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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):  
**October 24, 2016**

**ALLIANCE DATA SYSTEMS CORPORATION**

(Exact Name of Registrant as Specified in Charter)

**DELAWARE**  
(State or Other Jurisdiction  
of Incorporation)

**001-15749**  
(Commission  
File Number)

**31-1429215**  
(IRS Employer  
Identification No.)

**7500 DALLAS PARKWAY, SUITE 700**  
**PLANO, TEXAS 75024**  
(Address and Zip Code of Principal Executive Offices)

**(214) 494-3000**  
(Registrant's Telephone Number, including Area Code)

**NOT APPLICABLE**  
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K 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
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act
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## **Item 1.01 Entry into a Material Definitive Agreement.**

### **Purchase Agreement**

On October 24, 2016, Alliance Data Systems Corporation, as the issuer (the "**Company**"), and certain of its subsidiaries, as guarantors, entered into a purchase agreement (the "**Purchase Agreement**") with Merrill Lynch, Pierce, Fenner & Smith Incorporated, as the representative of the initial purchasers named in the Purchase Agreement (the "**Initial Purchasers**"), under which it agreed to sell \$500 million aggregate principal amount of its 5.875% senior notes due 2021 (the "**Notes**") to the Initial Purchasers. The Company and the subsidiary guarantors of the Notes have agreed to indemnify the Initial Purchasers against certain liabilities, including liabilities under the Securities Act of 1933, as amended (the "**Securities Act**"), or to contribute to payments the Initial Purchasers may be required to make because of any such liabilities. The offering of the Notes closed on October 27, 2016. The description of the Purchase Agreement herein is qualified in its entirety by reference to the full text of such Purchase Agreement, a copy of which is attached hereto as Exhibit 10.1 and incorporated by reference herein.

### **Indenture**

The Notes are governed by an indenture (the "**Indenture**") dated as of October 27, 2016 among the Company, certain of its subsidiaries as guarantors, and Regions Bank, as trustee. Pursuant to the Indenture, interest on the Notes will accrue at a rate of 5.875% per annum on the principal amount from October 27, 2016, payable semi-annually in arrears on May 1 and November 1 of each year, beginning on May 1, 2017. The Notes will mature on November 1, 2021, subject to earlier repurchase or redemption.

### ***Guarantees***

The Notes are guaranteed on a senior unsecured basis by each of the Company's existing and future domestic restricted subsidiaries that guarantees its domestic credit agreement.

### ***Ranking***

The Notes rank equally in right of payment with the Company's existing and future senior unsecured debt, including indebtednesses under the Company's credit agreement and existing senior notes, and senior in right of payment to any future debt that is expressly subordinated in right of payment to the Notes. The guarantees rank equally in right of payment with all of the guarantors' existing and future senior unsecured indebtedness, including their guarantees of indebtedness under the Company's credit agreement and its existing senior notes, and senior in right of payment to any future debt that is expressly subordinated in right of payment to the guarantees. The Notes and the guarantees are effectively subordinated to the Company's and guarantors' secured debt to the extent of the value of the assets securing such debt. The Notes and the guarantees are structurally subordinated to all existing and future liabilities (including trade payables) of the Company's subsidiaries that do not guarantee the Notes.

### ***Optional Redemption***

The Company may redeem some or all of the Notes at any time at a redemption price equal to 100% of the principal amount of the Notes, plus accrued and unpaid interest, if any, to the applicable redemption date and the applicable premium specified in the Indenture. Prior to November 1, 2018, the applicable premium is a "make-whole" amount; on or after such date, the applicable premium is specified in a table in the Indenture. In addition, at any time prior to November 1, 2018, the Company may, with an amount equal to the net cash proceeds of one or more qualified equity offerings, as defined in the Indenture, redeem up to 35% of the aggregate principal amount of the outstanding Notes at a redemption price equal to 105.875% of the principal amount of the Notes, plus accrued and unpaid interest, if any, to, but not including, the applicable redemption date, provided that such redemption occurs within 90 days following the closing of such qualified equity offering.

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*Change of Control; Mandatory Offer to Repurchase Following Certain Asset Sales*

Upon the occurrence of certain kinds of changes of control, the Company must offer to purchase the Notes at 101% of their principal amount, plus accrued and unpaid interest to the date of purchase. If, within 365 days after the sale of certain assets of the Company or its restricted subsidiaries, as defined in the Indenture, the Company does not either repay certain debt or reinvest the excess proceeds of such asset sales as set forth in the Indenture, the Company must offer to use such excess proceeds to repurchase the Notes on the terms set forth in the Indenture.

*Covenants*

The Indenture contains covenants that limit, among other things, the Company's ability and the ability of some of its subsidiaries to (i) incur additional debt, (ii) declare or pay dividends, redeem stock or make other distributions to stockholders, (iii) make investments, (iv) create liens or use assets as security in other transactions, (v) merge or consolidate, or sell, transfer, lease or dispose of substantially all of the Company's assets, (vi) enter into transactions with affiliates, (vii) sell or transfer certain assets and (viii) enter into any consensual encumbrance or restriction on the ability of certain of the Company's subsidiaries to pay dividends or make loans or sell assets. The covenants are subject to a number of important qualifications, exceptions and limitations.

*Events of Default*

The Indenture includes customary events of default, including, among other things, payment default, covenant default, certain defaults under other indebtedness of the Company or certain of its subsidiaries, the failure to timely satisfy judgments over a certain sum against the Company or certain of its subsidiaries, and bankruptcy, insolvency or reorganization affecting the Company or certain of its subsidiaries.

*No Registration Rights*

The Company will not file a registration statement for the resale of the Notes. As a result, holders may only resell the Notes pursuant to an exemption from the registration requirements of the Securities Act, to the extent available, and other applicable securities laws.

The description of the Indenture herein is qualified in its entirety by reference to the full text of such Indenture, a copy of which is attached as Exhibit 4.1 hereto and incorporated by reference herein.

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## **Use of Proceeds**

After deducting the fees payable to the Initial Purchasers and the estimated offering expenses, the net proceeds to the Company from the offering of Notes are estimated to be approximately \$489.5 million. The Company intends to use the net proceeds from the offering to repay a portion of the outstanding indebtedness under the Company's revolving credit facility provided in our 2013 Credit Agreement, as amended (the "**2013 Credit Agreement**") and for general corporate purposes.

The Notes and the guarantees (together, the "**Securities**") have not been, and will not be, registered under the Securities Act. The Company offered and sold the Securities to the Initial Purchasers in reliance on the exemption from registration requirements provided by Section 4(a)(2) of the Securities Act. The Company relied on this exemption from registration requirements in part based on representations made by the Initial Purchasers in the Purchase Agreement. The Initial Purchasers then sold the Securities to qualified institutional buyers pursuant to exemptions from registration requirements provided by Rule 144A and Regulation S under the Securities Act. This Current Report on Form 8-K does not constitute an offer to sell nor a solicitation of an offer to buy any security and shall not constitute an offer, solicitation or sale in any jurisdiction in which such offer, solicitation or sale would be unlawful.

Certain of the Initial Purchasers and their affiliates have performed and/or may in the future perform financial advisory, investment banking and commercial banking services in the ordinary course of business to the Company, the guarantors and certain of their affiliates, for which they have received, and may in the future receive, customary fees and expense reimbursement. Certain of the Initial Purchasers in this offering and/or their affiliates serve as lenders and/or agents under the 2013 Credit Agreement and will receive their pro rata portion of the net proceeds from this offering that will be used to repay a portion of outstanding indebtedness under the Company's revolving credit facility. Regions Bank is acting as trustee under the Indenture and is an affiliate of Regions Securities LLC, an Initial Purchaser. Further, certain of the Initial Purchasers (or certain of their affiliates thereof) may be our customers under customary contractual arrangements from time to time. In addition, certain of the Initial Purchasers and/or their affiliates may hold positions in the Company's existing senior notes.

### **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 Item 1.01 above is incorporated herein by reference.

### **Item 3.03 Material Modification to Rights of Security Holders.**

The information set forth in Item 1.01 above with respect to the Indenture's limitations on the payment of dividends, redemption of stock or other distributions to the Company's stockholders is incorporated herein by reference.

### **Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

| <b><u>Exhibit No.</u></b> | <b><u>Document Description</u></b>  |
|---------------------------|---|
| 4.1                       | Indenture, dated October 27, 2016, among Alliance Data Systems Corporation, certain of its subsidiaries as guarantors and Regions Bank, as trustee (including the form of the Company's 5.875% Senior Note due November 1, 2021).                         |
| 10.1                      | Purchase Agreement, dated as of October 24, 2016, among Alliance Data Systems Corporation, subsidiary guarantors party thereto and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representative of the several Initial Purchasers party thereto. |

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SIGNATURES

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

Alliance Data Systems Corporation

Date: October 28, 2016

By: /s/ Charles L. Horn  
Charles L. Horn  
Executive Vice President and  
Chief Financial Officer

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**ALLIANCE DATA SYSTEMS CORPORATION, as Issuer**  
**AND EACH OF THE GUARANTORS PARTY HERETO, as Guarantors**  
**5.875% SENIOR NOTES DUE 2021**

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**INDENTURE**

**Dated as of October 27, 2016**

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**REGIONS BANK,**  
**as Trustee**

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Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders of the Notes.

ARTICLE 1  
DEFINITIONS AND INCORPORATION  
BY REFERENCE

Section 1.01 *Definitions.*

"144A Global Note" means a Global Note substantially in the form of Exhibit A hereto, bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depository or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

"Acceptable Commitment" has the meaning set forth in Section 4.10(b) hereof.

"Acquired Debt" means Debt (1) of a Person (including an Unrestricted Subsidiary) existing at the time such Person becomes a Restricted Subsidiary or (2) assumed in connection with the acquisition of assets from such Person. Acquired Debt shall be deemed to have been Incurred, with respect to clause (1) of the preceding sentence, on the date such Person becomes a Restricted Subsidiary and, with respect to clause (2) of the preceding sentence, on the date of consummation of such acquisition of assets; provided, however, that Debt of such acquired Person or assumed in connection with such acquisition of assets that is redeemed, defeased, retired or otherwise repaid substantially concurrently with the transactions by which (x) such Person merges with or into or becomes a Restricted Subsidiary of such Person or (y) such assets are acquired shall not be Acquired Debt.

"Affiliate" of any Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings that correspond to the foregoing.

"Affiliate Transaction" has the meaning set forth in Section 4.11(a) hereof.

"Agent" means any Registrar, co-registrar or Paying Agent.

"amend" means amend, modify, supplement, restate or amend and restate, including successively; and "amending" and "amended" have correlative meanings.

"Applicable Premium" means, with respect to any Note on any applicable Redemption Date and as calculated by the Company, the greater of:

- (1) 1% of the then outstanding principal amount of the Note; and
  - (2) the excess (to the extent positive) of:
-

(a) the present value at such Redemption Date of (i) the Redemption Price of the Note at November 1, 2018 (such Redemption Price being set forth in the table in Section 3.07(a) hereof) plus (ii) all required interest payments due on the Note through November 1, 2018 (excluding accrued but unpaid interest), computed using a discount rate equal to the Treasury Rate as of such Redemption Date plus 50 basis points; over

(b) the then outstanding principal amount of the Note.

Calculation of the Applicable Premium shall be made by the Company or on behalf of the Company by such Person as the Company shall designate and, in any event, such calculation shall not be a duty or obligation of the Trustee.

"*Applicable Procedures*" means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depository that apply to such transfer or exchange.

"*Asset Acquisition*" means:

(1) an Investment by the Company or any Restricted Subsidiary in any other Person pursuant to which such Person shall become a Restricted Subsidiary, or shall be merged with or into the Company or any Restricted Subsidiary; or

(2) the acquisition by the Company or any Restricted Subsidiary of assets of any Person that constitute all or substantially all of the assets of such Person, any division or line of business of such Person or any other properties or assets of such Person other than in the ordinary course of business.

"*Asset Sale*" means:

(1) the sale, lease, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions, of property or assets (including by way of a Sale and Leaseback Transaction) of the Company or any of its Restricted Subsidiaries (each referred to in this definition as a "*disposition*"); or

(2) the issuance or sale of Capital Interests in any Restricted Subsidiary, whether in a single transaction or a series of related transactions (other than Preferred Interests in Restricted Subsidiaries issued in compliance with Section 4.09 hereof);

in each case, other than:

(a) any disposition of cash, Eligible Cash Equivalents or Investment Grade Securities or obsolete, damaged, surplus or worn out property in the ordinary course of business or any disposition of inventory or goods (or other assets) no longer used in the ordinary course of business (including dispositions consisting of abandonment of intellectual property rights that, in the good faith judgment of the Company, are not material to the conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole);

(b) the disposition of all or substantially all of the assets of the Company in a manner permitted pursuant to Section 5.01 hereof or any disposition that constitutes a Change of Control pursuant to this Indenture;



- (c) the making of any Restricted Payment or Permitted Investment that is permitted to be made, and is made, under Section 4.07 hereof, or any payment or other transaction excluded from such definitions or their component definitions;
- (d) any disposition of assets or issuance or sale of Capital Interests in any Restricted Subsidiary in any transaction or series of related transactions with an aggregate Fair Market Value of less than \$50.0 million;
- (e) any disposition (including by liquidation, merger, consolidation or arrangement) of property or assets or issuance or sale of securities by a Restricted Subsidiary of the Company to the Company or by the Company or a Restricted Subsidiary of the Company to another Restricted Subsidiary of the Company;
- (f) to the extent allowable under Section 1031 of the Code or any comparable or successor provision, any exchange of like property (excluding any boot thereon) for use in a Permitted Business;
- (g) the lease, license, assignment or sublease of any real or personal property in the ordinary course of business;
- (h) any issuance, sale or other disposition of Capital Interests in, or Debt or other securities of, or disposition of assets or property received from, an Unrestricted Subsidiary;
- (i) foreclosures, condemnation or any similar action on assets (or exercise of termination rights under any lease, license, assignment or sublease of any real or personal property) or the granting of Liens not prohibited by this Indenture;
- (j) the sale or other disposition of Securitization Assets, or participations or interests therein, or the issuance or sale of Capital Interests in a Qualified Securitization Entity, in each case in connection with any Qualified Securitization Transaction;
- (k) the sale, discount or other disposition of inventory, accounts receivable or notes receivable in the ordinary course of business, or in connection with the collection or compromise thereof, or the conversion of accounts receivable to notes receivable or securities;
- (l) any financing transaction with respect to property built or acquired by the Company or any Restricted Subsidiary after the Issue Date, including Sale and Leaseback Transactions and Qualified Securitization Transactions not prohibited by this Indenture;
- (m) any sale or lease of services or licensing of intellectual property in the ordinary course of business;
- (n) dispositions in the ordinary course of business, including dispositions in connection with any Settlement and dispositions of Settlement Assets;
- (o) dispositions of Investments in Joint Ventures to the extent required by, or made pursuant to buy/sell arrangements between the joint venture parties set forth in, joint venture arrangements and similar binding arrangements;

- (p) any issuance, sale or other disposition of Capital Interests in a Restricted Subsidiary to any Person (or an Affiliate thereof) for which a Restricted Subsidiary provides shared purchasing, billing, collection or similar services in the ordinary course of business;
- (q) any disposition of assets to a governmental entity, authority or agency that continue in use by the Company or any Restricted Subsidiary, so long as the Company or any Restricted Subsidiary may obtain title to such assets upon reasonable notice by paying a nominal fee;
- (r) voluntary terminations of Swap Contracts and Hedging Obligations;
- (s) dispositions of real property and related assets in the ordinary course of business in connection with relocation activities for directors, officers, members of management, employees or consultants of the Company or any Restricted Subsidiary;
- (t) dispositions of Permitted Investments of the types described in clause (9) of the definition thereof;
- (u) dispositions that are necessary or advisable in order to comply with Regulatory Requirements;
- (v) issuances and sales of directors' qualifying shares and other Capital Interests in Restricted Subsidiaries issued to foreign governments, foreign individuals or other third parties to the extent required by applicable law; and
- (w) any surrender or waiver of contract rights or the settlement, release, recovery on or surrender of contract, tort or other claims of any kind.

"*Asset Sale Offer*" has the meaning set forth in Section 4.10(c) hereof.

"*Average Life*" means, as of any date of determination, with respect to any Debt, the quotient obtained by dividing (i) the sum of the products of (x) the number of years from the date of determination to the dates of each successive scheduled principal payment (including any sinking fund or mandatory redemption payment requirements) of such Debt multiplied by (y) the amount of such principal payment by (ii) the sum of all such principal payments.

"*Bankruptcy Law*" means Title 11, United States Code, or any similar U.S. Federal or state law or law of any other jurisdiction relating to bankruptcy, insolvency, winding-up, liquidation, reorganization or relief of debtors.

"*Board of Directors*" means (i) with respect to a corporation, the board of directors of such corporation or any duly authorized committee thereof; and (ii) with respect to any other entity, the board of directors or similar body of the general partner or managers of such entity or any duly authorized committee thereof.

"*Business Day*" means each day which is not a Legal Holiday.

"*Capital Interests*" in any Person means any and all shares, interests (including Preferred Interests), participations or other equivalents in the equity interest (however designated) in such Person and any rights (other than Debt securities convertible into an equity interest), warrants or options to acquire an equity interest in such Person.

"*Capital Lease Obligations*" means any obligation under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP; and the amount of Debt represented by such obligation shall be the capitalized amount of such obligations determined in accordance with GAAP; and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty.

"*Certificated Notes*" means certificated Notes registered in the name of the Holder thereof and issued in accordance with Section 2.07(c) hereof, substantially in the form set forth in Exhibit A hereto, except that such Note shall not bear the Global Note Legend and shall not have the "Schedule of Exchanges of Interests in the Global Note" attached thereto.

"*Change of Control*" means the occurrence of any of the following:

(1) the sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person (unless holders of a majority of the aggregate voting power of the Voting Interests of the Company, immediately prior to such transaction, hold securities of the surviving or transferee Person that represent, immediately after such transaction, at least a majority of the aggregate voting power of the Voting Interests of the surviving or transferee Person); or

(2) the Company becomes aware (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) of the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act or any successor provision), in a single transaction or in a series of related transactions, by way of merger, consolidation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision) of more than 50% of the total voting power of the Voting Interests in the Company.

"*Change of Control Expiration Date*" has the meaning set forth in Section 4.13(b) hereof.

"*Change of Control Offer*" has the meaning set forth in Section 4.13(a) hereof.

"*Change of Control Purchase Date*" has the meaning set forth in Section 4.13(b) hereof.

"*Change of Control Purchase Price*" has the meaning set forth in Section 4.13(a) hereof.

"*Code*" means the Internal Revenue Code of 1986, as amended from time to time and the regulations promulgated thereunder.

"*Commission*" means the Securities and Exchange Commission.

"*Common Interests*" of any Person means Capital Interests in such Person that do not rank prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of such Person, to Capital Interests of any other class in such Person.

"*Company*" means Alliance Data Systems Corporation and any successor thereto.

"*Company Order*" means a written request or order signed in the name of the Company by its chief executive officer, its president, any corporate executive vice president or senior vice president, its chief financial officer, its treasurer or any assistant treasurer, and delivered to the Trustee.

"*Consolidated Fixed Charge Coverage Ratio*" means, with respect to any Person, the ratio of the aggregate amount of Consolidated Operating EBITDA of such Person for the four full fiscal quarters, treated as one period, for which financial information in respect thereof is available immediately preceding the date of the transaction (the "*Transaction Date*") giving rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio (such four full fiscal quarter period being referred to herein as the "*Four Quarter Period*") to the aggregate amount of Consolidated Interest Expense of such Person for the Four Quarter Period. In addition to and without limitation of the foregoing, for purposes of this definition, "Consolidated Operating EBITDA" and "Consolidated Interest Expense" shall be calculated after giving effect (i) to the cost of any compensation, remuneration or other benefit paid or provided to any employee, consultant, Affiliate or equity owner of the entity involved in any Asset Acquisition to the extent such costs are eliminated or reduced (or public announcement has been made of the intent to eliminate or reduce such costs) prior to the date of such calculation and not replaced; and (ii) on a *pro forma* basis for the period of such calculation, to any Asset Sales or other dispositions or Asset Acquisitions or other acquisitions, investments, mergers, consolidations and discontinued operations (as determined in accordance with GAAP) occurring during the Four Quarter Period or any time subsequent to the last day of the Four Quarter Period and on or prior to the Transaction Date, as if such Asset Sale or other disposition or Asset Acquisition (including the incurrence or assumption of any such Acquired Debt), investment, merger, consolidation or disposed operation occurred on the first day of the Four Quarter Period. For purposes of this definition, whenever pro forma effect is to be given to an acquisition or disposition of assets or any other event in connection with any calculation, the pro forma calculations shall be determined in good faith by a responsible financial or accounting officer of the Company (including any pro forma expense and cost reductions that have occurred or are reasonably expected to occur, in the reasonable judgment of the chief financial officer of the Company (regardless of whether those cost savings or operating improvements could then be reflected in pro forma financial statements in accordance with Regulation S-X promulgated under the Securities Act or any regulation or policy of the Commission related thereto)).

"*Consolidated Interest Expense*" means, for any period, the total interest expense paid on Debt of such Person and its Restricted Subsidiaries (including the interest component of Capital Lease Obligations) for such period, determined on a consolidated basis in accordance with GAAP.

"*Consolidated Net Income*" of any Person means, for any fiscal period, the net income of such Person and its Restricted Subsidiaries, determined on a consolidated basis for such period, exclusive of the effect of any extraordinary or other nonrecurring gain and loss and excluding transaction costs and expenses associated with securities offerings, other financings and asset acquisitions and dispositions.

"*Consolidated Non-cash Charges*" means, with respect to any Person for any period, the aggregate depreciation, amortization (including amortization and impairment, as applicable, of goodwill, other intangibles, deferred financing fees, Debt issuance costs, commissions, fees and expenses) and other non-cash expenses of such Person and its Restricted Subsidiaries reducing Consolidated Net Income of such Person and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP; *provided* that any cash payment made (or received) with respect to any such non-cash charge, expense or loss shall be subtracted (added) in computing Consolidated Operating EBITDA during the period in which such cash payment is made (or received).

"*Consolidated Operating EBITDA*" means, for any period, the sum of Consolidated Net Income for such period, *plus*, to the extent deducted in determining Consolidated Net Income without duplication,

(a) depreciation and amortization expense, including amortization of intangible assets, (b) interest expense paid on Qualifying Deposits and Qualified Securitization Transactions for such period, (c) Consolidated Interest Expense, (d) federal, state, local and foreign income, value added and similar taxes and (e) all other Consolidated Non-cash Charges. If, during the period for which Consolidated Operating EBITDA is being calculated, the Company or any Restricted Subsidiary has (i) acquired sufficient Capital Interests of a Person to cause such Person to become a Subsidiary; (ii) acquired all or substantially all of the assets or operations, division or line of business of a Person; (iii) disposed of sufficient Capital Interests of a Subsidiary to cause such Subsidiary to cease to be a Subsidiary; or (iv) disposed of or discontinued all or substantially all of the assets or operations of a Subsidiary or business unit, Consolidated Operating EBITDA shall be calculated after giving *pro forma* effect thereto as if such acquisition, disposition or discontinuation had occurred on the first day of such period and the reasonable expenses related to such acquisition, disposition or discontinuation shall be added to Consolidated Operating EBITDA for such period.

"*Consolidated Secured Leverage Ratio*" means, with respect to any Person, the ratio of the aggregate amount of all Secured Debt of such Person and its Restricted Subsidiaries at the end of the most recent fiscal quarter for which financial information in respect thereof is available immediately preceding the Transaction Date giving rise to the need to calculate the Consolidated Secured Leverage Ratio to the aggregate amount of Consolidated Operating EBITDA of such Person for the Four Quarter Period ending with such fiscal quarter. In addition to and without limitation of the foregoing, for purposes of this definition, this ratio shall be calculated after giving effect (i) to the cost of any compensation, remuneration or other benefit paid or provided to any employee, consultant, Affiliate or equity owner of the entity involved in any Asset Acquisition to the extent such costs are eliminated or reduced (or public announcement has been made of the intent to eliminate or reduce such costs) prior to the date of such calculation and not replaced; and (ii) on a *pro forma* basis for the period of such calculation, to any Asset Sales or other dispositions or Asset Acquisitions or other acquisitions, investments, mergers, consolidations and discontinued operations (as determined in accordance with GAAP) occurring during the Four Quarter Period or any time subsequent to the last day of the Four Quarter Period and on or prior to the Transaction Date, as if such Asset Sale or other disposition or Asset Acquisition (including the incurrence or assumption of any such Acquired Debt), investment, merger, consolidation or disposed operation occurred on the first day of the Four Quarter Period. For purposes of this definition, whenever *pro forma* effect is to be given to an acquisition or disposition of assets or any other event in connection with any calculation, the *pro forma* calculations shall be determined in good faith by a responsible financial or accounting officer of the Company (including any *pro forma* expense and cost reductions that have occurred or are reasonably expected to occur, in the reasonable judgment of the chief financial officer of the Company (regardless of whether those cost savings or operating improvements could then be reflected in *pro forma* financial statements in accordance with Regulation S-X promulgated under the Securities Act or any regulation or policy of the Commission related thereto)).

If such Person or any of its Restricted Subsidiaries Guarantees Debt of a third Person, the above clause shall give effect to the incurrence of such Guaranteed Debt as if such Person or such Subsidiary had directly incurred or otherwise assumed such Guaranteed Debt only if such Guarantee is secured by a Lien on assets or property of such Person or such Subsidiary.

"*Consolidated Total Leverage Ratio*" means, with respect to any Person, the ratio of the aggregate amount of all Debt of such Person and its Restricted Subsidiaries at the end of the most recent fiscal quarter for which financial information in respect thereof is available immediately preceding the Transaction Date giving rise to the need to calculate the Consolidated Total Leverage Ratio to the aggregate amount of Consolidated Operating EBITDA of such Person for the Four Quarter Period ending with such fiscal quarter. In addition to and without limitation of the foregoing, for purposes of this

definition, this ratio shall be calculated in a manner consistent with the adjustments and assumptions set forth in the definition of "Consolidated Secured Leverage Ratio" above.

If such Person or any of its Restricted Subsidiaries Guarantees Debt of a third Person, the above clause shall give effect to the incurrence of such Guaranteed Debt as if such Person or such Subsidiary had directly incurred or otherwise assumed such Guaranteed Debt.

"*Convertible Notes*" means any unsubordinated Debt issued by the Company that by its terms may be converted into or exchanged for Capital Interests in the Company at the option of the Company or the holder of such Debt, including Debt with respect to which the performance due by the Company may be measured in whole or in part by reference to the value of a Capital Interest in the Company but may be satisfied in whole or in part in cash.

"*Corporate Trust Office*" means the office of the Trustee at which at any particular time its corporate trust business shall principally be administered, which office at the date hereof is located at Regions Bank, 3773 Richmond Avenue, Suite 1100, Houston, Texas 77046, Attn: Corporate Trust, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

"*Covenant Defeasance*" has the meaning set forth in Section 9.01(c) hereof.

"*Covenant Termination Event*" has the meaning set forth in Section 4.17(a) hereof.

"*Credit Agreement*" means the Company's Credit Agreement, dated July 10, 2013, by and among the Company, the guarantors party thereto and Wells Fargo Bank, N.A., as administrative agent, and the other agents and lenders named therein, together with all related notes, letters of credit, collateral documents, guarantees, and any other related agreements and instruments executed and delivered in connection therewith, whether before, on or after the Issue Date, in each case as amended, modified, supplemented, restated, refinanced, refunded or replaced in whole or in part from time to time including by or pursuant to any agreement or instrument that extends the maturity of any Debt thereunder, or increases the amount of available borrowings thereunder (provided that such increase in borrowings is permitted under clause (1) of the definition of the term "Permitted Debt"), or adds Subsidiaries of the Company as additional borrowers or guarantors thereunder, in each case with respect to such agreement or any successor or replacement agreement and whether by the same or any other agent, lender, group of lenders, purchasers or Debt holders.

"*Credit Facilities*" means one or more credit facilities (including the Credit Agreement) with banks or other lenders providing for revolving loans or term loans or the issuance of letters of credit or bankers' acceptances or the like.

"*Custodian*" means any receiver, interim receiver, receiver and manager, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

"*Debt*" of any Person means at any date, without duplication (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person to pay the deferred purchase price of property, except trade accounts payable arising in the ordinary course of business, (iv) all obligations of such Person as lessee which are capitalized in accordance with GAAP, (v) all non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit or similar instrument, in each case that have been drawn and not repaid within ten Business Days (but in

each case excluding letters of credit and other instruments secured by cash or Eligible Cash Equivalents or issued in respect of trade payables), (vi) all Debt secured by a Lien on any asset of such Person, whether or not such Debt is otherwise an obligation of such Person (but if such Debt is not an obligation of such Person, the amount of Debt hereunder shall in no event be in excess of the orderly liquidation value of such asset), (vii) all Debt of others Guaranteed by such Person, to the extent of the maximum liability under such Guarantee, and (viii) Redeemable Capital Interests of the Company or any of its Subsidiaries, valued at the amount of all obligations with respect to the redemption or repurchase thereof or the applicable liquidation preference.

Notwithstanding the foregoing, the term "Debt" will exclude: (u) obligations arising out of the endorsement of negotiable instruments for collection in the ordinary course of business; (v) customary indemnification obligations; (w) any obligations under a Qualified Securitization Transaction; (x) any obligations of such Person in respect of Qualifying Deposits; (y) post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment is otherwise contingent; *provided, however*, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and finally determined, the amount is paid within 60 days thereafter; and (z) any earn-out obligation until such obligation appears in the liabilities section of the balance sheet of such Person (provided, that any such obligation appearing as such a liability shall continue to be excluded from Debt to the extent (A) such Person is indemnified for the payment thereof by a solvent Person or (B) amounts to be applied to the payment therefor are in escrow).

The amount of Debt of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, only upon the occurrence of the contingency giving rise to the obligations, of any contingent obligations at such date; *provided, however*, that in the case of Debt sold at a discount, the amount of such Debt at any time will be the accreted value thereof at such time.

"*Debt Agreements*" means one or more Credit Facilities (including the Credit Agreement), commercial paper facilities, note purchase agreements or indentures, in each case with banks or other lenders, investors or a trustee providing for revolving loans, term loans, the issuance of letters of credit or bankers' acceptances, receivables financings or the issuance of debt securities.

"*Default*" means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

"*Depositary*" means, with respect to the Notes issued in the form of one or more Global Notes, DTC or another Person designated as Depositary by the Company, which Person must be a clearing agency registered under the Exchange Act.

"*Designated Non-cash Consideration*" means non-cash consideration (or, if appropriate in the context, the Fair Market Value thereof) received by the Company or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officers' Certificate, setting forth the basis of such valuation, executed by the principal financial officer of the Company, *less* the amount of cash or Eligible Cash Equivalents received in connection with a subsequent sale or other disposition of or collection on such Designated Non-cash Consideration.

"*Discharge*" has the meaning set forth in Section 9.01(a) hereof.

"*Domestic Restricted Subsidiary*" means a Domestic Subsidiary that is a Restricted Subsidiary.

"Domestic Subsidiary" means any Subsidiary that is formed or otherwise organized in the United States or a State thereof or the District of Columbia (other than a Restricted Subsidiary the parent or indirect parent of which is not formed or otherwise organized in the United States or a State thereof or the District of Columbia).

"DTC" means The Depository Trust Company.

"Eligible Bank" means a bank or trust company (i) that is organized and existing under the laws of the United States of America or Canada, or any state, territory, province or possession thereof or any member state of the European Union, (ii) that, as of the time of the making or acquisition of an Investment in such bank or trust company, has combined capital and surplus in excess of \$500.0 million and (iii) the senior Debt of which is rated at least "A-2" by Moody's or at least "A" by S&P.

"Eligible Cash Equivalents" means any of the following Investments: (i) securities issued or directly and fully guaranteed or insured by the United States, Canada or a member state of the European Union or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States, Canada or such member state is pledged in support thereof) maturing not more than one year after the date of acquisition (or such other maturities if not prohibited by the Credit Agreement); (ii) time deposits in and certificates of deposit of any Eligible Bank (or in any other financial institution to the extent the amount of such deposit is within the limits insured by the Federal Deposit Insurance Corporation), *provided* that such Investments have a maturity date not more than two years after the date of acquisition and that the Average Life of all such Investments is one year or less from the respective dates of acquisition (or such other maturities or Average Life if not prohibited by the Credit Agreement); (iii) repurchase obligations with a term of not more than 180 days for underlying securities of the types described in clause (i) above or clause (iv) below entered into with any Eligible Bank or securities dealers of recognized national standing; (iv) direct obligations issued by any state, province or territory of the United States or Canada or any political subdivision or public instrumentality thereof, *provided* that such Investments mature, or are subject to tender at the option of the holder thereof, within 365 days after the date of acquisition (or such other maturities if not prohibited by the Credit Agreement) and, at the time of acquisition, have a rating of at least A from S&P's or A-2 or P-2 (or long term ratings of at least A3 or A-) from either S&P or Moody's, or with respect to municipal bonds, a rating of at least MIG 2 or VMIG 2 from Moody's (or equivalent ratings by any other nationally recognized rating agency); (v) commercial paper of any Person other than an Affiliate of the Company and other than structured investment vehicles, *provided* that such Investments have a rating permissible under clause (iv) above and mature within 270 days after the date of acquisition (or such other maturities if not prohibited by the Credit Agreement); (vi) overnight and demand deposits in and bankers' acceptances of any Eligible Bank; (vii) demand deposits in any bank or trust company to the extent insured by the Federal Deposit Insurance Corporation; (viii) in the case of a Foreign Subsidiary or any other Restricted Subsidiary that conducts business outside of the United States, demand deposits and time deposits that (a) are denominated in the currency of a country that is a member of the Organisation for Economic Co-operation and Development ("*OECD*") or the currency of the country in which such Restricted Subsidiary is organized or conducts business and (b) are consistent with the Company's investment policy as in effect from time to time, *provided* that, in the case of time deposits, such Investments have a maturity date not more than two years after the date of acquisition and that the Average Life of all such time deposits is one year or less from the respective dates of acquisition; (ix) money market funds (and shares of investment companies that are registered under the Investment Company Act of 1940) substantially all of the assets of which comprise Investments of the types described in clauses (i) through (vii); (x) United States dollars, or money in other currencies received in the ordinary course of business; (xi) asset-backed securities and corporate securities that are eligible for inclusion in money market funds; (xii) fixed maturity securities that are rated BBB- and above by S&P or Baa3 and above by Moody's; *provided* that the aggregate amount of Investments by any Person in fixed maturity securities that are rated BBB+, BBB or BBB- by S&P or Baa1, Baa2 or Baa3 by



Moody's shall not exceed 20% of the aggregate amount of Investments in fixed maturity securities by such Person; and (xiii) instruments generally equivalent or similar to those referred to in clauses (i) through (vii) above or funds generally equivalent or similar to those referred to in clause (ix) above and comparable in credit quality and tenor to those referred to in such clauses and commonly used by corporations for cash management purposes in jurisdictions outside the United States to the extent advisable in connection with any business conducted by the Company or by any Restricted Subsidiary, all as determined in good faith by the Company.

"*European Union*" means the European Union, including any country which is as of the Issue Date, or becomes after the Issue Date, a member of the European Union.

"*Event of Default*" has the meaning set forth in Section 6.01 hereof.

"*Excess Proceeds*" has the meaning set forth in Section 4.10(c) hereof.

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

"*Fair Market Value*" means, with respect to the consideration received or paid in any transaction or series of transactions, the fair market value thereof as determined in good faith by the Company. In the case of a transaction between the Company or a Restricted Subsidiary, on the one hand, and a Qualified Securitization Entity, on the other hand, if the Board of Directors of the Company determines in its sole discretion that such determination is appropriate, a determination as to Fair Market Value may be made at the commencement of the transaction and be applicable to all dealings between the Qualified Securitization Entity and the Company or such Restricted Subsidiary during the course of such transaction.

"*Foreign Subsidiary*" means, with respect to any Person, any Restricted Subsidiary of such Person that is not organized or existing under the laws of the United States, any state thereof or the District of Columbia and any Restricted Subsidiary of such Foreign Subsidiary.

"*Four Quarter Period*" has the meaning set forth in the definition of "Consolidated Fixed Charge Coverage Ratio."

"*GAAP*" means generally accepted accounting principles in the United States, consistently applied, as set forth in the Financial Accounting Standards Board ("*FASB*") Accounting Standards Codification and the rules and interpretations of the Commission under the authority of the federal securities laws, or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, as in effect as of the Start Date irrespective of any subsequent change in such Accounting Standards Codification or other statements or any subsequent adoption of International Financial Reporting Standards.

"*Global Note Legend*" means the legend set forth in Section 2.07(f)(2) hereof, which is required to be placed on all Global Notes issued under this Indenture.

"*Global Notes*" means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes, substantially in the form of Exhibit A hereto, that bears the Global Note Legend and that has the "Schedule of Exchanges of Interests in the Global Note" attached thereto, issued in accordance with Section 2.02, 2.07(b), 2.07(d) or 2.07(g) hereof.

"*Guarantee*" means, as applied to any Debt of another Person, (i) a guarantee (other than by endorsement of negotiable instruments for collection in the normal course of business), direct or indirect,

in any manner, of any part or all of such Debt, (ii) any direct or indirect obligation, contingent or otherwise, of a Person guaranteeing or having the effect of guaranteeing the Debt of any other Person in any manner and (iii) an agreement of a Person, direct or indirect, contingent or otherwise, the practical effect of which is to assure in any way the payment (or payment of damages in the event of non-payment) of all or any part of such Debt of another Person (and "Guaranteed" and "Guaranteeing" shall have meanings that correspond to the foregoing).

"*Guarantor*" means each Restricted Subsidiary of the Company that executes and delivers this Indenture on the Issue Date as a guarantor and each other Restricted Subsidiary of the Company that thereafter Guarantees the Notes pursuant to the terms of this Indenture, and their respective successors and assigns, in each case unless and until such Restricted Subsidiary is released from its obligations under its Note Guarantee pursuant to this Indenture.

"*Hedging Obligations*" of any Person means the obligations of such Person pursuant to any interest rate agreement, currency agreement or commodity agreement.

"*Holder*" means a Person in whose name a Note is registered in the security register. In connection with Notes issued in global book-entry form, DTC shall be treated for all purposes as the only registered holder of such Notes.

"*Incur*" means, with respect to any Debt or other obligation of any Person, to create, issue, incur (by conversion, exchange or otherwise), assume, Guarantee or otherwise become liable in respect of such Debt or other obligation or the recording, as required pursuant to GAAP or otherwise, of any such Debt or other obligation on the balance sheet of such Person; *provided, however*, that a change in GAAP or an interpretation thereunder that results in an obligation of such Person that exists at such time becoming Debt shall not be deemed an Incurrence of such Debt. Debt otherwise Incurred by a Person before it becomes a Subsidiary of the Company shall be deemed to be Incurred at the time at which such Person becomes a Subsidiary of the Company. "*Incurrence*," "*Incurred*," "*Incurable*" and "*Incurring*" shall have meanings that correspond to the foregoing. A Guarantee by the Company or a Restricted Subsidiary of Debt Incurred by the Company or a Restricted Subsidiary, as applicable, shall not be a separate Incurrence of Debt. For the avoidance of doubt, Debt of a Restricted Subsidiary that is assumed by the Company or a Restricted Subsidiary shall not be deemed to be a separate Incurrence of Debt.

"*Indenture*" means this Indenture, as amended or supplemented from time to time in accordance with its terms.

"*Indirect Participant*" means a Person who holds a beneficial interest in a Global Note through a Participant.

"*Initial Notes*" means the \$500,000,000 aggregate principal amount of the 5.875% Senior Notes due 2021 of the Company issued pursuant to this Indenture on the Issue Date.

"*Initial Purchasers*" means Merrill Lynch, Pierce, Fenner & Smith Incorporated, J.P. Morgan Securities LLC, Wells Fargo Securities, LLC, RBC Capital Markets, LLC, Mizuho Securities USA Inc., MUFG Securities Americas Inc., SunTrust Robinson Humphrey, Inc., CIBC World Markets Corp., Deutsche Bank Securities Inc., BNP Paribas Securities Corp., BBVA Securities Inc., Capital One Securities, Inc., Fifth Third Securities, Inc., Regions Securities LLC, SMBC Nikko Securities America, Inc., Scotia Capital (USA) Inc., KeyBanc Capital Markets Inc., Raymond James & Associates, Inc., U.S. Bancorp Investments, Inc., and The Williams Capital Group, L.P., as applicable, and such other initial purchasers party to any purchase agreement entered into in connection with the offer and sale of any Additional Notes.

"*Insured Subsidiary*" means a Subsidiary of the Company that is an "insured depository institution" under and as defined in the U.S. Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)) or any successor statute or that has an analogous status under the laws of Canada or any other country that is a member of the OECD or any political subdivision of any such country.

"*Interest Payment Date*" means May 1 and November 1 of each year, as applicable, commencing on May 1, 2017.

