of Bank, as applicable.

"Register" has the meaning set forth in Section 8.5(f).

"Reimbursement Obligations" means the obligations of Borrower to reimburse Bank pursuant to Section 2.5 amounts drawn under Letters of Credit.

"Rent Reserve" means a reserve for rent at leased locations subject to landlord's liens, past due rent, and up to three (3) months future rent that would be payable to a landlord that has not executed and delivered a Collateral Access Agreement, established by Bank in its Permitted Discretion.

"Reportable Event" means any of the events described in Section 4043(c) of ERISA other than a Reportable Event as to which the provision of thirty (30) days' notice to the PBGC is waived under applicable regulations in effect as of the date of this Agreement.

"Reserves" means the Availability Reserve, the Bank Product Reserve, the Dilution Reserve, and the Rent Reserve. Bank shall have the right, at any time and from time to time after the Closing Date in its Permitted Discretion to establish, modify or eliminate Reserves.

"Restricted Payment" means (a) any payment of principal or interest or any purchase, redemption, retirement, acquisition or defeasance with respect to any Subordinate Debt or any deferred purchase price obligations (including earnouts), (b) any Distribution on account of any Ownership Interests of any Loan Party, now or hereafter outstanding, (c) any purchase, redemption, retirement, sinking fund, or other direct or indirect acquisition for value of any Ownership Interests of any Loan Party now or hereafter outstanding, (d) any distribution of Assets to any Owners of any Loan Party, whether in cash, Assets, or in obligations of such Loan Party, (e) any allocation or other set apart of any sum for the payment of any Distribution on, or for the purchase, redemption or retirement of, any Ownership Interests of any Loan Party, or (f) any other distribution by reduction of capital or otherwise in respect of any Ownership Interests of any Loan Party.

"Revolving Credit Availability" means, as of the date of determination, the difference of (a) the lesser of (i) the Borrowing Base, or (ii) the Revolving Credit Commitment, minus (b) the sum of (i) the aggregate outstanding Revolving Loans, plus (ii) the Letter of Credit Usage.

"Revolving Credit Commitment" has the meaning set forth in Section 1.1 of the Summary of Credit Terms.

"Revolving Credit Commitment Fee" has the meaning set forth in 1.13(a) .

"Revolving Loans" has the meaning set forth in Section 1.1.

"Revolving Loans Maturity Date" has the meaning set forth in Section 1.1 of the Summary of Credit Terms.

"Sanctioned Country" has the meaning set forth in Section 4.27.

"Sanctioned Person" has the meaning set forth in Section 4.27.

"Sanctions Program" has the meaning set forth in Section 4.27.

"Section 638" has the meaning set forth in Section 8.13.

"Security Agreement" means that certain Security Agreement, dated as of even date herewith, among Loan Parties and Bank.

"Sellers" has the meaning set forth in Recital A.

"Senior Funded Debt" means the outstanding Obligations.

"Senior Leverage Ratio" means, as of the date of determination, the ratio of (i) Senior Funded Debt, to (ii) the Consolidated Adjusted EBITDA for the trailing twelve (12) month period ended on the date of determination.

"Services Fee Subordination Agreement" means that certain letter agreement, dated as of even date herewith, among Borrower, Parent and Bank, subordinating the payment of Charges (as such term is defined in the Intercompany Services Agreement).

"Solvent" means, with respect to any Person on the date any determination thereof is to be made, that on such date: (a) the present fair valuation of the Assets of such Person is greater than such Person's probable liability in respect of existing debts; (b) such Person does not intend to, and does not believe that it will, incur debts beyond such Person's ability to pay as such debts mature in the ordinary course of business; and (c) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, which would leave such Person with Assets remaining which would constitute unreasonably small capital after giving effect to the nature of the particular business or transaction. For purposes of this definition (i) the fair valuation of any property or assets means the amount realizable within a reasonable time, either through collection or sale of such Assets at their regular market value, which is the amount obtainable by a capable and diligent Person from an interested buyer willing to purchase such property or assets within a reasonable time under ordinary circumstances; and (ii) the term debts includes any payment obligation, whether or not reduced to judgment, equitable or legal, matured or unmatured, liquidated or unliquidated, disputed or undisputed, secured or unsecured, absolute, fixed or contingent.

