## DESCRIPTION OF NOTES

In this "Description of Notes," (i) the terms "*we*," "*us*" and "*our*" each refer to Cogent Communications Group, Inc. and its consolidated subsidiaries and (ii) the term the "*Company*" refers solely to Cogent Communications Group, Inc. and not to any of its subsidiaries. For purposes of this description, the 3.500% senior secured notes due 2026 are referred to as the "*Notes*." The definitions of certain other terms used in this description are set forth throughout the text or under "—Certain Definitions."

The Notes will be issued under an indenture, to be dated as of the Issue Date (the "*Indenture*"), among the Company, the Guarantors party thereto, Wilmington Trust, National Association, as trustee (the "*Trustee*") and as collateral agent (the "*Collateral Agent*"). It is expected that Cogent Holdco will become a guarantor of the Notes on the Issue Date; however, Cogent Holdco's guarantee will be unsecured and Cogent Holdco will not be subject to the covenants under the Indenture. Unless otherwise noted, the discussion of guarantees in this Description of Notes is only with respect to the guarantees by the Company's Subsidiaries. The Company will issue the Notes with an initial aggregate principal amount of $500.0 million. The Company may issue an unlimited principal amount of additional notes under the Indenture (the "*Additional Notes*") from time to time after this offering without notice to or the consent of the Holders of the Notes. Such Additional Notes will have identical terms and conditions as the Notes issued on the Issue Date other than the date of original issuance, the issue price, the date from which interest will initially begin to accrue and the first interest payment date. We will only be permitted to issue such Additional Notes if at the time of such issuance, we are in compliance with the covenants described under the captions "—Certain Covenants—Limitation on Indebtedness, Disqualified Stock and Preferred Stock" and "—Certain Covenants—Limitation on Liens." Any Additional Notes will be part of the same issue as the Notes we are currently offering and Holders of such Additional Notes will vote on all matters as a single class with the Holders of the Notes issued on the Issue Date. Unless otherwise expressly stated or the context otherwise requires, references to the "Notes" in this "Description of Notes" mean the Notes issued on the Issue Date and any Additional Notes the Company may issue in the future pursuant to the terms of the Indenture.

The Notes will not be registered under the Securities Act and will be subject to certain transfer restrictions. See "Notice to Investors." The Indenture will not be qualified under or subject to, and will not incorporate (by reference or otherwise), any provisions of the U.S. Trust Indenture Act of 1939, as amended.

The following description is a summary of the material terms of the Indenture, the Notes and the Security Documents. It does not, however, restate the Indenture, the Notes or the Security Documents in their entirety. You should read the Indenture, the Notes and the Security Documents because they contain additional information and because they and not this description define your rights as a Holder of the Notes. Copies of the Indenture and the Notes may be obtained after the Issue Date by requesting them from the Company.

### Terms of the Notes

The Notes will be senior secured obligations of the Company and will mature on May 1, 2026. Each Note will bear interest at a rate per annum shown on the front cover of this Offering Memorandum from May 7, 2021 or from the most recent date to which interest has been paid or provided for, payable semi-annually to Holders of record at the close of business on the April 15 or October 15 immediately preceding the interest payment date on May 1 and November 1 of each year, commencing on November 1, 2021.

Interest will be computed on the basis of a 360-day year comprising twelve 30-day months. In no event will the rate of interest on the Notes be higher than the maximum rate permitted by applicable law.

### Brief Description of the Structure and Ranking of the Notes and the Note Guarantees

#### *The Notes*

The Notes will:

- be the Company's senior secured obligations, and will be guaranteed on an unsubordinated, senior secured basis by the Guarantors;
- initially be limited to an aggregate principal amount of $500.0 million, subject to the Company's ability to issue Additional Notes;

- mature on May 1, 2026;
- be secured, subject to Permitted Liens, on a first-priority basis by Liens on the Collateral;
- be effectively senior to all of the Company's existing and future unsecured Indebtedness, including the Existing Notes, and future Indebtedness secured by Liens on the Collateral that are junior to the Liens on the Collateral securing the Notes, in each case, to the extent of the value of the Collateral;
- rank *pari passu* in right of payment with the Company's existing and future Indebtedness that is not subordinated in right of payment to the Notes, including the Existing Notes;
- rank contractually senior in right of payment to all of the Company's existing and future Indebtedness that is subordinated in right of payment to the Notes;
- be effectively subordinated to any existing and future Secured Indebtedness of the Company that is secured by Liens on assets that do not constitute Collateral or that is secured by Liens on the Collateral that are senior to the Liens securing the Notes, in each case, to the extent of the value of the assets securing such Indebtedness; and
- be structurally subordinated to all Indebtedness and other liabilities of Subsidiaries of the Company that do not provide Note Guarantees, which will only consist of Subsidiaries that are not Material Domestic Subsidiaries.

***The Note Guarantees***

Each Note Guarantee of a Guarantor will:

- be the Guarantor's senior secured obligation;
- be effectively senior to all of the Guarantor's existing and future unsecured Indebtedness, including such Guarantor's Guarantee of the Existing Notes, and Indebtedness secured by Liens on the Collateral that are junior to the Liens on the Collateral securing such Note Guarantee, in each case, to the extent of the value of the Collateral;
- rank *pari passu* in right of payment with the Guarantor's existing and future Indebtedness that is not subordinated in right of payment to its Note Guarantee, including such Guarantor's Guarantees of the Existing Notes;
- rank contractually senior in right of payment to all of the Guarantor's future Indebtedness that is subordinated in right of payment to the Note Guarantees;
- be effectively subordinated to any existing and future Secured Indebtedness of the Guarantor that is secured by Liens on assets that do not constitute Collateral or that is secured by Liens on the Collateral that are senior to the Liens securing the Guarantor's Note Guarantee, in each case, to the extent of the value of the assets securing such Indebtedness; and
- be structurally subordinated to all Indebtedness and other liabilities of Subsidiaries of such Guarantor that do not provide Note Guarantees, which will only consist of Subsidiaries that are not Material Domestic Subsidiaries.

Cogent Holdco's guarantee will be Cogent Holdco's senior unsecured obligation, and will rank equally in right of payment with all of Cogent Holdco's existing and future senior indebtedness, including the Existing Unsecured Notes, and senior in right of payment to all of Cogent Holdco's future subordinated indebtedness. Cogent Holdco's guarantee will be effectively subordinated to Cogent Holdco's secured indebtedness to the extent of the value of the collateral securing such indebtedness.