"*Investment*" by any Person means any direct or indirect loan, advance (or other extension of credit) or capital contribution to (by means of any transfer of cash or other property or assets to another Person or any other payments for property or services for the account or use of another Person) another Person, including the following: (i) the purchase or acquisition of any Capital Interest or other evidence of beneficial ownership in another Person; (ii) the purchase, acquisition or Guarantee of the Debt of another Person; and (iii) the purchase or acquisition of the business or assets of another Person substantially as an entirety but shall exclude: (a) accounts receivable and other extensions of trade credit in accordance with the Company's customary practices; (b) the acquisition of property and assets from suppliers and other vendors in the normal course of business; (c) prepaid expenses and workers' compensation, utility, lease and other pledges and deposits permitted under the definition of "Permitted Liens"; and (d) endorsements of negotiable instruments and documents in the ordinary course of business. The value of an Investment shall be deemed to be the value at the time made as determined in good faith by the senior management or Board of Directors of the Company and without giving effect to subsequent changes in value.

"*Investment Grade Rating*" means a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P, or an equivalent rating by a "nationally recognized statistical rating organization" as defined in Section 3 of the Exchange Act.

"*Investment Grade Securities*" means:

- (1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Eligible Cash Equivalents);
- (2) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or instruments constituting loans or advances among the Company and its Subsidiaries;
- (3) investments in any fund that invests exclusively in investments of the type described in clauses (1) and (2), other than immaterial amounts of cash pending investment or distribution; and
- (4) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

"*Issue Date*" means October 27, 2016.

"*Joint Venture*" means any joint venture entity, whether a company, unincorporated firm, association, partnership or any other entity which, in each case, is not a Subsidiary of the Company or any of its Restricted Subsidiaries, but in which the Company or a Restricted Subsidiary has a direct or indirect equity or similar interest.

"*Legal Defeasance*" has the meaning set forth in Section 9.01(b) hereof.

"*Legal Holiday*" means a Saturday, a Sunday or a day on which banking institutions are not required to be open in The City of New York or any Place of Payment.

"*Lien*" means, with respect to any property or other asset, any mortgage, deed of trust, deed to secure Debt, pledge, hypothecation, assignment, deposit arrangement, security interest, lien (statutory or otherwise), charge, easement, encumbrance, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever on or with respect to such property or other asset (including any conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing).

"*Maturity Date*" when used with respect to any Note, means the date on which the principal amount of such Note becomes due and payable as therein or herein provided.

"*Moody's*" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"*Net Proceeds*" means the aggregate cash proceeds received by the Company or any of its Restricted Subsidiaries in respect of any Asset Sale, including any cash received upon the sale or other disposition of any Designated Non-cash Consideration received in any Asset Sale, net of (i) the costs relating to such Asset Sale and the sale or disposition of such Designated Non-cash Consideration, including legal, accounting and investment banking fees, and brokerage and sales commissions, survey costs, title insurance premiums, and related search and recording charges, transfer taxes, deed or mortgage recording taxes, other customary expenses and consultant and other customary fees, and any relocation expenses incurred as a result thereof, (ii) taxes paid or payable as a result thereof (including, in respect of any proceeds received in connection with any Asset Sale of or by any Foreign Subsidiary or of any asset or property located or deemed located outside of the United States, deductions in respect of withholding taxes and similar taxes, fees, charges and penalties payable in connection with repatriation of such funds to the United States), in each case after taking into account any available tax credits or deductions and any tax sharing arrangements, (iii) all distributions and other payments required to be made to holders of minority interests, royalty interests, stock appreciation rights or similar rights or interests in Restricted Subsidiaries or the assets or properties thereof as a result of such Asset Sale, (iv) amounts required to be applied to the repayment of principal, premium, if any, and interest on senior Debt required (other than required by Section 4.10(b)(1) hereof) to be paid as a result of such transaction, and (v) deduction of appropriate amounts to be provided by the Company or any of its Restricted Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Company or any of its Restricted Subsidiaries after such sale or other disposition thereof, including pension and other post-employment benefit liabilities, liabilities related to environmental matters, indemnification obligations associated with such transaction and purchase price adjustments.

Notwithstanding the foregoing, to the extent that any or all of the Net Proceeds from an Asset Sale of or by any Foreign Subsidiary or of any asset or property located or deemed located outside of the United States is prohibited or delayed from being repatriated to the United States pursuant to applicable local law (or to the extent that the Board of Directors of the Company determines, in good faith, that repatriation of such Net Proceeds would have a material adverse tax consequence to the Company) despite reasonable effort by the Company or such Restricted Subsidiary to exclude or release those funds from such restrictions or to avoid such tax, the portion of such Net Proceeds so affected shall be deemed excluded from Net Proceeds for so long as such restrictions or material adverse tax consequences exist.

"*Non-U.S. Person*" means a Person who is not a U.S. person, as defined in Regulation S.

"*Notation of Guarantee*" means a notation of guarantee substantially in the form attached as Exhibit D hereto.

"*Note Guarantee*" means the Guarantee by any Guarantor of the Company's obligations under this Indenture.

"*Notes*" means the 5.875% Senior Notes due 2021 of the Company.

"*obligations*" means any principal, premium, interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and bankers' acceptances), damages and other liabilities, and guarantees of payment of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any Debt.

"*OECD*" has the meaning set forth in the definition of "Eligible Cash Equivalents."

"*Offering Memorandum*" means the offering memorandum of the Company, dated October 24, 2016, related to the offering of the Initial Notes and related Note Guarantees.

"*Officers' Certificate*" means a certificate signed by two officers of the Company or a Guarantor, as applicable, one of whom must be the principal executive officer, the principal financial officer or the principal accounting officer of the Company or such Guarantor, as applicable.

"*Opinion of Counsel*" means a written opinion from legal counsel who is reasonably acceptable to the Trustee and delivered to the Trustee. The counsel may be an employee of or counsel to the Company or the Trustee.

"*Participant*" means, with respect to the Depositary, a Person who has an account with the Depositary.

"*Paying Agent*" has the meaning set forth in Section 2.04 hereof.

"*Permitted Asset Swap*" means the purchase and sale, exchange or other disposition (within a 180-day period) of Related Business Assets or a combination of Related Business Assets and cash or Eligible Cash Equivalents between the Company or any of its Restricted Subsidiaries and another Person; *provided* that any cash or Eligible Cash Equivalents received must be applied in accordance with Section 4.10 hereof.

"*Permitted Business*" means any business conducted or proposed to be conducted by the Company and its Restricted Subsidiaries on the Issue Date or any business that is similar, reasonably related, incidental, complementary or ancillary thereto, or expansions or developments thereof, and any other business approved from time to time by the Board of Directors of the Company.

"*Permitted Debt*" means:

(1) Debt Incurred pursuant to the Credit Agreement and other Debt Agreements in an aggregate principal amount at any one time outstanding not to exceed the greater of (a) \$5.0 billion and (b) the aggregate principal amount of Debt that at the time of Incurrence would not cause the Consolidated Secured Leverage Ratio to exceed 3.00 to 1.00; provided that for purposes

of determining the amount of Debt that may be Incurred pursuant to clause (1)(b), all Debt Incurred under this clause (1) shall be treated as Secured Debt;

- (2) Debt under the Notes issued on the Issue Date;
- (3) Note Guarantees;
- (4) Debt of the Company or any Restricted Subsidiary outstanding on the Issue Date (other than pursuant to clauses (1), (2) or (3) above);
- (5) Guarantees Incurred by the Company of Debt of a Restricted Subsidiary otherwise permitted to be incurred under this Indenture;
  - (6) customer deposits and advance payments received in the ordinary course of business from customers for goods and services purchased in the ordinary course of business;
- (7) Guarantees Incurred by any Restricted Subsidiary of Debt of the Company or any Restricted Subsidiary, including Guarantees by any Restricted Subsidiary of Debt under the Credit Agreement, *provided* that (a) such Debt is Permitted Debt or is otherwise Incurred in accordance with Section 4.09 hereof and (b) if such Debt is subordinated in right of payment to the Notes, such Guarantees are subordinated in right of payment to the Note Guarantees to the same or a greater extent;
- (8) Debt incurred in respect of workers' compensation claims, health, disability or other employee benefits, property, casualty or liability insurance, and self-insurance obligations, and, for the avoidance of doubt, indemnity, bid, performance, warranty, stay, release, appeal, surety, customs and similar bonds, letters of credit and bank guarantees for trade payables or other operating purposes and completion guarantees provided or incurred (including Guarantees thereof) by the Company or a Restricted Subsidiary in the ordinary course of business;
- (9) Debt Incurred by any Qualified Securitization Entity in connection with a Qualified Securitization Transaction (which may include Debt Incurred to acquire Securitization Assets in preparation for a Qualified Securitization Transaction) and unsecured Guarantees by the Company or any of its Restricted Subsidiaries of any such Debt;
- (10) Debt Incurred by the Company or any Restricted Subsidiary to finance an acquisition or the Incurrence of Acquired Debt by the Company or any Restricted Subsidiary that was outstanding on the date that such Restricted Subsidiary was acquired, directly or indirectly, by the Company; *provided* that either (a) the Company would be permitted to Incur at least \$1.00 of additional Debt (other than Permitted Debt) pursuant to Section 4.09(a) or (b) the Company's Consolidated Fixed Charge Coverage Ratio immediately following such acquisition and Incurrence would be greater than the Company's Consolidated Fixed Charge Coverage Ratio immediately prior to such acquisition and/or Incurrence;
- (11) Debt owed by the Company or a Restricted Subsidiary to the Company or any Restricted Subsidiary, *provided* that if for any reason such Debt ceases to be held by the Company or a Restricted Subsidiary, as applicable, such Debt shall cease to be Permitted Debt under this clause (11) and shall be deemed Incurred as Debt of the Company or a Restricted Subsidiary as appropriate for purposes of this Indenture;

(12) Debt of the Company or any Restricted Subsidiary pursuant to Capital Lease Obligations and Purchase Money Debt, and Refinancing Debt incurred in respect of Debt permitted under this clause (12), provided that the aggregate principal amount of such Debt outstanding at any time under this clause (12) may not exceed, in the aggregate, the greater of (i) 3.5% of Total Assets of the Company (as of the end of the last fiscal quarter for which financial information in respect thereof is available immediately preceding the date of the incurrence of such obligation) and (ii) \$350.0 million;

(13) Debt arising from agreements of the Company or a Restricted Subsidiary providing for indemnification, contribution, earnout, adjustment of purchase price, deferred compensation or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets or Capital Interests of a Restricted Subsidiary otherwise permitted under this Indenture;

(14) the issuance by any of the Company's Restricted Subsidiaries to the Company or to any of its Restricted Subsidiaries of shares of Preferred Interests; *provided, however*, that:

(a) any subsequent issuance or transfer of Capital Interests that results in any such Preferred Interests being held by a Person other than the Company or a Restricted Subsidiary; and

(b) any sale or other transfer of any such Preferred Interests to a Person that is not either the Company or a Restricted Subsidiary;

shall be deemed, in each case, to constitute an issuance of such Preferred Interests by such Restricted Subsidiary that was not permitted by this clause (14);

(15) Debt arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; *provided, however*, that such Debt is extinguished within five Business Days of Incurrence;

(16) Debt of the Company or any of the Restricted Subsidiaries issued to former, current or future directors, officers, members of management, employees or consultants of the Company or any of its Subsidiaries or their respective estates, heirs, family members, spouses, former spouses or beneficiaries under their estates to finance the purchase or redemption of Capital Interests of the Company or any Restricted Subsidiary permitted by this Indenture;

(17) Debt of the Company or any Restricted Subsidiary in an aggregate principal amount not to exceed \$500.0 million at any time outstanding;

(18) Debt consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations of the Company or any Restricted Subsidiary contained in supply arrangements, in each case, in the ordinary course of business;

(19) issuances by Insured Subsidiaries of deposits and other items;

(20) Debt Incurred by the Company or any Restricted Subsidiary representing deferred compensation to employees of the Company or any Subsidiary incurred in the ordinary course of business (including those Incurred in connection with any acquisition);

(21) Debt Incurred on behalf of, or representing Guarantees of Debt of, Joint Ventures not in excess of \$200.0 million at any one time outstanding;

(22) Debt Incurred by the Company or any Restricted Subsidiary to an Unrestricted Subsidiary for money borrowed, excluding any amounts that are funded, directly or indirectly, by Debt Incurred by such Unrestricted Subsidiary; and

(23) Refinancing Debt.

Notwithstanding anything herein to the contrary, Debt that refunds, refinances, renews, replaces, extends or defeases existing Debt then currently classified as permitted under clauses (1), (12), (17) and (21) of this definition of "Permitted Debt" shall not constitute "Refinancing Debt" under clause (23) of this definition of "Permitted Debt."

"Permitted Investments" means:

(1) Investments in existence on the Issue Date;

(2) Investments required pursuant to any agreement or obligation of the Company or a Restricted Subsidiary, in effect on the Issue Date, to make such Investments;

(3) Investments in cash and Eligible Cash Equivalents;

(4) Investments in property and other assets, owned or used by the Company or any Restricted Subsidiary in the normal course of business;

(5) Investments by the Company or any of its Restricted Subsidiaries in the Company or any Restricted Subsidiary;

(6) (i) Investments by the Company or any Restricted Subsidiary in a Person, if as a result of such Investment (A) such Person becomes a Restricted Subsidiary or (B) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated or wound-up into, the Company or a Restricted Subsidiary and (ii) Investments owned by such Person at the time of such acquisition, merger or other transaction;

(7) Swap Contracts and Hedging Obligations;

(8) receivables owing to the Company or any of its Restricted Subsidiaries and advances to customers and suppliers, in each case if created, acquired or made in the ordinary course of business and payable or dischargeable in accordance with customary trade terms or such other terms as the Company or such Restricted Subsidiary deems reasonable under the circumstances;

(9) any Investments received in compromise or resolution of (A) other Investments or obligations of trade creditors, suppliers or customers that were incurred in the ordinary course of business of the Company or any of its Restricted Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor, supplier or customer or (B) litigation, arbitration or other disputes with Persons who are not Affiliates;



- (10) Investments by the Company or any Restricted Subsidiary in an aggregate amount not to exceed the greater of (i) 3.5% of Total Assets of the Company (as of the end of the last fiscal quarter for which financial information in respect thereof is available immediately preceding the date of the incurrence of such obligation) and (ii) \$350.0 million at any one time outstanding (*provided*, however, that if any Investment made pursuant to this clause is made in any Person that is not a Restricted Subsidiary and such Person thereafter becomes a Restricted Subsidiary, such Investment shall thereafter be deemed to have been made pursuant to clause (5) above and not this clause for so long as such Person continues to be a Restricted Subsidiary);
- (11) loans and advances (including for travel and relocation) to directors, officers, members of management, employees and consultants (or Guarantees issued to support the obligations of such Persons) made in the ordinary course of business;
- (12) Investments the payment for which consists solely of Capital Interests of the Company;
- (13) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;
- (14) Guarantees permitted by Section 4.09 hereof;
- (15) Investments consisting of the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons;
- (16) Investments in Joint Ventures;
- (17) Investments in securities or other assets not constituting cash or Eligible Cash Equivalents and received in connection with an Asset Sale made pursuant to Section 4.10 hereof or any disposition of assets not constituting an Asset Sale;
- (18) repurchases of the Notes and related Note Guarantees;
- (19) Investments arising in the ordinary course of business as a result of any Settlement, including Investments in and of Settlement Assets;
- (20) Investments consisting of credit card loans made by Insured Subsidiaries pursuant to the terms of any applicable credit card accounts owned by Insured Subsidiaries;
- (21) Investments by Insured Subsidiaries that are necessary or advisable to comply with Regulatory Requirements;
- (22) Investments in Insured Subsidiaries that are necessary or advisable to comply with Regulatory Requirements;
- (23) Investments in Securitization Assets and Qualified Securitization Entities and other Investments made pursuant to, arising as a result of, or otherwise in connection with, Qualified Securitization Transactions;

(24) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 4.11(b) (except transactions described in clauses (3), (6), (10), (15), (16), (17) and (18) of Section 4.11(b));

(25) Guarantees by the Company or any Restricted Subsidiary of leases (other than Capital Lease Obligations) and other obligations not constituting Debt, in each case entered into in the ordinary course of business;

(26) any pledges or deposits permitted under the definition of "Permitted Liens"; and

(27) any Investment that replaces, refinances or refunds any other Investment permitted under this Indenture; *provided*, that the new Investment is in an amount that does not exceed the amount replaced, refinanced or refunded, and is made in the same Person as the Investment replaced, refinanced or refunded.

"*Permitted Liens*" means:

(1) Liens existing on the Issue Date;

(2) Liens in favor of the Company or a Restricted Subsidiary;

(3) Liens that secure Debt if, at the time of each such Incurrence, such Debt is in an aggregate maximum principal amount not to exceed the maximum principal amount of Debt that is permitted to be Incurred pursuant to clause (1) of the definition of "Permitted Debt" (and, in each case, that secure any related Treasury Management Agreements, Hedging Obligations and Swap Contracts permitted under the agreement related thereto); provided that in each case the Company may elect pursuant to an Officers' Certificate delivered to the Trustee to treat all or any portion of the commitment under any Credit Facility as being Incurred at such time, in which case any subsequent Incurrence of Debt under such commitment shall be deemed, for purposes of this clause (3), not to be an Incurrence at such subsequent time;

(4) any Lien for taxes, assessments or other governmental charges or levies not overdue for more than 30 days (or which, if due and payable, are being contested in good faith and for which adequate reserves are being maintained, to the extent required by GAAP) or the nonpayment of which in the aggregate would not reasonably be expected to have a material adverse effect on the Company and its Restricted Subsidiaries taken as a whole;

(5) any warehousemen's, materialmen's, landlord's or other similar Liens arising by law or ordinary course of business contracts for sums not overdue for more than 60 days (or which, if due and payable, are being contested in good faith and with respect to which adequate reserves are being maintained, to the extent required by GAAP) or the nonpayment of which in the aggregate would not reasonably be expected to have a material adverse effect on the Company and its Restricted Subsidiaries taken as a whole;

(6) survey exceptions, encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telephone lines and other similar purposes, or zoning or other similar restrictions as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties that do not in the aggregate materially adversely affect the value of the Company and its Restricted Subsidiaries (taken as a whole) or materially impair the operation of the business of the Company and its Restricted Subsidiaries (taken as a whole);

(7) Liens incurred or deposits or pledges (i) in connection with workers' compensation, unemployment insurance and other types of statutory obligations or the requirements of any official body, (ii) to secure the payment or performance of tenders, statutory or regulatory obligations, self-insurance obligations, bids, leases, contracts (including contracts to provide customer care services, billing services, transaction processing services and other services), banker's acceptances, performance, surety, stay, customs, appeals and return of money bonds and other similar obligations, including letters of credit and bank guarantees required or requested by the United States, any State thereof or any foreign government or any subdivision, department, agency, organization or instrumentality of any of the foregoing in connection with any contract or statute (exclusive of obligations for the payment of borrowed money), (iii) to cover anticipated costs of future redemptions of awards under loyalty marketing programs, or (iv) required or requested by any Regulatory Authority;

(8) Liens (including Liens securing Acquired Debt) on property or assets of a Person existing at the time such property or asset is acquired by, or such Person is acquired or merged with or into or consolidated with, the Company or a Restricted Subsidiary, or becomes a Restricted Subsidiary (and not created or Incurred in anticipation of such transaction), *provided* that such Liens are not extended to the property and assets of the Company and its Restricted Subsidiaries other than the property or assets acquired;

(9) Liens to secure any permitted extension, renewal, refinancing, replacement or refunding (or successive extensions, renewals, refinancings, replacements or refundings), in whole or in part, of any Debt secured by Permitted Liens; *provided* that such Liens do not extend to any other property or assets;

(10) Liens in favor of customs or revenue authorities arising as a matter of law to secure payment of custom duties in connection with the importation of goods incurred in the ordinary course of business;

(11) licenses of intellectual property granted in the ordinary course of business;

(12) Liens to secure Capital Lease Obligations, Purchase Money Debt and Refinancing Debt permitted to be incurred pursuant to clause (12) of the definition of "Permitted Debt"; *provided* that such Liens do not extend to or cover any assets other than such assets acquired or constructed after the Issue Date with the proceeds of such Capital Lease Obligations or Purchase Money Debt;

(13) Liens upon specific items of inventory or other goods and proceeds of any Person securing such Person's obligation in respect of banker's acceptances issued or created in the ordinary course of business for the account of such Person to facilitate the purchase, shipment, or storage of such inventory or other goods;

(14) Liens securing (i) Debt Incurred to finance the construction, purchase or lease of, or repairs, improvements or additions to, property, plant or equipment of such Person; *provided, however*, that the Lien may not extend to any other property owned by such Person or any of its Restricted Subsidiaries at the time the Lien is Incurred, and the Debt secured by the Lien may not be Incurred more than 270 days after the later of the acquisition, completion of construction, repair, improvement, addition or commencement of full operation of the property subject to the Lien and (ii) Refinancing Debt Incurred in respect of Debt Incurred pursuant to this clause (14);

(15) Liens on property of, shares of Capital Interests in, securities and Debt of, or other obligations of, another Person at the time such other Person becomes a Subsidiary of such Person (including Liens that secure Debt of such Subsidiary); *provided, however*, that (i) the Liens may not extend to any other property owned by such Person or any of its Restricted Subsidiaries and (ii) such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Restricted Subsidiary;

(16) Liens (i) that are contractual rights of set-off, (ii) relating to the establishment of depository relations with banks not given in connection with the issuance of Debt, (iii) relating to pooled deposit or sweep accounts of the Company or any of its Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations and other cash management activities incurred in the ordinary course of business of the Company and or any of its Restricted Subsidiaries, (iv) relating to purchase orders and other agreements entered into with customers of the Company or any of its Restricted Subsidiaries in the ordinary course of business, (v) of a collection bank on items in the course of collection, (vi) encumbering reasonable customary initial deposits and margin deposits and attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business, and (vii) in favor of banking institutions arising as a matter of law or pursuant to customary account agreements encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(17) any attachment or Liens securing judgments not constituting an Event of Default under Section 6.01(7) hereof;

(18) leases, subleases, licenses or sublicenses granted to others in the ordinary course of business that do not materially interfere with the ordinary conduct of the business of the Company and its Restricted Subsidiaries taken as a whole;

(19) any interest or title of an owner of equipment or inventory on loan or consignment to the Company or any of its Restricted Subsidiaries and Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Company or any Restricted Subsidiary in the ordinary course of business;

(20) Liens in the ordinary course of business to secure liability to insurance carriers;

(21) Liens securing the Notes and the Note Guarantees;

(22) Liens securing Hedging Obligations and Swap Contracts so long as any related Debt is permitted to be Incurred under this Indenture;

(23) options, put and call arrangements, rights of first refusal and similar rights relating to Investments in Joint Ventures, partnerships and the like permitted to be made under this Indenture;

(24) Liens pursuant to the terms and conditions of any contracts between the Company or any Restricted Subsidiary and the government of the United States, any State thereof, or any foreign country or any subdivision, department, agency, organization or instrumentality of any of the foregoing;

(25) Liens on Securitization Assets and Capital Interests in, securities and Debt issued by, and other obligations of, Qualified Securitization Entities and other Liens arising in connection with Qualified Securitization Transactions;

(26) Settlement Liens;

(27) any pledge of the Capital Interests of, securities and Debt of, or other obligations of, an Unrestricted Subsidiary;

(28) Liens (i) on advances of cash or Eligible Cash Equivalents in favor of the seller of any property to be acquired by the Company or any Restricted Subsidiary under clause (6) of the definition of "Permitted Investment" to be applied against the purchase price for such Investment, (ii) consisting of an agreement to dispose of any property in a disposition permitted under this Indenture and (iii) on cash earnest money deposits made by the Company or any Restricted Subsidiary in connection with any letter of intent or purchase agreement permitted under this Indenture;

(29) Liens securing Debt permitted by clause (13) of the definition of "Permitted Debt";

(30) Liens arising under this Indenture in favor of the Trustee for its own benefit and similar Liens in favor of other trustees, agents and representatives arising under instruments governing Debt permitted to be incurred or outstanding under this Indenture, *provided* that such Liens are solely for the benefit of the trustees, agents and representatives in their capacities as such and not for the benefit of the holders of such Debt;

(31) Liens arising from the deposit of funds or securities in trust for the purpose of decreasing or defeasing Debt so long as such deposit of funds or securities and such decreasing or defeasing of Debt are permitted under Section 4.07;

(32) Liens on securities that are the subject of repurchase agreements constituting Eligible Cash Equivalents;

(33) Liens created by, or granted pursuant to, Regulatory Requirements; and

(34) Liens not otherwise permitted under this Indenture securing obligations in an aggregate amount at the time of incurrence not to exceed the greater of (i) 4.0% of Total Assets of the Company (as of the end of the last fiscal quarter for which financial information in respect thereof is available immediately preceding the date of the incurrence of such obligation) and (ii) \$400.0 million.

In each case set forth above, notwithstanding any stated limitation on the assets or property that may be subject to such Lien, a Permitted Lien on a specified asset or property or group or type of assets or property may include Liens on all improvements, additions and accessions thereto, assets and property affixed or appurtenant thereto, and all products and proceeds thereof, including dividends, distributions, interest and increases in respect thereof.

"*Person*" means any individual, corporation, limited liability company, partnership, Joint Venture, trust, unincorporated organization or government or any agency or political subdivision thereof.

"*Place of Payment*," when used with respect to the Notes, means the place or places where the principal of (and premium, if any) and interest on the Notes are payable as specified as contemplated by Section 4.02 hereof.

"*Preferred Interests*," as applied to the Capital Interests in any Person, means Capital Interests in such Person of any class or classes (however designated) that rank prior, as to the payment of dividends or as to the distribution of assets upon any voluntary or involuntary liquidation, dissolution or winding up of such Person, to shares of Common Interests in such Person.

"*Private Placement Legend*" means the legend set forth in Section 2.07(f)(1) hereof to be placed on all Notes issued under this Indenture, except where otherwise permitted by the provisions of this Indenture.

"*Purchase Money Debt*" means Debt:

(1) Incurred to finance the purchase, lease or construction (including additions and improvements thereto) of any assets (other than Capital Interests) of such Person or any Restricted Subsidiary; and

(2) that is secured by a Lien on such assets where the lender's sole security is to the assets so purchased, leased or constructed (and additions and accessions thereto and proceeds thereof); and in either case that does not exceed 100% of the cost.

"*Qualified Capital Interests*" in any Person means a class of Capital Interests other than Redeemable Capital Interests.

"*Qualified Equity Offering*" means a public or private offering of Qualified Capital Interests of the Company other than (x) any such offering to a Subsidiary of the Company and (y) any public offerings registered on Form S-8.

"*Qualified Institutional Buyer*" or "*QIB*" shall have the meaning specified in Rule 144A.

"*Qualified Securitization Entity*" means a Person that is a special purpose entity used in connection with a Qualified Securitization Transaction.

"*Qualified Securitization Transaction*" means a securitization or other sale or financing of Securitization Assets.

"*Qualifying Deposits*" means deposits that (i) are insured by the U.S. Federal Deposit Insurance Corporation (or, in the case of an Insured Subsidiary organized under the laws of Canada or any other country that is a member of the OECD or any political subdivision of any such country, the Canada Deposit Insurance Corporation or any similar or corresponding entity or fund) or any successor entity or fund and (ii) do not exceed the difference between (A) the amount of Securitization Assets net of the allowance for doubtful accounts *minus* (B) the amount of any bonds or notes that is based on one or more pools of Securitization Assets, or collateralized by the cash flows from one or more pools of Securitization Assets, in each case as shown on the consolidated balance sheet of the Company and its Subsidiaries.

"*Rating Agency*" means (1) each of Moody's and S&P and (2) if Moody's or S&P ceases to rate the Notes for reasons outside of the Company's control, a "nationally recognized statistical rating organization" as defined in Section 3 of the Exchange Act selected by the Company as a replacement agency for Moody's or S&P, as the case may be.

"*Redeemable Capital Interests*" in any Person means any equity security of such Person that by its terms (or by terms of any security into which it is convertible or for which it is exchangeable), or

otherwise (including the passage of time or the happening of an event), is required to be redeemed, is redeemable at the option of the holder thereof in whole or in part (including by operation of a sinking fund), or is convertible or exchangeable for Debt of such Person at the option of the holder thereof, in whole or in part, at any time prior to the Stated Maturity of the Notes; *provided* that only the portion of such equity security that is required to be redeemed, is so convertible or exchangeable or is so redeemable at the option of the holder thereof before such date will be deemed to be Redeemable Capital Interests. Notwithstanding the preceding sentence, any equity security that would constitute Redeemable Capital Interests solely because the holders of the equity security have the right to require the Company to repurchase such equity security upon the occurrence of a change of control or an asset sale will not constitute Redeemable Capital Interests if the terms of such equity security provide that the Company may not repurchase or redeem any such equity security pursuant to such provisions unless such repurchase or redemption complies with Section 4.07 hereof. The amount of Redeemable Capital Interests deemed to be outstanding at any time for purposes of this Indenture will be the maximum amount that the Company and its Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Redeemable Capital Interests or portion thereof, exclusive of accrued dividends.

"*Redemption Date*," when used with respect to any Note to be redeemed pursuant to Article 3 of this Indenture, means the date fixed for such redemption pursuant to the terms of such Article 3.

"*Redemption Price*," when used with respect to any Note to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

"*Refinancing Debt*" means Debt that refunds, refinances, renews, replaces, extends or defeases any Debt permitted to be Incurred by the Company or any Restricted Subsidiary pursuant to the terms of this Indenture, whether involving the same or any other lender or creditor or group of lenders or creditors, but only to the extent that:

(1) such Refinancing Debt is subordinated in right of payment to the Notes or any Note Guarantee to at least the same extent as the Debt being refunded, refinanced, renewed, replaced, extended or defeased, if such Debt was subordinated in right of payment to the Notes or any Note Guarantee;

(2) the Refinancing Debt is scheduled to mature either (a) no earlier than the Debt being refunded, refinanced, renewed, replaced, or extended or defeased or (b) at least 91 days after the maturity date of the Notes;

(3) the Refinancing Debt has an Average Life at the time such Refinancing Debt is Incurred that is equal to or greater than the Average Life of the Debt being refunded, refinanced, renewed, replaced, extended or defeased;

(4) such Refinancing Debt is in an aggregate principal amount that is less than or equal to the sum of (a) the aggregate principal or accreted amount (in the case of any Debt issued with original issue discount, as such) then outstanding (plus the amount of any unexpired unfunded commitments) under the Debt being refunded, refinanced, renewed, replaced, extended or defeased, (b) the amount of accrued and unpaid interest, if any, and premiums owed, if any, not in excess of preexisting prepayment provisions on such Debt being refunded, refinanced, renewed, replaced, extended or defeased and (c) the amount of reasonable and customary fees, expenses and costs related to the Incurrence of such Refinancing Debt; and

(5) such Refinancing Debt is Incurred by the same Person (or its successor) that initially Incurred the Debt being refunded, refinanced, renewed, replaced, extended or defeased, except that the Company may Incur Refinancing Debt to refund, refinance, renew, replace, extend or defease Debt of any Restricted Subsidiary of the Company.

"Registrar" has the meaning set forth in Section 2.04 hereof.

"Regulation S" means Regulation S promulgated under the Securities Act.

"Regulation S Global Note" means a Global Note substantially in the form of Exhibit A hereto, bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depository or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 903.

"Regulatory Authority" means any federal, state, local, foreign or other government or any political subdivision thereof, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government and having direct or indirect jurisdiction over an Insured Subsidiary or any business thereof, a Qualified Securitization Entity, or any direct or indirect parent company of an Insured Subsidiary or Qualified Securitization Entity.

"Regulatory Requirements" means all applicable laws, rules, regulations, orders, requirements, guidelines, interpretations, directives and requests (whether or not having the force of law) from and of, and plans, memoranda and agreements with, any Regulatory Authority.

"Related Business Assets" means assets (other than cash or Eligible Cash Equivalents) used or useful in a Permitted Business; *provided* that any assets received by the Company or a Restricted Subsidiary in exchange for assets transferred by the Company or a Restricted Subsidiary will not be deemed to be Related Business Assets if they consist of securities of a Person, unless upon receipt of the securities of such Person, such Person would become a Restricted Subsidiary or a Joint Venture.

"Responsible Officer" means, when used with respect to the Trustee, any officer of the Trustee within the Corporate Trust Department of the Trustee located at the Corporate Trust Office who has direct responsibility for the administration of this Indenture and, for the purposes of Section 7.01(c)(2) hereof and the second sentence of Section 7.05 hereof shall also mean any other officer of the Trustee to whom any corporate trust matter is referred because of such officer's knowledge of and familiarity with the particular subject.

"Restricted Certificated Note" means a Certificated Note bearing the Private Placement Legend.

"Restricted Global Note" means a Global Note bearing the Private Placement Legend.

"Restricted Payment" is defined to mean any of the following:

(1) any dividend or other distribution declared and paid on the Capital Interests in the Company or on the Capital Interests in any Restricted Subsidiary of the Company to any Person other than the Company or a Restricted Subsidiary of the Company, other than:

(A) dividends or distributions made solely in Qualified Capital Interests in the Company, and



(B) dividends or distributions payable to the Company or a Restricted Subsidiary of the Company or to other holders of Capital Interests of a Restricted Subsidiary on a *pro rata* basis;

(2) any payment made by the Company or any of its Restricted Subsidiaries to purchase, redeem, defease or otherwise acquire or retire for value any Capital Interests in the Company (including the conversion into, or exchange for, Debt) other than (A) any such Capital Interests owned by the Company or any Restricted Subsidiary and (B) any payment made solely in Qualified Capital Interests in the Company;

(3) any payment made by the Company or any of its Restricted Subsidiaries (other than a payment made solely in Qualified Capital Interests in the Company) to redeem, repurchase, defease (including in substance or legal defeasance) or otherwise acquire or retire for value (including pursuant to mandatory repurchase covenants), prior to any scheduled maturity, scheduled sinking fund or mandatory redemption payment, Debt of the Company or any Guarantor that is subordinate in right of payment to the Notes or Note Guarantees (excluding any Debt owed to the Company or any Restricted Subsidiary), except payments in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case, within one year of the due date thereof;

(4) any Investment by the Company or a Restricted Subsidiary in any Person, other than a Permitted Investment; and

(5) any designation of a Restricted Subsidiary as an Unrestricted Subsidiary.

"*Restricted Period*," with respect to any Notes, means the period of 40 consecutive days beginning on and including the later of (a) the day on which such Notes are first offered to persons other than distributors (as defined in Regulation S) in reliance on Regulation S, notice of which day shall be promptly given by the Company to the Trustee, and (b) the Issue Date.

"*Restricted Subsidiary*" means any Subsidiary (including any Foreign Subsidiary) that has not been designated as an "Unrestricted Subsidiary" in accordance with this Indenture.

"*Rule 144*" means Rule 144 promulgated under the Securities Act.

"*Rule 144A*" means Rule 144A promulgated under the Securities Act.

"*Rule 903*" means Rule 903 promulgated under the Securities Act.

"*Rule 904*" means Rule 904 promulgated under the Securities Act.

"*S&P*" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., and any successor to its rating agency business.

"*Sale and Leaseback Transaction*" means any direct or indirect arrangement pursuant to which property is sold or transferred by the Company or a Restricted Subsidiary and is thereafter leased back as a capital lease by the Company or a Restricted Subsidiary.

"*Secured Debt*" of a Person means any Debt of such Person secured by a Lien on assets or property of such Person permitted to be Incurred under this Indenture.

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

"*Securitization Assets*" means credit card receivables, other receivables, royalty and revenue streams, other financial assets, proceeds of the foregoing, and books, records and other related assets incidental to the foregoing.

"*Settlement*" means the transfer of cash or other property with respect to any credit, charge or debit card charge, check or other instrument, electronic funds transfer, or other type of paper-based or electronic payment, transfer, or charge transaction for which a Person acts as a processor, remitter, funds recipient or funds transmitter in the ordinary course of its business.

"*Settlement Asset*" means any cash, receivable or other property, including a Settlement Receivable, due or conveyed to a Person in consideration for a Settlement made or arranged, or to be made or arranged, by such Person or an Affiliate of such Person.

"*Settlement Debt*" means any payment or reimbursement obligation in respect of a Settlement Payment.

"*Settlement Liens*" means any Lien relating to any Settlement or Settlement Debt (and may include, for the avoidance of doubt, the grant of a Lien in or other assignment of a Settlement Asset in consideration of a Settlement Payment, Liens securing intraday and overnight overdraft and automated clearing house exposure, and similar Liens).

"*Settlement Payment*" means the transfer, or contractual undertaking (including by automated clearing house transaction) to effect a transfer, of cash or other property to effect a Settlement.

"*Settlement Receivable*" means any general intangible, payment intangible, or instrument representing or reflecting an obligation to make payments to or for the benefit of a Person in consideration for and in the amount of a Settlement made or arranged, or to be made or arranged, by such Person.

"*Significant Subsidiary*" has the meaning set forth in Rule 1-02 of Regulation S-X promulgated under the Securities Act, but shall not include any Unrestricted Subsidiary.

"*Start Date*" means March 29, 2012.

"*Stated Maturity*," when used with respect to (i) any Note or any installment of interest thereon, means the date specified in such Note as the fixed date on which the principal amount of such Note or such installment of interest is due and payable and (ii) any other Debt or any installment of interest thereon, means the date specified in the instrument governing such Debt as the fixed date on which the principal of such Debt or such installment of interest is due and payable.

"*Subsidiary*" means, with respect to any Person, any corporation, limited or general partnership, trust, association or other business entity of which an aggregate of at least a majority of the Voting Interests therein is, at the time, directly or indirectly, owned by such Person and/or one or more Subsidiaries of such Person. Unless otherwise specified or the context shall otherwise require, "Subsidiary" refers to a Subsidiary of the Company.

"*Supplemental Indenture*" means, for purposes of Section 4.15, a supplemental indenture substantially in the form attached as Exhibit E hereto.

"*Surviving Entity*" has the meaning set forth in Section 5.01(a) hereof.

"*Swap Contract*" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward contracts, future contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, repurchase agreements, reverse repurchase agreements, sell buy backs and buy sell back agreements, and securities lending and borrowing agreements, or any other similar transactions or any combination of any of the foregoing (including any option to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "*Master Agreement*"), including any such obligations or liabilities under any Master Agreement.

"*Total Assets*" means, with respect to any Person, the total assets of such Person and its Restricted Subsidiaries determined on a consolidated basis in accordance with GAAP less any amount of assets reflected therein to the extent that they have been sold or pledged pursuant to a Qualified Securitization Transaction that are or may be reflected as Debt on a balance sheet of such Person.

"*Transaction Date*" has the meaning set forth in the definition of "Consolidated Fixed Charge Coverage Ratio."

"*Treasury Management Agreements*" means any and all agreements governing the provision of treasury or cash management services, including deposit accounts, funds transfer, automated clearinghouse, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services and other agreements related to treasury or cash management services.

"*Treasury Rate*" means, with respect to the Notes, as of the applicable Redemption Date, the yield to maturity as of such Redemption Date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to such Redemption Date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such Redemption Date to November 1, 2018; *provided, however*, that if the period from such Redemption Date to such date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"*Trust Indenture Act*" means the Trust Indenture Act of 1939 (15 U.S. Code §§ 77aaa-77bbb), as amended, as in effect on the date hereof.

"*Trustee*" means Regions Bank, an Alabama banking corporation, until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"*Unrestricted Certificated Note*" means one or more Certificated Notes that do not bear and are not required to bear the Private Placement Legend.

"*Unrestricted Global Note*" means a permanent Global Note, substantially in the form of Exhibit A attached hereto, that bears the Global Note Legend and that has the "Schedule of Exchanges of Interests in the Global Note" attached thereto, and that is deposited with or on behalf of and registered in the name of the Depositary, representing Notes that do not bear and are not required to bear the Private Placement Legend.

"*Unrestricted Subsidiary*" means:

- (1) any Subsidiary designated as such by an Officers' Certificate where neither the Company nor any of its Restricted Subsidiaries (i) provides credit support for, or Guarantee of, any Debt of such Subsidiary or any Subsidiary of such Subsidiary (including any undertaking, agreement or instrument evidencing such Debt, but excluding, in each case, the grant of Liens described in clause (27) of the definition of the term "Permitted Liens" and, in the case of a Qualified Securitization Entity, any Qualified Securitization Transactions) or (ii) is directly or indirectly liable for any Debt of such Subsidiary or any Subsidiary of such Subsidiary (except, in each case, the grant of Liens described in clause (27) of the definition of the term "Permitted Liens" and, in the case of a Qualified Securitization Entity, any Qualified Securitization Transactions); and
- (2) any Subsidiary of an Unrestricted Subsidiary.

"*U.S. Government Obligations*" means direct non-callable obligations of, or guaranteed by, the United States of America for the payment of which guarantee or obligations the full faith and credit of the United States is pledged.

"*U.S. Person*" means a U.S. person as defined in Rule 902(k) promulgated under the Securities Act.

"*Voting Interests*" means, with respect to any Person, securities of any class or classes of Capital Interests in such Person, taking into account the voting power of such securities, entitling the holders thereof generally to vote on the election of members of the Board of Directors or comparable body of such Person (other than securities or interests having such power only by reason of the happening of a contingency).