"Standby Letter of Credit Fee" has the meaning set forth in Section 2.3(a).

"Subject Covenant Default" has the meaning set forth in Section 7.3(a).

"Subject Transaction" means the acquisition by Borrower 2 of the Ownership Interests of Borrower 1 in accordance with the Purchase Agreement.

"Subordinate Debt" has the meaning set forth in the Subordination Agreement and also means any other Debt that is subordinated to the Obligations pursuant to a subordination agreement in form and substance satisfactory to Bank.

"Subordination Agreement" means an agreement under which Subordinate Debt is subordinated to the Obligations in a manner and form satisfactory to Bank in its Permitted Discretion as to right and time of payment and as to any other rights and remedies thereunder, including, but not limited to that certain Services Fee Subordination Agreement, dated as of even date herewith, among Borrower, Parent and Bank.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, trust or other entity (whether now existing or hereafter organized or acquired) of which such Person or one or more Subsidiaries of such Person at the time owns or controls directly or indirectly more than fifty percent (50%) of the shares of stock or partnership or other ownership interest having general voting power under ordinary circumstances to elect a majority of the board of directors, managers or trustees or otherwise exercising control of such corporation, limited liability company, partnership, trust or other entity (irrespective of whether at the time stock or any other form of ownership of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

"Summary of Credit Terms" means the Summary of Credit Terms at the beginning of this Agreement.

"Swaps" means payment obligations with respect to interest rate swaps, currency swaps and similar obligations obligating a Person to make payments, whether periodically or upon the happening of a contingency. For the purposes of this Agreement, the amount of the obligation under any Swap shall be the amount determined, in respect thereof as of the end of the then most recently ended Fiscal Quarter, based on the assumption that such Swap had terminated at the end of such Fiscal Quarter, and in making such determination, if any agreement relating to such Swap provides for the netting of amounts payable by and to each party thereto or if any such agreement provides for the simultaneous payment of amounts by and to each party, then in each such case, the amount of such obligation shall be the net amount so determined.

"Swap Documents" means and includes the ISDA Master Agreement and Schedule thereto between Borrower and Bank, and all Confirmations (as such term is defined in such ISDA Master Agreement) between Borrower and Bank executed in connection with any Swaps.

"Swap Obligation" means, with respect to any Loan Party, 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.

"Swap Termination Value" means, with respect to any Swap, at any time, after taking into account the effect of any legally enforceable netting or master agreement relating to such Swap and the effect of all Swaps outstanding under such netting or master agreement, (a) for any date on or after the date that such Swaps have been closed out pursuant to an early termination date, the net close-out, settlement or termination value derived thereby, and (b) for any other date, the net close-out, settlement or termination value that would be determined as of such date under the relevant netting or master agreement, if any, as if such Swaps were subject to early termination due to default of Borrower or its Affiliates.

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

"Tax Distributions" means with respect to each taxable year, an amount equal to a Borrower's or its Subsidiary's federal and state income tax liability for such taxable year calculated assuming such Borrower or its Subsidiary filed its tax returns on a separate return basis. Such separate return calculations shall be based upon the Internal Revenue Code, Treasury regulations and other forms of official tax guidance as published by the United States Internal Revenue Service, as well as state tax laws, regulations and other forms of official tax guidance published by the various states at issue. For purposes of calculating the permitted Tax Distributions for any taxable year, and consistent with Parent's prior practice, (i) net operating losses shall not be allowed to be carried back, (ii) net operating losses generated after the date that a Borrower or its Subsidiary became a member of the Parent or Kingsway Financial Services Inc. consolidated, unitary, combined, or similar income tax group shall be taken into consideration in calculating such Borrower's or such Subsidiary's separate federal and state tax liability except to the extent that (A) such net operating losses were previously utilized to offset the taxable income of the Parent or Kingsway Financial Services Inc. consolidated, unitary, combined, or similar income tax group or the tax liability of the Parent or Kingsway Financial Services Inc. consolidated, unitary, combined, or similar income tax group, and (B) for which a Borrower or its Subsidiary has received a tax benefit for such net operating loss, (iii) net operating losses previously taken into consideration in calculating a Borrower's or its Subsidiary's separate federal and state tax liability shall not be allowed to be taken into consideration in calculating such Borrower's or its Subsidiary's separate federal and state tax liability and (iv) net operating losses generated prior to the date that a Borrower or its Subsidiary became a member of the Parent consolidated, unitary, combined, or similar income tax group or the Kingsway Financial Services Inc. consolidated, unitary, combined or similar income tax group shall only be taken into account in arriving at separate return taxable income to the extent that such net operating loss is actually utilized in the calculation of the taxable income of the Parent or Kingsway Financial Services Inc. consolidated, unitary, combined, or similar income tax group, or the tax liability of the Parent or Kingsway Financial Services Inc. consolidated, unitary, combined, or similar income tax group.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term Loan" has the meaning set forth in Section 1.2(a).