***General***

As of March 31, 2021, on an as adjusted basis after giving effect to the issuance of the Notes and the use of proceeds therefrom (including the Refinancing Transactions (as defined elsewhere in this Offering Memorandum)), and after excluding

intercompany balances and intercompany guarantees on a consolidated basis, we would have had $1,134.3 million of Indebtedness. Of such amount, $723.8 million represented secured indebtedness, Finance Lease Obligations and amounts owing pursuant to an installment payment agreement with a vendor. As of March 31, 2021, our non-Guarantor Subsidiaries had $51.3 million of Indebtedness (excluding intercompany balances and intercompany guarantees on a consolidated basis), all of which were Finance Lease Obligations. For the three-month period ended March 31, 2021, our non-Guarantor Subsidiaries represented approximately 25.3% of our revenue and approximately 24.9% of our cash and cash equivalents on a consolidated basis with Cogent Holdco.

As of the Issue Date, Cogent Holdco and all of the Company's Material Domestic Subsidiaries will be Initial Guarantors. In the future, some of the Company's Domestic Subsidiaries might not Guarantee the Notes. In addition, the Indenture will not require any current or future Foreign Subsidiaries to provide a Note Guarantee. In the event of a bankruptcy, liquidation or reorganization of any non-Guarantor Subsidiaries, the non-Guarantor Subsidiaries will be required to repay financial and trade creditors before distributing any assets to the Company or a Guarantor.

As of the Issue Date, all of the Company's Subsidiaries will be "Restricted Subsidiaries." However, under the circumstances described below under "—Certain Covenants—Designation of Restricted and Unrestricted Subsidiaries," the Company will be permitted to designate certain of its Subsidiaries as "Unrestricted Subsidiaries." Unrestricted Subsidiaries will not be subject to any of the restrictive covenants in the Indenture. Further, Unrestricted Subsidiaries will not Guarantee the Notes.

Substantially all of the operations of the Company are conducted through its Subsidiaries. As a result, the Company is dependent upon dividends and other payments from its Subsidiaries to generate the funds necessary to meet our outstanding Indebtedness service and other obligations, and such dividends and other payments may be restricted by law or the instruments governing our Indebtedness. The Company's Subsidiaries may not generate sufficient cash from operations to enable it to make principal and interest payments on its Indebtedness, including the Notes. See "Risk Factors—Risk Factors Related to the Notes—As a holding company, the Issuer's only source of cash is distributions from its subsidiaries."

Unless a Subsidiary is a Guarantor, claims of creditors of such Subsidiaries (including trade creditors) and claims of preferred stockholders (if any) of such Subsidiaries generally will have priority with respect to the assets and earnings of such Subsidiaries over the claims of creditors of the Company, including Holders. The Notes, therefore, will be structurally subordinated to claims of creditors (including trade creditors) and preferred stockholders (if any) of non-Guarantor Subsidiaries. See "Risk Factors—Risk Factors Related to the Notes—The notes are structurally subordinated to all liabilities of the Issuer's current and future non-guarantor subsidiaries." Although the Indenture will contain limitations on the amount of additional Indebtedness that the Company, the Guarantors and the Restricted Subsidiaries may incur, the amount of such additional Indebtedness, some or all of which may be secured, could be substantial. See "Risk Factors—Risk Factors Related to Our Indebtedness—Despite our leverage, we may still be able to incur more debt. This could further exacerbate the risks that we and our subsidiaries face."

**Form of Notes**

The Notes will be issued on the Issue Date only in fully registered form without coupons and only in minimum denominations of $2,000 and integral multiples of $1,000 in excess thereof.

The Notes will be initially in the form of one or more global notes (the "*Global Notes*"). The Global Notes will be deposited with the Trustee as custodian for The Depository Trust Company ("*DTC*"). Ownership of interests in the Global Notes will be limited to Persons that have accounts with DTC or their respective participants. The terms of the Indenture will provide for the issuance of definitive registered Notes in certain circumstances. Please see the section entitled "Book Entry; Delivery and Form."

**Transfer and Exchange**

A Holder may transfer or exchange Notes in accordance with the Indenture and the procedures described in "Notice to Investors." The registrar maintained by the Company (the "*Registrar*") and/or the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents. No service charge will be made for any registration of transfer, exchange or redemption of the Notes, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection with any such registration of transfer or exchange.

The Company and the Registrar are not required to transfer or exchange any Note selected for redemption or tendered and not validly withdrawn. Also, the Company and the Registrar are not required to transfer or exchange any Note

for a period of 15 days before a selection of Notes to be redeemed. The registered Holder of a Note will be treated as the owner of it for all purposes. Only registered Holders will have rights under the Indenture.

**Payments on the Notes; Paying Agent and Registrar**

If a Holder has given wire transfer instructions to the Company or the paying agent maintained by the Company (the "*Paying Agent*") at least ten Business Days prior to the applicable payment date, the Company will pay through the Paying Agent all principal of and premium, if any, and interest on that Holder's Notes in accordance with those instructions. All other payments on Notes will be made at the office or agency of the Paying Agent and Registrar unless the Company elects to make interest payments by check mailed to the Holders at their addresses set forth in the register of Holders; *provided* that all payments of principal, premium, if any, and interest, with respect to the Global Notes registered in the name of or held by DTC or its nominee will be made by wire transfer of immediately available funds to the account specified by DTC.

The Trustee will initially act as Paying Agent and Registrar. The Company may change the Paying Agent or Registrar without prior notice to the Holders, and the Company or any of its Subsidiaries may act as Paying Agent or Registrar.

**Note Guarantees**

***General***

Under the Indenture, the Initial Guarantors will jointly and severally agree to guarantee the due and punctual payment of all amounts payable under the Notes, including principal, premium, if any, and interest. The Indenture will require any future Material Domestic Subsidiary of the Company or any Guarantor to provide a Note Guarantee. See "—Certain Covenants—Future Subsidiary Note Guarantees."