#### Section 1.02 *Rules of Construction.*

Unless the context otherwise requires:

- (1) a term has the meaning assigned to it herein, whether defined expressly or by reference;
- (2) 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;
- (3) "or" is not exclusive;
- (4) words in the singular include the plural, and in the plural include the singular;
- (5) "will" shall be interpreted to express a command;

(6) words used herein implying any gender shall apply to both genders;

(7) "herein," "hereof," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subsection;

(8) "\$," "U.S. Dollars" and "United States Dollars" each refer to United States dollars, or such other money of the United States that at the time of payment is legal tender for payment of public and private debts;

(9) references to sections of or rules under the Securities Act will be deemed to include substitute, replacement of successor sections or rules adopted by the Commission from time to time;

(10) references to Sections, Articles or Exhibits are references to Sections, Articles or Exhibits of or to this Indenture unless context otherwise requires; and

(11) the words "including," "includes" and similar words shall be deemed to be followed by "without limitation."

Section 1.03 *Incorporation by Reference of Trust Indenture Act.*

Whenever this Indenture expressly refers to a provision of the Trust Indenture Act, the provision is incorporated by reference in and made a part of this Indenture. Unless and until this Indenture has been qualified under the Trust Indenture Act, provisions of the Trust Indenture Act not expressly incorporated by reference in this Indenture will not be applicable and will not be a part of this Indenture.

The following Trust Indenture Act terms used in this Indenture have the following meanings:

"indenture securities" means the Notes;

"indenture security Holder" means a Holder of a Note;

"indenture to be qualified" means this Indenture;

"indenture trustee" or "institutional trustee" means the Trustee; and

"obligor" on the Notes and the Guarantees means the Company and the Guarantors, respectively, and any successor obligor upon the Notes and the Guarantees, respectively.

All other terms used in this Indenture that are defined by the Trust Indenture Act, defined by Trust Indenture Act reference to another statute or defined by Commission rule under the Trust Indenture Act have the meanings so assigned to them.

ARTICLE 2  
THE NOTES

Section 2.01 *Amount of Notes.*

The Trustee shall initially authenticate and deliver the Initial Notes for original issue on the Issue Date in an aggregate principal amount of \$500,000,000 of the Notes upon a written order of the Company in the form of a Company Order. In addition, at any time and from time to time, the Trustee shall upon a written order of the Company in the form of a Company Order authenticate and deliver any additional

Notes ("*Additional Notes*") in unlimited aggregate principal amount (so long as permitted by the terms of this Indenture, including, without limitation, Section 4.09 hereof). Each such written order shall specify the amount of Notes to be authenticated and the date on which the Notes are to be authenticated. All the Notes issued under this Indenture shall be consolidated with and form a single class with the Initial Notes and shall have the same terms as to status, waivers, amendments, offers to purchase, redemptions or otherwise as the Initial Notes.

Notwithstanding anything else in this Indenture to the contrary, at the Company's option, Additional Notes may be issued with the same CUSIP number as the Initial Notes and without the Private Placement Legend, *provided* that the Company has furnished an Opinion of Counsel to the Trustee confirming that such issuance would not conflict with federal and state securities laws and the rules and regulations of the Commission.

Section 2.02 *Form and Dating; Terms.*

(a) The Notes and the Trustee's certificate of authentication shall be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rules or usage. Each Note shall be dated the date of its authentication. The Notes shall be in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.

(b) Notes issued in global form shall be substantially in the form of Exhibit A hereto (including the Global Note Legend thereon and the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Notes issued in definitive form shall be substantially in the form of Exhibit A attached hereto (but without the Global Note Legend thereon and without the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Each Global Note shall represent such of the outstanding Notes as shall be specified in the "Schedule of Exchanges of Interests in the Global Note" attached thereto and each shall provide that it shall represent up to the aggregate principal amount of Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as applicable, to reflect exchanges and redemptions and transfers of interests. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby shall be made by the Trustee or the Registrar, as custodian with respect to the Notes in global form or any successor entity thereof, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.07 hereof.

(c) The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is unlimited.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Company, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

Section 2.03 *Execution and Authentication.*

The Notes shall be executed on behalf of the Company by its Chairman of the Board, Chief Executive Officer, Chief Financial Officer, President, any Vice President or Treasurer. The signature of any of these officers on the Notes may be manual or facsimile.

If an officer whose signature is on a Note was an officer at the time of such execution but no longer holds that office at the time the Trustee authenticates the Note, the Note shall be valid nevertheless.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Note shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Note to the Trustee for cancellation as provided in Section 2.12 hereof, for all purposes of this Indenture such Note shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

At any time and from time to time after execution and delivery of this Indenture, subject to the terms of this Indenture, the Trustee shall, upon written order of the Company in the form of a Company Order, authenticate and deliver Notes. Each such written order shall specify the amount of Notes to be authenticated and the date on which the Notes are to be authenticated.

Section 2.04 *Registrar and Paying Agent.*

The Company shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange (the "*Registrar*"), and an office or agency where Notes may be presented for payment (the "*Paying Agent*") and an office or agency where notices and demands to or upon the Company, if any, in respect of the Notes and this Indenture may be served. The Registrar shall keep a register of the Notes and of their transfer and exchange. The Company may have one or more additional Paying Agents. The term "Paying Agent" includes any additional Paying Agent, and the term "Registrar" includes any co-registrar.

The Company shall enter into an appropriate agency agreement with any Agent that is not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall notify the Trustee in writing of the name and address of any such Agent. If the Company fails to maintain a Registrar or Paying Agent, or fails to give the foregoing notice, the Trustee shall act as such and shall be entitled to appropriate compensation in accordance with Section 7.06 hereof.

The Company initially appoints DTC to act as Depositary with respect to the Global Notes.

The Company initially appoints the Trustee as Registrar, Paying Agent and Agent for service of notices and demands in connection with the Notes and this Indenture, and the Corporate Trust Office of the Trustee as the office or agency of the Company for such purposes. The Company may change any Paying Agent or Registrar without prior notice to the Holders. The Company or any of its Subsidiaries may act as Paying Agent or Registrar.

Section 2.05 *Paying Agent To Hold Money in Trust.*

Each Paying Agent shall hold in trust for the benefit of the Holders or the Trustee all money held by the Paying Agent for the payment of principal of, premium, if any, or interest on the Notes (whether such money has been paid to it by the Company or any other obligor on the Notes), and the Company and the Paying Agent shall notify the Trustee in writing of any default by the Company (or any other obligor on the Notes) in making any such payment. Money held in trust by any Paying Agent need not be

segregated except as required by law and in no event shall any Paying Agent be liable for any interest on any money received by it hereunder; *provided* that if the Company or an Affiliate thereof acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold such money in a separate trust fund. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee and account for any funds disbursed, and the Trustee may at any time during the continuance of any Event of Default specified in Section 6.01(1) or (2) hereof, upon written request to a Paying Agent, require such Paying Agent to pay forthwith all money so held by it to the Trustee and to account for any funds disbursed. Upon making such payment, the Paying Agent shall have no further liability for the money delivered to the Trustee.

Section 2.06 *Holder Lists.*

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of the Holders and shall otherwise comply with Trust Indenture Act Section 312(a). If the Trustee is not the Registrar, the Company shall furnish to the Trustee at least five Business Days before each Interest Payment Date, and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders as of the April 15 or October 15, as applicable, immediately preceding such Interest Payment Date or such other date as the Trustee requests and the Company shall otherwise comply with Trust Indenture Act Section 312(a); *provided* that, if and as long as the Trustee is the Registrar, no such list need be furnished.

Section 2.07 *Transfer and Exchange.*

(a) *Transfer and Exchange of Global Notes.* Except as otherwise set forth in this Section 2.07, a Global Note may be transferred, in whole and not in part, only by the Depository to a nominee of the Depository, by a nominee of the Depository to the Depository or to another nominee of the Depository, or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository. A beneficial interest in a Global Note may not be exchanged for a Certificated Note unless (i) the Depository (x) notifies the Company that it is unwilling or unable to continue as Depository for such Global Note or (y) has ceased to be a clearing agency registered under the Exchange Act and, in either case, a successor Depository is not appointed by the Company within 90 days, (ii) there shall have occurred and be continuing an Event of Default with respect to the Notes under this Indenture and the Depository shall have requested the issuance of Certificated Notes or (iii) subject to the procedures of the Depository, the Company, at its option, notifies the Trustee in writing that the Company elects to cause the issuance of the Certificated Notes. Upon the occurrence of any of the preceding events in (i), (ii) or (iii) above, Certificated Notes delivered in exchange for any Global Note or beneficial interests therein will be registered in the names, and issued in any approved denominations, requested by or on behalf of the Depository (in accordance with its customary procedures). Global Notes also may be exchanged or replaced, in whole or in part, as provided in Sections 2.08 and 2.11 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.07 or Section 2.08 or 2.11 hereof, shall be authenticated and delivered in the form of, and shall be, a Global Note, except for Certificated Notes issued subsequent to any of the preceding events in (i), (ii) or (iii) above and pursuant to Section 2.07(c) hereof. A Global Note may not be exchanged for another Note other than as provided in this Section 2.07(a); *provided, however*, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.07(b), (c) or (h) hereof.

(b) *Transfer and Exchange of Beneficial Interests in the Global Notes.* The transfer and exchange of beneficial interests in the Global Notes shall be effected through the Depository, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes shall be subject to restrictions on transfer comparable to those set forth herein



to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also shall require compliance with either subparagraph (1) or (2) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(1) *Transfer of Beneficial Interests in the Same Global Note.* Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend; *provided, however*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). The Restricted Period shall be terminated upon the receipt by the Trustee of an Officers' Certificate certifying that the Restricted Period may be terminated in accordance with Regulation S. Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.07(b)(1).

(2) *All Other Transfers and Exchanges of Beneficial Interests in Global Notes.* In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.07(b)(1) hereof, the transferor of such beneficial interest must deliver or cause to be delivered to the Registrar either (A) (1) a written order from a Participant or an Indirect Participant given to the Depository in accordance with the Applicable Procedures directing the Depository to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase or (B) (1) a written order from a Participant or an Indirect Participant given to the Depository in accordance with the Applicable Procedures directing the Depository to cause to be issued a Certificated Note in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given by the Depository to the Registrar containing information regarding the Person in whose name such Certificated Note shall be registered to effect the transfer or exchange referred to in (1) above; *provided* that in no event shall Certificated Notes be issued upon the transfer or exchange of beneficial interests in the Regulation S Global Note prior to the expiration of the Restricted Period. The Restricted Period shall be terminated upon the receipt by the Trustee of an Officers' Certificate certifying that the Restricted Period may be terminated in accordance with Regulation S. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.07(g) hereof.

(3) *Transfer of Beneficial Interests to Another Restricted Global Note.* A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.07(b)(2) hereof and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in the 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof; or

(B) if the transferee will take delivery in the form of a beneficial interest in the Regulation S Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof.

(4) *Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an Unrestricted Global Note.* A beneficial interest in any Restricted Global Note may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.07(b)(2) hereof and the Registrar receives the following:

(i) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(a) thereof; or

(ii) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this paragraph, if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to this paragraph at a time when an Unrestricted Global Note has not yet been issued, the Company shall issue and, upon receipt of a Company Order, the Trustee shall, in accordance with Section 2.03 hereof, authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to the paragraph above.

Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Note.

(c) *Transfer or Exchange of Beneficial Interests for Certificated Notes.*

(1) *Beneficial Interests in Restricted Global Notes to Restricted Certificated Notes.* If any holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Certificated Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Certificated Note, then, upon the occurrence of any of the events in paragraph (i), (ii) or (iii) of Section 2.07(a) hereof and receipt by the Registrar of the following documentation:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Certificated Note, a certificate from such holder substantially in the form of Exhibit C hereto, including the certifications in item (2)(a) thereof;

(B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to the Company or any of its Restricted Subsidiaries, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(F) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.07(g) hereof, and the Company shall execute and the Trustee shall authenticate and deliver to the Person designated in the instructions a Certificated Note in the applicable principal amount. Any Certificated Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.07(c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depository and the Participant or Indirect Participant. The Trustee shall deliver such Certificated Notes to the Persons in whose names such Notes are so registered. Any Certificated Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.07(c)(1) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(2) *Beneficial Interests in Restricted Global Notes to Unrestricted Certificated Notes.* A holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Certificated Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Certificated Note only upon the occurrence of any of the events in subsection (i), (ii) or (iii) of Section 2.07(a) hereof and the Registrar receives the following:

(i) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for an Unrestricted Certificated Note, a certificate from such holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof; or

(ii) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of an Unrestricted Certificated Note, a certificate from such holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this paragraph, if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(3) *Beneficial Interests in Unrestricted Global Notes to Unrestricted Certificated Notes.* If any holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for an Unrestricted Certificated Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Unrestricted Certificated Note, then, upon the occurrence of any of the events in subsection (i), (ii) or (iii) of Section 2.07(a) hereof and satisfaction of the conditions set forth in Section 2.07(b)(2) hereof, the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.07(g) hereof, and the Company shall execute and the Trustee shall authenticate and deliver to the Person designated in the instructions a Unrestricted Certificated Note in the applicable principal amount. Any Unrestricted Certificated Note issued in exchange for a beneficial interest pursuant to this Section 2.07(c)(3) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from or through the Depository and the Participant or Indirect Participant. The Trustee shall deliver such Unrestricted Certificated Notes to the Persons in whose names such Notes are so registered. Any Unrestricted Certificated Note issued in exchange for a beneficial interest pursuant to this Section 2.07(c)(3) shall not bear the Private Placement Legend.

(d) *Transfer and Exchange of Certificated Notes for Beneficial Interests.*

(1) *Restricted Certificated Notes to Beneficial Interests in Restricted Global Notes.* If any Holder of a Restricted Certificated Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note or to transfer such Restricted Certificated Note to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Restricted Certificated Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (2)(b) thereof;

(B) if such Restricted Certificated Note is being transferred to a QIB in accordance with Rule 144A, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such Restricted Certificated Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such Restricted Certificated Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Certificated Note is being transferred to the Company or any of its Restricted Subsidiaries, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(F) if such Restricted Certificated Note is being transferred pursuant to an effective registration statement under the Securities Act, a certificate substantially in the form of Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee shall cancel the Restricted Certificated Note, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the applicable Restricted Global Note, in the case of

clause (B) above, the applicable 144A Global Note, and in the case of clause (C) above, the applicable Regulation S Global Note.

(2) *Restricted Certificated Notes to Beneficial Interests in Unrestricted Global Notes.* A Holder of a Restricted Certificated Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Restricted Certificated Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note and the Registrar receives the following:

(i) if the Holder of such Certificated Notes proposes to exchange such Notes for a beneficial interest in the Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(c) thereof; or

(ii) if the Holder of such Certificated Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of a beneficial interest in the Unrestricted Global Note, a certificate from such Holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this paragraph, if the Registrar or the Company so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar and the Company to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of the conditions of any of the subparagraphs in this Section 2.07(d)(2), the Trustee shall cancel the Certificated Notes and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

(3) *Unrestricted Certificated Notes to Beneficial Interests in Unrestricted Global Notes.* A Holder of an Unrestricted Certificated Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Certificated Notes to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Unrestricted Certificated Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

If any such exchange or transfer from a Unrestricted Certificated Note to a beneficial interest is effected pursuant to subparagraph (2) or (3) above at a time when an Unrestricted Global Note has not yet been issued, the Company shall issue and, upon receipt of a Company Order, the Trustee shall, in accordance with Section 2.03 hereof, authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Unrestricted Certificated Notes so transferred.

(e) *Transfer and Exchange of Certificated Notes for Certificated Notes.* Upon request by a Holder of Certificated Notes and such Holder's compliance with the provisions of this Section 2.07(e), the Registrar shall register the transfer or exchange of Certificated Notes. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Certificated Notes duly endorsed or accompanied by a written instruction of transfer substantially in the form of Exhibit B attached hereto, duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.07(e):

(1) *Restricted Certificated Notes to Restricted Certificated Notes.* Any Restricted Certificated Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Certificated Note if the Registrar receives the following:

(A) if the transfer will be made pursuant to a QIB in accordance with Rule 144A, then the transferor must deliver a certificate substantially in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transfer will be made pursuant to Rule 903 or Rule 904 then the transferor must deliver a certificate substantially in the form of Exhibit B hereto, including the certifications in item (2) thereof; or

(C) if the transfer will be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate substantially in the form of Exhibit B hereto, including the certifications, certificates and Opinions of Counsel required by item (3) thereof, if applicable.

(2) *Restricted Certificated Notes to Unrestricted Certificated Notes.* Any Restricted Certificated Note may be exchanged by the Holder thereof for an Unrestricted Certificated Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Certificated Note and the Registrar receives the following:

(i) if the Holder of such Restricted Certificated Notes proposes to exchange such Notes for an Unrestricted Certificated Note, a certificate from such Holder substantially in the form of Exhibit C hereto, including the certifications in item (1)(d) thereof; or

(ii) if the Holder of such Restricted Certificated Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Certificated Note, a certificate from such Holder substantially in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this paragraph, if the Registrar or the Company so requests, an Opinion of Counsel in form reasonably acceptable to the Registrar and the Company to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(3) *Unrestricted Certificated Notes to Unrestricted Certificated Notes.* A Holder of Unrestricted Certificated Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Certificated Note. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Certificated Notes pursuant to the instructions from the Holder thereof.

(f) *Legends.* The following legends shall appear on the face of all Global Notes and Certificated Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture:

(1) *Private Placement Legend.*

(A) Except as permitted by subparagraph (B) below, each Global Note and each Certificated Note (and all Notes issued in exchange therefor or substitution therefor) shall bear the legend in substantially the following form:

THE SECURITY (OR ITS PREDECESSOR) EVIDENCED HEREBY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER SECTION 5 OF THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THE SECURITY EVIDENCED HEREBY MAY NOT BE OFFERED, SOLD, PLEDGED, ASSIGNED, ENCUMBERED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THE SECURITY EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A AND/OR REGULATIONS THEREUNDER. THE HOLDER OF THE SECURITY EVIDENCED HEREBY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) SUCH SECURITY MAY BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (1)(a) INSIDE THE UNITED STATES TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A UNDER THE SECURITIES ACT, (b) OUTSIDE THE UNITED STATES TO A FOREIGN PERSON IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 903 OR RULE 904 OF REGULATIONS UNDER THE SECURITIES ACT, (c) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF APPLICABLE) OR (d) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL ACCEPTABLE TO THE COMPANY IF THE COMPANY SO REQUESTS), (2) TO THE COMPANY OR (3) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT AND, IN EACH CASE, IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THE SECURITY EVIDENCED HEREBY OF THE RESALE RESTRICTIONS SET FORTH IN CLAUSE (A) ABOVE. NO REPRESENTATION CAN BE MADE AS TO THE AVAILABILITY OF THE EXEMPTION PROVIDED BY RULE 144 FOR RESALE OF THE SECURITY EVIDENCED HEREBY.

(B) Notwithstanding the foregoing, any Global Note or Certificated Note issued pursuant to subparagraph (b)(4), (c)(2), (c)(3), (d)(2), (d)(3), (e)(2) or (e)(3) of this Section 2.07 (and all Notes issued in exchange therefor or substitution thereof) shall not bear the Private Placement Legend.

(2) *Global Note Legend.* Each Global Note shall bear a legend in substantially the following form:

THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY. THIS NOTE IS NOT EXCHANGEABLE FOR NOTES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS NOTE (OTHER THAN A TRANSFER OF THIS NOTE AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY (A NEW YORK CORPORATION) ("DTC") TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

(g) *Cancellation and/or Adjustment of Global Notes.* At such time as all beneficial interests in a particular Global Note have been exchanged for Certificated Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note shall be returned to or retained and canceled by the Trustee in accordance with Section 2.12 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Certificated Notes, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(h) *General Provisions Relating to Transfers and Exchanges.*

(1) To permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Global Notes and Certificated Notes upon receipt of a Company Order in accordance with Section 2.03 hereof or at the Registrar's request.

(2) No service charge shall be made to a holder of a beneficial interest in a Global Note or to a Holder of a Certificated Note for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.08, 2.11, 3.06, 4.10, 4.13 and 8.04 hereof).



(3) Neither the Registrar nor the Company shall be required to register the transfer of or exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(4) All Global Notes and Certificated Notes issued upon any registration of transfer or exchange of Global Notes or Certificated Notes shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Certificated Notes surrendered upon such registration of transfer or exchange.

(5) The Company shall not be required (A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 30 days before the day of any selection of Notes for redemption under Section 3.02 hereof and ending at the close of business on the day of selection, (B) to register the transfer of or to exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part or (C) to register the transfer of or to exchange a Note between a regular record date and the next succeeding Interest Payment Date.

(6) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Company may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of (and premium, if any) and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Company shall be affected by notice to the contrary.

(7) Upon surrender for registration of transfer of any Note at the office or agency of the Company designated pursuant to Section 4.02 hereof, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more replacement Notes of any authorized denomination or denominations of a like aggregate principal amount.

(8) At the option of the Holder, Notes may be exchanged for other Notes of any authorized denomination or denominations of a like aggregate principal amount upon surrender of the Notes to be exchanged at such office or agency; *provided* that such exchange is made in accordance with Section 2.07 hereof. Whenever any Global Notes or Certificated Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the replacement Global Notes and Certificated Notes which the Holder making the exchange is entitled to in accordance with the provisions of Section 2.07 hereof.

(9) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.07 to effect a registration of transfer or exchange may be submitted by facsimile.

(10) None of the Trustee, Registrar or any Agent shall have an obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer that may be imposed under this Indenture with respect to the Notes pursuant to the terms hereof or under applicable law, other than to require delivery of such certificates, documentation or other evidence as are expressly required by, and to do so if and when expressly required by, this Indenture or the terms of the Notes.

#### Section 2.08 *Replacement Notes.*

If a mutilated Note is surrendered to the Registrar or the Trustee, or if the Holder of a Note claims that the Note has been lost, destroyed or wrongfully taken, the Company shall issue and the Trustee shall authenticate a replacement Note if the Holder of such Note furnishes to the Company and the Trustee evidence reasonably acceptable to them of the ownership and the destruction, loss or theft of such Note

and if the requirements of Section 8-405 of the New York Uniform Commercial Code as in effect on the date of this Indenture are met. If required by the Trustee or the Company, an indemnity bond shall be posted, sufficient in the judgment of all to protect the Company, the Trustee, the Registrar or any Paying Agent from any loss that any of them may suffer if such Note is replaced. The Company may charge such Holder for the Company's reasonable out-of-pocket expenses in replacing such Note and the Trustee may charge the Company for the Trustee's expenses (including, without limitation, attorneys' fees and disbursements) in replacing such Note. Every replacement Note shall constitute a contractual obligation of the Company.

Section 2.09 *Outstanding Notes.*

The Notes outstanding at any time are all Notes that have been authenticated by the Trustee except for (a) those canceled by it, (b) those delivered to it for cancellation, (c) to the extent set forth in Sections 9.01 and 9.02 hereof, on or after the date on which the conditions set forth in Section 9.01 or 9.02 hereof have been satisfied, those Notes theretofore authenticated and delivered by the Trustee hereunder and (d) those described in this Section 2.09 as not outstanding. Subject to Section 2.10 hereof, a Note does not cease to be outstanding because the Company or one of its Affiliates holds the Note.

If a Note is replaced pursuant to Section 2.08 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a bona fide purchaser in whose hands such Note is a legal, valid and binding obligation of the Company.

If the Paying Agent holds, in its capacity as such, on any Maturity Date, money sufficient to pay all accrued interest and principal with respect to the Notes payable on that date and is not prohibited from paying such money to the Holders thereof pursuant to the terms of this Indenture, then on and after that date such Notes cease to be outstanding and interest on them ceases to accrue.

Section 2.10 *Treasury Notes.*

In determining whether the Holders of the required principal amount of Notes have concurred in any declaration of acceleration or notice of default or direction, waiver or consent or any amendment, modification or other change to this Indenture, Notes owned by the Company or any other Affiliate of the Company shall be disregarded as though they were not outstanding, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent or any amendment, modification or other change to this Indenture, only Notes as to which a Responsible Officer of the Trustee has actually received an Officers' Certificate stating that such Notes are so owned shall be so disregarded. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee established to the satisfaction of the Trustee the pledgee's right so to act with respect to the Notes and that the pledgee is not the Company or any other obligor on the Notes or any of their respective Affiliates.

Section 2.11 *Temporary Notes.*

Until definitive Notes are prepared and ready for delivery, the Company may prepare and the Trustee shall, upon receipt of a Company Order, authenticate temporary Notes. Temporary Notes shall be substantially in the form of definitive Notes but may have variations that the Company considers appropriate for temporary Notes. Without unreasonable delay, the Company shall prepare and the Trustee shall authenticate definitive Notes in exchange for temporary Notes. Until such exchange, temporary Notes shall be entitled to the same rights, benefits and privileges as definitive Notes.

Section 2.12 *Cancellation.*

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall dispose of such canceled Notes in accordance with its customary procedures. The Trustee shall deliver a certificate to the Company with respect to canceled certificates upon written request. The Company may not reissue or resell, or issue new Notes to replace Notes that the Company has redeemed or paid, or that have been delivered to the Trustee for cancellation (other than in accordance with this Indenture).

Section 2.13 *Defaulted Interest.*

If the Company defaults on a payment of interest on the Notes, it shall pay the defaulted interest, plus (to the extent permitted by law) any interest payable on the defaulted interest, in accordance with the terms hereof, to the Persons who are Holders on a subsequent special record date, which date shall be at least five Business Days prior to the payment date. The Company shall fix such special record date and payment date in a manner satisfactory to the Trustee and the Paying Agent. At least 10 days before such special record date, the Company shall mail (or send electronically to DTC, in the case of Global Notes) to each Holder a notice that states the special record date, the payment date and the amount of defaulted interest, and interest payable on defaulted interest, if any, to be paid. The Company may make payment of any defaulted interest in any other lawful manner not inconsistent with the requirements (if applicable) of any securities exchange on which the Notes may be listed and, upon such notice as may be required by such exchange, if, after written notice given by the Company to the Trustee of the proposed payment pursuant to this sentence, such manner of payment shall be deemed practicable by the Trustee.

Section 2.14 *CUSIP Number.*

The Company in issuing the Notes may use a "CUSIP," "ISIN" or other similar number, and if so, such CUSIP, ISIN or other similar number shall be included in notices of redemption or exchange as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness or accuracy of the CUSIP, ISIN or other similar number printed in the notice or on the Notes, and that reliance may be placed only on the other identification numbers printed on the Notes. The Company shall promptly notify the Trustee in writing of any such CUSIP, ISIN or other similar number used by the Company in connection with the issuance of the Notes and of any change in the CUSIP, ISIN or other similar number.

Section 2.15 *Deposit of Moneys.*

Prior to 11:00 a.m., New York City time, on each Interest Payment Date and Maturity Date, the Company shall have deposited with the Paying Agent in immediately available funds money sufficient to make cash payments, if any, due on such Interest Payment Date or Maturity Date, as the case may be. The principal and interest on a Global Note shall be payable by the Trustee to the Depository of such Global Note or its nominee, as the case may be, as the sole registered owner and the sole Holder of the Notes represented thereby. If the due date for any payment in respect of the Notes is not a Business Day at the location of the applicable Paying Agent, payment of the amount due will be made on the next succeeding Business Day and no interest shall accrue for the period from such due date to such succeeding Business Day. The principal and interest on Certificated Notes shall be payable, either in person or by mail, at the office of the Paying Agent.

Interest on the Notes shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

ARTICLE 3  
REDEMPTION AND PREPAYMENT

Section 3.01 *Election To Redeem; Notices to Trustee.*

If the Company elects to redeem Notes pursuant to this Article 3, at least 30 days prior to the Redemption Date but not more than 60 days prior to the Redemption Date, the Company shall notify the Trustee in writing of the Redemption Date and the principal amount of such Notes to be redeemed and the Redemption Price, and deliver to the Trustee, no later than two Business Days prior to the Redemption Date, an Officers' Certificate stating that such redemption will comply with the conditions contained in this Article 3. Notice given to the Trustee pursuant to this Section 3.01 may, at the Company's discretion, be subject to the satisfaction of one or more conditions precedent. The Trustee may waive either or both of the time periods set forth in this Section 3.01 or agree to shorter time periods. Other than an optional redemption made by an affirmative election of the Company pursuant to this Section 3.01, no payment, purchase, redemption, repurchase, defeasance, exchange or other acquisition, retirement for value or satisfaction of Notes (including any payment made or deemed made after acceleration of the Notes) shall constitute an optional redemption of the Notes for purposes of Section 3.07 hereof and paragraphs 5 and 7 of the Notes.

Section 3.02 *Selection by Trustee of Notes To Be Redeemed.*

If less than all of the Notes are to be redeemed, the Trustee will select the Notes or portions thereof in authorized denominations to be redeemed, *pro rata* or by any other method customarily authorized by the clearing systems (subject to DTC procedures). No Notes of \$2,000 or less shall be redeemed in part and no redemption shall result in a Holder holding a Note of less than \$2,000.

The Trustee (or the Registrar, as appropriate) shall promptly notify the Company of the Notes selected for redemption and, in the case of any partial redemption, the principal amount thereof to be redeemed. For all purposes of this Indenture unless the context otherwise requires, provisions of this Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption.

Section 3.03 *Notice of Redemption.*

Notices of redemption shall be sent electronically to DTC, in the case of Global Notes, or shall be mailed by first-class mail, in the case of Certificated Notes, not less than 30 nor more than 60 days before the Redemption Date to each Holder of Notes to be redeemed at its registered address.

The notice shall identify the Notes to be redeemed (including the CUSIP numbers thereof) and shall state:

- (1) the Redemption Date;
- (2) the Redemption Price;

- (3) if any Note is to be redeemed in part only, the portion of the principal amount of such Note to be redeemed and that, after the Redemption Date and upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion will be issued;
- (4) the name and address of the Paying Agent;
- (5) that Notes called for redemption must be surrendered to the Paying Agent to collect the Redemption Price;
- (6) that unless the Company defaults in making the redemption payment, interest on Notes called for redemption ceases to accrue on and after the Redemption Date;
- (7) if such notice is conditioned upon the occurrence of one or more conditions precedent, the nature of such conditions precedent;
- (8) the aggregate principal amount of Notes that are being redeemed;
- (9) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed;
- (10) that no representation is made as to the correctness or accuracy of the CUSIP number, ISIN number or other similar number, if any, listed in such notice or printed on the Notes; and
- (11) the conditions, if any, to the redemption.

At the Company's written request made at least five Business Days prior to the date on which notice is to be given (unless a shorter notice shall be agreed to by the Trustee), the Trustee shall give the notice of redemption in the Company's name and at the Company's sole expense.

Section 3.04 *Effect of Notice of Redemption.*

Once the notice of redemption described in Section 3.03 hereof is mailed or given electronically in the manner provided in Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the Redemption Date (unless any condition to the redemption set forth in the notice thereof shall not have been satisfied) and at the Redemption Price plus interest accrued to the Redemption Date. Upon surrender to the Paying Agent, such Notes shall be paid at the Redemption Price plus interest accrued to the Redemption Date; *provided* that (a) if the Redemption Date is after a regular record date and on or prior to the Interest Payment Date, the accrued interest shall be payable to the Holder of the redeemed Notes registered on the relevant record date; and (b) if a Redemption Date is a Legal Holiday, payment shall be made on the next succeeding Business Day and no interest shall accrue for the period from such Redemption Date to such succeeding Business Day. Such notice, if mailed or given electronically in the manner provided in Section 3.03 hereof, shall be conclusively presumed to have been given whether or not the Holder receives such notice.

Section 3.05 *Deposit of Redemption Price.*

On or prior to 11:00 A.M., New York City time, on each Redemption Date, the Company shall deposit with the Paying Agent in immediately available funds money sufficient to pay the Redemption Price of, and accrued interest on, all Notes to be redeemed on that date other than Notes or portions

thereof called for redemption on that date which have been delivered by the Company to the Trustee for cancellation.

On and after any Redemption Date, if money sufficient to pay the Redemption Price of, and accrued interest on, Notes called for redemption shall have been made available in accordance with the immediately preceding paragraph, the Notes called for redemption will cease to accrue interest and the only right of the Holders of such Notes will be to receive payment of the Redemption Price of, and, subject to Section 3.04(a) hereof, accrued and unpaid interest on, such Notes to the Redemption Date. If any Note surrendered for redemption shall not be so paid, interest will be paid, from the Redemption Date until such redemption payment is made, on the unpaid principal of the Note and any interest not paid on such unpaid principal, in each case at the rate and in the manner provided in the Notes.

Section 3.06 *Notes Redeemed in Part.*

In the case of Certificated Notes redeemed in part, a new Note in principal amount equal to the unredeemed portion of the original Note will be issued in the name of the Holder thereof upon surrender for cancellation of the original Note. In the case of Global Notes redeemed in part, the outstanding balance of any such Global Note shall be adjusted by the Trustee to reflect such redemption. On and after the Redemption Date, subject to Section 3.05 hereof, interest ceases to accrue on Notes or portions of them called for redemption.

Section 3.07 *Optional Redemption.*

(a) The Notes may be redeemed, in whole or in part, at any time on or after November 1, 2018, at the option of the Company upon not less than 30 nor more than 60 days' prior notice at the following Redemption Prices (expressed as percentages of the principal amount to be redeemed) set forth below, plus accrued and unpaid interest, if any, to, but not including, the Redemption Date (subject to the right of Holders of record on the relevant regular record date to receive interest due on the relevant Interest Payment Date), if redeemed during the 12-month period beginning on November 1 of the years indicated:

| <u>Year</u>         | <u>Redemption Price</u> |
|---------------------|-------------------------|
| 2018                | 102.938%                |
| 2019                | 101.469%                |
| 2020 and thereafter | 100.000%                |

(b) In addition, prior to November 1, 2018, the Notes may be redeemed, in whole or in part, at any time, at the option of the Company upon not less than 30 nor more than 60 days' prior notice mailed by first-class mail to each Holder's registered address or sent in accordance with the procedures of DTC for Global Notes, at a Redemption Price equal to 100% of the principal amount of the Notes to be redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, but not including, the applicable Redemption Date (subject to the right of Holders of record on the relevant regular record date to receive interest due on the relevant Interest Payment Date).

(c) In addition to the optional redemption provisions of the Notes described in clauses (a) and (b) of this Section 3.07, prior to November 1, 2018, the Company may, with an amount equal to the net cash proceeds of one or more Qualified Equity Offerings, redeem up to 35% of the aggregate principal amount of the outstanding Notes (including Additional Notes) at a Redemption Price equal to 105.875% of the principal amount thereof, plus accrued and unpaid interest thereon, if any, to, but not including, the Redemption Date (subject to the right of Holders of record on the relevant regular record date to receive

interest due on the relevant Interest Payment Date); *provided* that at least 65% of the aggregate principal amount of Notes originally issued under this Indenture (including Additional Notes) remains outstanding immediately after the occurrence of any such redemption (excluding Notes held by the Company or its Subsidiaries) and that any such redemption occurs within 90 days following the closing of any such Qualified Equity Offering.

(d) The Notes may also be redeemed in certain circumstances as described in Section 4.13(h).

(e) Any redemption pursuant to this Section 3.07 or Section 4.13(h) shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof.

(f) Notice of any redemption, whether in connection with a Qualified Equity Offering, other transaction or otherwise, may be given prior to the completion thereof, and any such redemption or notice may, at the Company's discretion, be subject to one or more conditions precedent, including, but not limited to, completion of the related Qualified Equity Offering or other transaction. In addition, if such redemption is subject to satisfaction of one or more conditions precedent, such notice shall state that, in the Company's discretion, the Redemption Date may be delayed until such time as any or all such conditions shall be satisfied, or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied by the Redemption Date, or by the Redemption Date so delayed. In addition, the Company may provide in such notice that payment of the Redemption Price and performance of the Company's obligations with respect to such redemption may be performed by another Person.

#### Section 3.08 *Mandatory Redemption.*

The Company is not required to make mandatory redemption or sinking fund payments with respect to the Notes.

### ARTICLE 4 COVENANTS

#### Section 4.01 *Payment of Principal, Premium and Interest.*

The Company covenants and agrees that it will duly and punctually pay the principal of (and premium, if any) and interest on the Notes in accordance with the terms of the Notes and this Indenture.

#### Section 4.02 *Maintenance of Office or Agency.*

The Company will maintain in each Place of Payment for Notes an office or agency where Notes may be presented or surrendered for payment, where Notes may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind

such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Notes for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

Section 4.03 *Provision of Financial Information.*

(a) Whether or not required by the Commission, so long as any Notes are outstanding, the Company will furnish to the Holders of Notes or file or furnish, as applicable, electronically with the Commission through the Commission's Electronic Data Gathering, Analysis and Retrieval System (or any successor system), or, if the Commission will not accept such a filing, otherwise make publicly available, within the time periods specified in the Commission's rules and regulations, after giving effect to all applicable extensions and cure periods:

(1) all quarterly and annual financial information that would be required to be contained in a filing with the Commission on Forms 10-Q and 10-K if the Company were required to file such Forms, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" and, with respect to the annual information only, a report on the annual financial statements by the Company's certified independent accountants; and

(2) all current reports that would be required to be filed with the Commission on Form 8-K if the Company were required to file such reports;

*provided, however*, that if the Company is not required to file reports with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (*i.e.*, is a "voluntary filer"), the reports described in clauses (1) and (2) of this Section 4.03(a) shall not be required to contain (i) any information that a voluntary filer would not be required to include in such reports, or that would not be otherwise applicable to a voluntary filer, under the Commission's rules and regulations and (ii) any information, certificates or reports required pursuant to Sections 302, 404 and 906 of the Sarbanes-Oxley Act of 2002, as amended, or Items 307, 308, 402, 406 and 407 of Regulation S-K.

(b) In addition, whether or not required by the Commission, so long as any Notes are outstanding, the Company will file or furnish, as applicable, a copy of all of the information and reports referred to in clauses (1) and (2) of Section 4.03(a) hereof, subject to the above-referenced exceptions, with the Commission for public availability within the time periods specified in the Commission's rules and regulations, after giving effect to all applicable extensions and cure periods (unless the Commission will not accept such a filing) or otherwise make such information publicly available to prospective investors. In addition, for so long as any Notes remain outstanding, the Company and the Guarantors will furnish to the Holders and to prospective investors, upon their request, the information, if any, required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

The Company will be deemed to have made the reports or information referred to in clauses (1) and (2) of Section 4.03(a) hereof publicly available, subject to the above-referenced exceptions, if the Company has posted such reports or information on the Company website with access to current and prospective investors. For purposes of this covenant, the term "Company website" means the collection of web pages that may be accessed on the World Wide Web using the URL address <http://www.alliancedata.com> or such other address as the Company may from time to time designate in writing to the Trustee.

Delivery of such reports, information and documents to the Trustee is for informational purposes only, and the Trustee's receipt of such shall not constitute constructive notice of any information



contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

Section 4.04 *Corporate Existence.*

Subject to Article 5 hereof, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a corporation.

Section 4.05 *Money for Notes Payments To Be Held in Trust.*

(a) If the Company shall at any time act as its own Paying Agent with respect to the Notes, it will, on or before each Maturity Date or Interest Payment Date on any of the Notes, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal (and premium, if any) or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee in writing of its action or failure so to act.

(b) Whenever the Company shall have a Paying Agent for the Notes, it will, prior to 11:00 a.m., New York City time, on each Maturity Date or Interest Payment Date on the Notes, deposit with the Paying Agent in immediately available funds a sum sufficient to pay the principal (and premium, if any) or interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium, if any, or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee in writing of its action or failure so to act.

(c) The Company will cause the Paying Agent, other than the Trustee, to execute and deliver to the Trustee an instrument in which the Paying Agent shall agree with the Trustee, subject to the provisions of this Section 4.05, that the Paying Agent will:

(1) hold all sums held by it for the payment of the principal of (and premium, if any) or interest on the Notes in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee notice of any default by the Company (or any other obligor upon the Notes) in the making of any payment of principal (and premium, if any) or interest on the Notes; and

(3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by the Paying Agent.

(d) The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct the Paying Agent to pay, to the Trustee all sums held in trust by the Company or the Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or the Paying Agent; and, upon such payment by the Paying Agent to the Trustee, the Paying Agent shall be released from all further liability with respect to such money.

(e) Any money deposited with the Trustee or the Paying Agent, or then held by the Company, in trust for the payment of the principal of (and premium, if any) or interest on the Notes and remaining unclaimed for two years after such principal (and premium, if any) or interest has become due and payable shall be paid to the Company on Company Order, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor,

look only to the Company for payment thereof, and all liability of the Trustee or the Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided, however*, that the Trustee or the Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in New York, New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 4.06 *Payment of Taxes and Other Claims.*

The Company promptly will pay or discharge or cause to be paid or discharged (1) all taxes, assessments and governmental charges levied or imposed upon the Company or any Restricted Subsidiary or upon the income, profits or property of the Company or any Restricted Subsidiary, and (2) all lawful claims against the Company or any Restricted Subsidiary for labor, materials and supplies, which in the case of either clause (1) or (2) of this Section 4.06, if unpaid, might by law become a Lien (other than a Permitted Lien) upon a property; *provided, however*, that neither the Company nor any Restricted Subsidiary shall be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim (x) whose amount, applicability or validity is being contested in good faith by appropriate proceedings or (y) to the extent that the failure to pay or discharge the same could not reasonably be expected to have a material adverse effect of the Company and its Restricted Subsidiaries taken as a whole.