"Term Loan Commitment" has the meaning set forth in Section 1.2(a) of the Summary of Credit Terms.

"Term Loan Commitment Fee" has the meaning set forth in Section 1.13(b).

"Term Loan Maturity Date" has the meaning set forth in Section 1.2(b) of the Summary of Credit Terms.

"Transferee" has the meaning set forth in Section 8.5(e).

"UCC" means the California Uniform Commercial Code, as amended or supplemented from time to time.

"Uniform Customs" means the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500, as the same may be amended from time to time.

"U.S. Person" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Internal Revenue Code.

"Withholding Agent" means any Loan Party and Bank.

2. Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all Financial Statements required to be delivered hereunder shall be prepared in accordance with GAAP, except that, notwithstanding anything set forth to the contrary in this Agreement, to the extent Financial Statements are delivered or accounting determinations are made with respect to periods ending on or prior to the date that is sixty (60) days after the Closing Date, such Financial Statements or accounting determinations need not be prepared or made in accordance with GAAP, but shall be prepared or made in accordance with past practices. Notwithstanding anything herein to the contrary, to the extent that any change in GAAP after the Closing Date (including any change announced prior to, but which do not take effect until after the Closing Date) results in leases which are, or would have been, classified as operating leases under GAAP as it exists on the Closing Date being classified as a Capital Lease under as revised GAAP, such change in classification of leases from operating leases to Capital Leases shall be ignored for purposes of this Agreement including in regards to Capital Expenditures.

3. UCC Terms. Any and all terms used in this Agreement or in any Loan Document which are defined in the UCC shall be construed and defined in accordance with the meaning and definition ascribed to such terms under the UCC, unless otherwise defined herein or in such Loan Document.

4. Computation of Time Periods. In this Agreement, with respect to the computation of periods of time from a specified date to a later specified date, the word from means from and including and the words to and until each mean to but excluding. Periods of days referred to in this Agreement shall be counted in calendar days unless otherwise stated.

5. Construction. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular and to the singular include the plural, references to any gender include any other gender, the part includes the whole, the term including is not limiting, and the term or has, except where otherwise indicated, the inclusive meaning represented by the phrase and/or. References in this Agreement to determination by Bank include good faith estimates by Bank (in the case of quantitative determinations), and good faith beliefs by Bank (in the case of qualitative determinations). The words hereof, herein, hereby, hereunder, and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Article, section, subsection, clause, exhibit and schedule references are to this Agreement, unless otherwise specified. Any reference in this Agreement or any of the Loan Documents to this Agreement or any of the Loan Documents includes any and all permitted alterations, amendments, changes, extensions, modifications, renewals, or supplements thereto or thereof, as applicable.

6. Annex, Exhibits and Schedules. All of the annexes, and all of the exhibits and schedules attached to this Agreement shall be deemed incorporated herein by reference.