Each Note Guarantee of a Guarantor will be the Guarantor's senior secured obligation, secured by the Collateral on a first priority basis, as described under "—Collateral and Security," subject to Permitted Liens. The Indenture will state that each Guarantor under its Note Guarantee will be limited to an amount not to exceed the maximum amount that can be guaranteed by such Guarantor by law or without resulting in its obligations under its Note Guarantee being voidable or unenforceable under applicable laws relating to fraudulent transfer, or under similar laws affecting the rights of creditors generally. See "Risk Factors—Risk Factors Related to the Notes—A court could void Cogent Holdco's and/or the Issuer's subsidiaries' guarantees of the notes or the related liens under fraudulent transfer laws." Each Guarantor that makes a payment or distribution under its Note Guarantee will be entitled to contribution from any other Guarantor.

***Release of the Note Guarantees***

A Note Guarantee of a Guarantor will be automatically and unconditionally released (and thereupon shall terminate and be discharged and be of no further force and effect):

(1) in connection with any sale or other disposition (including by merger or otherwise) of (x) Capital Stock of the Guarantor after which such Guarantor is no longer a Subsidiary of the Company, if the sale of all such Capital Stock of that Guarantor complies with the applicable provisions of the Indenture, or (y) all or substantially all the assets of such Guarantor, if such sale or other disposition (including by merger or otherwise) is made in compliance with the Indenture and such entity is not a guarantor under any other Capital Markets Indebtedness or the Revolving Credit Agreement;

(2) if the Company properly designates the Guarantor as an Unrestricted Subsidiary under the Indenture;

(3) upon a Legal Defeasance, Covenant Defeasance or satisfaction and discharge of the Indenture that complies with the provisions under "—Legal Defeasance and Covenant Defeasance" or "—Satisfaction and Discharge," as applicable;

(4) upon payment in full of the aggregate principal amount of all Notes then outstanding and all other obligations under the Indenture and the Notes then due and owing;

(5) such Guarantor ceasing to be a Material Domestic Subsidiary and such entity is not a guarantor under any other Capital Markets Indebtedness or the Revolving Credit Agreement; or

(6) upon the occurrence of a Covenant Suspension Event, as described under "—Certain Covenants."

A Note Guarantee of a Guarantor also will be automatically released upon the applicable Subsidiary ceasing to be a Subsidiary as a result of any foreclosure of any pledge or security interest of all of the Capital Stock of such Guarantor securing the Indenture or any other Pari Passu Obligations or other exercise of remedies in respect thereof in accordance with the Intercreditor Agreement.

Upon any occurrence giving rise to a release of a Note Guarantee as specified above and upon the Company's delivery to the Trustee of an Officer's Certificate certifying compliance with the applicable provisions, the Trustee will, at the sole cost of the Company, execute any documents reasonably requested by the Company in order to evidence or effect such release, termination and discharge in respect of such Note Guarantee. Neither the Company nor any Guarantor will be required to make a notation on the Notes to reflect any Note Guarantee or any such release, termination or discharge. Upon any release of a Guarantor from its Note Guarantee, such Guarantor shall also be released from its obligations under the Security Documents.

**Collateral and Security**

***Collateral Generally***

The Notes and the Note Guarantees will be secured equally and ratably by continuing first-priority security interests (subject to Permitted Liens and certain exceptions) in substantially all of the tangible and intangible assets of the Company and the Subsidiary Guarantors, whether now owned or hereafter acquired or arising, and wherever located, including, but not limited to, all existing and future Capital Stock and intercompany debt of any Domestic Subsidiary owned directly by the Company or any Guarantor and all existing and future Capital Stock of any Foreign Subsidiary owned directly by the Company or any Guarantor (limited, in the case of any such Foreign Subsidiaries, to 65% of the Capital Stock of such Foreign Subsidiaries), accounts receivable, chattel paper, inventory, equipment, investment property, intellectual property, interests in commercial tort claims, other general intangibles and certain material, owned Real Property and all proceeds of the foregoing, subject to the exceptions discussed below and certain other limitations described herein (collectively, the "*Collateral*").

The Collateral will exclude certain items of property, including, without limitation:

- any intent-to-use United States trademark application for which an amendment to allege use or statement of use has not been filed and accepted by the United States Patent and Trademark Office;
- any instrument, investment property, contract, license, permit or other general intangible that by its terms cannot be, or requires any consent to be, pledged, transferred or assigned, or to the extent that granting a security interest therein would result in a breach or default under such instrument, investment property, contract, license, permit or other general intangible, in each case, after giving effect to the anti-assignment provisions of the Uniform Commercial Code of any jurisdiction;
- assets owned by any Grantor on the Issue Date or thereafter acquired and any proceeds thereof that are on the Issue Date or at the time of their acquisition subject to a Lien permitted pursuant to clauses (4) and (9) of the definition of "Permitted Liens" or such Lien is permitted by the Indenture and is of the type permitted by clauses (4) and (9) of the definition of "Permitted Liens" (whether or not incurred in reliance on such clauses) or, to the extent any such Indebtedness would constitute Permitted Refinancing Indebtedness of the foregoing, clause (7) of the definition of "Permitted Liens," in each case, to the extent and for so long as the contract or other agreement in which such Permitted Lien is granted (or documentation providing for a purchase money obligation, capital lease obligation or IRU) validly prohibits the creation of any other Lien on such assets and proceeds (in each case, after giving effect to the anti-assignment provisions of the Uniform Commercial Code of any jurisdiction);
- any Capital Stock of any Foreign Subsidiary directly owned by the Company or any Guarantor in excess of 65% of the Capital Stock of such Foreign Subsidiary;
- any Capital Stock of any direct or indirect Subsidiaries of any Foreign Subsidiary;
- any leasehold interests in Real Property; and

- certain other items agreed by the parties and as more fully set forth in the Security Documents.