Section 4.07 *Limitation on Restricted Payments.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, make any Restricted Payment unless, at the time of and after giving effect to the proposed Restricted Payment:

(1) no Default or Event of Default shall have occurred and be continuing or will occur as a consequence thereof;

(2) after giving effect to such Restricted Payment on a *pro forma* basis, the Company would be permitted to Incur at least \$1.00 of additional Debt (other than Permitted Debt) pursuant to Section 4.09(a) hereof; and

(3) after giving effect to such Restricted Payment on a *pro forma* basis, the aggregate amount expended or declared for all Restricted Payments made on or after the Start Date (excluding Restricted Payments permitted by clauses (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (14), (15), (16), (17) and (18) of Section 4.07(b) hereof) shall not exceed the sum (without duplication) of (all such calculations being made as if this Section 4.07 had been in effect as of the Start Date and at all times thereafter):

(A) 50% of the Consolidated Net Income (or, if Consolidated Net Income shall be a deficit, minus 100% of such deficit) of the Company accrued on a cumulative basis during the period (taken as one accounting period) from the beginning of the fiscal quarter during which the Start Date occurred and ending on the last day of the fiscal quarter immediately preceding the date of such proposed Restricted Payment, *plus*

(B) 100% of the aggregate net proceeds (including the Fair Market Value of property other than cash) received by the Company subsequent to the Start Date either (i)

as a contribution to its common equity capital or (ii) from the issuance and sale (other than to a Restricted Subsidiary) of its Qualified Capital Interests, including Qualified Capital Interests issued upon the conversion of Debt or Redeemable Capital Interests of the Company, and from the exercise of options, warrants or other rights to purchase such Qualified Capital Interests (other than the exercise by a Restricted Subsidiary), *plus*

(C) 100% of the net reduction in Investments (other than Permitted Investments), subsequent to the Start Date, in any Person, resulting from payments of interest on Debt, dividends, repayments of loans or advances, or any sale or disposition of such Investments, repurchases or redemptions of Investments, releases of guarantees and reclassifications of Investments as Permitted Investments (but only to the extent such items are not included in the calculation of Consolidated Net Income), in each case to the Company or any Subsidiary from any Person, *plus*

(D) to the extent that any Unrestricted Subsidiary of the Company designated as such after the Start Date is redesignated as a Restricted Subsidiary, an amount equal to the sum of (i) the return, after the Start Date, on Investments in such Unrestricted Subsidiary made after the Start Date as a result of dividends, distributions, cancellation of indebtedness for borrowed money owed by the Company or any Restricted Subsidiary to an Unrestricted Subsidiary, interest payments, return of capital, repayments of Investments or other transfers of assets to the Company or any Restricted Subsidiary from such Unrestricted Subsidiary, any sale for cash, repayment, redemption, liquidating distribution or other cash and (ii) the portion (proportionate to the Company's equity interest in such Subsidiary) of the Fair Market Value of the assets less liabilities of such Unrestricted Subsidiary at the time such Unrestricted Subsidiary is designated a Restricted Subsidiary, not to exceed, in the case of any Unrestricted Subsidiary, the amount of Investments made after the Start Date by the Company and its Restricted Subsidiaries in such Unrestricted Subsidiary.

(b) Notwithstanding Section 4.07(a) hereof, the Company and its Restricted Subsidiaries may take the following actions, *provided* that, in the case of clauses (17), (18) and (19) of this Section 4.07(b), immediately after giving effect to such action, no Default or Event of Default has occurred and is continuing:

(1) the payment of any dividend or other distribution on Capital Interests in the Company or a Restricted Subsidiary or the consummation of any irrevocable redemption within 60 days after the declaration of such dividend or other distribution or the giving of the redemption notice, as the case may be, if at the date of such declaration or notice, such payment would have been permitted by this Section 4.07;

(2) the purchase, repurchase, redemption, defeasance or other acquisition or retirement of any Qualified Capital Interests of the Company by conversion into, or by or in exchange for, Qualified Capital Interests, or out of net cash proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary of the Company) of other Qualified Capital Interests of the Company;

(3) the purchase, repurchase, redemption, defeasance or acquisition or retirement for value of any Debt of the Company or a Guarantor that is subordinate in right of payment to the Notes or the applicable Note Guarantee by conversion into, or by or in exchange for, or out of the net cash proceeds of a substantially concurrent issue and sale (other than to a Subsidiary of the

Company) of, (x) new subordinated Debt of the Company or a Guarantor Incurred in accordance with this Indenture or (y) Qualified Capital Interests of the Company;

(4) the purchase, redemption, defeasance, retirement or other acquisition for value of Capital Interests in the Company or any Subsidiary held by former, current or future directors, officers, employees or consultants of the Company or any Restricted Subsidiary (or their respective estates, heirs, family members, spouses, former spouses or beneficiaries under their estates or other permitted transferees) upon death, disability, retirement or termination of employment or alteration of employment status or pursuant to the terms of any agreement under which such Capital Interests were issued; *provided* that the aggregate cash consideration paid for such purchase, redemption, defeasance, retirement or other acquisition of such Capital Interests does not exceed \$50.0 million in any calendar year; *provided, however*, that such amount in any calendar year may be increased by an amount not to exceed (A) the cash proceeds received by the Company or any of its Restricted Subsidiaries from the sale of Qualified Capital Interests of the Company to directors, officers and employees of the Company and its Restricted Subsidiaries and such other persons that occurs after the Start Date; *provided, however*, that the amount of such cash proceeds utilized for any such repurchase, retirement, other acquisition or dividend will not increase the amount available for Restricted Payments under Section 4.07(a)(3) hereof; plus (B) the cash proceeds of key man life insurance policies received by the Company and its Restricted Subsidiaries after the Start Date (*provided, however*, that the Company may elect to apply all or any portion of the aggregate increase contemplated by the proviso of this clause (4) in any calendar year and, to the extent any payment described under this clause (4) is made by delivery of Debt and not in cash, such payment shall be deemed to occur only when, and to the extent, the obligor on such Debt makes payments with respect to such Debt);

(5) the purchase, repurchase, redemption, defeasance or other acquisition or retirement of Capital Interests deemed to occur upon (A) the exercise of stock options, warrants or other convertible or exchangeable securities or (B) the withholding of a portion of such Capital Interests to pay for the taxes payable by such Person on account of such grant or award;

(6) the extension of credit that constitutes intercompany Debt, the Incurrence of which was permitted pursuant to Section 4.09 hereof;

(7) payments arising out of the exercise of warrants, options or other securities convertible into or exchangeable for the Capital Interests of the Company or a Restricted Subsidiary, including upon conversion of Convertible Notes, or in connection with any merger, consolidation, amalgamation or other combination involving the Company, and all other payments arising out of the purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of, or the conversion or exercise of, or otherwise with respect to, the Convertible Notes and all warrants, options and other securities issued, sold or purchased in connection with the issuance of the Convertible Notes or upon conversion or exercise of any of the foregoing, including, in each case, any payments in connection with the termination of any Hedging Obligation or Swap Contract entered into at any time in connection with any Convertible Notes;

(8) the purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of any subordinated Debt in accordance with provisions substantially similar to those in Sections 4.10 and 4.13 hereof; *provided* that all Notes tendered by Holders in connection with a Change of Control Offer or Asset Sale Offer, as applicable, have been repurchased, redeemed or acquired for value;

(9) the declaration and payment of dividends to holders of any class or series of Redeemable Capital Interests of the Company or any Restricted Subsidiary issued or Incurred in compliance with Section 4.09;

(10) any Restricted Payment used to fund amounts owed to Affiliates, in each case to the extent permitted by Section 4.11;

(11) any Investment made in exchange for, or out of the net cash proceeds of, a substantially concurrent offering of Qualified Capital Interests of the Company;

(12) repurchases by the Company or any Restricted Subsidiary of Capital Interests that were not theretofore owned by the Company or a Subsidiary of the Company in any Restricted Subsidiary;

(13) cash payments, in lieu of issuance of fractional shares, in connection with the conversion, exercise or exchange of warrants, options, Convertible Notes or other securities convertible into, or exercisable or exchangeable for, Capital Interests in the Company or a Restricted Subsidiary;

(14) the declaration and payment of any dividend or distribution consisting of Capital Interests in, Debt or other securities of, or assets or property received from, an Unrestricted Subsidiary;

(15) payments to dissenting stockholders not to exceed \$5.0 million pursuant to applicable law or in connection with the settlement or other satisfaction of legal claims made pursuant to or in connection with a consolidation, merger, amalgamation, arrangement or disposition of assets in a transaction not prohibited by this Indenture;

(16) payments of fees, including by means of discounts with respect to interests issued or sold, in connection with Qualified Securitization Transactions;

(17) the making of any Restricted Payments if, at the time of the making of such payments, and after giving effect thereto (including the Incurrence of any Debt to finance such payment), the Consolidated Total Leverage Ratio would not exceed 3.50 to 1.00;

(18) the making of any other Restricted Payments not in excess of \$250.0 million in the aggregate at any time outstanding; and

(19) the declaration after the Issue Date of dividends to holders of Common Interests of the Company of up to \$125.0 million in the aggregate during any calendar year pursuant to this clause (19).

(c) If the Company makes a Restricted Payment which, at the time of the making of such Restricted Payment, in the good faith determination of the Company, would be permitted under the requirements of this Indenture, such Restricted Payment shall be deemed to have been made in compliance with this Indenture notwithstanding any subsequent adjustment made in good faith to the Company's financial statements affecting its Consolidated Net Income.

(d) If any Person in which an Investment is made, which Investment constitutes a Restricted Payment when made, thereafter becomes a Restricted Subsidiary in accordance with this Indenture, all such Investments previously made in such Person shall no longer be counted as Restricted Payments for

purposes of calculating the aggregate amount of Restricted Payments pursuant to Section 4.07(a)(3) hereof, in each case to the extent such Investments would otherwise be so counted.

(e) For purposes of this Section 4.07, if a particular Restricted Payment involves a non-cash payment, including a distribution of assets, then such Restricted Payment shall be deemed to be an amount equal to the cash portion of such Restricted Payment, if any, plus an amount equal to the Fair Market Value of the non-cash portion of such Restricted Payment.

**Section 4.08** *Limitation on Dividend and Other Payment Restrictions Affecting Insured Subsidiaries.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, cause or suffer to exist or become effective or enter into any consensual encumbrance or restriction (other than pursuant to any law, rule, regulation or order) on the ability of any Insured Subsidiary to (i) pay dividends or make any other distributions on its Capital Interests owned by the Company or any Restricted Subsidiary or pay any Debt or other obligation owed to the Company or any Restricted Subsidiary, (ii) make loans or advances to the Company or any Restricted Subsidiary or (iii) sell, lease or transfer any of its property or assets to the Company or any of its Restricted Subsidiaries.

(b) Section 4.08(a) hereof shall not apply to the following encumbrances or restrictions:

- (1) encumbrances and restrictions in existence on the Issue Date, including those required by the Credit Agreement;
- (2) encumbrances and restrictions under this Indenture, the Notes and the Note Guarantees;
- (3) customary supermajority voting provisions and other customary provisions with respect to the disposition or distribution of assets, each contained in corporate charters, bylaws, stockholders' agreements, limited liability company agreements, partnership agreements, Joint Venture agreements and other similar agreements;
- (4) encumbrances and restrictions required by any Regulatory Requirement or any Regulatory Authority;
- (5) customary restrictions in agreements governing Liens permitted to be incurred under this Indenture, including Section 4.12 hereof; *provided* that such restrictions relate solely to the property subject to such Lien;
- (6) encumbrances and restrictions contained in any merger agreement or any agreement for the sale or other disposition of an asset, including the Capital Interests or other securities or obligations of a Subsidiary, *provided* that such disposition is made in compliance with this Indenture, including Sections 4.10 and 5.01 hereof;
- (7) encumbrances and restrictions contained in contracts (other than relating to Debt) entered into in the ordinary course of business that do not, in the aggregate, detract from the value of the property or assets of the Company or any Restricted Subsidiary in any material manner (including non-assignment provisions in leases and licenses);
- (8) encumbrances and restrictions contained in agreements governing Debt permitted to be incurred under this Indenture, including Section 4.09 hereof;

(9) any encumbrance or restriction contained in any agreement, instrument or Capital Interest of a Person, or with respect to any property or asset, acquired after the Issue Date (including by merger or consolidation) as in effect at the time of such acquisition (except to the extent such agreement, instrument or Capital Interest was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or any property or assets, as applicable, other than the Person or the property or assets so acquired;

(10) any encumbrance or restriction contained in any agreement, instrument or Capital Interest of a Qualified Securitization Entity, or with respect to any Securitization Assets, which encumbrance or restriction is not applicable to any Person, or any assets, as applicable, other than such Qualified Securitization Entity or such Securitization Assets;

(11) encumbrances and restrictions contained in customary lock-up agreements entered into in connection with a proposed sale or issuance of Capital Interests;

(12) customary encumbrances and restrictions contained in Swap Contracts and Hedging Obligations;

(13) encumbrances and restrictions arising out of Preferred Interests relating to the payment of dividends and distributions with respect to other Capital Interests; and

(14) encumbrances and restrictions contained in any agreement or instrument or Capital Interest that amends, modifies, restates, renews, increases, supplements, refunds, replaces, extends or refinances any agreement, instrument or Capital Interest described in clauses (1) through (14) of this Section 4.08(b), from time to time, in whole or in part, *provided* that the encumbrances or restrictions set forth therein are not materially more restrictive, taken as a whole, than those contained in the predecessor agreement, instrument or Capital Interests.

In each case set forth above, notwithstanding any stated limitation on the assets or property that may be subject to such encumbrance or restriction, an encumbrance or restriction on a specified asset or property or group or type of assets or property may also apply to all improvements, additions and accessions thereto, assets and property affixed or appurtenant thereto, and all products and proceeds thereof, including dividends, distributions, interest and increases in respect thereof.

(c) Nothing contained in this Section 4.08 shall prevent the Company or any Restricted Subsidiary from (i) creating, incurring, assuming or suffering to exist any Liens otherwise permitted by Section 4.12 hereof or (ii) restricting the sale or other disposition of property or assets of the Company or any of its Restricted Subsidiaries that secure Debt of the Company or any of its Restricted Subsidiaries Incurred in accordance with Sections 4.09 and 4.12 hereof.

#### Section 4.09 *Limitation on Incurrence of Debt.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, Incur any Debt (including Acquired Debt); *provided* that the Company and any Restricted Subsidiary may Incur Debt (including Acquired Debt) if, immediately after giving effect to the Incurrence of such Debt and the receipt and application of the proceeds therefrom, (i) the Consolidated Fixed Charge Coverage Ratio of the Company and its Restricted Subsidiaries, determined on a *pro forma* basis as if any such Debt (including any other Debt being Incurred contemporaneously), and any other Debt Incurred since the beginning of the Four Quarter Period, had been Incurred and the proceeds thereof had been applied at the beginning of the Four Quarter Period, and any other Debt repaid since the beginning of the Four Quarter

Period had been repaid at the beginning of the Four Quarter Period, would be greater than 2.0:1.0 and (ii) no Default or Event of Default shall have occurred and be continuing at the time or as a consequence of the Incurrence of such Debt.

(b) If, during the Four Quarter Period or subsequent thereto and prior to the date of determination, the Company or any of its Restricted Subsidiaries shall have engaged in any Asset Sales, Asset Acquisitions, Investments, mergers, consolidations or discontinued operations (as determined in accordance with GAAP) or shall have designated any Restricted Subsidiary to be an Unrestricted Subsidiary or any Unrestricted Subsidiary to be a Restricted Subsidiary, Consolidated Operating EBITDA and Consolidated Interest Expense for the Four Quarter Period shall be calculated on a *pro forma* basis giving effect to such Asset Sales, Asset Acquisitions, Investments, mergers, consolidations, discontinued operations or designations, as the case may be, and the application of any proceeds therefrom as if such events had occurred on the first day of the Four Quarter Period.

(c) If the Debt that is the subject of a determination under this provision is Acquired Debt, Debt Incurred in connection with the acquisition of any Person, business, property or assets, or Debt of an Unrestricted Subsidiary being designated as a Restricted Subsidiary, then such ratio shall be determined by giving effect (on a *pro forma* basis, as if the transaction had occurred at the beginning of the Four Quarter Period) to (x) the Incurrence of such Acquired Debt or such other Debt by the Company or any of its Restricted Subsidiaries and (y) the inclusion, in the Company's Consolidated Operating EBITDA, of the Consolidated Operating EBITDA of the acquired Person, business, property or assets or redesignated Subsidiary.

(d) Notwithstanding the provisions of Section 4.09(a) hereof, the Company and its Restricted Subsidiaries may Incur Permitted Debt.

(e) For purposes of determining any particular amount of Debt under this Section 4.09, (x) Debt outstanding under the Credit Agreement on the Start Date shall at all times be treated as Incurred pursuant to clause (1) of the definition of "Permitted Debt" and (y) Guarantees or obligations with respect to letters of credit supporting Debt otherwise included in the determination of such particular amount shall not be included. For purposes of determining compliance with this Section 4.09, in the event that an item of Debt meets the criteria of more than one of the types of Debt described above, including categories of Permitted Debt and under Section 4.09(a)(i) hereof, the Company, in its sole discretion, may classify, and from time to time may reclassify, all or any portion of such item of Debt in any manner such that the item of Debt would be permitted to be incurred at the time of such classification or reclassification, as applicable.

(f) The accrual of interest or dividends, the accretion of principal, accreted value or liquidation preference, the amortization of original issue discount or debt discount, the payment of interest on Debt in the form of additional Debt, the payment of dividends on Capital Interests in the form of additional shares of Capital Interests with the same terms, the obligation to pay a premium in respect of Debt or a Capital Interest arising in connection with the issuance of a notice of redemption or the making of a mandatory change of control offer or asset sale offer for such Debt or Capital Interest, increases in the amount of Debt outstanding solely as a result of fluctuations in market value, exchange rates or currency values, and unrealized losses or charges in respect of Hedging Obligations or Swap Contracts, in each case will be deemed not to be an Incurrence of Debt or an issuance of Capital Interests for purposes of this Section 4.09.

(g) For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Debt or any other covenant, limitation or ratio in this Indenture, the U.S. dollar-equivalent principal amount of Debt denominated in a foreign currency shall be utilized, calculated based



on the relevant currency exchange rate in effect on the date such Debt was incurred. Notwithstanding any other provision of this Indenture, the maximum amount of Debt that the Company or any Restricted Subsidiary may incur pursuant to this Section 4.09 shall not be deemed to be exceeded, nor shall any other covenant, limitation or ratio in this Indenture be deemed to be breached or exceeded, solely as a result of fluctuations in market value, exchange rates or currency values.

(h) Debt will not be considered subordinate in right of payment to any other Debt solely by virtue of being unsecured, secured with a subset of the collateral securing such other Debt or with different collateral, secured to a greater or lesser extent or secured with greater or lower priority, by virtue of structural subordination, by virtue of maturity date, order of payment or order of application of funds, or by virtue of not being guaranteed by all guarantors of such other Debt, and any subordination in right of payment must be pursuant to a written agreement or instrument.

Section 4.10 *Limitation on Asset Sales.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale, unless:

(1) the Company or such Restricted Subsidiary, as the case may be, receives consideration from such Asset Sale at least equal to the Fair Market Value of the assets sold or otherwise disposed of or Capital Interests issued or sold (in each case, such Fair Market Value to be determined by the Company on the date of contractually agreeing to such Asset Sale); and

(2) except in the case of a Permitted Asset Swap, at least 75% of the consideration therefor received by the Company or such Restricted Subsidiary, as the case may be, is in the form of cash or Eligible Cash Equivalents; *provided* that the following shall be deemed to be cash for purposes of this Section 4.10(a)(2) and for no other purpose:

(A) any liabilities (as reflected in the Company's or such Restricted Subsidiary's most recent balance sheet or in the footnotes thereto, or if Incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been shown on the Company's or such Restricted Subsidiary's balance sheet or in the footnotes thereto if such Incurrence or accrual had taken place on the date of such balance sheet, as determined by the Company) of the Company or such Restricted Subsidiary, other than liabilities that are by their terms subordinated to the Notes, (i) for which the Company and all of its Restricted Subsidiaries have been validly released by all creditors in writing or (ii) in respect of which neither the Company nor any Restricted Subsidiary following such Asset Sale has any obligation,

(B) any securities, notes or other obligations or assets received by the Company or such Restricted Subsidiary from such transferee that are converted by the Company or such Restricted Subsidiary into cash (to the extent of the cash received) within 365 days following the closing of such Asset Sale, and

(C) any Designated Non-cash Consideration received by the Company or such Restricted Subsidiary in such Asset Sale having an aggregate Fair Market Value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (C) that is at that time outstanding, no greater than 10% of Total Assets of the Company and its Subsidiaries at the time of the receipt of such Designated Non-cash Consideration, with the Fair Market Value of each item of Designated Non-cash

Consideration being measured at the time received and without giving effect to subsequent changes in value.

(b) Within 365 days after the receipt of any Net Proceeds of any Asset Sale, the Company or such Restricted Subsidiary, at its option, may apply the Net Proceeds from such Asset Sale, or other funds,

(1) to permanently reduce:

(A) obligations under Credit Facilities, or under any senior Debt that is Secured Debt (and, to the extent the obligations being reduced constitute revolving credit obligations, to correspondingly reduce commitments with respect thereto); or

(B) Debt of a Restricted Subsidiary that is not a Guarantor, other than Debt owed to the Company or another Restricted Subsidiary;

(2) to make an Asset Sale Offer; or

(3) to make any combination of (A) an Investment in all or substantially all of the assets of one or more businesses, (B) an Investment in the Capital Interests of one or more businesses, *provided* that such business is a Restricted Subsidiary or such Investment results in such business becoming a Restricted Subsidiary, (C) capital expenditures or (D) acquisitions of other assets, in each of (A) through (D), that are used or useful in a Permitted Business or replace the businesses, properties and/or assets that are the subject of such Asset Sale; *provided* that, in the case of this clause (3) of Section 4.10(b), a binding commitment (which may be subject to customary conditions) shall be treated as a permitted application of funds from the date of such commitment so long as the Company or such other Restricted Subsidiary enters into such commitment with the good faith expectation that such funds will be applied to satisfy such commitment within 180 days after the end of the 365-day period described above (an "*Acceptable Commitment*"); *provided further*, that if any *Acceptable Commitment* is later cancelled or terminated for any reason before such funds are so applied, then, to the extent the 365-day period referred to in the first sentence of this paragraph has lapsed, such unapplied amount shall constitute Excess Proceeds (as defined in clause (c) of this Section 4.10).

(c) If the amount of Net Proceeds from Asset Sales exceeds the amount invested, expended or applied as provided and within the time periods set forth in clause (b) of this Section 4.10, such excess amount will be deemed to constitute "*Excess Proceeds*."

When the aggregate amount of Excess Proceeds exceeds \$150.0 million, the Company shall make an offer to all Holders of the Notes, and, if required (or at the Company's election, if permitted) by the terms of any other senior Debt, to the holders of any such senior Debt (an "*Asset Sale Offer*"), to purchase the maximum aggregate principal amount of the Notes and such other senior Debt that is a minimum of \$2,000 or an integral multiple of \$1,000 in excess thereof that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof, plus accrued and unpaid interest to, but not including, the date fixed for the closing of such offer, in accordance with the procedures set forth in this Indenture. The Company will commence an Asset Sale Offer with respect to Excess Proceeds within ten Business Days after the date that Excess Proceeds exceed \$150.0 million by sending the notice required pursuant to the terms of this Indenture, with a copy to the Trustee.

(d) To the extent that the aggregate amount of Notes and other senior Debt tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Company may use any remaining Excess Proceeds for general corporate purposes, subject to other covenants contained in this Indenture. If the aggregate principal amount of Notes and other senior Debt tendered by such holders thereof exceeds the amount of Excess Proceeds, the Trustee shall select the Notes and the agent for such other senior Debt, as applicable, shall select such other senior Debt to be purchased by lot, *pro rata* or by any other method customarily authorized by clearing systems (so long as an authorized denomination results therefrom) based on the accreted value or principal amount of the Notes or such other senior Debt tendered. Additionally, the Company may, at its option, make an Asset Sale Offer using funds in an amount equal to the amount of Net Proceeds from any Asset Sale at any time after consummation of such Asset Sale; *provided* that such Asset Sale Offer shall be in an aggregate amount of not less than \$10.0 million. Upon completion of any Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero.

(e) Pending the final application of any Net Proceeds pursuant to this Section 4.10, the holder of such Net Proceeds may apply such Net Proceeds temporarily to reduce Debt outstanding under a revolving credit facility or otherwise invest such Net Proceeds in any manner not prohibited by this Indenture.

(f) Notwithstanding anything to the contrary in this Section 4.10, all references herein to "*Net Proceeds*" and "*Excess Proceeds*" shall be deemed to mean cash in an amount equal to the amount of Net Proceeds or Excess Proceeds, as applicable, but not necessarily the actual cash received from the relevant Asset Sale. The Company and its Subsidiaries shall have no obligation to segregate, trace or otherwise identify Net Proceeds or Excess Proceeds (other than the amounts thereof), it being agreed that cash is fungible and that the Company's obligations under this Section 4.10 may be satisfied by the application of funds from other sources.

(g) The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder and all Regulatory Requirements, in each case to the extent such laws, regulations or Regulatory Requirements are applicable in connection with the repurchase of the Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations or Regulatory Requirements conflict with the provisions of this Indenture, the Company will comply with the applicable securities laws and regulations and Regulatory Requirements and shall be deemed not to have breached its obligations described in this Indenture by virtue thereof.

#### Section 4.11 *Limitation on Transactions with Affiliates.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with (which term, for purposes of this Section 4.11, shall include "for the benefit of" where appropriate in the context) any Affiliate of the Company (each, an "*Affiliate Transaction*") involving aggregate payments or consideration in excess of \$25.0 million, unless:

(1) the Affiliate Transaction is on terms that are not materially less favorable to the Company or the relevant Restricted Subsidiary, taken as a whole, than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person; and

(2) the Company delivers to the Trustee with respect to any Affiliate Transaction involving aggregate payments or consideration in excess of \$75.0 million, a resolution of the

Board of Directors of the Company set forth in an Officers' Certificate certifying that such Affiliate Transaction complies with this Section 4.11 and that such Affiliate Transaction has been approved by a majority of the members of the Board of Directors of the Company.

(b) The following items will be deemed not to be Affiliate Transactions and, therefore, will not be subject to the provisions of clause (a) of this Section 4.11:

- (1) any employment, consulting or other compensation arrangement or agreement, employee or compensation benefit plan, officer or director compensation or indemnification agreement or any similar arrangement entered into by the Company or any of its Restricted Subsidiaries in the ordinary course of business and payments pursuant thereto;
- (2) transactions between or among the Company and/or its Restricted Subsidiaries;
- (3) transactions with a Person that is an Affiliate of the Company solely because the Company owns, directly or through a Restricted Subsidiary, a Capital Interest in, or controls, such Person;
- (4) [reserved];
- (5) any issuance or sale of Qualified Capital Interests of the Company and the granting of registration and other customary rights in connection therewith;
- (6) Restricted Payments that do not violate the provisions of Section 4.07 hereof and the definition of "Permitted Investments" and payments described in, but excluded from, the definitions of "Restricted Payment" and "Permitted Investments" and their component definitions;
- (7) the grant of stock options, restricted stock, stock appreciation rights, phantom stock awards or similar rights or Capital Interests to directors, officers, employees and consultants that are approved by the Board of Directors of the Company or any of its Restricted Subsidiaries in the ordinary course of business;
- (8) the existence of, or the performance by the Company or any of its Restricted Subsidiaries under the terms of, any agreement or instrument as in effect on the Issue Date or any amendment thereto (so long as any such agreement or instrument together with all amendments thereto, taken as a whole, is not more disadvantageous to the Holders of the Notes in any material respect than the original agreement or instrument as in effect on the Issue Date) or any transaction contemplated thereby;
- (9) transactions that are necessary or advisable in order to comply with Regulatory Requirements;
- (10) transactions in which the Company or any of its Restricted Subsidiaries, as the case may be, delivers to the Trustee a letter from an independent financial advisor stating that such transaction is fair to the Company or such Restricted Subsidiary from a financial point of view or stating that the terms are not materially less favorable to the Company or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person;

(11) transactions with customers, clients, suppliers, or purchasers or sellers of goods or services, in each case in the ordinary course of business that are fair to the Company and its Restricted Subsidiaries in the good faith judgment of the Company, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(12) any transaction with a Qualified Securitization Entity that is not prohibited under this Indenture;

(13) payments of reasonable fees, expenses and indemnity to, and loans (or cancellation of loans) to, former, current and future employees, officers, directors, management personnel or consultants of the Company or any of its Subsidiaries and employment agreements, collective bargaining agreements, stock option plans, benefit plans, other similar arrangements and related trust arrangements with such Persons which, in each case, are approved by the Company in good faith;

(14) payments to and from, and transactions with, any Joint Venture in the ordinary course of business;

(15) transactions with Persons solely in their capacity as holders of a minority of any class of Debt or Capital Interests of the Company or any of its Restricted Subsidiaries, where such Persons are treated no more favorably than holders of such class of Debt or Capital Interests of the Company or such Restricted Subsidiary generally;

(16) any transaction with any Person who is not an Affiliate of the Company immediately before the consummation of such transaction that becomes an Affiliate as a result of such transaction;

(17) transactions permitted by, and complying with, Section 5.01 hereof;

(18) transactions between the Company or any of its Restricted Subsidiaries and any Person, a director of which is also a director of the Company or any of its Subsidiaries, if such director abstains from voting as a director of the Company or such Subsidiary, as the case may be, on any matter involving such other Person; and

(19) pledges of Capital Interests in, or Debt of, Unrestricted Subsidiaries.

#### Section 4.12 *Limitation on Liens.*

The Company will not, and will not permit any of the Guarantors to, enter into, create, incur, assume or suffer to exist any Liens of any kind securing Debt (other than Permitted Liens) on or with respect to any of its property or assets now owned or hereafter acquired or any interest therein or any income or profits therefrom, without securing the Notes and all other amounts due under this Indenture equally and ratably with (or, at the Company's election, prior to) the Debt secured by such Lien until such time as such Debt is no longer secured by such Lien; *provided* that if the Debt so secured is subordinated by its terms to the Notes or a Note Guarantee, the Lien securing such Debt will also be so subordinated by its terms to the Lien securing the Notes and the Note Guarantees at least to the same extent.

Unless otherwise specified in the relevant security agreement, any Lien securing the Notes or a Note Guarantee granted in satisfaction of the preceding paragraph shall be automatically and unconditionally released and discharged in all respects upon (i) the release and discharge of the Lien

securing such other Debt or (ii) in the case of any Lien securing a Note Guarantee, upon the termination and discharge of such Note Guarantee in accordance with the terms of this Indenture.

Section 4.13 *Purchase of Notes Upon a Change of Control.*

(a) If a Change of Control occurs, unless the Company has previously or concurrently mailed (or sent electronically to DTC, in the case of Global Notes) a redemption notice with respect to all the outstanding Notes pursuant to Section 3.07 hereof, the Company will make a written offer to purchase all of the Notes pursuant to the offer described below (the "*Change of Control Offer*") at a price in cash (the "*Change of Control Purchase Price*") equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest, if any, to the date of purchase.

(b) The Change of Control Offer will be sent by the Company, (i) in the case of Global Notes, through the facilities of DTC and (ii) in the case of Certificated Notes, by first class mail, postage prepaid, to each Holder at his address appearing in the security register on the date of the Change of Control Offer, in the case of each of clauses (i) and (ii), offering to purchase all of the Notes at the purchase price set forth in such Change of Control Offer (as determined pursuant to this Indenture). Unless otherwise required by applicable law, the Change of Control Offer shall specify an expiration date (the "*Change of Control Expiration Date*") which shall be, subject to any contrary requirements of applicable law, not less than 30 days or more than 60 days after the date of delivery of such Change of Control Offer and a settlement date (the "*Change of Control Purchase Date*") for purchase of Notes within five Business Days after the Change of Control Expiration Date. The Company shall notify the Trustee at least 15 days (or such shorter period as is acceptable to the Trustee), in the case of Global Notes, through the facilities of DTC, and, in the case of Certificated Notes, prior to the mailing of the Change of Control Offer of the Company's obligation to make a Change of Control Offer, and the Change of Control Offer shall be mailed by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company. The Change of Control Offer shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Change of Control Offer. The Change of Control Offer shall also state:

- (1) the Section of this Indenture pursuant to which the Change of Control Offer is being made;
- (2) the Change of Control Expiration Date and the Change of Control Purchase Date;
- (3) the aggregate principal amount of the outstanding Notes offered to be purchased pursuant to the Change of Control Offer;
- (4) the Change of Control Purchase Price to be paid by the Company for each \$1,000 principal amount of Notes accepted for payment (as specified pursuant to this Indenture);
- (5) that the Holder may tender all or any portion of the Notes registered in the name of such Holder and that any portion of a Note tendered must be tendered in a minimum principal amount of \$2,000 (and integral multiples of \$1,000 in excess thereof);
- (6) the place or places where Notes are to be surrendered for tender pursuant to the Change of Control Offer, if applicable;
- (7) that, unless the Company defaults in making such purchase, any Note accepted for purchase pursuant to the Change of Control Offer will cease to accrue interest on and after the Change of Control Purchase Date, but that any Note not tendered or tendered but not purchased

by the Company pursuant to the Change of Control Offer will continue to accrue interest at the same rate;

(8) that, on the Change of Control Purchase Date, the Change of Control Purchase Price will become due and payable upon each Note accepted for payment pursuant to the Change of Control Offer;

(9) that each Holder electing to tender a Note pursuant to the Change of Control Offer will be required to surrender such Note or cause such Note to be surrendered at the place or places set forth in the Change of Control Offer prior to the close of business on the Change of Control Expiration Date (such Note being, if the Company or the Trustee so requires, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing);

(10) that Holders will be entitled to withdraw all or any portion of Notes tendered if the Company (or its paying agent) receives, not later than the close of business on the Change of Control Expiration Date, a facsimile transmission or letter setting forth the name of the Holder, the aggregate principal amount of the Notes the Holder tendered, the certificate numbers of the Notes the Holder tendered and a statement that such Holder is withdrawing all or a portion of his tender;

(11) that, if Notes are duly tendered and not withdrawn pursuant to the Change of Control Offer, the Company shall purchase all such Notes; and

(12) if applicable, that, in the case of any Holder whose Note is purchased only in part, the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Note without service charge, a new Note or Notes, of any authorized denomination as requested by such Holder, in the aggregate principal amount equal to and in exchange for the unpurchased portion of the aggregate principal amount of the Notes so tendered.

(c) A Change of Control Offer shall be deemed to have been made by the Company with respect to the Notes if (i) within 60 days following the date of the consummation of a transaction or series of transactions that constitutes a Change of Control, the Company commences a Change of Control Offer for all outstanding Notes at the Change of Control Purchase Price (*provided* that the running of such 60-day period shall be suspended, for up to a maximum of 30 days, during any period when the commencement of such Change of Control Offer is delayed or suspended by reason of any court's or governmental authority's review of or ruling on any materials being employed by the Company to effect such Change of Control Offer, so long as the Company has used and continues to use its commercially reasonable efforts to make and conclude such Change of Control Offer promptly) and (ii) all Notes properly tendered pursuant to the Change of Control Offer are purchased on the terms of such Change of Control Offer.

(d) The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder and all Regulatory Requirements, in each case to the extent such laws, regulations or Regulatory Requirements are applicable in connection with the repurchase of the Notes pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws, regulations or Regulatory Requirements conflict with the provisions of this Indenture, the Company will comply with the applicable securities laws and regulations and Regulatory Requirements and shall be deemed not to have breached its obligations described in this Indenture by virtue thereof.

(e) The Company will not be required to make a Change of Control Offer with respect to the Notes upon a Change of Control if (i) a third party makes such Change of Control Offer contemporaneously with or upon a Change of Control in the manner, at the times and otherwise in compliance with the requirements of this Indenture and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer or (ii) a notice of redemption has been given pursuant to Section 3.07 hereof.

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

(g) On the Change of Control Purchase Date, the Company will, to the extent permitted by law:

(1) accept for payment all Notes issued by it or portions thereof properly tendered pursuant to the Change of Control Offer;

(2) deposit with the Paying Agent an amount equal to the aggregate Change of Control Purchase Price in respect of all Notes or portions thereof so tendered; and

(3) deliver, or cause to be delivered, to the Trustee for cancellation of the Notes so accepted together with an Officers' Certificate to the Trustee stating that such Notes or portions thereof have been tendered to and purchased by the Company.

(h) If Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in a Change of Control Offer and the Company, or any third party making a Change of Control Offer in lieu of the Company as described above, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Company or such third party will have the right, upon not less than 15 days nor more than 60 days' prior notice, provided that such notice is given not more than 30 days following such purchase pursuant to the Change of Control Offer described above, to redeem all Notes that remain outstanding following such purchase on a date (the "*Second Change of Control Payment Date*") at the Change of Control Purchase Price in respect of the Second Change of Control Payment Date.

Section 4.14 [Reserved].

Section 4.15 *Additional Note Guarantees.*

The Company will cause each of its Domestic Restricted Subsidiaries that Incurs or in any other manner becomes liable for any Debt under the Credit Agreement or other Credit Facilities of the Company or a Domestic Restricted Subsidiary, within 30 days thereafter, to execute and deliver to the Trustee a Supplemental Indenture pursuant to which such Domestic Subsidiary will guarantee the Company's obligations under the Notes and this Indenture.

Section 4.16 *Limitation on Designation of Unrestricted Subsidiaries.*

(a) The Company may designate any Subsidiary of the Company to be an "Unrestricted Subsidiary" as provided below, in which event such Subsidiary and each other Person that is then or thereafter becomes a Subsidiary of such Subsidiary will be deemed to be an Unrestricted Subsidiary.

(b) The Company may designate any Subsidiary to be an Unrestricted Subsidiary if either:



(1) the Subsidiary to be so designated has Total Assets of \$1,000 or less; or

(2) the Company could make a Restricted Payment at the time of designation in an amount equal to the greater of the Fair Market Value or book value of such Subsidiary pursuant to Section 4.07 hereof (other than pursuant to Section 4.07(b)(17)) and such amount is thereafter treated as a Restricted Payment for the purpose of calculating the amount available for Restricted Payments thereunder.

(c) An Unrestricted Subsidiary may be designated as a Restricted Subsidiary if (i) all the Debt of such Unrestricted Subsidiary could be Incurred under Section 4.09 hereof and (ii) all the Liens on the property and assets of such Unrestricted Subsidiary could be incurred pursuant to Section 4.12 hereof.

Section 4.17 *Covenant Termination Event.*

(a) If on any date following the Issue Date (i) the Notes have Investment Grade Ratings from both Rating Agencies (and notwithstanding the failure of the Notes subsequently to maintain an Investment Grade Rating from either Rating Agency), and (ii) no Default has occurred and is continuing under this Indenture (the simultaneous occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as the "*Covenant Termination Event*"), the covenants listed below will automatically and permanently terminate, and from and after such time, the Company and its Subsidiaries will not be subject to Sections 4.07, 4.08, 4.09, 4.10, 4.11, 4.13 and 4.15 hereof.

(b) The Company shall provide an Officers' Certificate to the Trustee indicating the occurrence of the Covenant Termination Event. The Trustee will have no obligation to (i) independently determine or verify if the Covenant Termination Event has occurred or (ii) notify the holders of the Notes of the occurrence of the Covenant Termination Event.

Section 4.18 *Compliance Certificate.*

(a) The Company and each Guarantor shall deliver to the Trustee, within 120 days after the end of each fiscal year, a certificate of the principal executive officer, principal financial officer or principal accounting officer stating that a review of the activities of the Company and its Subsidiaries during the preceding fiscal year has been made under the supervision of the signing officer with a view to determining whether the Company has complied in all material respects with all conditions and covenants under this Indenture (such compliance to be determined without regard to any period of grace or requirement of notice provided under this Indenture).