7. No Presumption Against Any Party. Neither this Agreement, any of the Loan Documents, any other document, agreement, or instrument entered into in connection herewith, nor any uncertainty or ambiguity herein or therein shall be construed or resolved using any presumption against any party hereto, whether under any rule of construction or otherwise. On the contrary, this Agreement, the Loan Documents, and the other documents, instruments, and agreements entered into in connection herewith have been reviewed by each of the parties and their counsel and shall be construed and interpreted according to the ordinary meanings of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

8. Independence of Provisions. All agreements and covenants hereunder, under the Loan Documents, and the other documents, instruments, and agreements entered into in connection herewith shall be given independent effect such that if a particular action or condition is prohibited by the terms of any such agreement or covenant, the fact that such action or condition would be permitted within the limitations of another agreement or covenant shall not be construed as allowing such action to be taken or condition to exist.

Annex 2
To
Credit Agreement

Closing Conditions

Bank must receive each of the following prior to September 26, 2024, each in form and substance satisfactory to Bank.

1. Each of the Loan Documents (other than such Loan Documents to be delivered pursuant to Section 3.3), all duly executed by Borrower and/or the other Persons party thereto, and acknowledged where required;

2. A Certificate of the Chief Executive Officer of each Corporate Loan Party, dated as of the Closing Date, certifying the incumbency and signatures of the Authorized Officers who are executing the Loan Documents on behalf of such Corporate Loan Party; the Operating Agreement of such Corporate Loan Party and all amendments thereto as being true and correct and in full force and effect; and the resolutions of the Owners of such Corporate Loan Party as being true and correct and in full force and effect, authorizing the execution and delivery of the Loan Documents and the Purchase Documents, and authorizing the transactions contemplated hereunder and thereunder, and authorizing the Authorized Officers to execute the same on behalf of such Corporate Loan Party;

3. Each Corporate Loan Party's Certificate of Incorporation or Certificate of Formation, as applicable, and all amendments thereto, certified by the Secretary of State of such Corporate Loan Party's incorporation or formation, as applicable, and dated a recent date prior to the Closing Date;

4. A certificate of status and good standing for each Corporate Loan Party, dated a recent date prior to the Closing Date, showing that such Corporate Loan Party is in good standing under the laws of the state indicated in **Schedule 4.1**;

5. Duly filed applications for foreign qualification and good standing for each Corporate Loan Party in each of the states indicated in **Schedule 4.1**;

6. A Borrowing Base Certificate reflecting a Borrowing Base greater than or equal to the initial advance of the Revolving Loans;

7. A certificate signed by the Chief Executive Officer of each Corporate Loan Party, dated as of the Closing Date, certifying that both immediately before and immediately after giving effect to the transactions contemplated by the Loan Documents and the Purchase Documents, such Corporate Loan Party is and will be Solvent; to their Knowledge, the representations and warranties of Corporate Loan Party contained in the Loan Documents are true and correct in all material respects, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects, and to the best of their knowledge after due and diligent inquiry, both immediately before and immediately after giving effect to the transactions contemplated by this Agreement, the Loan Documents and the Purchase Documents, no Event of Default, Default or Material Adverse Effect is continuing or shall occur;

8. Satisfactory site visit to business headquarters including a meeting with any Persons at Seller who will retain any role with the Loan Parties after the closing of the Subject Transaction;

9. Satisfactory call with lead investors and board members of the Loan Parties;

10. Due diligence with respect to Corporate Loan Parties (including background checks on management) and Owners of Borrower and Seller, including audits, financial and legal survey, billing practices and recognition accounting for revenue, post-closing capitalization table and management of Board of Directors;

11. Satisfactory review of leases and Material Contracts to which the Loan Parties are a party;

12. Uniform Commercial Code and other public record searches with respect to Corporate Loan Parties and Seller;

13. Sponsor shall have deposited not less than $12,000,000 in the aggregate in the Facilitation Account, to be invested in Borrower on terms and conditions reasonably satisfactory to Bank;

14. After consummation of the Subject Transaction, Borrower shall have opening cash and working capital in amounts satisfactory to Bank;

15. The Revolving Credit Commitment Fee, the Term Loan Commitment Fee, and all Expenses owing on the Closing Date;

16. Satisfactory review of the Loan Parties' revenue, attrition, customer, order, and backlog data, and satisfactory review of sample contracts;