In addition, mortgages and other perfection steps will not be required in respect of any fee interests in Real Property having a value of $1,000,000 or less. As of the Issue Date, there will be no grants of mortgages or other perfection steps taken with respect to any fee interests in Real Property, because none of the Real Property interests of the Company or the Guarantors meets the aforementioned $1,000,000 threshold. Unmortgaged Real Property interests include, without limitation, numerous leases of real property that may be material to the present conduct of the business of the Company and the Guarantors. In addition, among our most material assets are IRUs. Substantially all of our IRUs are in the form of capital lease obligations and may be subject to certain limitations on assignment. While we may purport to grant a security interest in the IRUs as general intangibles, the above mentioned assignment limitations of IRUs and the prior claims of third parties against the IRUs may prevent the Secured Parties from foreclosing on such assets and result in there effectively being no value in the IRUs for the Holders of the Notes. In addition, the incurrence of capital lease obligations associated with IRUs will not be limited by the Indenture governing the Notes. See "—Certain Covenants—Limitation on Indebtedness, Disqualified Stock and Preferred Stock," "—Certain Covenants—Limitations on Liens" and "Risk Factors—Risk Factors Related to the Collateral—The proceeds from the sale of the collateral securing the Notes and guarantees may not be sufficient to satisfy all our obligations under the Notes," for certain risks related to the scope and perfection of the security interests in the Collateral and your ability to realize value therefrom.

***Security Documents Generally***

On or prior to the Issue Date, the Company and the Initial Guarantors will enter into the Security Documents (including, without limitation, the Security Agreement) with the Collateral Agent, which documents will provide for the grant of security interests in the Collateral in favor of the Collateral Agent, for the benefit of itself, the Trustee and the Holders of the Notes and any future holders of Additional Pari Passu Obligations subject to the Intercreditor Agreement.

The Company will, and will cause each of the Guarantors to, do or cause to be done all acts and things that may be required, or which the Collateral Agent from time to time may reasonably request, to assure and confirm that the Collateral Agent holds, for the benefit of itself, the Trustee and the Holders of the Notes, duly created, enforceable and perfected Liens upon the Collateral as contemplated by the Indenture and the Security Documents.

The Company and the Guarantors will be able to Incur Additional Pari Passu Obligations in the future that could share in the Collateral, and Junior Lien Priority Obligations in the future that may share in Collateral proceeds after recovery by the Holders of Notes. Any such Indebtedness may limit the recovery from the realization of the value of such Collateral available to satisfy the Holders of the Notes. The lenders with respect to such Indebtedness will be required to join an intercreditor agreement, which will be substantially in form of the Intercreditor Agreement attached to the Security Agreement, as Additional Secured Parties. The amount of all such additional secured Indebtedness will be limited by the covenants disclosed under "—Certain Covenants—Limitation on Indebtedness, Disqualified Stock and Preferred Stock" and "—Certain Covenants—Limitation on Liens." Under certain circumstances the amount of such additional Indebtedness could be significant.

Furthermore, the Company will be permitted to Incur a limited amount of Obligations (including Indebtedness represented by Finance Lease Obligations not associated with IRUs, mortgage financings and purchase money obligations) for the purpose of financing all or any part of the purchase price or cost of lease, construction, installation, repair or improvement of property, plant or equipment used in the business of the Company or its Restricted Subsidiaries (including any reasonably related fees or expenses Incurred in connection with such acquisition, construction or improvement, and whether through the direct purchase of such assets or through the purchase of the Capital Stock of any Person owning such assets) and such Obligations may be secured by Permitted Liens on such assets (and the proceeds thereof) purchased, leased, constructed, installed, repaired or improved and, for so long as the contract or other agreement governing such Permitted Lien validly prohibits the creation of any other Lien on such assets and proceeds, such assets and proceeds may be excluded from the Collateral.

No appraisals of any Collateral have been prepared in connection with this offering. The value of the Collateral at any time is subject to fluctuation based on factors that include, among others, the condition of the Internet service provider industry, the ability to sell the Collateral in an orderly sale, general economic conditions, the availability of suitable buyers and similar factors. By its nature, some or all of the Collateral may be illiquid and may have no readily ascertainable market value. We cannot assure you that the fair market value of the Collateral as of the date of this Offering Memorandum exceeds the principal amount of the Indebtedness secured thereby. The value of the assets pledged as Collateral for obligations under

the Indenture could be impaired in the future as a result of changing economic conditions, our failure to implement our business strategy, competition or other future trends.

We cannot assure you that, in the event of a foreclosure, the proceeds from the sale of the portion of the Collateral allocated or allocable to the repayment of the obligations under the Indenture would be sufficient to satisfy the amounts outstanding under the Notes. If such proceeds were not sufficient to repay amounts outstanding under the Notes, the Holders of the Notes (to the extent not repaid from the proceeds of the sale of the Collateral) would have only an unsecured, general claim against the Company's and the Guarantors' remaining assets, which claim would rank equal in priority to unsecured general Indebtedness. In the event that a bankruptcy case is commenced by or against us, if the value of the Collateral is less than the amount of principal and accrued and unpaid interest on the Notes and all other senior secured obligations, interest may cease to accrue on the Notes from and after the date the bankruptcy petition is filed. See generally, "Risk Factors—Risk Factors Related to the Collateral."

***After-Acquired Property***

Promptly following the acquisition by the Company or any Guarantor of any After-Acquired Property (but subject to the applicable limitations in the Security Documents), the Company or such Guarantor will execute and deliver such security agreement supplements, mortgages, deeds of trust, security instruments, financing statements, title insurance, surveys and certificates and opinions of counsel as are customary and reasonably necessary to vest in the Collateral Agent a perfected security interest or other Lien in or on such After-Acquired Property and to have such After-Acquired Property added to the Collateral, and thereupon all provisions of the Indenture relating to the Collateral will be deemed to relate to such After-Acquired Property to the same extent and with the same force and effect.

***Collateral Agent***

By accepting the Notes, each Holder will be deemed to have irrevocably appointed Wilmington Trust, National Association as the Collateral Agent, to act as its agent under the Indenture, Security Agreement, the other Security Documents and the Intercreditor Agreement, and to have irrevocably authorized the Collateral Agent to perform the duties and exercise the rights, powers and discretions that are specifically given to it under the Indenture, the Security Agreement and the other Security Documents, together with any other incidental rights, powers and discretions. Under the terms of the Indenture and the Security Agreement, the Collateral Agent may resign on prior written notice, and the Collateral Agent may also be removed for cause and replaced by a replacement collateral agent selected by a majority of Holders of the Notes, with the consent of the Company.

The Collateral Agent will hold (directly or through co-trustees, co-agents, agents or sub-agents), and will be entitled to enforce, all Liens on the Collateral created by the Security Documents.