(b) So long as any of the Notes are outstanding, the Company will deliver to the Trustee, reasonably promptly after the principal executive officer, the principal financial officer, the principal accounting officer, any corporate executive vice president or the treasurer of the Company becomes aware that a Default or Event of Default has occurred and is continuing, an Officers' Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

Section 4.19 *Stay, Extension and Usury Laws.*

Each of the Company and each of the Guarantors covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and each of the Company and each of the Guarantors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage

of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

ARTICLE 5  
SUCCESSORS

Section 5.01 *Consolidation, Merger, Conveyance, Transfer or Lease.*

(a) The Company will not in any transaction or series of transactions, consolidate with or merge into any other Person (other than a merger of a Subsidiary into the Company in which the Company is the continuing Person), or sell, assign, convey, transfer, lease or otherwise dispose of all or substantially all of the assets of the Company and its Restricted Subsidiaries, taken as a whole, to any other Person, unless:

(1) either:

(A) the Company shall be the continuing Person; or

(B) the Person (if other than the Company) formed by such consolidation or into which the Company is merged, or the Person that acquires, by sale, assignment, conveyance, transfer, lease or other disposition, all or substantially all of the assets of the Company and its Restricted Subsidiaries, taken as a whole (such Person, the "*Surviving Entity*"), (i) shall be a corporation, partnership, limited liability company or similar entity organized and validly existing under the laws of the United States, any political subdivision thereof or any state thereof or the District of Columbia and (ii) shall expressly assume, by a supplemental indenture, the due and punctual payment of all amounts due in respect of the principal of (and premium, if any) and interest on all the Notes and the performance of the covenants and obligations of the Company under this Indenture; *provided* that at any time the Company or its successor is not a corporation, there shall be a co-issuer of the Notes that is a corporation;

(2) immediately after giving effect to such transaction or series of transactions on a *pro forma* basis (including any Debt Incurred or anticipated to be Incurred in connection with or in respect of such transaction or series of transactions), no Default or Event of Default shall have occurred and be continuing or would result therefrom; and

(3) the Company delivers, or causes to be delivered, to the Trustee, in form reasonably satisfactory to the Trustee, an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, conveyance, assignment, transfer, lease or other disposition complies with the requirements of this Indenture and that such supplemental indenture constitutes the legal, valid and binding obligation of the Surviving Entity subject to customary exceptions.

(b) Notwithstanding the foregoing, failure to satisfy the requirements of clause (2) of Section 5.01(a) hereof will not prohibit:

(1) a merger between the Company and a Restricted Subsidiary that is a wholly owned Subsidiary of the Company or a sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all of the assets of the Company and its Restricted Subsidiaries,

taken as a whole, to a Restricted Subsidiary that is a wholly owned Subsidiary of the Company; or

(2) a merger between the Company and an Affiliate incorporated solely for the purpose of converting the Company into a corporation organized under the laws of the United States or any political subdivision or state thereof, so long as the amount of Debt of the Company and its Restricted Subsidiaries is not increased thereby.

(c) For all purposes of this Indenture and the Notes, Subsidiaries of any Surviving Entity will, upon such transaction or series of transactions, become Restricted Subsidiaries or Unrestricted Subsidiaries as provided pursuant to this Indenture and all Debt, and all Liens on property or assets, of the Surviving Entity and its Restricted Subsidiaries that was not Debt, or were not Liens on property or assets, of the Company and its Restricted Subsidiaries immediately prior to such transaction or series of transactions shall be deemed to have been Incurred upon such transaction or series of transactions.

(d) Upon any transaction or series of transactions that are of the type described in, and are effected in accordance with, conditions described in clauses (a), (b) and (c) of this Section 5.01, the Surviving Entity shall succeed to, and be substituted for, and may exercise every right and power of, the Company, under this Indenture with the same effect as if such Surviving Entity had been named as the Company therein; and when a Surviving Entity duly assumes all of the obligations and covenants of the Company pursuant to this Indenture and the Notes, except in the case of a lease, the predecessor Person shall be relieved of all such obligations.

## ARTICLE 6 DEFAULTS AND REMEDIES

### Section 6.01 *Events of Default.*

Each of the following is an "*Event of Default*" under this Indenture:

(1) default in the payment in respect of the principal of (or premium, if any, on) any Note when due and payable (whether at Stated Maturity or upon repurchase, acceleration, optional redemption or otherwise);

(2) default in the payment of any interest upon any Note when it becomes due and payable, and continuance of such default for a period of 30 days;

(3) except as permitted by this Indenture, any Note Guarantee of any Significant Subsidiary (or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary) shall for any reason cease to be, or it shall be asserted in writing by any Guarantor or the Company not to be, in full force and effect and enforceable in accordance with its terms (and, in the case of any such assertion, such default continues for a period of 10 days);

(4) failure by the Company or any of its Restricted Subsidiaries to comply with Section 5.01 hereof;

(5) default in the performance, or breach, of any other covenant or agreement of the Company or any Guarantor in this Indenture (other than a covenant or agreement a default in whose performance or whose breach is specifically dealt with in clause (1), (2), (3) or (4) of this Section 6.01), and continuance of such default or breach for a period of 60 days after written notice thereof (or 180 days in the case of such a default or breach under Section 4.03 hereof) has

been given to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the outstanding Notes;

(6) a default or defaults under any bonds, debentures, notes or other evidences of Debt (other than the Notes) by the Company or any Restricted Subsidiary that is a Significant Subsidiary having, individually or in the aggregate, a principal amount outstanding of at least \$300.0 million, whether such Debt now exists or shall hereafter be created, which default or defaults shall have resulted in the acceleration of the maturity of such Debt prior to its express maturity or shall constitute a failure to pay at least \$300.0 million of such Debt when due and payable after the expiration of any applicable grace period with respect thereto;

(7) the entry against the Company or any Restricted Subsidiary that is a Significant Subsidiary of a final judgment or final judgments for the payment of money in an aggregate amount in excess of \$300.0 million (in excess of amounts covered by independent third-party insurance as to which the insurer has been notified of such judgment and does not deny coverage) by a court or courts of competent jurisdiction, which judgments remain undischarged, unwaived, unstayed, unbonded or unsatisfied for a period of 60 consecutive days;

(8) the Company or any Significant Subsidiary (or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary):

(A) commences a voluntary insolvency proceeding;

(B) consents to the entry of an order for relief against it in an involuntary insolvency proceeding or consents to its dissolution or winding-up;

(C) consents to the appointment of a Custodian of it or for any substantial part of its property;

(D) makes a general assignment for the benefit of its creditors;

(E) generally is not paying its debts as they become due; or

(F) takes any comparable action under any foreign laws relating to insolvency;

*provided, however*, for the avoidance of doubt, that the dissolution or liquidation of any Restricted Subsidiary into the Company or into another Restricted Subsidiary, other than as part of a credit reorganization, shall not constitute an Event of Default under this Section 6.01(8); and

(9) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company or any Significant Subsidiary (or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary) in an involuntary insolvency proceeding;

(B) appoints a Custodian of the Company or any Significant Subsidiary (or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary) or for any substantial part of their property;

(C) orders the winding-up, liquidation or dissolution of the Company or any Significant Subsidiary (or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary);

(D) orders the presentation of any plan or arrangement, compromise or reorganization of the Company or any Significant Subsidiary (or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary); or

(E) grants any similar relief under any foreign laws;

and in each such case the order or decree remains undischarged, unstayed and in effect for 60 days.

The foregoing will constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

Section 6.02 *Acceleration of Maturity; Rescission.*

(a) If an Event of Default (other than an Event of Default specified in clause (8) or (9) of Section 6.01 hereof with respect to the Company) occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in aggregate principal amount of the outstanding Notes may declare the principal of the Notes and any accrued interest on the Notes to be due and payable immediately by a notice in writing to the Company (and to the Trustee if given by Holders); *provided, however*, that after such acceleration, the Holders of a majority in aggregate principal amount of the outstanding Notes may rescind and annul such acceleration if (i) the rescission would not conflict with any judgment or decree and (ii) all Events of Default, other than the nonpayment of accelerated principal amount of or interest on the Notes, have been cured or waived as provided in this Indenture. No such rescission shall affect any subsequent Default or impair any right consequent thereto.

(b) In the event of a declaration of acceleration of the Notes solely because an Event of Default described in clause (6) of Section 6.01 hereof has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically rescinded and annulled if the event of default or payment default triggering such Event of Default pursuant to clause (6) of Section 6.01 hereof shall be remedied or cured by the Company or a Restricted Subsidiary of the Company or waived by the holders of the relevant Debt within 20 Business Days after the declaration of acceleration with respect thereto and if the rescission and annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction obtained by the Trustee for the payment of amounts due on the Notes.

(c) If an Event of Default specified in clause (8) or (9) of Section 6.01 hereof occurs with respect to the Company, the principal of and any accrued interest on the Notes then outstanding shall *ipso facto* become immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

Section 6.03 *Other Remedies.*

(a) If an Event of Default occurs and is continuing, the Trustee is authorized to pursue any available remedy by proceeding at law or in equity to collect the payment of principal of, or premium, if any, and interest on the Notes, as the case may be, or to enforce the performance of any provision of the

Notes or this Indenture and may take any necessary action requested of it as Trustee to settle, compromise, adjust or otherwise conclude any proceedings to which it is a party.

(b) The Trustee is authorized to maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. Any such proceeding instituted by the Trustee may be brought in its own name and as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the compensation, expenses, disbursements of the Trustee and its counsel, be for the ratable benefit of the Holders of the Notes in respect of which such judgment has been recovered. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative, to the extent permitted by law. Any costs, including attorneys' fees and expenses, associated with actions taken by the Trustee under this Section 6.03 shall be reimbursed to the Trustee by the Company.

Section 6.04 *Waiver of Past Defaults and Events of Default.*

The Holders of not less than a majority in aggregate principal amount of the outstanding Notes may on behalf of the Holders of all the Notes waive any past Default under this Indenture and its consequences, except a Default:

- (1) in any payment in respect of the principal of (or premium, if any) or interest on any Notes (including any Note which is required to have been purchased pursuant to a Change of Control Offer or Asset Sale Offer which has been made by the Company); or
- (2) in respect of a covenant or provision of this Indenture which under this Indenture cannot be modified or amended without the consent of the Holder of each outstanding Note affected thereby.

Section 6.05 *Control by Majority.*

The Holders of a majority in principal amount of the outstanding Notes will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee, subject to receipt by the Trustee of security and indemnity satisfactory to the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines may be unduly prejudicial to the rights of other Holders of Notes or that may involve the Trustee in personal liability.

Section 6.06 *Limitation on Suits.*

No Holder of any Note will have any right to institute any proceeding with respect to this Indenture or for any remedy hereunder unless such Holder shall have previously given to the Trustee written notice of a continuing Event of Default and unless also the Holders of at least 25% in aggregate principal amount of the outstanding Notes shall have made written request to the Trustee, and provided security and indemnity satisfactory to the Trustee, to institute such proceeding as Trustee, and the Trustee shall not have received from the Holders of a majority in aggregate principal amount of the outstanding Notes a direction inconsistent with such request and shall have failed to institute such proceeding within 60 days. Such limitations do not apply, however, to a suit instituted by a Holder of a Note directly (as opposed to through the Trustee) for enforcement of payment of the principal of (and premium, if any) or interest on such Note on or after the respective due dates expressed in such Note.

Section 6.07 *Rights of Holders To Receive Payment.*

Notwithstanding any other provision of this Indenture, the legal right of any Holder of a Note to receive payment of the principal of (and premium, if any) or interest on such Note (including in connection with an offer to purchase) or to bring suit for the enforcement of any such payment, on or after the due date expressed in the Notes shall not be impaired or affected without the consent of such Holder, but (i) the foregoing provisions of this Section 6.07 shall not apply to any action or omission that impairs or affects merely the practical (but not the legal) right of any Holder of a Note to receive any such payment, and (ii) no action or omission that impairs or affects merely the practical (but not the legal) right of any Holder of a Note to receive any such payment shall be prohibited by this Section 6.07 or constitute a breach of this Section 6.07.

Section 6.08 *Collection Suit by Trustee.*

If an Event of Default specified in clause (1) or (2) of Section 6.01 hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company (or any other obligor on the Notes) for the whole amount of unpaid principal (and premium, if any) and accrued interest remaining unpaid.

Section 6.09 *Trustee May File Proofs of Claim.*

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.06 hereof) and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes), its creditors or its property and, unless prohibited by law, shall be entitled and empowered to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same after deduction of its charges and expenses to the extent that any such charges and expenses are not paid out of the estate in any such proceedings and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.06 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, and any other amounts due the Trustee under Section 7.06 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceedings. All rights of action and claims under this Indenture or the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders in respect of which such judgment has been recovered.

Section 6.10 *Priorities.*

Any money or property collected by the Trustee pursuant to this Article 6, and any money or other property distributable in respect of the Company's obligations under this Indenture after an Event of Default shall be applied in the following order:

FIRST: to the Trustee (including any predecessor Trustee) for amounts due under Section 7.06 hereof;

SECOND: to Holders for amounts due and unpaid on the affected Notes for principal, premium, if any, and interest as to each, ratably, without preference or priority of any kind, according to the amounts due and payable on the affected Notes; and

THIRD: to the Company.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.10.

Section 6.11 *Undertaking for Costs.*

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 hereof or a suit by Holders of more than 10% in principal amount of the Notes then outstanding.

Section 6.12 *Delay or Omission Not Waiver.*

No delay or omission of the Trustee or of any Holder of any Notes to exercise any right or remedy occurring upon an Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

ARTICLE 7  
TRUSTEE

Section 7.01 *Duties of Trustee.*

(a) If an Event of Default actually known to a Responsible Officer of the Trustee has occurred and is continuing, the Trustee will exercise such of the rights and powers vested in it under this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of its own affairs.

(b) Except during the continuance of an Event of Default:

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and



(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture but, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts, statements, opinions or conclusions stated therein).

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of clause (b) or (d) of this Section 7.01;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Responsible Officers of the Trustee, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction of the Holders of a majority in aggregate principal amount of the outstanding Notes, determined as provided herein, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to the Notes.

(d) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any liability. The Trustee will be under no obligation to exercise any of its rights and powers under this Indenture at the request of any Holders, unless such Holders have offered to the Trustee security and indemnity satisfactory to it against any cost, loss, liability or expense.

(e) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct of, affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section 7.01.

(f) The Trustee shall not be liable for interest or earnings on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by the law.

(g) The Trustee shall not be responsible for the application of any money by any Paying Agent other than the Trustee.

#### Section 7.02 *Rights of Trustee.*

Subject to Section 7.01 hereof:

(a) The Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document (whether in its original or facsimile form) believed in good faith by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a board resolution.

(c) Whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, conclusively rely upon an Officers' Certificate or an Opinion of Counsel or both.

(d) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through attorneys or agents and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent appointed with due care by it hereunder.

(e) The Trustee shall not be liable for any action taken, suffered, or omitted to be taken in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

(f) The Trustee may consult with counsel of its selection, and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in reliance thereon.

(g) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have provided to the Trustee security and indemnity satisfactory to the Trustee against the costs, losses, expenses and liabilities which might be incurred by it in compliance with such request or direction and then only to the extent required by the terms of this Indenture.

(h) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(i) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records, and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(j) The Trustee shall not be deemed to have notice or be charged with knowledge of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of such Default or Event of Default from the Company or any Holder is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture.

(k) The Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

(l) Anything in this Indenture notwithstanding, in no event shall the Trustee be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit), even if the Trustee has been advised as to the likelihood of such loss or damage and regardless of the form of action.

(m) The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its control, including, without limitation, any provision of any law or regulation or any act of any governmental authority; natural catastrophes or other acts of God; earthquakes; fire; flood; terrorism; wars and other military disturbances; sabotage; epidemics; riots; interruptions; loss or malfunctions of utilities, computer (hardware or software) or communication services; accidents; labor disputes; acts of civil or military authority and governmental action.

(n) The permissive right of the Trustee to take or refrain from taking action hereunder shall not be construed as a duty.

(o) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel.

#### Section 7.03 *Individual Rights of Trustee.*

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may make loans to, accept deposits from, perform services for or otherwise deal with the Company or any Affiliate thereof with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest within the meaning of Section 310(b)(1) of the Trust Indenture Act, it must eliminate such conflict within 90 days, apply to the Commission for permission to continue as Trustee (if this Indenture has been qualified under the Trust Indenture Act) or resign.

Any Agent may do the same with like rights. The Trustee is also subject to Section 7.09 hereof.

#### Section 7.04 *Trustee's Disclaimer.*

The recitals contained herein and in the Notes, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee shall not be responsible for and makes no representations as to the validity, sufficiency or adequacy of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of Notes or the proceeds thereof. The Trustee shall not be responsible to make any calculation with respect to any matter under this Indenture. The Trustee shall have no duty to monitor or investigate the Company's compliance with or the breach of, or cause to be performed or observed, any representation, warranty or covenant made in this Indenture.

Section 7.05 *Notice of Defaults.*

Within 90 days after the occurrence thereof, and if actually known to a Responsible Officer of the Trustee, the Trustee shall give to the Holders of the Notes a notice of each Default or Event of Default with respect to the Notes known to the Trustee, by transmitting such notice to Holders at their addresses as the same shall then appear on the register of the Notes kept by the Registrar, unless such Default shall have been cured or waived before the giving of such notice and a Responsible Officer of the Trustee has actual knowledge of such cure or waiver. Except in the case of a Default or Event of Default in payment of the principal of (and premium, if any) or interest on any of the Notes when and as the same shall become payable, or to make any payments pursuant to a redemption or repurchase of the Notes pursuant to the provisions of this Indenture, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or Responsible Officers in good faith determines that withholding the notice is in the interests of Holders.

Section 7.06 *Compensation and Indemnity.*

(a) The Company shall pay to the Trustee and Agents from time to time such compensation for their services hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as shall be agreed upon in writing. The Company shall reimburse the Trustee and Agents upon request for all disbursements, expenses and advances incurred or made by them in connection with the Trustee's duties under this Indenture, including the compensation, disbursements and expenses of the Trustee's agents and external counsel, except any such expense, disbursement or advance incurred or made by the Trustee or its agents through the Trustee's or such agents' own willful misconduct or negligence.

(b) The Company and the Guarantors, jointly and severally, shall fully indemnify each of the Trustee and their officers, agents and employees and any predecessor Trustee for, and hold each of them harmless against, any and all loss, damage, claim, liability or expense, including, without limitation, attorneys' fees and expenses incurred by each of them in connection with the acceptance or performance of its duties under this Indenture including the costs and expenses of defending itself against any claim (whether asserted by the Company, the Guarantors or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder (including, without limitation, settlement costs). The Trustee or Agent shall notify the Company in writing promptly of any claim of which a Responsible Officer of the Trustee has actual knowledge asserted against the Trustee or Agent for which it may seek indemnity; *provided* that the failure by the Trustee or Agent to so notify the Company shall not relieve the Company or the Guarantors of their obligations hereunder. The Trustee may have separate counsel with respect to the defense of any such claim and the Company and the Guarantors, jointly and severally, shall pay the reasonable fees and expenses of such counsel; *provided, however*, that the Company and the Guarantors shall not be required to pay such fees and expenses if they assume the Trustee's defense and, in the Trustee's reasonable judgment, there is no conflict of interest between (i) the Company and the Guarantors, as applicable, and (ii) the Trustee in connection with such defense or potential harm to the Trustee's business.

(c) Notwithstanding the foregoing, the Company need not reimburse the Trustee for any expense or indemnify it against any loss or liability to have been incurred by the Trustee through its own willful misconduct or negligence.

(d) To secure the payment obligations of the Company in this Section 7.06, the Trustee shall have a Lien prior to the Notes on all money or property held or collected by the Trustee and such money or property held in trust to pay principal of and interest on particular Notes. Such Lien will survive the satisfaction and discharge of this Indenture.

(e) The obligations of the Company under this Section 7.06 to compensate and indemnify the Trustee, Agents and each predecessor Trustee and to pay or reimburse the Trustee, Agents and each predecessor Trustee for expenses, disbursements and advances shall be the liability of the Company and the Lien provided for under this Section 7.06 and shall survive the resignation or removal of the Trustee and the satisfaction, discharge or other termination of this Indenture for any reason, including any termination or rejection hereof under any Bankruptcy Law.

(f) In addition to, but without prejudice to its other rights under this Indenture, when the Trustee incurs expenses or renders services after an Event of Default specified in clause (8) or (9) of Section 6.01 hereof occurs, the expenses (including the reasonable charges and expenses of its agents and counsel) and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

(g) For purposes of this Section 7.06, the term "Trustee" shall include any predecessor Trustee; *provided, however*, that the negligence, willful misconduct or bad faith of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.

Section 7.07 *Replacement of Trustee.*

(a) A resignation or removal of the Trustee and appointment of a successor Trustee will become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.07.

(b) The Trustee may resign, and be discharged from the trust hereby created, at any time by so notifying the Company in writing no later than 15 Business Days prior to the date of the proposed resignation. The Holders of a majority in principal amount of the outstanding Notes may remove the Trustee by notifying the Company and the removed Trustee in writing and may appoint a successor Trustee with the Company's written consent, which consent shall not be unreasonably withheld. The Company may remove the Trustee at its election if:

(1) the Trustee fails to comply with Section 7.09 hereof;

(2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under Bankruptcy Law;

(3) a receiver or other public officer takes charge of the Trustee or its property;

(4) the Trustee otherwise becomes incapable of acting; or

(5) other than with respect to a successor Trustee appointed by the Holders pursuant to the second sentence of this Section 7.07(b), the Company desires in its sole and absolute discretion to appoint a successor Trustee and no Default or Event of Default is then continuing.

(c) If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee.

(d) If a successor Trustee does not take office within 30 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of at least 10% in principal amount of the outstanding Notes may petition at the expense of the Company any court of competent jurisdiction for the appointment of a successor Trustee.

(e) If the Trustee fails to comply with Section 7.09 hereof, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Immediately following such delivery, the retiring Trustee shall, subject to the Lien and its rights under Section 7.06 hereof, transfer all property held by it as Trustee to the successor Trustee, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. A successor Trustee shall mail (or send electronically to DTC in the case of Global Notes) notice of its succession to each Holder. Notwithstanding replacement of the Trustee pursuant to this Section 7.07, the Lien and Company's obligations under Section 7.06 hereof shall continue for the benefit of the retiring Trustee.

Section 7.08 *Successor Trustee by Consolidation, Merger, etc.*

Any Person into which the Trustee or any successor to it in the trusts created by this Indenture shall be merged or converted, or any Person with which it or any successor to it shall be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee or any such successor to it shall be a party, or any Person to which the Trustee or any successor to it shall sell or otherwise transfer all or substantially all of the corporate trust business of the Trustee, shall be the successor Trustee under this Indenture without the execution or filing of any paper or any further act on the part of any of the parties hereto; *provided* that such Person shall be otherwise qualified and eligible under this Article 7. In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture with respect to the Notes, any of such Notes shall have been authenticated but not delivered by the Trustee then in office, any successor to such Trustee may adopt the certificate of authentication of any predecessor Trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor Trustee; *provided, however*, that the right to adopt the certificate of authentication of any predecessor Trustee or authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 7.09 *Eligibility; Disqualification.*

There will at all times be a Trustee hereunder that is a Person (i) organized and doing business under the laws of the United States of America or of any state thereof, (ii) authorized under such laws to exercise corporate trustee power, and (iii) subject to supervision or examination by federal or state authorities. The Trustee (together with its corporate parent) shall have a combined capital and surplus of at least \$100.0 million as set forth in the most recent applicable published annual report of condition.

## ARTICLE 8 AMENDMENT, SUPPLEMENT AND WAIVER

Section 8.01 *Without Consent of Holders.*

Without the consent of any Holders, at any time and from time to time, the Company, the Guarantors and the Trustee may enter into one or more indentures supplemental to this Indenture and the Note Guarantees for any of the following purposes:

- (1) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants of the Company in this Indenture and the Note Guarantees and in the Notes;
- (2) to secure the Notes, to add to the covenants of the Company for the benefit of the Holders, or to surrender any right or power conferred upon the Company in this Indenture;
- (3) to add additional Events of Default;
- (4) to provide for uncertificated Notes in addition to or in place of the Certificated Notes;
- (5) to evidence and provide for the acceptance of appointment under this Indenture by a successor Trustee;
- (6) to provide for or confirm the issuance of Additional Notes in accordance with the terms of this Indenture;
- (7) to add a Guarantor or to release a Guarantor in accordance with the terms of this Indenture;
- (8) to cure or reform any ambiguity, defect, omission, mistake, manifest error or inconsistency or to conform this Indenture or the Notes to any provision of the "Description of Notes" set forth in the Offering Memorandum;
- (9) to comply with any requirements of the Commission with respect to the qualification of this Indenture under the Trust Indenture Act; or
- (10) to provide additional rights or benefits to the Holders or to make any change that does not adversely affect the rights of any Holder in any material manner.

Upon the written request of the Company accompanied by a board resolution of the Board of Directors of the Company authorizing the execution of any such supplemental indenture and upon receipt by the Trustee of the documents described in Section 8.05 hereof, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture, in which case the Trustee may, but shall not be obligated to, enter into such supplemental indenture.

Section 8.02 *With Consent of Holders.*

(a) With the consent of the Holders of not less than a majority in aggregate principal amount of the outstanding Notes, the Company, the Guarantors and the Trustee may enter into an indenture or indentures supplemental to this Indenture for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or the Notes or of modifying in any manner the rights of the Holders of the Notes under this Indenture, including the definitions therein; *provided, however*, that no such supplemental indenture shall, without the consent of the Holder of each outstanding Note affected thereby:

- (1) change the Stated Maturity of any Note or of any installment of interest on any Note, or reduce the amount payable in respect of the principal thereof or the rate of interest thereon or any premium payable thereon, or reduce the amount that would be due and payable on

acceleration of the maturity thereof, or change the Place of Payment where, or the coin or currency in which, any Note or any premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof, or change the date on which any Notes may be subject to redemption or reduce the Redemption Price therefor;

(2) reduce the percentage in aggregate principal amount of the outstanding Notes, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or of certain defaults hereunder and their consequences) provided for in this Indenture;

(3) modify the obligations of the Company to make a Change of Control Offer or an Asset Sale Offer upon a Change of Control or Asset Sale, as the case may be, if such modification was done after the occurrence of such event;

(4) modify or change any provision of this Indenture affecting the ranking of the Notes or any Note Guarantee in a manner adverse to the Holders of the Notes;

(5) modify any of the provisions of this Indenture described in this Section 8.02(a) or provisions relating to waiver of defaults or certain covenants, except to increase any such percentage required for such actions or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each outstanding Note affected thereby; or

(6) release any Note Guarantees required to be maintained under this Indenture (other than in accordance with the terms of this Indenture).

(b) The Holders of not less than a majority in aggregate principal amount of the outstanding Notes may, on behalf of the Holders of all the Notes, waive any past Default under this Indenture and its consequences, except a Default:

(1) in any payment in respect of the principal of (or premium, if any) or interest on any Notes (including any Note that is required to have been purchased pursuant to a Change of Control Offer or Asset Sale Offer that has been made by the Company); or

(2) in respect of a covenant or provision of this Indenture that under this Indenture cannot be modified or amended without the consent of the Holder of each outstanding Note affected.

(c) It is not necessary for the consent of the Holders under this Section 8.02 to approve the particular form of any proposed amendment, supplement or waiver, but it is sufficient if such consent approves the substance thereof.

(d) After an amendment that requires the consent of the Holders becomes effective, the Company shall mail (or send electronically to DTC in the case of Global Notes) to each registered Holder at such Holder's address appearing in the security register a notice briefly describing such amendment. However, the failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of the amendment.

(e) Upon the written request of the Company accompanied by a board resolution of the Board of Directors of the Company authorizing the execution of any such supplemental indenture, and



upon the receipt by the Trustee of evidence reasonably satisfactory to the Trustee of the consent of the Holders as aforesaid and upon receipt by the Trustee of the documents described in Section 8.05 hereof, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture, in which case the Trustee may, but shall not be obligated to, enter into such supplemental indenture.

Section 8.03 *Revocation and Effect of Consents.*

(a) After an amendment, supplement, waiver or other action becomes effective, a consent to it by a Holder of a Note is a continuing consent conclusive and binding upon such Holder and every subsequent Holder of the same Note or portion thereof, and of any Note issued upon the transfer thereof or in exchange therefor or in place thereof, even if notation of the consent is not made on any such Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the amendment, supplement or waiver becomes effective. An amendment, supplement or waiver becomes effective with respect to the Notes in accordance with its terms and thereafter binds every Holder of Notes.

(b) The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to consent to any amendment, supplement, or waiver. If a record date is fixed, then, notwithstanding clause (a) of this Section 8.03, those Persons who were Holders at such record date (or their duly designated proxies), and only such Persons, shall be entitled to consent to such amendment, supplement, or waiver or to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 180 days after such record date unless the consent of the requisite number of Holders has been obtained.

Section 8.04 *Notation on or Exchange of Notes.*

If an amendment, supplement or waiver changes the terms of a Note, the Company may require the Holder of the Note to deliver it to the Trustee. The Trustee may place an appropriate notation on the Note regarding the changed terms and return it to the Holder.

Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Note shall issue and the Trustee shall authenticate a new Note that reflects the changed terms. Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

Section 8.05 *Trustee To Sign Amendments, etc.*

The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article 8 if the amendment, supplement or waiver does not affect the rights, duties, liabilities or immunities of the Trustee. If it does affect the rights, duties, liabilities or immunities of the Trustee, the Trustee may, but need not, sign such amendment, supplement or waiver. In signing or refusing to sign such amendment, supplement or waiver the Trustee shall be entitled to receive and, subject to Section 7.01 hereof, shall be fully protected in relying upon an Officers' Certificate and an Opinion of Counsel stating, in addition to the matters required by Section 11.03 hereof, that such amendment, supplement or waiver is authorized or permitted by this Indenture.

ARTICLE 9  
SATISFACTION AND DISCHARGE OF INDENTURE; DEFEASANCE

Section 9.01 *Satisfaction and Discharge of Indenture; Defeasance.*

(a) The Company may terminate its obligations and the obligations of the Guarantors with respect to the Notes and the Note Guarantees under this Indenture, except for those which expressly survive by the terms of this Indenture, when:

(1) either:

(A) all Notes theretofore authenticated and delivered have been delivered to the Trustee for cancellation, or

(B) all such Notes not theretofore delivered to the Trustee for cancellation (i) have become due and payable or (ii) will become due and payable within one year or are to be called for redemption within one year (a "*Discharge*") under irrevocable arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, and the Company has irrevocably deposited or caused to be deposited with the Trustee funds in cash in U.S. Dollars in an amount sufficient to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation for principal of, premium, if any, and interest to the Stated Maturity or Redemption Date;

(2) no Default or Event of Default shall have occurred and be continuing on the date of the deposit or will occur as a result of the deposit and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Company or any Guarantor is a party or by which the Company or any Guarantor is bound (other than a Default or Event of Default or a default or event of default under any such other instrument resulting from borrowing funds to be applied to make such deposit (and any similar concurrent deposit relating to other Debt) and the granting of Liens in connection therewith);

(3) the Company has paid or caused to be paid all other sums then due and payable under this Indenture by the Company;

(4) with respect to clause (1)(B) of this Section 9.01(a), the Company has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes at maturity or on the Redemption Date, as the case may be; and

(5) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel in form and substance reasonably acceptable to the Trustee, each stating that all conditions precedent under this Indenture relating to the Discharge have been complied with.

(b) The Company may elect, at its option, to have its obligations and the obligations of the Guarantors discharged with respect to the outstanding Notes and the Note Guarantees ("*Legal Defeasance*"). *Legal Defeasance* means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by the outstanding Notes, except for:

(1) the rights of Holders of such Notes to receive payments in respect of the principal of and any premium and interest on such Notes when payments are due;

(2) the Company's obligations with respect to such Notes concerning issuing temporary Notes under Section 2.11 hereof, registration of Notes under Section 2.04 hereof, mutilated, destroyed, lost or stolen Notes under Section 2.08 hereof, and the maintenance of an office or agency for payment under Section 2.04 hereof and money for security payments held in trust under Section 2.05 hereof;

(3) the rights, powers, trusts, duties, and immunities of the Trustee; and

(4) clauses (b) and (c) of this Section 9.01.

(c) In addition, the Company may elect, at its option, to have its obligations and the obligations of the Guarantors released with respect to Sections 4.03, 4.06 through 4.16, 4.18 and 5.01 hereof ("*Covenant Defeasance*"). In the event Covenant Defeasance occurs, Sections 6.01(3), (4), (5), (6) and (7) hereof will no longer constitute Defaults or Events of Default with respect to the Notes.

(d) If the Company exercises its Legal Defeasance option, payment of the Notes may not be accelerated because of an Event of Default with respect thereto.

(e) Upon satisfaction of the conditions set forth herein and upon request of the Company, the Trustee shall acknowledge in writing the discharge of those obligations that the Company terminates.

(f) Notwithstanding clauses (a) and (b) of this Section 9.01, the Company's obligations in Sections 2.04, 2.06, 2.07, 2.08, 7.06, 9.03, 9.05 and 9.06 hereof and the rights and immunities of the Trustee under this Indenture shall survive until such time as the Notes have been paid in full. Thereafter, the Company's obligations in Sections 7.06, 9.03, 9.05 and 9.06 hereof and the rights and immunities of the Trustee under this Indenture shall survive.

#### Section 9.02 *Conditions to Defeasance.*

In order to exercise either Legal Defeasance or Covenant Defeasance with respect to the outstanding Notes:

(a) the Company must irrevocably have deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to the benefit of, the Holders of such Notes: (1) money in cash in U.S. Dollars in an amount, (2) U.S. Government Obligations, which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, money in an amount or (3) a combination thereof, in each case sufficient without reinvestment, in the opinion of a nationally recognized firm of independent public accountants (or, if two or more nationally recognized firms of independent public accountants decline to issue such opinion after the Company has made reasonable efforts to obtain such an opinion, in the opinion of the Company's chief financial officer) expressed in a written certification thereof delivered to the Trustee in form and substance reasonably acceptable to the Trustee, to pay and discharge, and which shall be applied by the Trustee to pay and discharge, the entire indebtedness in respect of the principal of and premium, if any, and interest on such Notes on the Stated Maturity thereof or (if the Company has made irrevocable arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name and at the expense of the Company) the Redemption Date thereof, as the case may be, in accordance with the terms of this Indenture and the Notes;

(b) in the case of Legal Defeasance, the Company shall have delivered to the Trustee an Opinion of Counsel satisfactory to the Trustee stating that (1) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (2) since the date of this Indenture, there has been a change in the applicable United States federal income tax law, in either case (1) or (2) to the effect that, and based thereon such opinion shall confirm that, the Holders of the Notes will not recognize gain or loss for United States federal income tax purposes as a result of the deposit and Legal Defeasance to be effected with respect to such Notes and will be subject to United States federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit and Legal Defeasance were not to occur;

(c) in the case of Covenant Defeasance, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such outstanding Notes will not recognize gain or loss for United States federal income tax purposes as a result of the deposit and Covenant Defeasance to be effected with respect to such Notes and will be subject to United States federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit and Covenant Defeasance were not to occur;

(d) no Default or Event of Default with respect to the outstanding Notes shall have occurred and be continuing at the time of such deposit after giving effect thereto (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit (and any similar concurrent deposit relating to other Debt) and the granting of any Lien to secure such borrowing);

(e) such Legal Defeasance or Covenant Defeasance shall not cause the Trustee to have a conflicting interest within the meaning of the Trust Indenture Act (assuming all Notes are in default within the meaning of the Trust Indenture Act);

(f) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, any material agreement or material instrument (other than this Indenture) to which the Company is a party or by which the Company is bound (other than a default or event of default under any such other instrument resulting from borrowing funds to be applied to make the deposit under this Indenture in connection with the legal defeasance or covenant defeasance (and any similar concurrent deposit relating to other Debt) and the granting of Liens in connection therewith); and

(g) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel in form and substance reasonably acceptable to the Trustee, each stating that all conditions precedent with respect to such Legal Defeasance or Covenant Defeasance have been complied with.

Notwithstanding the foregoing, the Opinion of Counsel required by clause (b) of this Section 9.02 with respect to a Legal Defeasance need not be delivered if all Notes not previously delivered to the Trustee for cancellation (x) have become due and payable, or (y) will become due and payable within one year at Stated Maturity or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company.

Section 9.03 *Deposited Money and U.S. Government Obligations To Be Held in Trust; Other Miscellaneous Provisions.*

(a) All money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee pursuant to clause (a) of Section 9.02 hereof in respect of the outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent, to the Holders of such Notes, of all sums due and to become due thereon in respect of principal, premium, if any, and accrued interest, but such money need not be segregated from other funds except to the extent required by law.

(b) The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to clause (a) of Section 9.02 hereof or the principal, premium, if any, and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes; it being understood that the Trustee shall bear no responsibility for any such tax, fee or other charge which by law is payable by or on behalf of the Holders.

(c) Anything in this Article 9 to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon a request of the Company any money or U.S. Government Obligations held by it as provided in clause (a) of Section 9.02 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee in form and substance reasonably satisfactory to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 9.04 *Reinstatement.*

If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with Section 9.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to this Article 9 until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with Section 9.01 hereof; *provided* that if the Company has made any payment of principal of, premium, if any, or accrued interest on any Notes because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

Section 9.05 *Moneys Held by Paying Agent.*

In connection with the satisfaction and discharge of this Indenture, all moneys then held by any Paying Agent under the provisions of this Indenture shall, upon written demand of the Company, be paid to the Trustee, or if sufficient moneys have been deposited pursuant to clause (a) of Section 9.02 hereof, to the Company upon a request of the Company, and thereupon the Paying Agent shall be released from all further liability with respect to such moneys.

Section 9.06 *Moneys Held by Trustee.*

Any moneys deposited with the Trustee or any Paying Agent or then held by the Company in trust for the payment of the principal of, or premium, if any, or interest on any Note that are not applied but remain unclaimed by the Holder of such Note for two years after the date upon which the principal of,

or premium, if any, or interest on such Note shall have respectively become due and payable shall be repaid to the Company upon a request of the Company, or if such moneys are then held by the Company in trust, such moneys shall be released from such trust; and the Holder of such Note entitled to receive such payment shall thereafter, as an unsecured general creditor, look only to the Company for the payment thereof, and all liability of the Trustee or the Paying Agent with respect to such trust money shall thereupon cease; *provided* that the Trustee or the Paying Agent, before being required to make any such repayment, shall, at the written request of the Company and at the expense of the Company either mail (or send electronically to DTC in the case of Global Notes) to each Holder affected, at the address shown in the register of the Notes maintained by the Registrar pursuant to Section 2.04 hereof, or cause to be published once a week for two successive weeks, in a newspaper published in the English language, customarily published each Business Day and of general circulation in The City of New York, New York, a notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such notice or the date of the publication, any unclaimed balance of such moneys then remaining will be repaid to the Company. After payment to the Company or the release of any money held in trust by the Company, Holders entitled to the money must look only to the Company for payment as general creditors unless applicable abandoned property law designates another Person.

## ARTICLE 10 GUARANTEES

### Section 10.01 *Guarantee.*

(a) Subject to this Article 10, each Guarantor, hereby jointly and severally, absolutely, unconditionally and irrevocably guarantees the Notes and obligations of the Company hereunder and thereunder, and guarantees to each Holder of a Note authenticated and delivered by the Trustee, and to the Trustee on behalf of such Holder, that (i) the principal of (and premium, if any) and interest on the Notes will be paid in full when due, whether at Stated Maturity, by acceleration or otherwise (including, without limitation, the amount that would become due but for the operation of any automatic stay provision of any Bankruptcy Law), together with interest on the overdue principal, if any, and interest on any overdue interest, to the extent lawful, and all other obligations of the Company to the Holders or the Trustee hereunder or thereunder will be paid in full or performed, all in accordance with the terms hereof and thereof; and (ii) in case of any extension of time of payment or renewal of any Notes or of any such other obligations, the same will be paid in full when due or performed in accordance with the terms of the extension or renewal, whether at Stated Maturity, by acceleration or otherwise, subject, however, in the case of clauses (i) and (ii) above, to the limitations set forth in Section 10.03 hereof.

Each Guarantor hereby agrees that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of Notes with respect to any provisions hereof or thereof, any release of any other Guarantor, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor.

(b) Each Guarantor hereby waives (to the extent permitted by law) the benefits of diligence, presentment, demand for payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company or any other Person, protest, notice and all demands whatsoever and covenants that the Note Guarantee of such Guarantor shall not be discharged as to the Notes, except by complete performance of the obligations contained in the Notes, this Indenture and such Note Guarantee. Each Guarantor acknowledges that the Note Guarantee is a guarantee of payment and not of collection. Each of the Guarantors hereby agrees that, in the event of a

default in payment of principal (or premium, if any) or interest on any Note, whether at its Stated Maturity, by acceleration, purchase or otherwise, legal proceedings may be instituted by the Trustee on behalf of, or by, the Holder of such Note, subject to the terms and conditions set forth in this Indenture, directly against each of the Guarantors to enforce such Guarantor's Note Guarantee without first proceeding against the Company or any other Guarantor. Each Guarantor agrees that if, after the occurrence and during the continuance of an Event of Default, the Trustee or any of the Holders are prevented by applicable law from exercising their respective rights to accelerate the maturity of the Notes, to collect interest on the Notes, or to enforce or exercise any other right or remedy with respect to the Notes, such Guarantor will pay to the Trustee for the account of the Holders, upon demand therefor, the amount that would otherwise have been due and payable had such rights and remedies been permitted to be exercised by the Trustee or any of the Holders.

(c) If any Holder or the Trustee is required by any court or otherwise to return to the Company or any Guarantor, or any custodian, trustee, liquidator or other similar official acting in relation to either the Company or any Guarantor, any amount paid by any of them to the Trustee or such Holder, the Note Guarantee of each of the Guarantors, to the extent theretofore discharged, shall be reinstated in full force and effect. Each Guarantor further agrees that, as between each Guarantor, on the one hand, and the Holders and the Trustee, on the other hand, (x) subject to this Article 10, the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of the Note Guarantee of such Guarantor, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any acceleration of such obligations as provided in Article 6 hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by each Guarantor for the purpose of the Note Guarantee of such Guarantor.