17. Satisfactory review of retention plan and post-close employment agreements with key employees;

18. True and correct executed copies of the Purchase Agreement and all principal Purchase Documents with respect thereto;

19. The completion of the Initial Audit;

20. Satisfactory evidence that the Subject Transaction has been duly consummated or shall be duly consummated immediately upon the funding of the initial Loans in material compliance with Applicable Law and on terms and conditions acceptable to Bank in accordance with the Purchase Documents without material waiver of any term or condition thereof which has not been consented to by Bank;

21. Borrower shall have established the Bancontrolled Account with Bank;

22. Credit card direction letters executed by Borrower in favor of Bank, in form and substance satisfactory to Bank;

23. A Consolidated internally prepared Financial Statement for Borrower and its Subsidiaries through July 31, 2024, which shall include Borrower's and its Subsidiaries' Consolidated balance sheet as of such date, and Borrower's and its Subsidiaries' Consolidated statement of income and retained earnings and statement of cash flow for the Fiscal Year to date;

24. No Material Adverse Effect shall have occurred since June 30, 2024;

25. Copies of insurance binders or insurance certificates evidencing Borrower's having caused to be obtained insurance in accordance with Section 5.5;

26. A Quality of Earnings Report for the trailing twelve (12) month period ending June 30, 2024; and

27. Such other documents, instruments and agreements as Bank may reasonably request in connection with the transactions contemplated hereunder or to perfect or protect the Liens granted to Bank.

Compliance Certificate

TO: AVIDBANK

FROM: IMAGE SOLUTIONS, LLC and STEEL BRIDGE ACQUISITION LLC

The undersigned authorized officer of IMAGE SOLUTIONS, LLC, a North Carolina limited liability company ("*Borrower 1*"), and STEEL BRIDGE ACQUISITION LLC, a Delaware limited liability company ("*Borrower 2*", and, together with Borrower 1, individually and collectively, "*Borrower*"), hereby certifies that in accordance with the terms and conditions of the Credit Agreement between Borrower and Bank dated as of September 26, 2024 (as amended, the "*Agreement*") (i) Borrower is in complete compliance for the period ending _____ with all required covenants except as noted below and (ii) all representations and warranties of Borrower stated in the Agreement are true and correct as of the date hereof. Attached herewith are the required documents supporting the above certification. The Officer further certifies that these are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes.

Please indicate compliance status by circling Yes/No under "Complies" column.

Reporting Covenant	**Required**		**Complies**
Accounts Payable and Accounts Receivable Agings, Inventory Report, Borrowing Base Certificate	30 days after the last day of each month		Yes No
Monthly financial statements including balance sheet, income statement, cash flow statement	30 days after the last day of each month*		Yes No
Compliance Certificate	30 days after the last day of each month		Yes No
Annual financial statements (CPA Audited)	150 days after FYE		Yes No
Opening Balance Sheet	90 days after Closing Date		Yes No
Annual financial projections	30 days after FYE		Yes No
Bookings report and logo/revenue churn data	30 days after the last day of each quarter		Yes No
Financial Covenant	**Required**	**Actual**	**Complies**
Minimum Fixed Charge Coverage Ratio (tested quarterly)	1.15:1.00	___1.00	Yes No
Maximum Senior Leverage Ratio (tested monthly, except tested quarterly if less than or equal to 2.50)	Through 08/31/2025: 3.00:1.00 From 09/30/2025 through 08/31/2026: 2.75:1.00 From and after 09/30/2026: 2.50:1.00	___1.00	Yes No

New Intellectual Property Registrations: _____

* A roll-forward Quality of Earnings Report on a trailing 12 month basis shall be provided in lieu of monthly financial statements for months ending prior to the date Borrower's books and records are kept in compliance with GAAP.

Comments Regarding Exceptions: See Attached.