**Intercreditor Agreement**

In the event the Company Incurs Additional Obligations in the future permitted pursuant to the Indenture to share in the Collateral on a *pari passu* or junior basis with the Holders of the Notes, following the Issue Date, the Company, the Guarantors, the Trustee (as Authorized Representative for the Holders of the Notes) and the Collateral Agent will enter into an intercreditor agreement (as the same may be amended from time to time, the "*Intercreditor Agreement*") with the Authorized Representative of such Additional Obligations, with respect to the Collateral, which Intercreditor Agreement may be amended from time to time without the consent of the Holders of the Notes to add additional creditors holding Additional Obligations permitted to be Incurred and secured by the Collateral under the Indenture, the Intercreditor Agreement and any Additional Agreements then in effect.

***Enforcement of Security Interests***

The Intercreditor Agreement will provide that, prior to the Discharge of Pari Passu Obligations, the Applicable Authorized Representative will have the right, under certain circumstances, to direct the Collateral Agent to foreclose or take other actions with respect to the Collateral, and no other party to the Intercreditor Agreement will have the right to take any action with respect to the Collateral. Except as described below, the Applicable Authorized Representative will be the Authorized Representative of the Series of Pari Passu Obligations that constitutes the largest outstanding principal amount of any then-outstanding Series of Pari Passu Obligations (the "*Controlling Authorized Representative*"). Upon the occurrence of the Non-Controlling Authorized Representative Enforcement Date, the then-Applicable Authorized Representative will be replaced as Applicable Authorized Representative by the Authorized Representative of the Series of Pari Passu Obligations that then constitutes the next largest outstanding principal amount of any then-outstanding Series of Pari Passu Obligations

(other than the Series of Pari Passu Obligations represented by the Controlling Authorized Representative) with respect to the Collateral (the "*Major Non-Controlling Authorized Representative*").

The "*Non-Controlling Authorized Representative Enforcement Date*" with respect to which a non-Controlling Authorized Representative becomes the Applicable Authorized Representative is the date that is 90 days (throughout which 90-day period the applicable non-Controlling Authorized Representative was the Major Non-Controlling Authorized Representative) after the occurrence of both (a) an event of default, as defined in the applicable indenture or credit document for that Series of Pari Passu Obligations, and (b) the Collateral Agent's and each other Authorized Representative's receipt of written notice from that Authorized Representative certifying that (i) such Authorized Representative is the Major Non-Controlling Authorized Representative and that an event of default, as defined in the applicable indenture or credit document for that Series of Pari Passu Obligations, has occurred and is continuing and (ii) the Pari Passu Obligations of that Series are currently due and payable in full (whether as a result of acceleration thereof or otherwise) in accordance with the applicable indenture or credit document, as applicable, for that Series of Pari Passu Obligations; *provided* that the Non-Controlling Authorized Representative Enforcement Date will be stayed and shall not occur and shall be deemed not to have occurred with respect to any Collateral if (1) at any time the Collateral Agent has commenced and is diligently pursuing any enforcement action with respect to such Collateral or (2) at any time the Company or the Guarantor that has granted a security interest in such Collateral is then a debtor under or with respect to (or otherwise subject to) any insolvency or liquidation proceeding. If no such stay occurs, or is deemed to occur, then the Major Non-Controlling Authorized Representative will become the Applicable Authorized Representative from and after the occurrence of the Non-Controlling Authorized Representative Enforcement Date.

***Release of Liens and Amendments to Security Documents***

If at any time any Collateral is transferred to a third party or otherwise disposed of, in each case, in connection with any enforcement by the Collateral Agent in accordance with the provisions of the Intercreditor Agreement, the Liens in favor of the Applicable Authorized Representative and each other Authorized Representative, for the benefit of each Series of Pari Passu Secured Parties and Junior Lien Priority Secured Parties, upon such Collateral will automatically be released and discharged; *provided* that any proceeds of any Collateral realized therefrom shall be applied pursuant to the Intercreditor Agreement.

The Intercreditor Agreement will provide that the Collateral Agent may enter into any amendment to any Additional Security Document, so long as the Collateral Agent receives an Officer's Certificate of the Company stating that such amendment is permitted by the terms of the Indenture and each other Secured Credit Document then in effect. The Company will give notice to each Authorized Representative of any release of Collateral and of any amendment to any Additional Security Document.

***Restrictions on Enforcement of Priority Liens***

The Intercreditor Agreement will provide that the Applicable Authorized Representative will have the sole right to instruct the Collateral Agent to act or refrain from acting with respect to the Collateral, and (a) the Collateral Agent will not follow any instructions (other than certain types of instructions to exercise rights other than enforcement rights) with respect to the Collateral from any representative of any Non-Controlling Secured Party or other Additional Secured Party (other than the Applicable Authorized Representative) and (b) no Authorized Representative of any Non-Controlling Secured Party or other Additional Secured Party (other than the Applicable Authorized Representative) will instruct the Collateral Agent to commence any judicial or non-judicial foreclosure proceedings with respect to, seek to have a trustee, receiver, liquidator or similar official appointed for or over, attempt any action to take possession of, exercise any right, remedy or power with respect to, or otherwise take any action to enforce its interests in or realize upon, or take any other action available to it in respect of, the Collateral.

No representative of any Non-Controlling Secured Party may contest, protest or object to any foreclosure proceeding or action brought by or at the direction of the Collateral Agent in connection with the Intercreditor Agreement or the exercise of remedies against the Collateral. Each Authorized Representative of any Series of Additional Obligations will agree that it will not accept any Lien on any Collateral for the benefit of any series of Additional Obligations (other than funds deposited for the discharge or defeasance of any Additional Agreement) unless each other series of Additional Obligations is also secured by a Lien on such Collateral. Each of the Secured Parties will also agree that it will not contest or support any other person in contesting, in any proceeding (including any insolvency or liquidation proceeding), the perfection, priority, validity or enforceability of a Lien held by or on behalf of any of the Secured Parties in all or any part of the Collateral, or the provisions of the Intercreditor Agreement.