(d) Each Note Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Company for liquidation or reorganization, should the Company become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Company's assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes, whether as a "voidable preference", "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Notes shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

(e) To evidence its Note Guarantee, each Guarantor hereby agrees that a Notation of Guarantee substantially in the form attached as Exhibit D hereto will be endorsed by an officer of such Guarantor on each Note authenticated and delivered to the Trustee and that this Indenture or a supplemental indenture to this Indenture will be executed on behalf of such Guarantor by one of its officers. Each Guarantor hereby agrees that its Note Guarantee will remain in full force and effect notwithstanding any failure to endorse on each Note a Notation of Guarantee. The delivery of any Note by the Trustee, after the authentication thereof hereunder, will be deemed to constitute due delivery of the Notation of Guarantee set forth in this Indenture by the Guarantors. If an officer whose signature is on this Indenture or on the Notation of Guarantee no longer holds that office at the time the Trustee authenticates the Note on which a Notation of Guarantee is endorsed, the Notation of Guarantee will be valid nevertheless.

Section 10.02                    *Severability.*

In case any provision of any Note Guarantee shall be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 10.03                    *Limitation of Liability.*

Each Guarantor and by its acceptance hereof each Holder confirms that it is the intention of all such parties that the guarantee by each such Guarantor pursuant to its Note Guarantee not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law or the provisions of its local law relating to fraudulent transfer or conveyance. To effectuate the foregoing intention, the Holders and each such Guarantor hereby irrevocably agree that the obligations of such Guarantor under its Note Guarantee shall be limited to the maximum amount that will not, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Note Guarantee or pursuant to this Article 10, result in the obligations of such Guarantor under its Note Guarantee constituting such fraudulent transfer or conveyance.

Section 10.04                    *Contribution.*

In order to provide for just and equitable contribution among the Guarantors, the Guarantors agree, *inter se*, that in the event any payment or distribution is made by any Guarantor under a Note Guarantee, such Guarantor will be entitled to a contribution from any other Guarantor in a *pro rata* amount based on the net assets of each Guarantor determined in accordance with GAAP.

Section 10.05                    *Subrogation.*

Each Guarantor shall be subrogated to all rights of Holders against the Company in respect of any amounts paid by any Guarantor pursuant to the provisions of Section 10.01 hereof; *provided, however*, that if an Event of Default has occurred and is continuing, no Guarantor shall be entitled to enforce or receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by the Company under this Indenture or the Notes shall have been paid in full.

Section 10.06                    *Reinstatement.*

Each Guarantor hereby agrees (and each Person who becomes a Guarantor shall agree) that the Note Guarantee provided for in Section 10.01 hereof shall continue to be effective or be reinstated, as the case may be, if at any time, payment, or any part thereof, of any obligations or interest thereon is rescinded or must otherwise be restored by a Holder to the Company upon the bankruptcy or insolvency of the Company or any Guarantor.

Section 10.07                    *Release of a Guarantor.*

In the event of a sale or other transfer or disposition of all of the Capital Interests in any Guarantor to any Person that is not an Affiliate of the Company in compliance with the terms of this Indenture, or in the event all or substantially all the assets or Capital Interests of a Guarantor are sold or otherwise transferred, by way of merger, consolidation or otherwise, to a Person that is not an Affiliate of the Company in compliance with the terms of this Indenture, then such Guarantor (or the Person concurrently acquiring such assets of such Guarantor) shall be deemed automatically and unconditionally



released and discharged of any obligations under its Note Guarantee in support thereof, without any further action on the part of the Trustee or any Holder. At the request of the Company, such release and discharge or any other release of a Note Guarantee shall be evidenced by a supplemental indenture executed by the Company and the Trustee.

In addition, the Note Guarantee of a Guarantor will be released automatically:

- (1) if the Company designates any Restricted Subsidiary that is a Guarantor as an Unrestricted Subsidiary in accordance with the applicable provisions of this Indenture; or
- (2) upon the discharge of the Notes in accordance with this Indenture or upon Covenant Defeasance or Legal Defeasance of the Notes pursuant to this Indenture; or
- (3) upon the release, termination or satisfaction of all Debt of such Guarantor that would give rise to an obligation of the Company to cause such Guarantor to guarantee the Notes as more particularly described in Section 4.15 hereof.

Section 10.08 *Benefits Acknowledged.*

Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that its respective Note Guarantee and waiver pursuant to its respective Note Guarantee is knowingly made in contemplation of such benefits.

ARTICLE 11  
MISCELLANEOUS

Section 11.01 *Trust Indenture Act Controls.*

Subject to Section 1.03 hereof, if this Indenture has been qualified under the Trust Indenture Act and if any provision of this Indenture limits, qualifies or conflicts with the duties imposed by the Trust Indenture Act, the imposed duties shall control.

Section 11.02 *Notices.*

Except for notice or communications to Holders, any notice or communication shall be given in writing and is duly given when received if delivered in person, when receipt is acknowledged if sent by facsimile, on the next Business Day if timely delivered by a nationally recognized courier service that guarantees overnight delivery or two Business Days after deposit if mailed by first-class mail, postage prepaid, addressed as follows:

If to the Company and/or any Guarantor:

Alliance Data Systems Corporation  
7500 Dallas Parkway, Suite 700  
Plano, Texas 75024  
Facsimile: 214-494-3900  
Attention: Joseph L. Motes III, General Counsel

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

Akin Gump Strauss Hauer & Feld LLP

1700 Pacific Avenue, Suite 4100  
Dallas, Texas 75201  
Facsimile: 214-969-4343  
Attention: Seth R. Molay, P.C.

If to the Trustee:

Regions Bank  
3773 Richmond Avenue, Suite 1100  
Houston, Texas 77046  
Facsimile: 713-960-4058  
Attention: Corporate Trust

Such notices or communications shall be effective when actually received and shall be sufficiently given if so given within the time prescribed in this Indenture.

The Company, any Guarantor or the Trustee by written notice to the others may designate additional or different addresses for subsequent notices or communications.

The Trustee shall have the right, but shall not be required, to rely upon and comply with instructions and directions sent by email, facsimile and other similar unsecured electronic methods by Persons believed by the Trustee to be authorized to give instructions and directions on behalf of the Company. The Trustee shall have no duty or obligation to verify or confirm that the Person who sent such instructions or directions is, in fact, a Person authorized to give instructions on behalf of the Company; and the Trustee shall have no liability for any losses, liabilities, costs or expenses incurred or sustained by the Company as a result of such reliance upon or compliance with such instructions or directions, *provided* that such reliance was in good faith. The Company agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and all the risk of interception and misuse by third parties.

Unless otherwise expressly provided in this Indenture, any notice or communication mailed to a Holder shall be mailed to him by first-class mail, postage prepaid, at his address shown on the register kept by the Registrar.

Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication to a Holder is mailed in the manner provided above, it shall be deemed duly given, whether or not the addressee receives it.

If the Company mails a notice or communication to Holders, it will mail a copy to the Trustee and each Agent at the same time.

In case by reason of the suspension of regular mail service, or by reason of any other cause, it shall be impossible to mail any notice as required by this Indenture, then such method of notification as shall be made with the approval of the Trustee shall constitute a sufficient mailing of such notice.

Section 11.03                      *Certificate and Opinion as to Conditions Precedent.*

Upon any request or application by the Company to the Trustee to take any action under this Indenture (other than the authentication and delivery of the Initial Notes), if so requested by the Trustee, the Company shall furnish to the Trustee:

(1) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 11.04 hereof) stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 11.04 hereof) stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such eligible and qualified Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any certificate or opinion of counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating the information on which counsel is relying unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Section 11.04 *Statements Required in Certificate and Opinion.*

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture must include:

- (1) a statement that the Person making such certificate or opinion has read such covenant or condition;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been satisfied; and
- (4) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

Section 11.05 *Rules by Trustee and Agents.*

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 11.06 *No Personal Liability of Directors, Officers, Employees and Stockholders.*

No director, manager, officer, employee, stockholder, member, general or limited partner or incorporator, past, present or future, of the Company or any of its Subsidiaries, as such or in such capacity, shall have any personal liability for any obligations of the Company under the Notes, any Note Guarantee or this Indenture by reason of his, her or its status as such director, manager, officer, employee, stockholder, member, general or limited partner or incorporator. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes and Note Guarantees.

Section 11.07 *Governing Law; Waiver of Jury Trial.*

THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THIS INDENTURE, THE NOTES AND THE NOTE GUARANTEES WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, OR IN CONNECTION WITH THIS INDENTURE.

Section 11.08 *No Adverse Interpretation of Other Agreements.*

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 11.09 *Successors.*

All agreements of the Company in this Indenture and the Notes will bind its successors. All agreements of the Trustee in this Indenture will bind its successors. All agreements of each Guarantor in this Indenture will bind its successors, except as otherwise provided in Section 10.07 hereof.

Section 11.10 *Separability.*

In case any provision in this Indenture or in the Notes is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

Section 11.11 *Counterpart Originals.*

The parties may sign any number of copies of this Indenture. Each signed copy will be an original, but all of them together represent the same agreement. The exchange of copies of this Indenture and of signature pages by facsimile or .pdf transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or .pdf shall be deemed to be their original signatures for all purposes.

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and will in no way modify or restrict any of the terms or provisions hereof.

[Signatures on following page]

COMPANY:

ALLIANCE DATA SYSTEMS CORPORATION,  
as Issuer

By: /s/ Charles L. Horn  
Name: Charles L. Horn  
Title: Executive Vice President and Chief  
Financial Officer

GUARANTORS:

ADS ALLIANCE DATA SYSTEMS, INC.

By: /s/ Charles L. Horn  
Name: Charles L. Horn  
Title: Executive Vice President and Chief  
Financial Officer

ALLIANCE DATA FOREIGN HOLDINGS, INC.  
ASPEN MARKETING SERVICES, LLC

By: /s/ Charles L. Horn  
Name: Charles L. Horn  
Title: Vice President

ADS FOREIGN HOLDINGS, INC.

By: /s/ J. Jeffrey Chesnut  
Name: J. Jeffrey Chesnut  
Title: Treasurer

COMENITY LLC  
COMENITY SERVICING LLC

By: /s/ Jeffrey Fair  
Name: Jeffrey Fair  
Title: Vice President, Tax

*Signature Page to Indenture*

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EPSILON DATA MANAGEMENT, LLC  
CONVERSANT LLC  
COMMISSION JUNCTION LLC

By: /s/ J. Jeffrey Chesnut  
Name: J. Jeffrey Chesnut  
Title: Vice President and Assistant Treasurer

*Signature Page to Indenture*

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TRUSTEE:

REGIONS BANK

By: /s/ Alejandro Hoyos  
Name: Alejandro Hoyos  
Title: Vice President

*Signature Page to Indenture*

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[Face of Note]

[Insert the Global Note Legend, if applicable pursuant to the provisions of the Indenture]

[Insert the Private Placement Legend, if applicable pursuant to the provisions of the Indenture]

[RULE 144A] [REGULATION S] [GLOBAL] NOTE  
5.875% SENIOR NOTE DUE 2021

No. \$ [(or such greater or lesser amount as may be indicated on the attached Schedule of Exchanges of Interests in the Global Note)]<sup>1</sup>

ALLIANCE DATA SYSTEMS CORPORATION,  
a Delaware corporation (the "Company")

promises to pay to [CEDE & CO. or registered assigns]<sup>2</sup> [\_\_\_\_\_] <sup>3</sup>, the principal sum [set forth on the Schedule of Exchanges of Interests in the Global Note attached hereto]<sup>1</sup> [of \_\_\_\_\_ United States Dollars]<sup>2</sup> on November 1, 2021.

Interest Payment Dates: May 1 and November 1

Record Dates: April 15 and October 15

Reference is made to the further provisions of this Note contained herein, which will for all purposes have the same effect as if set forth at this place.

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1 If the Note is issued in global form.

2 If the Note is issued in global form.

3 If the Note is issued in certificated form.

IN WITNESS WHEREOF, the Company has caused this Note to be signed manually or by facsimile by one of its duly authorized officers.

ALLIANCE DATA SYSTEMS CORPORATION

By: \_\_\_\_\_

Name:

Title:

Certificate of Authentication

This is one of the 5.875% Senior Notes due 2021 referred to in the within-mentioned Indenture.

REGIONS BANK  
as Trustee

By: \_\_\_\_\_  
Authorized Signatory

Dated:

ALLIANCE DATA SYSTEMS CORPORATION

5.875% SENIOR NOTE DUE 2021

1. Interest. ALLIANCE DATA SYSTEMS CORPORATION, a Delaware corporation, as issuer (the "*Company*"), promises to pay, until the principal hereof is paid or made available for payment, interest on the principal amount set forth on the face hereof at a rate of 5.875% per annum. Interest shall be payable in arrears on each May 1 and November 1 (each an "*Interest Payment Date*"). Interest on the 5.875% Senior Notes due 2021 (the "*Notes*") will accrue from and including the most recent date to which interest has been paid or, if no interest has been paid, from and including October 27, 2016<sup>4</sup> to but excluding the date on which interest is paid; *provided* that the first Interest Payment Date shall be May 1, 2017<sup>3</sup>. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months. The Company shall pay interest on overdue principal and on overdue interest (to the full extent permitted by law) at the rate borne by the Notes.

2. Method of Payment. The Company will pay interest to those persons who were holders of record on the April 15 and October 15, as the case may be, immediately preceding each Interest Payment Date. Principal of and premium, if any, and interest on the Notes will be payable, and the Notes will be exchangeable and transferable, at the office or agency of the Company maintained for such purposes, which, initially, will be an office of the Trustee located in New York, New York; *provided, however*, that payment of interest with respect to the Notes may be made at the option of the Company by check mailed to the Person entitled thereto as shown on the security register or in accordance with the procedures of DTC for global book-entry Notes.

3. Paying Agent and Registrar. Initially, Regions Bank, an Alabama banking corporation (the "*Trustee*"), will act as a Paying Agent and Registrar. The Company may change any Paying Agent or Registrar without notice to the Holders. The Company or any of its Subsidiaries may act as Paying Agent.

4. Indenture. The Company issued the Notes under an Indenture dated as of October 27, 2016 (as such may be amended or supplemented from time to time in accordance with its terms, the "*Indenture*") among the Company, the Guarantors and the Trustee. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act. The Notes are subject to all such terms, and Holders are referred to the Indenture and the Trust Indenture Act for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling. Capitalized and certain other terms used and not otherwise defined herein have the meanings set forth in the Indenture.

5. Redemption of Notes. The Notes may be redeemed, in whole or in part, at any time on or after November 1, 2018, at the option of the Company upon not less than 30 nor more than 60 days' prior notice at the following Redemption Prices (expressed as percentages of the principal amount to be redeemed) set forth below, plus accrued and unpaid interest, if any, to, but not including, the Redemption Date (subject to the right of Holders of record on the relevant regular record date to receive interest due on the relevant Interest Payment Date), if redeemed during the 12-month period beginning on November 1 of the years indicated:

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<sup>4</sup> With respect to the Initial Notes.

| <u>Year</u>         | <u>Redemption Price</u> |
|---------------------|-------------------------|
| 2018                | 102.938%                |
| 2019                | 101.469%                |
| 2020 and thereafter | 100.000%                |

In addition, prior to November 1, 2018, the Notes may be redeemed, in whole or in part, at any time, at the option of the Company upon not less than 30 nor more than 60 days' prior notice mailed by first-class mail to each Holder's registered address or sent in accordance with the procedures of DTC for Global Notes, at a Redemption Price equal to 100% of the principal amount of the Notes to be redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, but not including, the applicable Redemption Date (subject to the right of Holders of record on the relevant regular record date to receive interest due on the relevant Interest Payment Date).

"Applicable Premium" means, with respect to any Note on any applicable Redemption Date, the greater of:

- (1) 1% of the then outstanding principal amount of the Note; and
- (2) the excess (to the extent positive):
  - (A) the present value at such Redemption Date of (i) the Redemption Price of the Note at November 1, 2018 (such Redemption Price being set forth in the table above) plus (ii) all required interest payments due on the Note through November 1, 2018 (excluding accrued but unpaid interest), computed using a discount rate equal to the Treasury Rate as of such Redemption Date plus 50 basis points; over
  - (B) the then outstanding principal amount of the Note.

"Treasury Rate" means, as of the applicable Redemption Date, the yield to maturity as of such Redemption Date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two Business Days prior to such Redemption Date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such Redemption Date to November 1, 2018; *provided, however*, that if the period from such Redemption Date to such date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

6. [Reserved].

7. Redemption of Notes with Net Proceeds of Qualified Equity Offerings. Prior to November 1, 2018, the Company may, with an amount equal to the net cash proceeds of one or more Qualified Equity Offerings, redeem up to 35% of the aggregate principal amount of the outstanding Notes (including Additional Notes) at a Redemption Price equal to 105.875% of the principal amount thereof, plus accrued and unpaid interest thereon, if any, to, but not including, the Redemption Date (subject to the right of Holders of record on the relevant regular record date to receive interest due on the relevant Interest Payment Date); *provided* that at least 65% of the aggregate principal amount of Notes originally issued under the Indenture (including Additional Notes) remains outstanding immediately after the

occurrence of any such redemption (excluding Notes held by the Company or its Subsidiaries) and that any such redemption occurs within 90 days following the closing of any such Qualified Equity Offering.

"*Qualified Equity Offering*" means a public or private offering of Qualified Capital Interests of the Company other than (x) any such offering to a Subsidiary of the Company and (y) any public offerings registered on Form S-8.

8. Redemption Procedures. If less than all of the Notes are to be redeemed, the Trustee will select the Notes or portions thereof in authorized denominations to be redeemed, *pro rata* or by any other method customarily authorized by the clearing systems (subject to DTC procedures). No Notes of \$2,000 or less shall be redeemed in part and no redemption shall result in a Holder holding a Note of less than \$2,000. For all purposes of the Indenture unless the context otherwise requires, provisions of the Indenture that apply to Notes called for redemption also apply to portions of Notes called for redemption.

9. Notice of Redemption. Notices of redemption shall be sent electronically to DTC, in the case of Global Notes, or shall be mailed by first-class mail, in the case of Certificated Notes, not less than 30 nor more than 60 days before the Redemption Date to each Holder of Notes to be redeemed at its registered address. If any Note is to be redeemed in part only, the notice of redemption that relates to that Note shall state the portion of the principal amount thereof to be redeemed.

10. Denominations, Transfer, Exchange. The Notes shall be issuable only in fully registered form without coupons in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.

11. Persons Deemed Owners. The Depository may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of a Global Note for all purposes whatsoever.

12. Unclaimed Money. If money for the payment of principal or interest remains unclaimed for two years, the Trustee or Paying Agent will pay the money back to the Company at its request or, if such money is then held by the Company in trust, such money shall be released from such trust. After that, Holders entitled to the money must look only to the Company for payment as general creditors unless applicable abandoned property law designates another Person.

13. Amendment, Supplement, Waiver, Etc. Without the consent of any Holders, at any time and from time to time, the Company, the Guarantors and the Trustee may enter into one or more Indentures supplemental to the Indenture and the Note Guarantees to, among other things, cure or reform any ambiguity, defect, omission, mistake, manifest error or inconsistency or to conform the Indenture or the Notes to any provision of the "Description of Notes" contained in the Offering Memorandum and to provide additional rights or benefits to the Holders or to make any change that does not adversely affect the rights of any Holder in any material manner. With the consent of the Holders of not less than a majority in aggregate principal amount of the outstanding Notes, the Company, the Guarantors and the Trustee may enter into an indenture or indentures supplemental to the Indenture to make other amendments or modifications, subject to certain exceptions requiring the consent of the Holder of each outstanding Note affected thereby.

14. Purchase of Notes Upon a Change of Control. If a Change of Control occurs, unless the Company has previously or concurrently mailed (or sent electronically to DTC in the case of Global Notes) a redemption notice with respect to all the outstanding Notes pursuant to Section 3.07 of the Indenture, the Company will make a written offer to purchase all of the Notes pursuant to a Change of Control Offer at a Change of Control Purchase Price in cash equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest, if any, to the date of purchase. The Company will not be

required to make a Change of Control Offer with respect to the Notes upon a Change of Control if a third party makes such Change of Control Offer contemporaneously with or upon a Change of Control in the manner, at the times and otherwise in compliance with the requirements of the Indenture and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

15. Successor Entity. When a successor entity duly assumes all of the obligations and covenants of the Company pursuant to the Indenture and the Notes, except in the case of a lease, the predecessor entity shall be relieved of all such obligations.

16. Defaults and Remedies. Events of Default are set forth in the Indenture. Subject to certain limitations in the Indenture, if an Event of Default with respect to the Notes (other than an Event of Default described in clause (8) or (9) of Section 6.01 of the Indenture with respect to the Company) occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in aggregate principal amount of the outstanding Notes may declare the principal of the Notes and any accrued interest on the Notes to be due and payable immediately. If an Event of Default described in clause (8) or (9) of Section 6.01 of the Indenture occurs with respect to the Company, the principal amount of and any accrued interest on the Notes then outstanding shall *ipso facto* become immediately due and payable without any declaration or other act on the part of the Trustee or any Holder. The Trustee shall be under no obligation to exercise any of its rights or powers under the Indenture at the request or direction of any of the Holders, unless such Holders have offered to the Trustee security and indemnity satisfactory to the Trustee. Except in the case of a Default or Event of Default in payment of the principal of, premium, if any, or interest on any Note (including payments pursuant to a redemption or repurchase of the Notes pursuant to the provisions of the Indenture), the Trustee may withhold the notice if and so long as the board of directors, the executive committee or a trust committee of its directors and/or Responsible Officers in good faith determines that withholding the notice is in the interests of Holders.

17. Trustee Dealings with Company. The Trustee or its Affiliates in its individual or any other capacity may become the owner or pledgee of Notes and may make loans to, accept deposits from, perform services for or otherwise deal with the Company or any Affiliate thereof with the same rights it would have if it were not Trustee.

18. No Recourse Against Others. No director, manager, officer, employee, stockholder, member, general or limited partner or incorporator, past, present or future, of the Company or any of its Subsidiaries, as such or in such capacity, shall have any personal liability for any obligations of the Company under the Notes, any Note Guarantee or the Indenture by reason of his, her or its status as such director, manager, officer, employee, stockholder, member, general or limited partner or incorporator. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes and Note Guarantees.

19. Discharge. The Company's obligations pursuant to the Indenture will be discharged, except for obligations pursuant to certain sections thereof, subject to the terms of the Indenture, upon the payment or cancellation of all the Notes or upon the irrevocable deposit with the Trustee of funds in an amount sufficient to pay and discharge the entire indebtedness on the Notes not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and interest to the Stated Maturity or Redemption Date.

20. Guarantees. The Company's obligations under the Notes are jointly and severally, fully and unconditionally guaranteed, to the extent set forth in the Indenture, by each of the Guarantors.



21. Covenant Termination Event. In the event of the occurrence of a Covenant Termination Event, as defined in the Indenture, the Company and its Subsidiaries will no longer be subject to Sections 4.07, 4.08, 4.09, 4.10, 4.11, 4.13 and 4.15 of the Indenture with respect to the Notes.

22. Authentication. This Note shall not be valid until the Trustee manually signs the certificate of authentication on this Note.

24. Governing Law. THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THIS NOTE WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

25. Abbreviations. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TENANT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

The Company will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to:

Alliance Data Systems Corporation  
7500 Dallas Parkway, Suite 700  
Plano, Texas 75024  
Facsimile: 214-494-3900  
Attention: Joseph L. Motes III, General Counsel

With a copy (which shall not constitute notice) to:

Akin Gump Strauss Hauer & Feld LLP  
1700 Pacific Avenue, Suite 4100  
Dallas, Texas 75201  
Facsimile: 214-969-4343  
Attention: Seth R. Molay, P.C.

ASSIGNMENT

I or we assign and transfer this Note to:

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(Insert assignee's social security or tax I.D. number)

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(Print or type name, address and zip code of assignee)

and irrevocably appoint: \_\_\_\_\_

as Agent to transfer this Note on the books of the Company. The Agent may substitute another to act for him.

Date: \_\_\_\_\_ Your Signature: \_\_\_\_\_

(Sign exactly as your name appears on the face of this Note)

Signature Guarantee: \_\_\_\_\_

SIGNATURE GUARANTEE

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Note purchased by the Company pursuant to Section 4.10 (Asset Sale) or Section 4.13 (Change of Control) of the Indenture, check the appropriate box below:

Asset Sale

Change of Control

If you want to elect to have only part of this Note purchased by the Company pursuant to Section 4.10 or Section 4.13 of the Indenture, state the principal amount (in denominations of \$2,000 and integral multiples of \$1,000):

\$ \_\_\_\_\_

Date: \_\_\_\_\_ Your Signature: \_\_\_\_\_  
(Sign exactly as your name appears on the face of this Note)

Signature Guarantee\*: \_\_\_\_\_

\* Signature must be guaranteed by a participant in a recognized Signature Guaranty Medallion Program or other signature guarantor acceptable to the Trustee

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE

The initial outstanding principal amount of this Global Note is \$\_\_\_\_\_. The following exchanges of a part of this Global Note for interest in another Global Note or for a Certificated Note, or exchanges of a part of another Global or Certificated Note for an interest in this Global Note, have been made:

| <b>Date of Exchange</b> | <b>Amount of decrease<br/>in Principal Amount<br/>of this Global Note</b> | <b>Amount of increase in<br/>Principal Amount of<br/>this Global Note</b> | <b>Principal Amount of<br/>this Global Note<br/>following such<br/>decrease or increase</b> | <b>Signature of<br/>authorized signatory<br/>of Trustee or Notes<br/>Custodian</b> |
|-------------------------|---|---|---|--|
|-------------------------|---|---|---|--|

## PURCHASE AGREEMENT

October 24, 2016

Merrill Lynch, Pierce, Fenner & Smith  
Incorporated  
As Representative of the  
several Initial Purchasers listed  
in Schedule A hereto

c/o Merrill Lynch, Pierce, Fenner & Smith  
Incorporated  
One Bryant Park  
New York, New York 10036

Ladies and Gentlemen:

**Introductory.** Alliance Data Systems Corporation, a Delaware corporation (the "**Company**"), proposes to issue and sell to the several Initial Purchasers named in Schedule A (the "**Initial Purchasers**"), acting severally and not jointly, the respective amounts set forth in such Schedule A of this Purchase Agreement (this "**Agreement**") of \$500,000,000 aggregate principal amount of the Company's 5.875% Senior Notes due 2021 (the "**Notes**"). Merrill Lynch, Pierce, Fenner & Smith Incorporated ("**Merrill Lynch**") has agreed to act as the representative of the several Initial Purchasers (the "**Representative**") in connection with the offering and sale of the Notes.

The Securities (as defined below) will be issued pursuant to an indenture, to be dated as of October 27, 2016 (the "**Indenture**"), among the Company, the Guarantors (as defined below) and Regions Bank, as trustee (the "**Trustee**"). The Notes will be issued only in book-entry form in the name of Cede & Co., as nominee of The Depository Trust Company (the "**Depository**") pursuant to a letter of representations, to be dated on or before the Closing Date (as defined in Section 2 hereof) (the "**DTC Agreement**"), among the Company, the Trustee and the Depository.

The payment of principal of, premium, if any, and interest on the Notes will be fully and unconditionally guaranteed on a senior unsecured basis, jointly and severally by (i) the entities listed on the signature pages hereof as "Guarantors" and (ii) any subsidiary of the Company formed or acquired after the Closing Date that executes an additional guarantee in accordance with the terms of the Indenture, and their respective successors and assigns (collectively, the "**Guarantors**"), pursuant to their guarantees (the "**Guarantees**"). The Notes and the Guarantees attached thereto are herein collectively referred to as the "**Securities**."

This Agreement, the Securities, the DTC Agreement and the Indenture are referred to herein as the "**Transaction Documents**."

The Company understands that the Initial Purchasers propose to make an offering of the Securities on the terms and in the manner set forth herein and in the Pricing Disclosure Package (as defined below) and agrees that the Initial Purchasers may resell, subject to the conditions set forth herein, all or a portion of the Securities to purchasers (the "**Subsequent Purchasers**") on the terms set forth in the Pricing Disclosure Package (the first time when sales of the Securities are made is referred to as the "**Time of Sale**"). The Securities are to be offered and sold to or through the Initial Purchasers without being registered with the Securities and Exchange Commission (the "**Commission**") under the U.S. Securities Act of 1933 (as amended, the "**Securities Act**," which term, as used herein, includes the rules and regulations of the Commission promulgated thereunder), in reliance upon exemptions therefrom.

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Pursuant to the terms of the Securities and the Indenture, investors who acquire Securities shall be deemed to have agreed that Securities may only be resold or otherwise transferred, after the date hereof, if such Securities are registered for sale under the Securities Act or if an exemption from the registration requirements of the Securities Act is available (including the exemption afforded by Rule 144A under the Securities Act ("**Rule 144A**") or Regulation S under the Securities Act ("**Regulation S**").

The Company has prepared and delivered to each Initial Purchaser copies of a Preliminary Offering Memorandum, dated October 24, 2016 (the "**Preliminary Offering Memorandum**"), and has prepared and delivered to each Initial Purchaser copies of a Pricing Supplement, dated October 24, 2016 (the "**Pricing Supplement**"), describing the terms of the Securities, each for use by such Initial Purchaser in connection with its solicitation of offers to purchase the Securities. The Preliminary Offering Memorandum and the Pricing Supplement are herein referred to as the "**Pricing Disclosure Package**." Promptly after this Agreement is executed and delivered, the Company will prepare and deliver to each Initial Purchaser a final offering memorandum dated the date hereof (the "**Final Offering Memorandum**").

All references herein to the terms "Pricing Disclosure Package" and "Final Offering Memorandum" shall be deemed to mean and include all information filed by the Company under the Securities Exchange Act of 1934 (as amended, the "**Exchange Act**," which term, as used herein, includes the rules and regulations of the Commission promulgated thereunder) prior to the Time of Sale and incorporated by reference in the Pricing Disclosure Package (including the Preliminary Offering Memorandum) or the Final Offering Memorandum (as the case may be), and all references herein to the terms "**amend**," "**amendment**" or "**supplement**" with respect to the Pricing Disclosure Package or the Final Offering Memorandum shall be deemed to mean and include all information filed by the Company under the Exchange Act after the Time of Sale and incorporated by reference in the Final Offering Memorandum.

The Company hereby confirms its agreements with the Initial Purchasers as follows:

SECTION 1. **Representations and Warranties.** Each of the Company and the Guarantors, jointly and severally, hereby represents, warrants and covenants to each Initial Purchaser that, as of the date hereof and as of the Closing Date (references in this Section 1 to the "**Offering Memorandum**" are to (x) the Pricing Disclosure Package in the case of representations and warranties made as of the date hereof and (y) the Pricing Disclosure Package and the Final Offering Memorandum in the case of representations and warranties made as of the Closing Date):

(a) **No Registration Required.** Subject to compliance by the Initial Purchasers with the representations and warranties set forth in Section 2 hereof and with the procedures set forth in Section 7 hereof, it is not necessary in connection with the offer, sale and delivery of the Securities to the Initial Purchasers and to each Subsequent Purchaser in the manner contemplated by this Agreement and the Offering Memorandum to register the Securities under the Securities Act or to qualify the Indenture under the Trust Indenture Act of 1939, as amended (the "**Trust Indenture Act**," which term, as used herein, includes the rules and regulations of the Commission promulgated thereunder).

(b) **No Integration of Offerings or General Solicitation.** None of the Company, its affiliates (as such term is defined in Rule 501 under the Securities Act) (each, an "**Affiliate**"), or any person acting on its or any of their behalf (other than the Initial Purchasers, as to whom the Company and the Guarantors make no representation or warranty) has, directly or indirectly, solicited any offer to buy or offered to sell, or will, directly or indirectly, solicit any offer to buy

or offer to sell, in the United States or to any United States citizen or resident, any security which is or would be integrated with the sale of the Securities in a manner that would require the Securities to be registered under the Securities Act. None of the Company, its Affiliates, or any person acting on its or any of their behalf (other than the Initial Purchasers, as to whom the Company and the Guarantors make no representation or warranty) has engaged or will engage, in connection with the offering of the Securities, in any form of general solicitation or general advertising within the meaning of Rule 502 under the Securities Act. With respect to those Securities sold in reliance upon Regulation S, (i) none of the Company, its Affiliates or any person acting on its or their behalf (other than the Initial Purchasers, as to whom the Company and the Guarantors make no representation or warranty) has engaged or will engage in any directed selling efforts within the meaning of Regulation S and (ii) each of the Company and its Affiliates and any person acting on its or their behalf (other than the Initial Purchasers, as to whom the Company and the Guarantors make no representation or warranty) has complied and will comply with the offering restrictions set forth in Regulation S.

(c) **Eligibility for Resale under Rule 144A.** Subject to compliance by the Initial Purchasers with the representations and warranties set forth in Section 2 hereof and with the procedures set forth in Section 7 hereof, the Securities are eligible for resale pursuant to Rule 144A and will not be, at the Closing Date, of the same class as securities listed on a national securities exchange registered under Section 6 of the Exchange Act or quoted in a U.S. automated interdealer quotation system.

(d) **The Pricing Disclosure Package and Final Offering Memorandum.** Neither the Pricing Disclosure Package, as of the Time of Sale, nor the Final Offering Memorandum, as of its date or (as amended or supplemented in accordance with Section 3(a), as applicable) as of the Closing Date, contains or represents an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that this representation, warranty and agreement shall not apply to statements in or omissions from the Pricing Disclosure Package, the Final Offering Memorandum or any amendment or supplement thereto made in reliance upon and in conformity with information furnished to the Company in writing by any Initial Purchaser through the Representative expressly for use in the Pricing Disclosure Package, the Final Offering Memorandum or amendment or supplement thereto, as the case may be. The Pricing Disclosure Package contains, and the Final Offering Memorandum will contain, all the information specified in, and meeting the requirements of, Rule 144A. The Company and the Guarantors have not distributed and will not distribute, prior to the later of the Closing Date and the completion of the Initial Purchasers' distribution of the Securities, any offering material in connection with the offering and sale of the Securities other than the Pricing Disclosure Package and the Final Offering Memorandum.

(e) **Company Additional Written Communications.** The Company and the Guarantors have not prepared, made, used, authorized, approved or distributed and will not prepare, make, use, authorize, approve or distribute any written communication that constitutes an offer to sell or solicitation of an offer to buy the Securities other than (i) the Pricing Disclosure Package, (ii) the Final Offering Memorandum and (iii) any electronic road show or other written communications, in each case used in accordance with Section 3(a). Each such communication by the Company or its agents and representatives pursuant to clause (iii) of the preceding sentence (each, a "**Company Additional Written Communication**"), when taken together with the Pricing Disclosure Package, did not as of the Time of Sale, and at the Closing Date will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order

to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that this representation, warranty and agreement shall not apply to statements in or omissions from each such Company Additional Written Communication made in reliance upon and in conformity with information furnished to the Company in writing by any Initial Purchaser through the Representative expressly for use in any Company Additional Written Communication.

(f) **Incorporated Reports.** The reports incorporated by reference in the Offering Memorandum at the time they were or hereafter are filed by the Company with the Commission (collectively, the "**Incorporated Reports**") conformed and will conform in all material respects to the requirements of the Exchange Act. Each such Incorporated Report, when taken together with the Pricing Disclosure Package, did not as of the Time of Sale, and at the Closing Date will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(g) **The Purchase Agreement.** This Agreement has been duly authorized, executed and delivered by the Company and the Guarantors.

(h) **The DTC Agreement.** The DTC Agreement has been duly authorized by the Company and, on the Closing Date, will have been duly executed and delivered by, and will constitute a valid and binding agreement of, the Company, enforceable in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or conveyance or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles, and except as rights to indemnification and contribution may be limited by applicable law.

(i) **Authorization of the Notes and the Guarantees.** The Notes to be purchased by the Initial Purchasers from the Company will on the Closing Date be in the form contemplated by the Indenture, have been duly authorized by the Company for issuance and sale pursuant to this Agreement and the Indenture and, at the Closing Date, will have been duly executed by the Company and, when authenticated in the manner provided for in the Indenture and delivered against payment of the purchase price therefor, will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or conveyance or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles and except as rights to indemnification and contribution may be limited by applicable law, and will be entitled to the benefits of the Indenture. On the Closing Date, the Guarantees of the Notes will be in the respective forms contemplated by the Indenture and will have been duly authorized by the Guarantors for issuance pursuant to this Agreement and the Indenture. When issued by each of the Guarantors, the Guarantees of the Notes will have been duly executed by each of the Guarantors at the Closing Date and, when the Notes have been authenticated in the manner provided for in the Indenture and issued and delivered against payment of the purchase price therefor, the Guarantees of the Notes will constitute valid and binding agreements of the Guarantors.

(j) **Authorization of the Indenture.** The Indenture, at the Closing Date, will have been duly authorized, executed and delivered by the Company and the Guarantors and, assuming due authorization, execution and delivery thereof by the Trustee will constitute a valid and binding agreement of the Company and the Guarantors, enforceable against the Company and the



Guarantors in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or conveyance or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles, and except as rights to indemnification and contribution may be limited by applicable law.

(k) **Description of the Securities and the Indenture.** The Securities and the Indenture will conform in all material respects to the respective statements relating thereto contained in the Offering Memorandum.

(l) **No Material Adverse Change.** Except as otherwise disclosed in the Offering Memorandum (exclusive of any amendment or supplement thereto), subsequent to the respective dates as of which information is given in the Offering Memorandum (exclusive of any amendment or supplement thereto): (i) there has been no material adverse change, or any development that would reasonably be expected to result in a material adverse change, in the condition, financial or otherwise, or in the earnings, business, operations or prospects, whether or not arising from transactions in the ordinary course of business, of the Company and its subsidiaries, considered as one entity (any such change is called a "**Material Adverse Change**"); (ii) the Company and its subsidiaries, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent, not in the ordinary course of business nor entered into any material transaction or agreement not in the ordinary course of business; and (iii) there has been no dividend or distribution of any kind declared, paid or made by the Company or, except for dividends paid to the Company or other subsidiaries, any of its subsidiaries on any class of their respective capital stock or repurchase or redemption by the Company or any of its subsidiaries of any class of their respective capital stock, except for the repurchases of the Company's common stock under its 2016 stock repurchase program approved by the Company's Board of Directors on January 1, 2016 and amended to increase such authorization on February 15, 2016.

(m) **Independent Accountants.** Deloitte & Touche LLP, which has expressed its opinion with respect to the financial statements (which term as used in this Agreement includes the related schedules and notes thereto) and supporting schedules filed with the Commission and included in the Offering Memorandum or incorporated by reference therein is an independent registered public accounting firm within the meaning of the Securities Act, the Exchange Act and the rules of the Public Company Accounting Oversight Board.

(n) **Preparation of the Financial Statements.** The financial statements, together with the related schedules and notes, included in the Offering Memorandum or incorporated by reference therein present fairly the consolidated financial position of the entities to which they relate as of and at the dates indicated and the results of their operations and cash flows for the periods specified. Such financial statements have been prepared in conformity with generally accepted accounting principles as applied in the United States ("**GAAP**") applied on a consistent basis throughout the periods involved, except as may be expressly stated in the related notes thereto. The financial data set forth in the Offering Memorandum under the caption "Summary—Summary Consolidated Financial and Other Data" fairly present in all material respects the information set forth therein on a basis consistent with that of the audited financial statements contained in the Offering Memorandum. The statistical and market-related data and forward-looking statements included in the Offering Memorandum or incorporated by reference therein are based on or derived from sources that the Company and its subsidiaries believe to be reliable and accurate in all material respects and represent their good faith estimates that are made

on the basis of data derived from such sources. The interactive data in eXtensible Business Reporting Language incorporated by reference in the Final Offering Memorandum and the Pricing Disclosure Package fairly present the information called for in all material respects and have been prepared in accordance with the Commission's rules and guidelines applicable thereto.

(o) **Incorporation and Good Standing of the Company and its Subsidiaries.** Each of the Company, the Guarantors and the Company's subsidiaries listed on Schedule B hereto (each, a "**Subsidiary**" and, collectively, the "**Subsidiaries**") has been duly incorporated, formed or organized, as applicable, and is validly existing as a corporation, limited partnership or a limited liability company, as applicable, in good standing under the laws of the jurisdiction of its incorporation, formation or organization, as applicable, and has corporate, limited partnership or limited liability company, as applicable, power and authority to own or lease, as the case may be, and operate its properties and to conduct its business as described in the Offering Memorandum and, in the case of the Company and the Guarantors, to enter into and perform its obligations under each of the Transaction Documents to which it is a party. The Company, each Guarantor and each of the Company's Subsidiaries is duly qualified as a foreign corporation, limited partnership or limited liability company, as applicable, to transact business and is in good standing or equivalent status in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except for such jurisdictions where the failure to so qualify or to be in good standing would not, individually or in the aggregate, result in a Material Adverse Change. All of the issued and outstanding capital stock or other ownership interest of each Guarantor and each Subsidiary has been duly authorized and validly issued, is fully paid and nonassessable and is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance or claim, except as disclosed in the Offering Memorandum or except as would not result in a Material Adverse Change. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed in Exhibit 21 to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2015 filed by the Company with the Commission, except for the Company's ownership interests in CBSM Companhia Brasileira De Servicos De Marketing; Excentus Corporation; Modopayments, LLC; SpendGo, Inc.; Brand Loyalty Sourcing Americas Holding B. V., Brand Loyalty Sourcing USA Inc. and LoyaltyOne (Shanghai) Marketing Limited.