IMAGE SOLUTIONS, LLC

_____
BY

_____
NAME

_____
TITLE

STEEL BRIDGE ACQUISITION LLC

_____
BY

_____
NAME

_____
TITLE

BANK USE ONLY

Received by: _____
AUTHORIZED SIGNER

Date: _____

Verified: _____
AUTHORIZED SIGNER

Date: _____

Compliance Status Yes No

Schedule 4.1
To
Credit Agreement

Legal Status

Corporate Loan Party	Type of Entity	Jurisdiction of Organization	Jurisdictions of Foreign Qualification
Steel Bridge Acquisition LLC	Limited Liability Company	Delaware	N/A
Image Solutions, LLC	Limited Liability Company	North Carolina	Kentucky

Schedule 4.7
To
Credit Agreement

Litigation

Image Solutions, LLC

- The Company was involved in the settlement of claims among GreatAmerica Financial Services Corporation, Image Solutions, LLC, and Ivie Funeral Home, Inc., which was reached by that certain Settlement Agreement and Mutual Releases dated August 16, 2024. The Company does not anticipate any continual litigation risks associated with this matter.

- The Company was involved in the settlement of claims among Synnex Corporation, Owner, and the Company, which was reached by that certain Settlement Agreement dated February 23, 2022. The Company does not anticipate any continual litigation risks associated with this matter.

Schedule 4.9(a)
To
Credit Agreement

Ownership of Parent

Class of Stock	Number of Shares Authorized	Owner	Number of Shares Issued and Outstanding to Owner	% of Total
LLC membership interest in Steel Bridge Acquisition LLC	N/A	Kingsway Search Xcelerator Inc.	N/A	100%

Schedule 4.9(b)
To
Credit Agreement

Ownership of Subsidiaries

Subsidiary	Jurisdiction of Organization	Number of Shares Authorized (by class)	Owner	Number of Shares Issued and Outstanding to Owner	% of Total
Image Solutions, LLC	North Carolina	N/A	Steel Bridge Acquisition LLC	N/A	100% of LLC membership interest

Schedule 4.12
To
Credit Agreement

Employee Benefit Plans

Image Solutions, LLC

1. SIMPLE IRA with 3% employer match
2. Health Insurance provided by Blue Cross Blue Shield (Base Plan and Buy Up Plan)
3. Vision, Dental & Accident Insurance benefits provided by Mutual of Omaha and Aflac, at employee expense
4. Offer Letter from the Company to Kimberlie Sutterfield dated August 19, 2015
5. Quarterly bonuses paid to Ms. Sutterfield and Stephen Lockhardt
6. Commissions paid to __ sales employees
7. Discretionary annual bonuses (up to $60,000 in the aggregate in 2023)
8. Vacation policy that provides for employees to receive 10 days of vacation per year after the first 90 days of service (increasing after 2 years (to 15 days) and 5 years (to 20 days)), with an allowance for 5 days of carryover.

Schedule 4.16
To
Credit Agreement

Intellectual Property Matters

None.

Schedule 4.19
To
Credit Agreement

Labor Matters

None.

Schedule 4.21
To
Credit Agreement

Brokers

The Image Solutions, LLC is party to that certain Engagement Agreement dated September 23, 2021 by and between the Image Solutions, LLC and Generational Equity, LLC, pursuant to which a Success Fee will be due to Generational Equity, LLC on or about the Closing Date.

Schedule 4.23
To
Credit Agreement

Material Contracts

None.

Schedule 6.2
To
Credit Agreement

Debt Existing on the Closing Date

1. Debt evidenced by that certain Master Program Agreement, dated as of June 12, 2019, by and between U.S. Bank Equipment Finance and Image Solutions, LLC

Schedule 6.3
To
Credit Agreement

Liens Existing on the Closing Date

1. Liens evidenced by that certain UCC-1 financing statement 20200126377A on file with the Secretary of State of the State of North Carolina naming Image Solutions, LLC as debtor and U.S. Bank Equipment Finance, a division of U.S. Bank National Association, as secured party