If an Intercreditor Event of Default has occurred and is continuing and the Collateral Agent takes action to enforce rights in respect of any Collateral, or any distribution is made with respect to any Collateral in any bankruptcy case of the Company or any Guarantor, the proceeds of any sale, collection or other liquidation of any Collateral by the Collateral Agent or any Secured Party (or received pursuant to any other intercreditor agreement), as applicable, or the proceeds of any such distribution (subject, in the case of any such distribution, to the paragraph immediately following) shall be applied:

> FIRST, to the payment of all reasonable legal fees and expenses and other reasonable costs or out-of-pocket expenses or other liabilities of any kind incurred by the Collateral Agent, acting on behalf of the Pari Passu Secured Parties under any Pari Passu Security Document or otherwise in connection with any Pari Passu Security Document or the Intercreditor Agreement;
>
> SECOND, to the Collateral Agent in an amount equal to the Collateral Agent's fees payable under the Intercreditor Agreement and any other Pari Passu Security Documents that are unpaid and to any Authorized Representative that has theretofore advanced or paid the Collateral Agent's fees in an amount equal to the amount so advanced or paid by such Authorized Representative prior to such distribution date;
>
> THIRD, to the ratable payment of Pari Passu Obligations consisting of fees, expenses and indemnity amounts (including attorneys' fees and expenses) owed to the Authorized Representatives, ratably among the Authorized Representatives in proportion to the amount of all fees, expenses and indemnity amounts owed to all Authorized Representatives under this clause;
>
> FOURTH, to the payment in full of all other Pari Passu Obligations then due and owing on a ratable basis among all Series, to be applied in accordance with the terms of the applicable Secured Credit Documents;
>
> FIFTH, to the payment in full of all Junior Lien Priority Obligations then due and owing on a ratable basis among all Series, to be applied in accordance with the terms of the applicable Secured Credit Documents; and
>
> SIXTH, after payment in full of all Pari Passu Obligations and Junior Lien Priority Obligations, to the Company for the account of the Company or the applicable Guarantor as its interests may appear.

Notwithstanding the foregoing, solely as among the holders of Pari Passu Obligations, with respect to any Collateral for which a third party (other than a Secured Party) has a lien or security interest that is junior in priority to the security interest of any Series of Additional Pari Passu Obligations but senior (as determined by appropriate legal proceedings in the case of any dispute) to the security interest of any other Series of Pari Passu Obligations (such third party, an "*Intervening Creditor*"), the value of any Collateral or proceeds that are allocated to such Intervening Creditor will be deducted on a ratable basis solely from the Collateral or proceeds to be distributed in respect of the Series of Additional Pari Passu Obligations with respect to which such impairment exists.

None of the Secured Parties may institute any suit or assert in any suit, bankruptcy, insolvency or other proceeding any claim against the Collateral Agent or any other Secured Party seeking damages from or other relief by way of specific performance, instructions or otherwise with respect to any Collateral. In addition, none of the Secured Parties may seek to have any Collateral or any part thereof marshaled upon any foreclosure or other disposition of such Collateral. If any Secured Party obtains possession of any Collateral or realizes any proceeds or payment in respect thereof, at any time prior to the discharge of each of the Additional Obligations, then it must hold such Collateral, proceeds or payment in trust for the other Secured Parties and promptly transfer such Collateral, proceeds or payment in trust to the Collateral Agent to be distributed in accordance with the Intercreditor Agreement.

The Secured Parties will acknowledge that the Additional Obligations may, subject to the limitations set forth in the other Secured Credit Documents, be increased, extended, renewed, replaced, restated, supplemented, restructured, repaid, refunded, refinanced or otherwise amended or modified from time to time, all without affecting the priorities set forth in the Intercreditor Agreement defining the relative rights of the Secured Parties; *provided* that the authorized representative of the holders of such amended or modified Indebtedness shall have executed a Joinder Agreement to the Intercreditor Agreement on behalf of the holders of such additional refinancing Indebtedness.

***Restrictions on Enforcement of Junior Liens***

The Intercreditor Agreement will provide that until the Discharge of Pari Passu Obligations, the Controlling Authorized Representative will have, subject to the exceptions set forth below in clauses (1) through (4), the exclusive right to authorize and direct the Collateral Agent with respect to the Security Documents and the Collateral, including, without

limitation, the exclusive right to authorize or direct the Collateral Agent to enforce, collect or realize on any Collateral or exercise any other right or remedy with respect to the Collateral, and no Authorized Representative for Junior Lien Priority Indebtedness or holder of Junior Lien Priority Obligations may authorize or direct the Collateral Agent with respect to such matters. Notwithstanding the foregoing, the holders of Junior Lien Priority Obligations may direct the Collateral Agent pursuant to the Junior Lien Priority Security Documents:

(1) without any condition or restriction whatsoever, at any time after the Discharge of Pari Passu Obligations;

(2) as necessary (subject to the prior Discharge of Pari Passu Obligations) to redeem any Collateral in a creditor's redemption permitted by law or to deliver any notice or demand necessary to enforce (subject to the prior Discharge of Pari Passu Obligations) any right to claim, take or receive proceeds of Collateral remaining after the Discharge of Pari Passu Obligations;

(3) as necessary to perfect or establish the priority (subject to Priority Liens) of the Junior Liens upon any Collateral, except that the holders of Junior Lien Priority Obligations may not require the Collateral Agent to take any action to perfect any Collateral through possession or control other than the Collateral Agent taking any action for possession or control required by the holders of Priority Liens and the Collateral Agent agreeing pursuant to the terms of the Intercreditor Agreement that the Collateral Agent as agent for the benefit of the holders of Pari Passu Obligations agrees to act as agent for the benefit of the holders of Junior Lien Priority Obligations; or

(4) as necessary to create, prove, preserve or protect (but not enforce) the Junior Liens upon any Collateral.