(p) **Non-Contravention of Existing Instruments; No Further Authorizations or Approvals Required.** Neither the Company, the Guarantors nor any of the Company's Subsidiaries is (i) in violation of its charter, bylaws or other constitutive document or (ii) in default (or, with the giving of notice or lapse of time, would be in default) ("**Default**") under any indenture, mortgage, loan or credit agreement, note, contract, franchise, lease or other instrument to which the Company, any Guarantor or any of the Company's Subsidiaries is a party or by which it or any of them may be bound (including, without limitation, the Company's existing credit agreement, dated July 10, 2013, among the Company, as the borrower, certain of the Company's domestic subsidiaries, as guarantors, and Wells Fargo Bank, National Association, as administrative agent (as amended, supplemented and modified through the date hereof); that certain Amendment and Restatement Agreement, dated June 9, 2016, relating to a €315,000,000 Facilities Agreement, originally dated October 4, 2011, as amended on July 26, 2012 and as amended and restated on January 17, 2013, on December 19, 2013 and on August 25, 2015, of BrandLoyalty Group B.V. (which agreement was assumed by the Company in connection with its acquisition in January 2014); the Company's 5.250% Senior Notes due 2017, the Company's 6.375% Senior Notes due 2020, the Company's 5.375% Senior Notes due 2022, the Company's 5.25% Senior Notes due 2023 and asset-backed securities), or to which any of the property or

assets of the Company, any Guarantor or any of the Subsidiaries is subject (each, an "**Existing Instrument**"), except, in the case of clause (ii) above, for such Defaults as would not, individually or in the aggregate, result in a Material Adverse Change. The execution, delivery and performance of this Agreement and the Indenture by the Company and the Guarantors party thereto, and the issuance and delivery of the Securities, and consummation of the transactions contemplated hereby and thereby and by the Offering Memorandum (i) will not result in any violation of the provisions of the charter, bylaws or other constitutive document of the Company or any Guarantor, (ii) will not conflict with or constitute a breach of, or Default or a Debt Repayment Triggering Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any Guarantor pursuant to, or require the consent of any other party to, any Existing Instrument, and (iii) will not result in any violation of any law, administrative regulation or administrative or court decree applicable to the Company or any Guarantor, except, in the case of clauses (ii) and (iii), for such conflicts, breaches, Defaults, liens, charges, encumbrances or violations as would not, individually or in the aggregate, result in a Material Adverse Change. No consent, approval, authorization or other order of, or registration or filing with, any court or other governmental or regulatory authority or agency is required for the execution, delivery and performance of the Transaction Documents by the Company and the Guarantors to the extent a party thereto, or the issuance and delivery of the Securities, or consummation of the transactions contemplated hereby and thereby and by the Offering Memorandum, except such as (i) have been obtained, or prior to the Closing Date, will have been obtained or made and (ii) may be required under any applicable state or foreign securities laws in any jurisdiction in which the Securities are offered and sold in connection with the transactions contemplated hereby. As used herein, a "**Debt Repayment Triggering Event**" means any event or condition which gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of the Guarantors.

(q) **No Material Actions or Proceedings.** There are no legal or governmental actions, suits or proceedings pending or, to the best of the Company's and the Guarantors' knowledge, threatened (i) against or affecting the Company or any of its subsidiaries or (ii) which has as the subject thereof any property owned or leased by, the Company or any of its subsidiaries, where, in each case, such action, suit or proceeding, if determined adversely to the Company or such subsidiary, would result in a Material Adverse Change or adversely affect the consummation of the transactions contemplated by this Agreement. No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the best of the Company's and the Guarantors' knowledge, is threatened or imminent, and the Company and the Guarantors are not aware of any existing, threatened or imminent labor disputes with the employees of any principal supplier of the Company, in each case that would result in a Material Adverse Change.

(r) **Intellectual Property Rights.** The Company and its subsidiaries own, possess, license or have other valid rights to use all patents, patent applications, trademarks and service marks, trade and service mark registrations, trade names, trade dress, copyrights, rights in data and databases, licenses, inventions, trade secrets, technology, know-how and other intellectual property (collectively, "**Intellectual Property Rights**") reasonably necessary to conduct their businesses as now conducted and as proposed in the Disclosure Package and the Final Offering Memorandum to be conducted. Except as disclosed in the Disclosure Package and the Final Offering Memorandum, (a) no party has been granted an exclusive license to use any portion of such Intellectual Property owned by the Company or its subsidiaries; (b) there is no material infringement by third parties of any such Intellectual Property owned by or exclusively licensed

to the Company or its subsidiaries; (c) there is no pending or threatened action, suit, proceeding or claim by others challenging the Company's or its subsidiaries' rights in or to any of its material Intellectual Property, and the Company is unaware of any facts that would form a reasonable basis for any such claim; (d) there is no pending or threatened action, suit, proceeding or claim by others challenging the enforceability, validity or scope of any such Intellectual Property, and the Company is unaware of any facts that would form a reasonable basis for any such claim; and (e) there is no pending or threatened action, suit, proceeding or claim by others that the Company's business as now conducted infringes or otherwise violates any patent, trademark, copyright, trade secret or other proprietary rights of others, and the Company is unaware of any other fact that would form a reasonable basis for any such claim, except with respect to clauses (a), (b), (c), (d) and (e), for such licenses, infringements, actions, suits, proceedings or claims as would not, individually or in the aggregate, result in a Material Adverse Change. Except as disclosed in the Disclosure Package and the Final Offering Memorandum, and except as would not, individually or in the aggregate, result in a Material Adverse Change, the conduct of the Company's business, as currently conducted and as proposed in the Disclosure Package and the Final Offering Memorandum to be conducted, does not and will not infringe, misappropriate, dilute, violate or otherwise conflict with the Intellectual Property rights of others.

(s) **All Necessary Permits, etc.** The Company and each subsidiary possess such valid and current certificates, authorizations or permits issued by the appropriate state, federal or foreign regulatory agencies or bodies necessary to conduct their respective businesses, as described in the Disclosure Package and the Final Offering Memorandum, except where failure to possess the same would not result in a Material Adverse Change, and neither the Company nor any subsidiary has received any notice of proceedings relating to the revocation or modification of, or non-compliance with, any such certificate, authorization or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would result in a Material Adverse Change.

(t) **Title to Properties.** The Company and each of its subsidiaries has good and marketable title to all the properties and assets reflected as owned in the financial statements referred to in Section 1(n) hereof, in each case free and clear of any security interests, mortgages, liens, encumbrances, equities, claims and other defects, except as disclosed in the Disclosure Package and the Final Offering Memorandum, and except as such do not materially and adversely affect the value of such property and do not materially interfere with the use made or proposed to be made of such property by the Company or such subsidiary or would not have, individually or in the aggregate, a Material Adverse Change. The real property, improvements, equipment and personal property held under lease by the Company or any subsidiary are held under valid and enforceable leases, with such exceptions as do not materially interfere with the use made or proposed to be made of such real property, improvements, equipment or personal property by the Company or such subsidiary or would not have, singly or in the aggregate, a Material Adverse Change.

(u) **Tax Law Compliance.** The Company and each of its subsidiaries have filed all federal, state, local and foreign tax returns required to be filed by them (taking into account valid extensions), and have paid all federal, state, local and foreign taxes (including any related interest, penalties or additions to tax) that are due and payable (whether or not shown on any tax return, including in their capacity as a withholding agent), except those, if any (i) which are being contested in good faith by appropriate proceedings diligently conducted that stay the enforcement of the tax in question and for which adequate reserves have been provided in accordance with GAAP or (ii) with respect to which the failure to make such filing or payment could not

individually or in the aggregate have a Material Adverse Change. The Company has made adequate charges, accruals and reserves in accordance with GAAP in the applicable financial statements referred to in Section 1(n) hereof in respect of all federal, state, local and foreign taxes for all current or prior periods as to which the tax liability of the Company or any of its subsidiaries has not been finally determined. There is no current, pending or, to the knowledge of the Company and the Guarantors, threatened tax audit, assessment, deficiency or other claim against the Company or any of its subsidiaries that would, individually or in the aggregate, if determined adversely, result in a Material Adverse Change.

(v) **Company and Guarantors Not an "Investment Company"**. The Company and the Guarantors have been advised of the rules and requirements under the Investment Company Act of 1940, as amended (the "**Investment Company Act**," which term, as used herein, includes the rules and regulations of the Commission promulgated thereunder). Neither the Company nor any Guarantor is, or after receipt of payment for the Securities and the application of the proceeds thereof as contemplated under the caption "Use of Proceeds" in the Disclosure Package and the Final Offering Memorandum will be, an "investment company" within the meaning of the Investment Company Act.

(w) **Insurance**. Each of the Company and its subsidiaries are insured by recognized, financially sound institutions with policies in such amounts and with such deductibles and covering such risks as are generally deemed adequate and customary for their businesses including, without limitation, policies covering real and personal property owned or leased by the Company and its subsidiaries against theft, damage, destruction and acts of vandalism. All policies of insurance and fidelity or surety bonds insuring the Company or any of its subsidiaries or their respective businesses, assets, employees, officers and directors are in full force and effect; the Company and its subsidiaries are in compliance with the terms of such policies and instruments in all material respects. The Company has no reason to believe that it or any subsidiary will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Change. Neither of the Company nor any subsidiary has been denied any insurance coverage which it has sought or for which it has applied.

(x) **No Price Stabilization or Manipulation**. None of the Company or any of the Guarantors has taken or will take, directly or indirectly, any action designed to or that would be reasonably expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Securities.

(y) **Solvency**. Each of the Company and the Guarantors is, and immediately after the Closing Date will be, Solvent. As used herein, the term "**Solvent**" means, with respect to any person on a particular date, that on such date (i) the fair market value of the assets of such person is greater than the total amount of liabilities (including contingent liabilities) of such person, (ii) the present fair salable value of the assets of such person is greater than the amount that will be required to pay the probable liabilities of such person on its debts as they become absolute and matured, (iii) such person is able to realize upon its assets and pay its debts and other liabilities, including contingent obligations, as they mature and (iv) such person does not have unreasonably small capital.

(z) **Compliance with Sarbanes-Oxley**. The Company and its officers and directors, in their capacity as such, are in compliance with the applicable provisions of the Sarbanes-Oxley

Act of 2002 (the "**Sarbanes-Oxley Act**," which term, as used herein, includes the rules and regulations of the Commission promulgated thereunder).

(aa) **Company's Accounting System.** The Company maintains a system of "internal control over financial reporting" (as defined in Rule 13a-15(f) of the Exchange Act) of the Company and its subsidiaries that complies with the requirements of the Exchange Act and has been designed by, or under the supervision of, its principal executive and principal financial officers, or persons performing similar functions, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. The Company maintains a system of accounting controls of the Company and its subsidiaries that is in compliance with the Sarbanes-Oxley Act and is sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and (v) the interactive data in eXtensible Business Reporting Language incorporated by reference in the Final Offering Memorandum and the Pricing Disclosure Package fairly present in all material respects the information called for by, and are prepared in accordance with, the Commission's rules and guidelines applicable thereto.

(bb) **Disclosure Controls and Procedures.** The Company has established and maintains disclosure controls and procedures (as such term is defined in Rules 13a-15 and 15d-15 under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating to the Company and its subsidiaries is made known to the chief executive officer and chief financial officer of the Company by others within the Company or any of its consolidated subsidiaries, and such disclosure controls and procedures are reasonably effective to perform the functions for which they were established subject to the limitations of any such control system; the Company's auditors and the Audit Committee of the Board of Directors of the Company have been advised of: (i) any significant deficiencies or material weaknesses in the design or operation of internal controls which could adversely affect the Company's ability to record, process, summarize, and report financial data; and (ii) any fraud, whether or not material, that involves management or other employees who have a role in the Company's internal controls; and since the date of the most recent evaluation of such disclosure controls and procedures, there has been (i) no material weakness in the Company's internal control over financial reporting (whether or not remediated) and (ii) no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(cc) **Regulations T, U, X.** Neither the Company nor any Guarantor nor any of their respective subsidiaries nor any agent thereof acting on their behalf has taken, and none of them will take, any action that might cause this Agreement or the issuance or sale of the Securities to violate Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System.

(dd) **Compliance with and Liability Under Environmental Laws.** Except as would not, individually or in the aggregate, result in a Material Adverse Change: (i) each of the Company and its subsidiaries and their respective operations and facilities are in compliance with, and not subject to any known liabilities under, applicable Environmental Laws, which compliance

includes, without limitation, having obtained and being in compliance with any permits, licenses or other governmental authorizations or approvals, and having made all filings and provided all financial assurances and notices, required for the ownership and operation of the business, properties and facilities of the Company or its subsidiaries under applicable Environmental Laws, and compliance with the terms and conditions thereof; (ii) neither the Company nor any of its subsidiaries has received any written communication, whether from a governmental authority, citizens group, employee or otherwise, that alleges that the Company or any of its subsidiaries is in violation of any Environmental Law; (iii) there is no claim, action or cause of action filed with a court or governmental authority, no investigation with respect to which the Company or any of its subsidiaries has received written notice, and no written notice by any person or entity alleging actual or potential liability on the part of the Company or any of its subsidiaries based on or pursuant to any Environmental Law pending or, to the best of the Company's and the Guarantors' knowledge, threatened against the Company or any of its subsidiaries or any person or entity whose liability under or pursuant to any Environmental Law the Company or any of its subsidiaries has retained or assumed either contractually or by operation of law; (iv) neither the Company nor any of its subsidiaries is conducting or paying for, in whole or in part, any investigation, response or other corrective action pursuant to any Environmental Law at any site or facility, nor is any of them subject or a party to any order, judgment, decree, contract or agreement which imposes any obligation or liability under any Environmental Law; (v) no lien, charge, encumbrance or restriction has been recorded pursuant to any Environmental Law with respect to any assets, facility or property owned, operated or leased by the Company or any of its subsidiaries; and (vi) to the best of the Company's and the Guarantors' knowledge, there are no past or present actions, activities, circumstances, conditions or occurrences, including, without limitation, the Release or threatened Release of any Material of Environmental Concern, that could reasonably be expected to result in a violation of or liability under any Environmental Law on the part of the Company or any of its subsidiaries, including without limitation, any such liability which the Company or any of its subsidiaries has retained or assumed either contractually or by operation of law.

For purposes of this Agreement, "**Environment**" means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and subsurface strata, and natural resources such as wetlands, flora and fauna. "**Environmental Laws**" means the common law and all federal, state, local and foreign laws or regulations, ordinances, codes, orders, decrees, judgments and injunctions issued, promulgated or entered thereunder, relating to pollution or protection of the Environment or human health, including without limitation, those relating to (i) the Release or threatened Release of Materials of Environmental Concern; and (ii) the manufacture, processing, distribution, use, generation, treatment, storage, transport, handling or recycling of Materials of Environmental Concern. "**Materials of Environmental Concern**" means any substance, material, pollutant, contaminant, chemical, waste, compound, or constituent, in any form, including without limitation, petroleum and petroleum products, subject to regulation or which can give rise to liability under any Environmental Law. "**Release**" means any release, spill, emission, discharge, deposit, disposal, leaking, pumping, pouring, dumping, emptying, injection or leaching into the Environment, or into, from or through any building, structure or facility.

(ee) **ERISA Compliance.** Except as would not result in a Material Adverse Change, the Company, and its subsidiaries and any "employee benefit plan" (as defined under the U.S. Employee Retirement Income Security Act of 1974, as amended, "**ERISA**," which term, as used herein, includes the regulations and published interpretations thereunder) established or maintained by the Company, its subsidiaries or their ERISA Affiliates (as defined below) are in compliance with ERISA and, the Company is in compliance with its obligations under ERISA

with respect to each "multiemployer plan" (as defined in Section 4001 of ERISA) to which the Company, its subsidiaries or an ERISA Affiliate contributes (a "**Multiemployer Plan**"). "**ERISA Affiliate**" means, with respect to the Company or a subsidiary, any member of any group of organizations described in Section 414 of the Internal Revenue Code of 1986, as amended, the "**Code**," which term, as used herein, includes the regulations and published interpretations thereunder. None of the following events has occurred within the prior six years or exists: (i) an audit or investigation by the U.S. Internal Revenue Service, the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation or any other U.S. federal or state governmental agency or any foreign regulatory agency with respect to the employment or compensation of employees by the Company or any of its subsidiaries that would result in a Material Adverse Change or (ii) any breach of any contractual obligation, or any violation of law or applicable qualification standards, with respect to the employment or compensation of employees by the Company or any of its subsidiaries that would result in a Material Adverse Change. Except, in each case, as would not, individually or in the aggregate, result in a Material Adverse Change, none of the following events has occurred within the prior six years or is reasonably likely to occur: (i) a failure to fulfill the obligations, if any, under the minimum funding standards of Section 302 of ERISA with respect to a Plan, determined without regard to any waiver of such obligations or extension of any amortization period; (ii) a material increase in the aggregate amount of contributions required to be made to all Plans in the current fiscal year of the Company and its subsidiaries compared to the amount of such contributions made in the Company and its subsidiaries' most recently completed fiscal year; (iii) a material increase in the Company and its subsidiaries' "accumulated post-retirement benefit obligations" (within the meaning of Statement of Financial Accounting Standards 106) compared to the amount of such obligations in the Company and its subsidiaries' most recently completed fiscal year; (iv) any event or condition giving rise to a liability under Title IV of ERISA; or (v) the filing of a claim by one or more employees or former employees of the Company or any of its subsidiaries related to its or their employment. For purposes of this paragraph, the term "Plan" means a plan (within the meaning of Section 3(3) of ERISA) subject to Title IV of ERISA with respect to which the Company or any of its subsidiaries may have any liability. Each "employee benefit plan" established or maintained by the Company, its subsidiaries or any of their ERISA Affiliates that is intended to be qualified under Section 401 of the Code is so qualified and nothing has occurred, whether by action or failure to act, which would reasonably be expected to cause the loss of such qualification.

(ff) **Compliance with Labor Laws.** Except as would not, individually or in the aggregate, result in a Material Adverse Change, (i) there is (A) no unfair labor practice complaint pending or, to the best of the Company's and the Guarantors' knowledge, threatened against the Company or any of its subsidiaries before the U.S. National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under collective bargaining agreements pending, or to the best of the Company's and the Guarantors' knowledge, threatened, against the Company or any of its subsidiaries, (B) no strike, labor dispute, slowdown or stoppage pending or, to the best of the Company's and the Guarantors' knowledge, threatened against the Company or any of its subsidiaries and (C) no union representation question existing with respect to the employees of the Company or any of its subsidiaries and, to the best of the Company's and the Guarantors' knowledge, no union organizing activities taking place and (ii) there has been no violation of any federal, state or local law relating to discrimination in hiring, promotion or pay of employees or of any applicable wage or hour laws.

(gg) **Compliance with Security, Privacy and Data Protection Laws.** The Company and its subsidiaries have taken commercially reasonable actions to protect and maintain the



security and operation of their networks, hardware, software, databases, websites and systems (and all data stored therein and transmitted thereby) and there have been no material disruptions or outages of same. The Company, and each of its subsidiaries, is in compliance in all material respects with all applicable laws, and its internal and published corporate policies and procedures, concerning the privacy and/or security of personal data of or concerning an individual, including, where applicable, any state data breach notification laws, state social security number protection laws, the U.S. Federal Trade Commission Act, as amended (15 U.S.C. Sections 41-58), the Gramm-Leach-Bliley Act, and state consumer protection Laws. The Company's email direct marketing activities have not violated in any material respect, the CAN-SPAM Act or any other U.S. federal or state law or regulation applicable to electronic direct marketing.

(hh) **Related Party Transactions.** No relationship, direct or indirect, exists between or among any of the Company or any Affiliate of the Company, on the one hand, and any director, officer, member, stockholder, customer or supplier of the Company or any Affiliate of the Company, on the other hand, which is required by the Securities Act to be disclosed in a registration statement on Form S-1 which is not so disclosed in the Disclosure Package and the Final Offering Memorandum. There are no outstanding loans, advances (except advances for business expenses in the ordinary course of business) or guarantees of indebtedness by the Company or any affiliate of the Company to or for the benefit of any of the officers or directors of the Company or any affiliate of the Company or any of their respective family members.

(ii) **No Unlawful Contributions or Other Payments.** Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company and the Guarantors, any director, officer, agent, employee or Affiliate of the Company or any of its subsidiaries (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (ii) is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the FCPA or the UK Bribery Act or any other applicable anti-bribery or anti-corruption law, including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA or the UK Bribery Act or any other applicable anti-bribery or anti-corruption law or (iii) has made, offered, agreed, requested or taken an act in furtherance of any unlawful bribe or other unlawful benefit, including, without limitation, any rebate, payoff, influence payment, kickback or other unlawful or improper payment or benefit. The Company, its subsidiaries and, to the knowledge of the Company and the Guarantors, its Affiliates have conducted their businesses in compliance with the FCPA and the UK Bribery Act or any other applicable anti-bribery or anti-corruption law and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

"FCPA" means U.S. Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

"UK Bribery Act" means the Bribery Act 2010 of the United Kingdom, as amended, and the rules and regulations thereunder.

(jj) **No Conflict with Money Laundering Laws.** The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable

financial recordkeeping and reporting requirements of the U.S. Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines issued, administered or enforced by any governmental agency (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or U.S. governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company and the Guarantors, threatened.

(kk) **No Conflict with Sanctions Laws.** Neither the Company nor any of its subsidiaries nor, to the knowledge of the Company and the Guarantors, any director, officer, agent, employee, authorized representative or Affiliate of the Company or any of its subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department, the U.S. Department of Commerce, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "**Sanctions**"), nor is the Company or any of its subsidiaries located, organized or resident in a country or territory that is the subject of Sanctions. The Company will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person, (i) to fund any activities of or business with any person that, at the time of such funding, is the subject of Sanctions, or is in the Crimea region of the Ukraine, Cuba, Iran, Syria, North Korea, Sudan or in any other country or territory, that, at the time of such funding, is the subject of Sanctions (each, a "**Sanctioned Country**"), (ii) to fund or facilitate any activities of or business in any Sanctioned Country or (iii) in any other manner that will result in a violation by any person (including any person participating in the offering, whether as underwriter, initial purchaser, advisor, investor or otherwise) of Sanctions. The Company and its subsidiaries have not, in the past five years, knowingly engaged in, and are not now knowingly engaged in, any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject of Sanctions or with any Sanctioned Country, provided, however, that with respect to any subsidiary acquired by the Company during such five-year period, this representation is made to the knowledge of the Company and the Guarantors as to the time period prior to which such entity has been the Company's subsidiary.

(ll) **Compliance with Banking Regulations.** Each of Comenity Bank (f/k/a World Financial Network Bank) and Comenity Capital Bank (f/k/a World Financial Capital Bank) (collectively, the "**Banks**") is a wholly-owned subsidiary of the Company. No charge, investigation or proceeding for the termination or revocation of the charter or good standing of either Bank is pending or, to the best knowledge of the Company and the Guarantors, threatened. The deposit accounts and deposits of each Bank are duly and adequately insured by the Federal Deposit Insurance Corporation (the "**FDIC**") to the full extent of FDIC insurance limits. No charge, investigation or proceeding for the termination or revocation of either Banks' FDIC insurance is pending or, to the best knowledge of the Company and the Guarantors, threatened. Neither the Company nor either Bank is subject to any order of the FDIC or any state or foreign banking departments with jurisdiction over either Bank or its operations, nor, except as set forth in the Pricing Disclosure Package and the Final Offering Memorandum, is the Company or either Bank subject to any agreement or consent related to compliance with U.S. banking laws and regulations with, or, except as disclosed and provided in writing to the Representative, board resolution adopted at the instigation of, any such regulatory authorities. Each Bank has conducted and is conducting its business so as to comply in all material respects with all applicable U.S. federal, foreign and state laws, rules, regulations, decisions, directives and orders

of, and agreements with, the FDIC and any state or foreign banking departments with jurisdiction over such Bank or its operations. No material charge, investigation or proceeding with respect to, or relating to, either Bank is pending or, to the best knowledge of the Company and the Guarantors, threatened, by or before any regulatory, administrative or U.S. governmental agency, body or authority. Each Bank is in compliance with all applicable capital requirements. Each Bank is well capitalized as defined in FDIC regulations, with capital ratios as set forth in the Pricing Disclosure Package and the Final Offering Memorandum. Except as would not result in a Material Adverse Change, whether singly or in the aggregate, the credit card accounts (the "**Accounts**") originated by either Bank, whether securitized by such Bank or retained as seller's interest for such Bank's own account, have been created, maintained by such Bank and serviced in compliance with applicable U.S. federal and state laws and regulations and the standard policies and procedures of such Bank relating to the administration of the Accounts including, but not limited to, the solicitation, credit approval, processing, servicing, collection and other administration and management of the Accounts, as such policies and procedures may have been modified from time to time. The interest rates, fees and charges in connection with the Accounts comply in all material respects with applicable U.S. federal and state laws and regulations and, except as would not reasonably be expected to result in a Material Adverse Change, whether singly or in the aggregate, with each agreement between such Bank and a cardholder containing the terms and conditions of the Account. All applications for Accounts have been conducted and evaluated and applicants notified in a manner which is in compliance, in all material respects, with all applicable provisions of the U.S. Equal Credit Opportunity Act and its implementing regulations, as amended. All disclosures made in connection with the Accounts are and have been in compliance, in all material respects, with the applicable provisions of the U.S. Consumer Credit Protection Act and its implementing regulations, as amended. Each of the Banks is in compliance, in all material respects, with the U.S. Truth in Lending Act and the U.S. Fair Credit Reporting Act, as amended by the U.S. Credit Card Accountability Responsibility and Disclosure Act of 2009. The Company is not required to register as a bank holding company under the U.S. Bank Holding Company Act of 1956, as amended. Each of the Company and its subsidiaries are in compliance in all material respects with all rules and regulations that are in effect and applicable to them pursuant to the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act, including but not limited to rules and regulations regarding asset-backed securities issued by the Commission.

(mm) **Regulation S.** The Company, the Guarantors and their respective Affiliates and all persons acting on their behalf (other than the Initial Purchasers, as to whom the Company and the Guarantors make no representation) have complied with and will comply with the offering restrictions requirements of Regulation S in connection with the offering of the Securities outside the United States and, in connection therewith, the Offering Memorandum will contain the disclosure required by Rule 902. The Company is a "reporting issuer" as defined in Rule 902 under the Securities Act.

Any certificate signed by an officer of the Company or any Guarantor and delivered to the Initial Purchasers or to counsel for the Initial Purchasers shall be deemed to be a representation and warranty by the Company or such Guarantor to each Initial Purchaser as to the matters set forth therein.

## SECTION 2. **Purchase, Sale and Delivery of the Securities.**

(a) **The Securities.** The Company agrees to issue and sell to the Initial Purchasers, severally and not jointly, all of the Notes, and each Guarantor agrees to execute its Guarantee, and subject to the

conditions set forth herein, the Initial Purchasers agree, severally and not jointly, to purchase from the Company the aggregate principal amount of the Notes set forth opposite their names on Schedule A hereto, at a purchase price of 98.00% of the principal amount thereof payable on the Closing Date, in each case, on the basis of the representations, warranties and agreements herein contained, and upon the terms herein set forth.

(b) **The Closing Date.** Delivery of certificates for the Notes in definitive form to be purchased by the Initial Purchasers and payment therefor shall be made at the offices of Cahill Gordon & Reindel LLP (or such other place as may be agreed to by the Company and the Representative) at 9:00 a.m. New York City time, on October 27, 2016 or such other time and date as the Representative shall designate by notice to the Company (the time and date of such closing are called the "**Closing Date**"). The Company hereby acknowledges that the Representative may provide notice to postpone the Closing Date as originally scheduled based on a determination by the Company or the Initial Purchasers to recirculate to investors copies of an amended or supplemented Offering Memorandum or a delay as contemplated by the provisions of Section 17 hereof. It is understood that the Representative is authorized, for its own account and the accounts of the several Initial Purchasers, to accept delivery of and receipt for, and make payment of the purchase price for, the Securities the Initial Purchasers have agreed to purchase.

(c) **Delivery of the Notes.** The Company shall deliver, or cause to be delivered, to the Representative for the accounts of the several Initial Purchasers certificates for the Notes at the Closing Date against the irrevocable release of a wire transfer of immediately available funds for the amount of the purchase price therefor. The certificates for the Notes shall be in such denominations and registered in the name of Cede & Co., as nominee of the Depository, pursuant to the DTC Agreement, and shall be made available for inspection on the business day preceding the Closing Date at a location in New York City, as the Representative may designate. Time shall be of the essence, and delivery at the time and place specified in this Agreement is a further condition to the obligations of the Initial Purchasers.

(d) **Initial Purchasers as Qualified Institutional Buyers.** Each Initial Purchaser, severally and not jointly, represents and warrants to, and agrees with, the Company and the Guarantors that:

1. it will offer and sell Securities only to (a) persons who it reasonably believes are "qualified institutional buyers" within the meaning of Rule 144A ("**Qualified Institutional Buyers**") in transactions meeting the requirements of Rule 144A or (b) upon the terms and conditions set forth in Annex I to this Agreement;
2. it is an institutional "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act; and
3. it will not offer or sell Securities by, any form of general solicitation or general advertising, including but not limited to the methods described in Rule 502(c) under the Securities Act.

SECTION 3. **Additional Covenants.** Each of the Company and the Guarantors further, jointly and severally, covenants and agrees with each Initial Purchaser as follows:

(a) **Preparation of Final Offering Memorandum; Initial Purchasers' Review of Proposed Amendments and Supplements and Company Additional Written Communications.** As promptly as practicable following the Time of Sale and in any event not later than the second business day following the date hereof, the Company will prepare and

deliver to the Initial Purchasers the Final Offering Memorandum, which shall consist of the Preliminary Offering Memorandum as modified only by the information contained in the Pricing Supplement. The Company will not amend or supplement the Preliminary Offering Memorandum or the Pricing Supplement. The Company will not amend or supplement the Final Offering Memorandum prior to the Closing Date unless the Representative shall previously have been furnished a copy of the proposed amendment or supplement at least two (2) business days prior to the proposed use or filing, and shall not have objected to such amendment or supplement. Before making, preparing, using, authorizing, approving or distributing any Company Additional Written Communication, the Company and the Guarantors will furnish to the Representative a copy of such written communication for review and will not make, prepare, use, authorize, approve or distribute any such written communication to which the Representative reasonably object.

(b) **Amendments and Supplements to the Final Offering Memorandum and Other Securities Act Matters.** If at any time prior to the Closing Date (i) any event shall occur or condition shall exist as a result of which any of the Pricing Disclosure Package as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading or (ii) it is necessary to amend or supplement any of the Pricing Disclosure Package to comply with law, the Company and the Guarantors agree to promptly notify the Initial Purchasers thereof and forthwith prepare and (subject to Section 3(a) hereof) furnish to the Initial Purchasers such amendments or supplements to any of the Pricing Disclosure Package as may be necessary so that the statements in any of the Pricing Disclosure Package as so amended or supplemented will not, in the light of the circumstances under which they were made, be misleading or so that any of the Pricing Disclosure Package will comply with all applicable law. If, prior to the completion of the placement of the Securities by the Initial Purchasers with the Subsequent Purchasers, any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Final Offering Memorandum, as then amended or supplemented, in order to make the statements therein, in the light of the circumstances when the Final Offering Memorandum is delivered to a Subsequent Purchaser, not misleading, or if in the judgment of the Representative or counsel for the Initial Purchasers it is otherwise necessary to amend or supplement the Final Offering Memorandum to comply with law, the Company and the Guarantors will promptly notify the Initial Purchasers thereof and forthwith prepare and (subject to Section 3(a) hereof) furnish to the Initial Purchasers such amendments or supplements to the Final Offering Memorandum so that the statements in the Final Offering Memorandum as so amended or supplemented will not, in the light of the circumstances at the Closing Date and at the time of sale of Securities, be misleading or so that the Final Offering Memorandum, as amended or supplemented, will comply with all applicable law.

(c) **Copies of the Offering Memorandum.** The Company agrees to furnish the Initial Purchasers, without charge, as many copies of the Pricing Disclosure Package and the Final Offering Memorandum and any amendments and supplements thereto as they shall reasonably request.

(d) **Blue Sky Compliance.** Each of the Company and the Guarantors shall cooperate with the Representative and counsel for the Initial Purchasers to qualify or register (or to obtain exemptions from qualifying or registering) all or any part of the Securities for offer and sale under the securities laws of the several states of the United States, the provinces of Canada or any other jurisdictions designated by the Representative, shall comply with such laws and shall

continue such qualifications, registrations and exemptions in effect so long as required for the distribution of the Securities. None of the Company or any of the Guarantors shall be required to qualify as a foreign corporation or to take any action that would subject it to general service of process in any such jurisdiction where it is not presently qualified or where it would be subject to taxation as a foreign corporation. The Company will advise the Representative promptly of the suspension of the qualification or registration of (or any such exemption relating to) the Securities for offering, sale or trading in any jurisdiction or any initiation or threat of any proceeding for any such purpose, and in the event of the issuance of any order suspending such qualification, registration or exemption, each of the Company and the Guarantors shall use its commercially reasonable efforts to obtain the withdrawal thereof at the earliest possible moment.

(e) **Use of Proceeds.** The Company shall apply the net proceeds from the sale of the Notes sold by it in the manner described under the caption "Use of Proceeds" in the Pricing Disclosure Package.

(f) **The Depository.** The Company will cooperate with the Initial Purchasers and use their commercially reasonable efforts to permit the Securities to be eligible for clearance and settlement through the facilities of the Depository.

(g) **Additional Issuer Information.** Prior to the completion of the placement of the Securities by the Initial Purchasers with the Subsequent Purchasers, the Company shall file, on a timely basis, with the Commission all reports and documents required to be filed under Section 13 or 15 of the Exchange Act. Additionally, at any time when the Company is not subject to Section 13 or 15 of the Exchange Act, for the benefit of holders and beneficial owners from time to time of the Securities, the Company shall furnish, at its expense, upon request, to holders and beneficial owners of Securities and prospective purchasers of Securities information ("**Additional Issuer Information**") satisfying the requirements of Rule 144A(d).

(h) **Future Reports to the Initial Purchasers.** At any time when the Company is not subject to Section 13 or 15 of the Exchange Act and any Securities remain outstanding, the Company will furnish to the Representative and, upon request, to each of the other Initial Purchasers: (i) as soon as practicable after the end of each fiscal year, copies of the Annual Report of the Company containing the balance sheet of the Company as of the close of such fiscal year and statements of income, stockholders' equity and cash flows for the year then ended and the opinion thereon of the Company's independent public or certified public accountants; (ii) as soon as practicable after the filing thereof, copies of each proxy statement, Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other report filed by the Company with the Commission, the Financial Industry Regulatory Authority ("**FINRA**") or any securities exchange; and (iii) as soon as available, copies of any report or communication of the Company mailed generally to holders of its capital stock or debt securities (including the holders of the Securities), if, in each case, such documents are not filed with the Commission within the time periods specified by the Commission's rules and regulations under Section 13 or 15 of the Exchange Act.

(i) **No Integration.** The Company agrees that it will not and will cause its subsidiaries not to make any offer or sale of securities of the Company or such subsidiary of any class if, as a result of the doctrine of "integration" referred to in Rule 502 under the Securities Act, such offer or sale would render invalid (for the purpose of (i) the sale of the Securities by the Company to the Initial Purchasers, (ii) the resale of the Securities by the Initial Purchasers to Subsequent Purchasers or (iii) the resale of the Securities by such Subsequent Purchasers to

others) the exemption from the registration requirements of the Securities Act provided by Section 4(a)(2) thereof or by Rule 144A or by Regulation S thereunder or otherwise.

(j) **No General Solicitation or Directed Selling Efforts.** The Company agrees that it will not and will not permit any of its subsidiaries or any other person acting on its or their behalf (other than the Initial Purchasers, as to which no covenant is given) to (i) solicit offers for, or offer or sell, the Securities by means of any form of general solicitation or general advertising within the meaning of Rule 502(c) of Regulation D or in any manner involving a public offering within the meaning of Section 4(a)(2) of the Securities Act or (ii) engage in any directed selling efforts with respect to the Securities within the meaning of Regulation S, and the Company will and will cause all such persons to comply with the offering restrictions requirement of Regulation S with respect to the Securities.

(k) **No Restricted Resales.** The Company will not, and will not permit any of its affiliates (as defined in Rule 144 under the Securities Act) to resell any of the Notes that have been reacquired by any of them.

(l) **Legended Securities.** Each certificate for a Security will bear the legend contained in "Transfer Restrictions" in the Preliminary Offering Memorandum for the time period and upon the other terms stated in the Preliminary Offering Memorandum.

The Representative on behalf of the several Initial Purchasers, may, in its sole discretion, waive in writing the performance by the Company or any Guarantor of any one or more of the foregoing covenants or extend the time for their performance.

#### SECTION 4. **Payment of Expenses.**

(a) Each of the Company and the Guarantors agrees to pay all reasonable costs, fees and expenses incurred in connection with the performance of its obligations hereunder and in connection with the transactions contemplated hereby, including, without limitation, (i) all expenses incident to the issuance and delivery of the Securities (including all printing and engraving costs), (ii) all necessary issue, transfer and other stamp, excise or similar taxes in connection with the issuance and sale of the Securities to the Initial Purchasers, (iii) all fees and expenses of the Company's and the Guarantors' counsel, independent public or certified public accountants and other advisors, (iv) all costs and expenses incurred in connection with the preparation, printing, filing, shipping and distribution (including any form of electronic distribution) of the Pricing Disclosure Package and the Final Offering Memorandum (including financial statements and exhibits), and all amendments and supplements thereto, and the Transaction Documents, (v) all filing fees, attorneys' fees and expenses incurred by the Company, the Guarantors or the Initial Purchasers in connection with qualifying or registering (or obtaining exemptions from the qualification or registration of) all or any part of the Securities for offer and sale under the securities laws of the several states of the United States, the provinces of Canada or other jurisdictions designated by the Initial Purchasers and agreed by the Company (including, without limitation, the cost of preparing, printing and mailing preliminary and final blue sky or legal investment memoranda and any related supplements to the Pricing Disclosure Package or the Final Offering Memorandum, (vi) the fees and expenses of the Trustee, including the fees and disbursements of counsel for the Trustee in connection with the Indenture and the Securities, (vii) any filing fees incident to, and any reasonable fees and disbursements of counsel to the Initial Purchasers in connection with the review by FINRA, if any, of the terms of the sale of the Securities, and (viii) all fees and expenses (including reasonable fees and expenses of counsel) of the Company and the Guarantors in connection with approval of the Securities by the

Depository for "book-entry" transfer, and the performance by the Company and the Guarantors of their respective other obligations under this Agreement.

(b) Except as provided in this Section 4 and Sections 6, 8 and 9 hereof, the Initial Purchasers shall pay their own expenses, including the (i) fees and disbursements of their counsel and (ii) all expenses incident to the "road show" for the offering of the Securities.

SECTION 5. **Conditions of the Obligations of the Initial Purchasers.** The obligations of the several Initial Purchasers to purchase and pay for the Securities as provided herein on the Closing Date shall be subject to the accuracy of the representations and warranties on the part of the Company and the Guarantors set forth in Section 1 hereof as of the date hereof and as of the Closing Date as though then made and to the timely performance by the Company and the Guarantors of their covenants and other obligations hereunder, and to each of the following additional conditions:

(a) **Accountants' Comfort Letter.** On the date hereof, the Initial Purchasers shall have received from Deloitte & Touche LLP, the independent registered public accounting firm for the Company, a "comfort letter" dated the date hereof addressed to the Initial Purchasers, in form and substance satisfactory to the Representative, covering the financial information in the Pricing Disclosure Package or incorporated by reference therein and other customary matters. In addition, on the Closing Date, the Initial Purchasers shall have received from such accountants a "bring-down comfort letter" dated the Closing Date addressed to the Initial Purchasers, in form and substance satisfactory to the Representative, in the form of the "comfort letter" delivered on the date hereof, except that (i) it shall cover the financial information in the Final Offering Memorandum or incorporated by reference therein and any amendment or supplement thereto and (ii) procedures shall be brought down to a date no more than three (3) days prior to the Closing Date.

(b) **No Material Adverse Change or Ratings Agency Change.** For the period from and after the date of this Agreement and prior to the Closing Date:

(i) in the judgment of the Representative there shall not have occurred any Material Adverse Change; and

(ii) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded the Company or any of its subsidiaries or any of their securities or indebtedness by any "nationally recognized statistical rating organization" registered under Section 15E of the Exchange Act.

(c) **Opinion of Counsel for the Company.** On the Closing Date the Initial Purchasers shall have received (i) the opinion, including the negative assurance statement, of Akin Gump Strauss Hauer & Feld LLP, counsel for the Company, dated as of such Closing Date, the form of which is attached as Exhibit A, and (ii) the opinion of internal counsel of the Company, with regard to the matters set forth in Exhibit B.