Exhibit 99.1

KINGSWAY ANNOUNCES $19.5 MILLION ACQUISITION OF IMAGE SOLUTIONS LLC

Management to Host Conference Call Wednesday, October 16, at 5 p.m. ET

- Expected to be immediately accretive
- Adds $9.8 million of annual unaudited revenue and $3.1 million of annual unaudited adjusted EBITDA
- Capital light, highly recurring revenue business in stable and growing market
- Latest acquisition under the Kingsway Search Xcelerator platform

Chicago – **September 27, 2024 - (NYSE: KFS) Kingsway Financial Services Inc.** ("Kingsway" or the "Company") today announced the acquisition of Image Solutions LLC ("Image Solutions"), an information technology managed services provider (IT MSP) for $19.5 million, plus transaction expenses and a working capital adjustment, in an all-cash transaction funded with cash on hand and $7.75 million in debt financing. Management will host a conference call Wednesday, October 16, at 5 p.m. ET to discuss the transaction.

J.T. Fitzgerald, Kingsway President and CEO, said, "The Image Solutions business aligns perfectly with our growing Xcelerator portfolio. It has proven itself a reliable partner for its clients through its dedication to consistent, premium IT hardware and support offerings, and we intend to maintain the delivery of outstanding benefits to the company's customers. Davide Zanchi, the Operator-in-Residence for this transaction, will transition into the CEO role, while the Founder, Garrett Williams, will remain as an advisor during a transition period. We are excited to welcome the Image Solutions team to the Kingsway family."

Image Solutions (www.imagesolutions-online.com/), a provider of IT Managed Services, was founded in 2003 by a veteran in the IT equipment sales industry. Originally, Image Solutions served as a distributor of IT equipment to hospitals and small businesses in North Carolina. Since 2010, Image Solutions has expanded its offerings and now operates three business units: equipment sales, service, and helpdesk. Image Solutions is considered one of the largest IT service providers in western North Carolina, providing comprehensive IT services for both hardware and software and employs 35 people.

Davide Zanchi, Kingsway Operator-in-Residence and newly appointed CEO, said "Image Solutions has built a great business in the field of IT managed services, boasting an impressive track record and enthusiastic client endorsements that drive an expanding roster of fresh prospects. Notably, its operations feature approximately 85% recurring revenue with low churn, strong margins, impressive historical organic growth, and presence in a steady, flourishing sector and geography. While evaluating this purchase, it became evident that Image Solutions sets the industry standard for outsourced IT management. I am enthusiastic about collaborating with the team to gain insights and, using a measured strategy, propel this enterprise to new heights."

The transaction was structured as a purchase of all the issued and outstanding membership interests in Image Solutions. Financing was provided by Avidbank. Holland & Knight LLP served as legal counsel to Kingsway.

Conference Call Information
Date: Wednesday, October 16, 2024
Time: 5 p.m. Eastern Time
Toll Free: 888-506-0062; Code: 846941
International: 973-528-0011; Code: 846941
Live Webcast Link: https://www.webcaster4.com/Webcast/Page/2928/51353

Conference Call Replay Information
Toll Free: 877-481-4010
International: 919-882-2331
Replay Passcode: 51353
Replay Webcast Link: https://www.webcaster4.com/Webcast/Page/2928/51353

About the Company
Kingsway is a holding company that owns or controls subsidiaries primarily in the extended warranty and business services industries. The common shares of Kingsway are listed on the New York Stock Exchange under the trading symbol "KFS."

The Company serves the extended warranty industry through its operating subsidiaries IWS (iwsgroup.com), Penn Warranty (pennwarranty.com), Preferred Warranties (preferredwarranties.com) and Trinity Warranty Solutions (trinitywarranty.com).

The Company serves the business services industry through its operating subsidiaries CSuite (csuitefinancialpartners.com), Ravix (ravixgroup.com), Secure Nursing Service (securenursing.com), SPI Software (spisoftware.com), Digital Diagnostics, Inc (ddimagingusa.com) and Image Solutions (imagesolutions-online.com).

Additional Information
Additional information about Kingsway, including a copy of its Annual Reports can be accessed on the EDGAR section of the U.S. Securities and Exchange Commission's website at www.sec.gov, on the Canadian Securities Administrators' website at www.sedar.com, or through the Company's website at www.kingsway-financial.com.

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