Until the Discharge of Pari Passu Obligations the holders of Junior Lien Priority Obligations, the Collateral Agent on behalf of the holders of Junior Lien Priority Obligations or any Authorized Representative for Junior Lien Priority Indebtedness will:

(1) not take or cause to be taken any action, the purpose or effect of which is to make any Lien in respect of any Junior Lien Priority Obligation *pari passu* with or senior to, or to give any Junior Lien Priority Secured Party any preference or priority relative to, the Liens with respect to the Pari Passu Obligations or the Pari Passu Secured Parties with respect to any of the Collateral;

(2) not contest, oppose, object to, interfere with, hinder or delay, in any manner, whether by judicial proceedings (including, without limitation, the filing of an insolvency or liquidation proceeding) or otherwise, any foreclosure, sale, lease, exchange, transfer or other disposition of the Collateral by any Pari Passu Secured Party or any other enforcement action taken (or any forbearance from taking any enforcement action) by or on behalf of any Pari Passu Secured Party;

(3) have no right to (i) direct either any of the Collateral Agent, any Authorized Representative of Pari Passu Debt or any other Pari Passu Secured Party to exercise any right, remedy or power with respect to the Collateral or pursuant to the Pari Passu Security Documents or (ii) consent or object to the exercise by the Collateral Agent, any Authorized Representative of Pari Passu Debt or any other Pari Passu Secured Party of any right, remedy or power with respect to the Collateral or pursuant to the Pari Passu Security Documents or to the timing or manner in which any such right is exercised or not exercised (or, to the extent they may have any such right described in this clause (3), whether as a junior lien creditor or otherwise, they hereby irrevocably waive such right);

(4) not institute any suit or other proceeding or assert in any suit, insolvency or liquidation proceeding or other proceeding any claim against any Pari Passu Secured Party seeking damages from or other relief by way of specific performance, instructions or otherwise, with respect to, and no Pari Passu Secured Party will be liable for, any action taken or omitted to be taken by any Pari Passu Secured Party with respect to the Collateral or pursuant to the Pari Passu Security Documents;

(5) not make any judicial or nonjudicial claim or demand or commence any judicial or non-judicial proceedings against the Company or any Guarantor or any of its subsidiaries or affiliates under or with respect to any Junior Lien Priority Security Document seeking payment or damages from or other relief by way of specific performance, instructions or otherwise under or with respect to any Junior Lien Priority Security Document (other than filing a proof of claim) or exercise any right, remedy or power under or with respect to, or otherwise take any action to enforce, other than filing a proof of claim, any Junior Lien Priority Security Document;

(6) not commence judicial or nonjudicial foreclosure proceedings with respect to, seek to have a trustee, receiver, liquidator or similar official appointed for or over, attempt any action to take possession of, exercise any right, remedy or power with respect to or otherwise take any action to enforce their interest in or realize upon the Collateral or pursuant to the Junior Lien Priority Security Documents; and

(7) not seek, and hereby waive any right, to have the Collateral or any part thereof marshaled upon any foreclosure or other disposition of the Collateral.

Subject to the terms of the Intercreditor Agreement, both before and during an insolvency or liquidation proceeding, the holders of Junior Lien Priority Obligations and the Authorized Representatives of Junior Lien Priority Indebtedness may take any actions and exercise any and all rights that would be available to a holder of unsecured claims; *provided* that the holders of Junior Lien Priority Obligations and the Authorized Representatives of the Junior Lien Priority Indebtedness may not take any of the actions prohibited by the Intercreditor Agreement, including by clauses (1) through (7) of the preceding paragraph, or oppose or contest any order that it has agreed not to oppose or contest in a insolvency or liquidation proceeding and may not otherwise act in any manner that is otherwise in contravention of the terms of the Intercreditor Agreement. In addition, any holder of Junior Lien Priority Indebtedness will be subject to customary restrictions on its ability to take certain actions or file various objections in any insolvency or liquidation proceeding, including with respect to any debtor in possession ("*DIP*") financing or sales of Collateral consented to by the Applicable Authorized Representative or Collateral Agent on its behalf and on behalf of the other Pari Passu Secured Parties, any motions for relief from the automatic stay by the Applicable Authorized Representative or Collateral Agent on its behalf and on behalf of the other applicable Pari Passu Secured Parties, and similar actions, and will also agree to subordinate their liens on the Collateral to such DIP financing, all adequate protection liens granted to the Collateral Agent on behalf of the Pari Passu Secured Parties, and any carve out from the Collateral agreed to by the Applicable Authorized Representative or Collateral Agent on its behalf and on behalf of the other applicable Pari Passu Secured Parties. Each holder of Junior Lien Priority Indebtedness will also agree not to object to any adequate protection sought by the Applicable Authorized Representative or Collateral Agent on its behalf and on behalf of the other applicable Pari Passu Secured Parties of its interests in the Collateral or to vote on any proposed plan of reorganization or similar dispositive plan that is inconsistent with the terms of the Intercreditor Agreement.

**Release of Liens on Collateral**

The Company and the Guarantors will be entitled to the release of property and other assets included in the Collateral from the Liens securing the Notes and the Guarantees under any one or more of the following circumstances:

- to enable the disposition of such property or assets (other than any such disposition to the Company or a Guarantor) to the extent permitted under the Indenture;
- in the case of a Guarantor that is released from its Guarantee (*provided* that it is also released from any guarantee in respect of any Additional Obligations then in effect), the release of the property and assets of such Guarantor;
- as described under "—Intercreditor Agreement"; and
- as described under "—Amendment, Supplement and Waiver."

The Liens on the Collateral securing the Notes and the Guarantees will also be released (i) upon the termination and release of all Liens on Collateral in accordance with the terms of the Indenture, the Security Documents and the Intercreditor Agreement, when entered into, or (ii) in the case of a Legal Defeasance or Covenant Defeasance or the satisfaction and discharge of the Indenture in accordance with the terms of the Indenture.

**Certain Covenants with Respect to the Collateral**

The Collateral will be pledged pursuant to the Security Documents, which will contain provisions relating to the administration of the Collateral. The following is a summary of some of the covenants and provisions set forth in the Security Documents and the Indenture as they relate to the Collateral:

*Further assurances.* The Security Documents and the Indenture will provide that each Grantor will, at its own expense, promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary, or that the Collateral Agent may request, in order to perfect any security interest granted or purported to be granted thereby or to enable the Collateral Agent to exercise and enforce its rights and remedies under such Security Documents with

respect to any of the Collateral. Under the terms of the Security Agreement, each Grantor will authorize the filing by the Collateral Agent of financing or continuation statements, or amendments, and such Grantor will execute, file and deliver to the Collateral Agent such other instruments or notices, as may be necessary or as Collateral Agent may request, in order to perfect and preserve the security interest granted or purported to be granted under the Security Agreement.