(d) **Opinion of Counsel for the Initial Purchasers.** On the Closing Date the Initial Purchasers shall have received the favorable opinion and the negative assurance letter of Cahill Gordon & Reindel LLP, counsel for the Initial Purchasers, dated as of such Closing Date, with



respect to such matters as may be reasonably requested by the Initial Purchasers, in form and substance satisfactory to the Initial Purchasers.

(e) **Officers' Certificate.** On the Closing Date the Initial Purchasers shall have received a written certificate of the Company executed by the Chief Executive Officer or President of the Company and the Chief Financial Officer or Chief Accounting Officer of the Company, dated as of the Closing Date, to the effect set forth in Section 5(b)(ii) hereof, and further to the effect that:

(i) for the period from and after the date of this Agreement and prior to the Closing Date there has not occurred any Material Adverse Change;

(ii) the representations, warranties and covenants of the Company and the Guarantors set forth in Section 1 hereof were true and correct as of the date hereof and are true and correct as of the Closing Date with the same force and effect as though expressly made on and as of the Closing Date;

(iii) no "Default" as that term is used in any of the Existing Instruments exists on such date and the actual and pro forma data concerning compliance by the Company under the financial covenant ratios contained in the Existing Instruments that is attached to such certificate is true, correct and complete; and

(iv) each of the Company and the Guarantors has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date.

(f) **Indenture.** The Company and the Guarantors shall have executed and delivered the Indenture, in form and substance reasonably satisfactory to the Initial Purchasers, and the Initial Purchasers shall have received executed copies thereof.

(g) **Additional Documents.** On or before the Closing Date, the Initial Purchasers and counsel for the Initial Purchasers shall have received such information, documents and opinions as they may reasonably require for the purposes of enabling them to pass upon the issuance and sale of the Securities as contemplated herein, or in order to evidence the accuracy of any of the representations and warranties, or the satisfaction of any of the conditions or agreements, herein contained.

If any condition specified in this Section 5 is not satisfied when and as required to be satisfied, this Agreement may be terminated by the Representative by notice to the Company at any time on or prior to the Closing Date, which termination shall be without liability on the part of any party to any other party, except that Sections 4, 6, 8 and 9 hereof shall at all times be effective and shall survive such termination.

**SECTION 6. Reimbursement of Initial Purchasers' Expenses.** If this Agreement is terminated by the Representative pursuant to Section 5 or 10 hereof, including if the sale to the Initial Purchasers of the Securities on the Closing Date is not consummated because of any refusal, inability or failure on the part of the Company to perform any agreement herein or to comply with any provision hereof, the Company and the Guarantors agree to reimburse the Initial Purchasers, severally, upon demand for all out-of-pocket expenses that shall have been reasonably incurred by the Initial Purchasers in connection with the proposed purchase and the offering and sale of the Securities, including, without

limitation, fees and disbursements of counsel, printing expenses, travel expenses, postage, facsimile and telephone charges.

SECTION 7. **Offer, Sale and Resale Procedures.** Each of the Initial Purchasers, on the one hand, and the Company and each of the Guarantors, on the other hand, hereby agree to observe the following procedures in connection with the offer and sale of the Securities:

(a) Offers and sales of the Securities will be made only by the Initial Purchasers or Affiliates thereof qualified to do so in the jurisdictions in which such offers or sales are made. Each such offer or sale shall only be made to persons whom the offeror or seller reasonably believes to be Qualified Institutional Buyers or non-U.S. persons outside the United States to whom the offeror or seller reasonably believes offers and sales of the Securities may be made in reliance upon Regulation S upon the terms and conditions set forth in Annex I hereto, which Annex I is hereby expressly made a part hereof.

(b) No general solicitation or general advertising (within the meaning of Rule 502 under the Securities Act) will be used in the United States in connection with the offering of the Securities.

(c) Upon original issuance by the Company, and until such time as the same is no longer required under the applicable requirements of the Securities Act, the Notes (and all securities issued in exchange therefor or in substitution thereof) shall bear the following legend:

"THE SECURITY (OR ITS PREDECESSOR) EVIDENCED HEREBY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER SECTION 5 OF THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND THE SECURITY EVIDENCED HEREBY MAY NOT BE OFFERED, SOLD, PLEDGED, ASSIGNED, ENCUMBERED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THE SECURITY EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. THE HOLDER OF THE SECURITY EVIDENCED HEREBY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) SUCH SECURITY MAY BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (1)(a) INSIDE THE UNITED STATES TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A UNDER THE SECURITIES ACT, (b) OUTSIDE THE UNITED STATES TO A FOREIGN PERSON IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, (c) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF APPLICABLE) OR (d) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION

REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL ACCEPTABLE TO THE COMPANY IF THE COMPANY SO REQUESTS), (2) TO THE COMPANY OR (3) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT AND, IN EACH CASE, IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THE SECURITY EVIDENCED HEREBY OF THE RESALE RESTRICTIONS SET FORTH IN CLAUSE (A) ABOVE. NO REPRESENTATION CAN BE MADE AS TO THE AVAILABILITY OF THE EXEMPTION PROVIDED BY RULE 144 FOR RESALE OF THE SECURITY EVIDENCED HEREBY."

Following the sale of the Securities by the Initial Purchasers to Subsequent Purchasers pursuant to the terms hereof, the Initial Purchasers shall not be liable or responsible to the Company for any losses, damages or liabilities suffered or incurred by the Company, including any losses, damages or liabilities under the Securities Act, arising from or relating to any resale or transfer of any Security.

SECTION 8.

**Indemnification.**

(a) **Indemnification of the Initial Purchasers.** Each of the Company and the Guarantors, jointly and severally, agrees to indemnify and hold harmless each Initial Purchaser, its Affiliates, directors, officers and employees, and each person, if any, who controls any Initial Purchaser within the meaning of the Securities Act and the Exchange Act against any loss, claim, damage, liability or expense, as incurred, to which such Initial Purchaser, Affiliate, director, officer, employee or controlling person may become subject, under the Securities Act, the Exchange Act or other U.S. federal or state statutory law or regulation, or at common law or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of the Company), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Offering Memorandum, the Pricing Supplement, any Company Additional Written Communication or the Final Offering Memorandum (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; and to reimburse each Initial Purchaser and each such Affiliate, director, officer, employee or controlling person for any and all expenses (including the fees and disbursements of counsel chosen by the Representative) as such expenses are reasonably incurred by such Initial Purchaser or such Affiliate, director, officer, employee or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action; provided, however, that the foregoing indemnity agreement shall not apply, with respect to an Initial Purchaser, to any loss, claim, damage, liability or expense to the extent, but only to the extent, arising out of or based upon any untrue statement or alleged untrue statement or omission or alleged omission made in reliance upon and in conformity with written information furnished to the Company by such Initial Purchaser through the Representative expressly for use in the Preliminary Offering Memorandum, the Pricing Supplement, any Company Additional Written Communication or the Final Offering Memorandum (or any amendment or supplement thereto). The indemnity agreement set forth in this Section 8(a) shall be in addition to any liabilities that the Company and the Guarantors may otherwise have.

(b) **Indemnification of the Company and the Guarantors.** Each Initial Purchaser agrees, severally and not jointly, to indemnify and hold harmless the Company, each Guarantor, each of their

respective officers and directors and each person, if any, who controls the Company or any Guarantor within the meaning of the Securities Act or the Exchange Act, against any loss, claim, damage, liability or expense, as incurred, to which the Company, any Guarantor or any such director or controlling person may become subject, under the Securities Act, the Exchange Act, or other U.S. federal or state statutory law or regulation, or at common law or otherwise (including in settlement of any litigation, if such settlement is effected with the written consent of such Initial Purchaser), insofar as such loss, claim, damage, liability or expense (or actions in respect thereof as contemplated below) arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Offering Memorandum, the Pricing Supplement, any Company Additional Written Communication or the Final Offering Memorandum (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Preliminary Offering Memorandum, the Pricing Supplement, any Company Additional Written Communication or the Final Offering Memorandum (or any amendment or supplement thereto), in reliance upon and in conformity with written information furnished to the Company by such Initial Purchaser through the Representative expressly for use therein; and to reimburse the Company, any Guarantor and each such director or controlling person for any and all expenses (including the fees and disbursements of counsel) as such expenses are reasonably incurred by the Company, any Guarantor or such director or controlling person in connection with investigating, defending, settling, compromising or paying any such loss, claim, damage, liability, expense or action. Each of the Company and the Guarantors hereby acknowledges that the only information that the Initial Purchasers through the Representative have furnished to the Company expressly for use in the Preliminary Offering Memorandum, the Pricing Supplement, any Company Additional Written Communication or the Final Offering Memorandum (or any amendment or supplement thereto) are the statements set forth in the fourth, sixth (third sentence only) and seventh paragraphs under the caption "Plan of Distribution" in the Preliminary Offering Memorandum and the Final Offering Memorandum. The indemnity agreement set forth in this Section 8(b) shall be in addition to any liabilities that each Initial Purchaser may otherwise have.

(c) **Notifications and Other Indemnification Procedures.** Promptly after receipt by an indemnified party under this Section 8 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 8, notify the indemnifying party in writing of the commencement thereof; provided that the failure to so notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party under this Section 8 except to the extent that it has been materially prejudiced by such failure (through the forfeiture of substantive rights and defenses) and shall not relieve the indemnifying party from any liability that the indemnifying party may have to an indemnified party other than under this Section 8. In case any such action is brought against any indemnified party and such indemnified party seeks or intends to seek indemnity from an indemnifying party, the indemnifying party will be entitled to participate in and, to the extent that it shall elect, jointly with all other indemnifying parties similarly notified, by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party; provided, however, if the defendants in any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that a conflict may arise between the positions of the indemnifying party and the indemnified party in conducting the defense of any such action or that there may be legal defenses available to it and/or other indemnified parties which are different from or additional to those available to the indemnifying party, the indemnified party or parties shall have the right to select separate counsel to assume such legal defenses and to otherwise participate in the defense of such action on behalf of such indemnified party or parties.

Upon receipt of notice from the indemnifying party to such indemnified party of such indemnifying party's election so to assume the defense of such action and approval by the indemnified party of counsel, the indemnifying party will not be liable to such indemnified party under this Section 8 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof (other than the reasonable costs of investigations) unless (i) the indemnified party shall have employed separate counsel in accordance with the proviso to the immediately preceding sentence (it being understood, however, that the indemnifying party shall not be liable for the expenses of more than one separate counsel (together with local counsel (in each jurisdiction)), which shall be selected by Merrill Lynch (in the case of counsel representing the Initial Purchasers or their related persons), representing the indemnified parties who are parties to such action) or (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of commencement of the action, in each of which cases the fees and expenses of counsel shall be at the expense of the indemnifying party.

(d) **Settlements.** The indemnifying party under this Section 8 shall not be liable for any settlement of any proceeding effected without its written consent, which will not be unreasonably withheld, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party against any loss, claim, damage, liability or expense by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by this Section 8, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 60 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request or disputed in good faith the indemnified party's entitlement to such reimbursement prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent to the entry of judgment in any pending or threatened action, suit or proceeding in respect of which any indemnified party is or could have been a party and indemnity was or could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent (i) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such action, suit or proceeding and (ii) does not include any statements as to or any findings of fault, culpability or failure to act by or on behalf of any indemnified party.

SECTION 9. **Contribution.** If the indemnification provided for in Section 8 hereof is for any reason held to be unavailable to or otherwise insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount paid or payable by such indemnified party, as incurred, as a result of any losses, claims, damages, liabilities or expenses referred to therein (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Guarantors, on the one hand, and the Initial Purchasers, on the other hand, from the offering of the Securities pursuant to this Agreement or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company and the Guarantors, on the one hand, and the Initial Purchasers, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Company and the Guarantors, on the one hand, and the Initial Purchasers, on the other hand, in connection with the offering of the Securities pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of the Securities pursuant to this Agreement (before deducting expenses) received by the Company, and the total discount

received by the Initial Purchasers bear to the aggregate initial offering price of the Securities. The relative fault of the Company and the Guarantors, on the one hand, and the Initial Purchasers, on the other hand, shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact or any such inaccurate or alleged inaccurate representation or warranty relates to information supplied by the Company and the Guarantors, on the one hand, or the Initial Purchasers, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission or inaccuracy.

The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include, subject to the limitations set forth in Section 8 hereof, any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim. The provisions set forth in Section 8 hereof with respect to notice of commencement of any action shall apply if a claim for contribution is to be made under this Section 9; provided, however, that no additional notice shall be required with respect to any action for which notice has been given under Section 8 hereof for purposes of indemnification.

The Company, the Guarantors and the Initial Purchasers agree that it would not be just and equitable if contribution pursuant to this Section 9 were determined by pro rata allocation (even if the Initial Purchasers were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 9.

Notwithstanding the provisions of this Section 9, no Initial Purchaser shall be required to contribute any amount in excess of the discount received by such Initial Purchaser in connection with the Securities distributed by it. No person guilty of fraudulent misrepresentation (within the meaning of Section 11 of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Initial Purchasers' obligations to contribute pursuant to this Section 9 are several, and not joint, in proportion to their respective commitments as set forth opposite their names in Schedule A. For purposes of this Section 9, each director, officer and employee of an Initial Purchaser and each person, if any, who controls an Initial Purchaser within the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as such Initial Purchaser, and each director of the Company or any Guarantor, and each person, if any, who controls the Company or any Guarantor with the meaning of the Securities Act and the Exchange Act shall have the same rights to contribution as the Company and the Guarantors.

SECTION 10. **Termination of this Agreement.** Prior to the Closing Date, this Agreement may be terminated by the Representative by notice given to the Company if at any time: (i) trading or quotation in any of the Company's securities shall have been suspended or limited by the Commission or by NYSE, or trading in securities generally on either the Nasdaq Stock Market or the NYSE shall have been suspended or limited, or minimum or maximum prices shall have been generally established on any of such quotation system or stock exchange by the Commission or FINRA; (ii) a general banking moratorium shall have been declared by any of U.S. federal, New York or Delaware authorities; (iii) there shall have occurred any outbreak or escalation of national or international hostilities or any crisis or calamity, or any change in the United States or international financial markets, or any substantial change or development involving a prospective substantial change in United States' or international political, financial or economic conditions, as in the judgment of the Representative is material and adverse and makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Securities in the manner and on the terms described in the Pricing Disclosure Package or to enforce contracts for the sale of securities; (iv) in the judgment of the Representative there shall have occurred any Material Adverse Change; or (v) the Company shall have sustained a loss by strike, fire, flood, earthquake, accident or other

calamity of such character as in the judgment of the Representative may interfere materially with the conduct of the business and operations of the Company regardless of whether or not such loss shall have been insured. Any termination pursuant to this Section 10 shall be without liability on the part of (i) the Company or any Guarantor to any Initial Purchaser, except that the Company and the Guarantors shall be obligated to reimburse the expenses of the Initial Purchasers pursuant to Sections 4 and 6 hereof, (ii) any Initial Purchaser to the Company, or (iii) any party hereto to any other party except that the provisions of Sections 8 and 9 hereof shall at all times be effective and shall survive such termination.

**SECTION 11. Representations and Indemnities to Survive Delivery.** The respective indemnities, agreements, representations, warranties and other statements of the Company, the Guarantors, their respective officers and the several Initial Purchasers set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of any Initial Purchaser, the Company, any Guarantor or any of their partners, officers or directors or any controlling person, as the case may be, and will survive delivery of and payment for the Securities sold hereunder and any termination of this Agreement.

**SECTION 12. Notices.** All communications hereunder shall be in writing and shall be mailed, hand delivered, couriered or facsimiled and confirmed to the parties hereto as follows:

If to the Initial Purchasers:

Merrill Lynch, Pierce, Fenner & Smith Incorporated  
One Bryant Park  
New York, New York 10036  
Facsimile: (212) 901-7897  
Attention: Legal Department

with a copy to:

Cahill Gordon & Reindel LLP  
80 Pine Street  
New York, New York 10005  
Facsimile: (212) 378-2169  
Attention: James J. Clark

If to the Company or the Guarantors:

Alliance Data Systems Corporation  
7500 Dallas Parkway, Suite 700  
Plano, Texas 75024  
Facsimile: (214) 494-3900  
Attention: Joseph L. Motes III, General Counsel

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

Akin Gump Strauss Hauer & Feld LLP  
1700 Pacific Avenue, Suite 4100  
Dallas, Texas 75201  
Facsimile: (214) 969-4343  
Attention: Seth R. Molay

Any party hereto may change the address or facsimile number for receipt of communications by giving written notice to the others.

SECTION 13. **Successors.** This Agreement will inure to the benefit of and be binding upon the parties hereto, and to the benefit of the indemnified parties referred to in Sections 8 and 9 hereof, and in each case their respective successors, and no other person will have any right or obligation hereunder. The term "successors" shall not include any Subsequent Purchaser or other purchaser of the Securities as such from any of the Initial Purchasers merely by reason of such purchase.

SECTION 14. **Authority of the Representative.** Any action by the Initial Purchasers hereunder may be taken by Merrill Lynch on behalf of the Initial Purchasers, and any such action taken by Merrill Lynch shall be binding upon the Initial Purchasers.

SECTION 15. **Partial Unenforceability.** The invalidity or unenforceability of any section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other section, paragraph or provision hereof. If any section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

SECTION 16. **Governing Law and Waiver of Jury Trial Provisions.** THIS AGREEMENT AND ANY CLAIM, DISPUTE OR CONTROVERSY ARISING UNDER OR RELATED TO THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN SUCH STATE WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THEREOF. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 17. **Default of One or More of the Several Initial Purchasers.** If any one or more of the several Initial Purchasers shall fail or refuse to purchase Securities that it or they have agreed to purchase hereunder on the Closing Date, and the aggregate number of Securities which such defaulting Initial Purchaser or Initial Purchasers agreed but failed or refused to purchase does not exceed 10% of the aggregate number of the Securities to be purchased on such date, the other Initial Purchasers shall be obligated, severally, in the proportions that the number of Securities set forth opposite their respective names on Schedule A bears to the aggregate number of Securities set forth opposite the names of all such non-defaulting Initial Purchasers, or in such other proportions as may be specified by the Initial Purchasers with the consent of the non-defaulting Initial Purchasers, to purchase the Securities which such defaulting Initial Purchaser or Initial Purchasers agreed but failed or refused to purchase on the Closing Date. If any one or more of the Initial Purchasers shall fail or refuse to purchase Securities and the aggregate number of Securities with respect to which such default occurs exceeds 10% of the aggregate number of Securities to be purchased on the Closing Date, and arrangements satisfactory to the Initial Purchasers and the Company for the purchase of such Securities are not made within 72 hours after



such default, this Agreement shall terminate without liability of any party to any other party except that the provisions of Sections 4, 6, 8 and 9 hereof shall at all times be effective and shall survive such termination. In any such case either the Initial Purchasers or the Company shall have the right to postpone the Closing Date, as the case may be, but in no event for longer than seven (7) days in order that the required changes, if any, to the Final Offering Memorandum or any other documents or arrangements may be effected.

As used in this Agreement, the term "**Initial Purchaser**" shall be deemed to include any person substituted for a defaulting Initial Purchaser under this Section 17. Any action taken under this Section 17 shall not relieve any defaulting Initial Purchaser from liability in respect of any default of such Initial Purchaser under this Agreement.

SECTION 18. **No Advisory or Fiduciary Responsibility.** Each of the Company and the Guarantors acknowledges and agrees that: (i) the purchase and sale of the Securities pursuant to this Agreement, including the determination of the offering price of the Securities and any related discounts and commissions, is an arm's-length commercial transaction between the Company and the Guarantors, on the one hand, and the several Initial Purchasers, on the other hand, and the Company and the Guarantors are capable of evaluating and understanding and understand and accept the terms, risks and conditions of the transactions contemplated by this Agreement; (ii) in connection with each transaction contemplated hereby and the process leading to such transaction each Initial Purchaser is and has been acting solely as a principal and is not the agent or fiduciary of the Company, and the Guarantors or their respective affiliates, stockholders, creditors or employees or any other party; (iii) no Initial Purchaser has assumed or will assume an advisory or fiduciary responsibility in favor of the Company and the Guarantors with respect to any of the transactions contemplated hereby or the process leading thereto (irrespective of whether such Initial Purchaser has advised or is currently advising the Company and the Guarantors on other matters) or any other obligation to the Company and the Guarantors except the obligations expressly set forth in this Agreement; (iv) the several Initial Purchasers and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company and the Guarantors, and the several Initial Purchasers have no obligation to disclose any of such interests by virtue of any fiduciary or advisory relationship; and (v) the Initial Purchasers have not provided any legal, accounting, regulatory or tax advice with respect to the offering contemplated hereby, and the Company and the Guarantors have consulted their own legal, accounting, regulatory and tax advisors to the extent they deemed appropriate.

This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company, the Guarantors and the several Initial Purchasers, or any of them, with respect to the subject matter hereof. The Company and the Guarantors hereby waive and release, to the fullest extent permitted by law, any claims that the Company and the Guarantors may have against the several Initial Purchasers with respect to any breach or alleged breach of fiduciary duty.

SECTION 19. **General Provisions.** This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may be executed in two or more counterparts, each one 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 telecopier, facsimile or other electronic transmission (i.e., a "pdf" or "tif") shall be effective as delivery of a manually executed counterpart thereof. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the

condition is meant to benefit. The section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

If the foregoing is in accordance with your understanding of our agreement, kindly sign and return to the Company the enclosed copies hereof, whereupon this instrument, along with all counterparts hereof, shall become a binding agreement in accordance with its terms.

Very truly yours,

ALLIANCE DATA SYSTEMS CORPORATION

By: /s/ Charles L. Horn

Name: Charles L. Horn

Title: Executive Vice President and Chief  
Financial Officer

ADS ALLIANCE DATA SYSTEMS, INC.

as Guarantor

By: /s/ Charles L. Horn

Name: Charles L. Horn

Title: Executive Vice President and Chief  
Financial Officer

ALLIANCE DATA FOREIGN HOLDINGS, INC.

ASPEN MARKETING SERVICES, LLC

as Guarantors

By: /s/ Charles L. Horn

Name: Charles L. Horn

Title: Vice President

ADS FOREIGN HOLDINGS, INC.

as Guarantor

By: /s/ J. Jeffrey Chesnut

Name: J. Jeffrey Chesnut

Title: Treasurer

COMENITY LLC

COMENITY SERVICING LLC

as Guarantors

By: /s/ Jeffrey Fair

Name: Jeffrey Fair

Title: Vice President, Tax

[Signature Page to Purchase Agreement]

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EPSILON DATA MANAGEMENT, LLC  
CONVERSANT LLC  
COMMISSION JUNCTION LLC  
as Guarantors

By: /s/ J. Jeffrey Chesnut  
Name: J. Jeffrey Chesnut  
Title: Vice President and Assistant Treasurer

The foregoing Purchase Agreement is hereby confirmed and accepted by the Representative as of the date first above written.

MERRILL LYNCH, PIERCE, FENNER & SMITH  
INCORPORATED,

Acting on behalf of itself  
and as the Representative of  
the several Initial Purchasers

By: Merrill Lynch, Pierce, Fenner & Smith  
Incorporated

By: /s/ Vikas Singh  
Name: Vikas Singh  
Title: Director

[Signature Page to Purchase Agreement]

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| Initial Purchasers                                 | Aggregate Principal<br>Amount of Securities to<br>be Purchased |
|--|--|
| Merrill Lynch, Pierce, Fenner & Smith Incorporated | \$ 105,000,000.00  |
| J.P. Morgan Securities LLC                         | \$ 55,000,000.00   |
| Wells Fargo Securities, LLC                        | \$ 55,000,000.00   |
| RBC Capital Markets, LLC                           | \$ 45,000,000.00   |
| Mizuho Securities USA Inc.                         | \$ 35,000,000.00   |
| MUFG Securities Americas Inc.                      | \$ 35,000,000.00   |
| SunTrust Robinson Humphrey, Inc.                   | \$ 35,000,000.00   |
| CIBC World Markets Corp.                           | \$ 20,000,000.00   |
| Deutsche Bank Securities Inc.                      | \$ 17,500,000.00   |
| BNP Paribas Securities Corp.                       | \$ 12,500,000.00   |
| BBVA Securities Inc.                               | \$ 12,500,000.00   |
| Capital One Securities, Inc.                       | \$ 12,500,000.00   |
| Fifth Third Securities, Inc.                       | \$ 12,500,000.00   |
| Regions Securities LLC                             | \$ 12,500,000.00   |
| SMBC Nikko Securities America, Inc.                | \$ 12,500,000.00   |
| Scotia Capital (USA) Inc.                          | \$ 12,500,000.00   |
| KeyBanc Capital Markets Inc.                       | \$ 2,500,000.00  |
| Raymond James & Associates, Inc.                   | \$ 2,500,000.00  |
| U.S. Bancorp Investments, Inc.                     | \$ 2,500,000.00  |
| The Williams Capital Group, L.P.                   | \$ 2,500,000.00  |
| <b>Total</b>                                       | <b>\$ 500,000,000</b>  |

**Significant Subsidiaries**

1. ADS Alliance Data Systems, Inc.
2. ADS Foreign Holdings, Inc.
3. Alliance Data Foreign Holdings, Inc.
4. Comenity Bank
5. Comenity Capital Bank
6. Comenity LLC
7. LoyaltyOne, Co. (a Nova Scotia, Canadian unlimited liability company)
8. Epsilon Data Management LLC
9. Conversant LLC
10. Alliance Data Lux Holdings S.´a r.l. (a private limited liability company organized in the Grand Duchy of Luxembourg)
11. Alliance Data Lux Financing S.´a r.l. (a private limited liability company organized in the Grand Duchy of Luxembourg)
12. Rhombus Investments L.P. (a Bermuda exempted limited partnership)

Opinion of counsel for the Company to be delivered pursuant to Section 5 of the Purchase Agreement.

- (i) Based solely on the Good Standing Certificate, the Company is validly existing as a corporation in good standing under the laws of the State of Delaware.
- (ii) The Company has the corporate power and authority to own, lease and operate its properties and conduct its business, in each case as described in the Pricing Disclosure Package and the Final Offering Memorandum, and to enter into and perform its obligations under the Purchase Agreement.
- (iii) Based solely on the Good Standing Certificates, the Company was duly qualified and in good standing as a foreign corporation in each jurisdiction listed on Schedule [ ] hereto to the extent noted in such Good Standing Certificates as of the dates noted therein.
- (iv) Based solely on the Good Standing Certificates, each of the Initial Guarantors (other than Comenity Servicing LLC and Commission Junction LLC) is validly existing as a corporation or limited liability company, as applicable, in good standing under the laws of the State of Delaware. "**Initial Guarantors**" means ADS Alliance Data Systems, Inc., ADS Foreign Holdings, Inc., Alliance Data Foreign Holdings, Inc., Aspen Marketing Services, LLC, Comenity Servicing LLC, Comenity LLC, Epsilon Data Management, LLC , Conversant LLC and Commission Junction LLC. Each of Comenity Servicing LLC and Commission Junction LLC is validly existing as a limited liability company in good standing under the laws of the State of Texas.
- (v) Each of the Initial Guarantors has the corporate or limited liability company power and authority, as applicable, to own its properties and conduct its business, in each case as described in the Pricing Disclosure Package and the Final Offering Memorandum and to enter into and perform its obligations under the Purchase Agreement.
- (vi) Based solely on the Good Standing Certificates, each Initial Guarantor was duly qualified and in good standing as a foreign corporation or limited liability company, as applicable, in each jurisdiction listed on Schedule [ ] to the extent noted in such Good Standing Certificates as of the dates noted therein.
- (vii) All of the issued and outstanding shares of capital stock of each Initial Guarantor that is a corporation are owned of record as specified on Schedule [ ]. All of the issued and outstanding limited liability company interests of each Initial Guarantor that is a limited liability company are owned of record as specified on Schedule [ ].
- (viii) The Purchase Agreement has been duly authorized, executed and delivered by the Company and each Initial Guarantor.
- (ix) The Indenture (including the Guarantees set forth therein) has been duly authorized, executed and delivered by the Company and each Initial Guarantor and (assuming the due authorization, execution and delivery thereof by the Trustee) is a valid and binding agreement of the Company and each Initial Guarantor, enforceable against the Company and each Initial Guarantor in accordance with its terms, except as the enforcement thereof may be limited by (i) applicable bankruptcy, insolvency, fraudulent transfer and conveyance, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally including court decisions



interpreting such Laws; (ii) general principles of equity, including, without limitation, concepts of good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity); (iii) the power of the courts to award damages in lieu of equitable remedies; and (iv) securities Laws and public policy underlying such Laws with respect to rights to indemnification and contribution.

- (x) The Notes have been duly authorized by the Company and, when executed by the Company and authenticated by the Trustee in the manner provided in the Indenture (assuming the due authorization, execution and delivery of the Indenture by the Trustee) and delivered against payment of the purchase price therefor, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by (i) applicable bankruptcy, insolvency, fraudulent transfer and conveyance, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally including court decisions interpreting such Laws; (ii) general principles of equity, including, without limitation, concepts of good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity); (iii) the power of the courts to award damages in lieu of equitable remedies; and (iv) securities Laws and public policy underlying such Laws with respect to rights to indemnification and contribution.
- (xi) The Securities and the Indenture conform in all material respects to the descriptions thereof contained in the Pricing Disclosure Package and the Final Offering Memorandum.
- (xii) The statements in each of the Pricing Disclosure Package and the Final Offering Memorandum under the caption "Description of Notes" and under the subcaptions "- 2013 Credit Agreement," "- 5.250% Senior Notes due 2017," "- 6.375% Senior Notes due 2020," "- 5.375% Senior Notes due 2022" and "- 5.25% Senior Notes due 2023" under the caption "Description of Other Indebtedness" insofar as they purport to constitute summaries of the terms of contracts and other documents, fairly present, in all material respects, the information purported to be included therein.
- (xiii) The statements in each of the Pricing Disclosure Package and the Final Offering Memorandum under the caption "Certain U.S. Federal Income Tax Considerations," insofar as such statements purport to be summaries of the terms of United States federal statutes, rules and regulations, in each case, that constitute Included Laws, constitute fair summaries of the terms of such statutes, rules or regulations in all material respects, subject to the qualifications and assumptions stated therein.
- (xiv) No authorization or approval by, registration or filing with, or notice to, any governmental authority or regulatory body (each, a "**Filing**") is required under any of the Included Laws for the due execution and delivery of the Transaction Documents by the Company or the Initial Guarantors and the performance by the Company and the Initial Guarantors of their respective obligations under the Transaction Documents except (i) such Filings as have been obtained or made and (ii) Filings required to be made in the ordinary course of business.
- (xv) The execution, delivery and performance of the Transaction Documents by the Company and the Initial Guarantors and the Company's and each Initial Guarantor's performance of its respective obligations thereunder, including the issuance and sale of the Notes by the Company and the issuance of the Guarantees by the Initial Guarantors, do not: (i) result in the violation by the Company or any Initial Guarantor of the Organizational Documents of the Company or the Initial Guarantors; (ii) result in the violation by the Company or any Initial Guarantor of any statute, rule

or regulation that is an Included Law; or (iii) breach or result in a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of the Initial Guarantors pursuant to, the Reviewed Agreements. "**Organizational Documents**" means (a) with respect to the Company, the Company's certificate of incorporation and the Company's bylaws, (b) with respect to each Initial Guarantor that is a corporation, such Initial Guarantor's certificate of incorporation and bylaws, and (c) with respect to each Initial Guarantor that is a limited liability company, such Initial Guarantor's certificate of formation and limited liability company agreement.

- (xvi) Each of the periodic and current reports filed by the Company under the Exchange Act and incorporated by reference in the Pricing Disclosure Package or the Final Offering Memorandum (except the financial statements, financial schedules and other financial, accounting and statistical data contained in, omitted from, or incorporated by reference in, such reports, as to which we express no view), at the time it was filed with the Commission, appeared on its face to be appropriately responsive in all material respects to the requirements of the Exchange Act and the rules and regulations promulgated by the Commission thereunder, except that we express no view as to the antifraud provisions of any Laws.
- (xvii) The Company and the Initial Guarantors are not and, after giving effect to the issuance and sale of the Notes in accordance with the terms of the Purchase Agreement and the application of the net proceeds therefrom as contemplated under the caption "Use of Proceeds" in the Pricing Disclosure Package and the Final Offering Memorandum, will not be, an "investment company" required to register under and within the meaning of the Investment Company Act.
- (xviii) Assuming the accuracy of the representations, warranties and covenants of the Company, the Initial Guarantors and the Initial Purchasers and the performance by such parties of their respective agreements contained in the Purchase Agreement, no registration of the Notes or the Guarantees under the Securities Act, and no qualification of an indenture under the Trust Indenture Act with respect thereto, is required in connection with the purchase of the Securities by the Initial Purchasers or the initial resale of the Securities by the Initial Purchasers to Subsequent Purchasers in the manner contemplated by the Purchase Agreement and the Pricing Disclosure Package and the Final Offering Memorandum.

Because the primary purpose of our professional engagement was not to establish or confirm factual matters or financial, accounting or statistical information and because many determinations involved in the preparation of the Pricing Disclosure Package and the Final Offering Memorandum are of a wholly or partially non-legal character, except to the extent expressly set forth in paragraphs (xii) and (xiii) above, we are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of the statements contained or incorporated by reference in the Pricing Disclosure Package and the Final Offering Memorandum and we make no representation that we have independently verified the accuracy, completeness or fairness of such statements.

However, in the course of our acting as counsel to the Company and the Initial Guarantors in connection with the preparation of the Pricing Disclosure Package and the Final Offering Memorandum, we have reviewed the Pricing Disclosure Package and the Final Offering Memorandum and have participated in conferences and telephone conversations with representatives of the Company and the Initial Guarantors, representatives of the independent public accountants for the Company, representatives of the Initial Purchasers and representatives of the Initial Purchasers' counsel, during which conferences and conversations the contents of the Final Offering Memorandum and the Pricing Disclosure Package and related matters were discussed.

Subject to the foregoing, on the basis of the information we gained in the course of our participation in such conferences and conversations and our review of the Final Offering Memorandum and the Pricing Disclosure Package, we confirm to you that:

- (a) No facts have come to our attention that cause us to believe that the Final Offering Memorandum (except the financial statements, financial schedules and other financial and accounting data contained therein or omitted therefrom or incorporated by reference therein, as to which we express no view), as of the date of the Final Offering Memorandum and as of the Closing Date, contained or contains any untrue statement of a material fact or omitted or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; and
- (b) No facts have come to our attention that cause us to believe that the Pricing Disclosure Package (except the financial statements, financial schedules and other financial and accounting data contained therein or omitted therefrom or incorporated by reference therein, as to which we express no view), as of the Time of Sale (which you have informed us was \_\_ p.m. on October 24, 2016), contained any untrue statement of a material fact or omitted to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading.

#### **Included Laws**

We express no opinion as to the Laws of any jurisdiction other than the Included Laws. We have made no special investigation or review of any published constitutions, treaties, statutes, laws, rules or regulations or judicial or administrative decisions ("**Laws**") other than a review of: (i) the Laws of the State of New York; (ii) the Delaware General Corporation Law and the Delaware Limited Liability Company Act; (iii) the Texas Business Organizations Code; and (iv) the federal Laws of the United States of America. For purposes of this letter, the term "**Included Laws**" means the Laws described in clauses (i)-(iv) of the preceding sentence that are, in our experience, normally applicable to transactions of the type contemplated in the Transaction Documents. The term "Included Laws" excludes: (a) securities Laws (other than (1) with respect to the opinion in paragraph (xvi) of this letter, the Exchange Act, (2) with respect to the opinion in paragraph (xvii) of this letter, the Investment Company Act, (3) with respect to the opinion in paragraph (xviii) of this letter, the Securities Act and the Trust Indenture Act, and (4) with respect to the negative assurance expressed in the last paragraph of this letter, the Securities Act and the Exchange Act); (b) Laws of any counties, cities, towns, municipalities and special political subdivisions, and foreign governments and, in each case, any agencies thereof; (c) notwithstanding clause (a) above, Laws relating to land use, zoning, building code and construction issues, environmental issues, intellectual property issues, antitrust issues, insurance issues, labor issues, pension issues, employee benefit issues, money laundering issues, antiterrorism issues and margin regulation issues; (d) tax Laws (other than with respect to both (1) the opinion in paragraph (xiii) of this letter and (2) the negative assurance expressed in the last paragraph of this letter, federal tax Laws other than the Foreign Account Tax Compliance Act); and (e) Laws relating to the regulation of the conduct of the businesses of the Company and its subsidiaries including without limitation the Bank Holding Company Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Federal Reserve Act, the Bank Secrecy Act, the Truth in Lending Act, the Equal Credit Opportunity Act, the Fair Credit Reporting Act, as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009, the Gramm-Leach-Bliley Act, the USA PATRIOT Act of 2001 and other Laws relating to the businesses of transaction processing, marketing, credit card issuance and processing, banking, origination, acquisition, securitization and servicing of receivables, and all related activities and services.

Opinion of internal counsel of Alliance Data Systems Corporation, to be delivered pursuant to Section 5 of the Purchase Agreement.

- (i) The Bank is a Delaware state chartered bank in good standing and validly existing under the laws of the State of Delaware.
- (ii) The Bank has full power and authority to own its properties and conduct its business, as described in the Disclosure Package and the Final Offering Memorandum.
- (iii) The Bank is duly qualified and is in good standing under the laws of each jurisdiction in which it is required to qualify, except where a failure to so qualify would not have a material adverse effect on the Bank.
- (iv) All of the issued and outstanding ownership interests of the Bank are owned of record by wholly-owned subsidiaries of the Company.
- (v) The statements in the Final Offering Memorandum under the headings: "Risk Factors—Current and proposed regulation and legislation relating to our card services could limit our business activities, product offerings and fees charged and may have a significant impact on our business, results of operation and financial condition"; "Risk Factors—Legislation relating to consumer privacy may affect our ability to collect data that we use in providing our loyalty and marketing services, which, among other things, could negatively affect our ability to satisfy our clients' needs"; "Risk Factors—If we are unable to securitize our credit card receivables due to changes in the market, we may not be able to fund new credit card receivables, which would have a negative impact on our operations and earnings"; "Risk Factors—Our bank subsidiaries are subject to extensive federal and state regulation that may require us to make capital contributions to them, and that may restrict the ability of these subsidiaries to make cash available to us"; and "Risk Factors—If our bank subsidiaries fail to meet certain criteria, we may become subject to regulation under the Bank Holding Company Act, which could force us to cease all of our non-banking activities and lead to a drastic reduction in our revenue and profitability"; and in our Annual Report on Form 10-K for the year ended December 31, 2015 under the headings "Business—Protection of Intellectual Property and Other Proprietary Rights"; "Business—Regulation"; and "Management's Discussion and Analysis of Financial Condition and Results of Operation—Legislative and Regulatory Matters" insofar as such statements constitute summaries of legal matters, agreements, documents or legal proceedings, or legal conclusions, have been reviewed by such counsel and accurately and fairly present and summarize, in all material respects, as of their respective issue dates, the matters referred to therein.

*Resale Pursuant to Regulation S or Rule 144A.* Each Initial Purchaser understands that:

Such Initial Purchaser agrees that it has not offered or sold and will not offer or sell the Securities in the United States or to, or for the benefit or account of, a U.S. person (other than a distributor), in each case, as defined in Rule 902 of Regulation S (i) as part of its distribution at any time and (ii) otherwise until 40 days after the later of the commencement of the offering of the Securities pursuant hereto and the Closing Date, other than in accordance with Regulation S or another exemption from the registration requirements of the Securities Act. Such Initial Purchaser agrees that, during such 40-day restricted period, it will not cause any advertisement with respect to the Securities (including any "tombstone" advertisement) to be published in any newspaper or periodical or posted in any public place and will not issue any circular relating to the Securities, except such advertisements as are permitted by and include the statements required by Regulation S.

Such Initial Purchaser agrees that, at or prior to confirmation of a sale of Securities by it to any distributor, dealer or person receiving a selling concession, fee or other remuneration during the 40-day restricted period referred to in Rule 903 of Regulation S, it will send to such distributor, dealer or person receiving a selling concession, fee or other remuneration a confirmation or notice to substantially the following effect:

"The Securities covered hereby have not been registered under the U.S. Securities Act of 1933, as amended (the "Securities Act"), and may not be offered and sold within the United States or to, or for the account or benefit of, U.S. persons (i) as part of your distribution at any time or (ii) otherwise until 40 days after the later of the date the Securities were first offered to persons other than distributors in reliance upon Regulation S and the Closing Date, except in either case in accordance with Regulation S under the Securities Act (or in accordance with Rule 144A under the Securities Act or to accredited investors in transactions that are exempt from the registration requirements of the Securities Act), and in connection with any subsequent sale by you of the Securities covered hereby in reliance on Regulation S under the Securities Act during the period referred to above to any distributor, dealer or person receiving a selling concession, fee or other remuneration, you must deliver a notice to substantially the foregoing effect. Terms used above have the meanings assigned to them in Regulation S under the Securities Act."

Such Initial Purchaser agrees that the Securities offered and sold in reliance on Regulation S will be represented upon issuance by a global security that may not be exchanged for definitive securities until the expiration of the 40-day restricted period referred to in Rule 903 of Regulation S and only upon certification of beneficial ownership of such Securities by non-U.S. persons or U.S. persons who purchased such Securities in transactions that were exempt from registration requirements of the Securities Act.