*Real Property mortgages and filings.* Each Grantor will agree that upon the acquisition of any fee interests in Real Property in excess of $1,000,000 in value it will promptly notify the Collateral Agent in writing of such acquisition and will grant to the Collateral Agent, for the benefit of the Pari Passu Secured Parties (including itself, the Trustee and the Holders of the Notes), a first-priority mortgage (subject to Permitted Liens) on each fee interest in Real Property owned by such Grantor and will deliver certain other customary documentation and customary opinions in connection with the grant of such mortgage, including title insurance policies, financing statements, fixture filings, to the extent delivered to the Grantor, and environmental audits, and such Grantor will pay all recording costs, intangible taxes and other fees and costs (including attorneys' fees and expenses) incurred in connection therewith.

*New Subsidiaries.* Pursuant to the Indenture, any new direct Material Domestic Subsidiary (whether by acquisition or creation) of a Grantor will be required within 15 days of such acquisition or creation to enter into the Security Agreement by executing and delivering a supplement to the Security Agreement in the form attached to the Security Agreement and take all actions required by the Security Agreement to perfect the liens created thereunder. Upon the execution and delivery of such supplement by such new Domestic Subsidiary, such Domestic Subsidiary shall become a Grantor under the Security Agreement, with the same force and effect as if originally named as a Grantor on the Issue Date. The execution and delivery of any instrument adding an additional Grantor as a party to the Security Agreement shall not require the consent of any then-existing Grantor.

**Certain Bankruptcy Limitations**

The right of the Collateral Agent (acting on behalf of the Trustee and the Holders of the Notes and the holders of Additional Obligations) to repossess and dispose of the Collateral upon the occurrence of an Event of Default is likely to be significantly impaired by applicable bankruptcy law if a bankruptcy case were to be commenced by or against us before the Collateral Agent repossessed and disposed of the Collateral. Upon the commencement of a case under Title 11 of the United States Bankruptcy Code of 1978, as amended (the "*Bankruptcy Code*"), a secured creditor such as the Collateral Agent (acting on behalf of the Additional Secured Parties) is prohibited from repossessing its security from a debtor in a bankruptcy case, or from disposing of security repossessed from such debtor, without prior bankruptcy court approval, which may not be given. Moreover, the Bankruptcy Code permits the debtor to continue to retain and use Collateral even though the debtor is in default under the applicable debt instruments, provided that the secured creditor is given "adequate protection." The meaning of the term "adequate protection" may vary according to circumstances, but it is intended in general to protect the value of the secured creditor's interest in the Collateral as of the commencement of the bankruptcy case and may include cash payments or the granting of additional security if and at such times as the bankruptcy court in its discretion determines that the value of the secured creditor's interest in the Collateral is declining during the pendency of the bankruptcy case. A bankruptcy court may determine that a secured creditor may not require compensation for a diminution in the value of its collateral if the value of the collateral exceeds the debt it secures.

In view of the lack of a precise definition of the term "adequate protection" and the broad discretionary power of a bankruptcy court, it is impossible to predict:

- how long payments under the Notes could be delayed following commencement of a bankruptcy case;
- whether or when the Collateral Agent could repossess or dispose of the Collateral;
- the value of the Collateral at the time of the bankruptcy petition; or
- whether or to what extent Holders of the Notes would be compensated for any delay in payment or loss of value of the Collateral through the requirement of "adequate protection."

Any disposition of the Collateral during a bankruptcy case would also require permission from the bankruptcy court. Furthermore, in the event a bankruptcy court determines the value of the Collateral is not sufficient to repay all amounts due on Pari Passu Obligations and the Notes, the holders of the Notes would hold a secured claim only to the extent of the value of the Collateral to which the Holders of the Notes are entitled and unsecured claims with respect to such shortfall. The Bankruptcy Code only permits the payment and accrual of post-petition interest, expenses, costs and attorneys' fees to a

secured creditor on a priority basis during a debtor's bankruptcy case to the extent the value of its Collateral is determined by the bankruptcy court to exceed the aggregate outstanding principal amount of the obligations secured by the Collateral.

**Optional Redemption**

At any time prior to February 1, 2026 (three months prior to the maturity date of the Notes), the Company may redeem all or part of the Notes at a redemption price equal to the sum of (i) 100.0% of the principal amount thereof, (ii) the Applicable Premium as of the date of redemption and (iii) accrued and unpaid interest thereon to, but excluding, the redemption date, subject to the rights of Holders of Notes on the relevant record date to receive interest due on the relevant interest payment date falling prior to or on the redemption date.

At any time on or after February 1, 2026, the Company may redeem all or part of the Notes at a redemption price equal to 100.0% of the principal amount thereof, plus accrued and unpaid interest thereon to, but excluding, the redemption date, subject to the rights of Holders of Notes on the relevant record date to receive interest due on the relevant interest payment date falling prior to or on the redemption date.

At any time, in connection with any tender offer or other offer to purchase the Notes (including pursuant to an Offer to Purchase), if not less than 90.0% in aggregate principal amount of the outstanding Notes are purchased by the Company, or any third party purchasing or acquiring Notes in lieu of the Company, all of the Holders of the Notes will be deemed to have consented to such tender offer or other offer and, accordingly, the Company or such third party will have the right, upon notice as described below, to redeem the Notes that remain outstanding following such purchase at the price paid to holders in such purchase (which may be less than par), *plus* accrued and unpaid interest, if any, on such Notes to, but excluding, the redemption date, subject to the rights of Holders of Notes on the relevant record date to receive interest due on the relevant interest payment date falling prior to or on the redemption date.

In connection with any redemption of Notes, any such redemption or notice may, at the Company's discretion, be subject to one or more conditions precedent. In addition, if such redemption or notice 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 waived by the Company in its sole discretion), or such redemption may not occur and such notice may be modified or rescinded in the event that any or all such conditions shall not have been satisfied (or waived by the Company in its sole discretion) by the redemption date, or by the redemption date so delayed. In addition, such notice of redemption may be extended if such conditions precedent have not been satisfied or waived by the Company by providing notice to the Holders.

If less than all of the Notes are to be redeemed at any time, the Company and/or the Trustee will select Notes for redemption as follows:

(1) in compliance with the requirements of the securities exchange, if any, on which the Notes are listed; or

(2) if the Notes are not so listed, on a *pro rata* basis, by lot or by such other method as the Paying Agent or Registrar deems fair and appropriate (and in such manner as complies with applicable legal requirements and, in the case of Global Notes, the procedures of DTC).

No Notes of $2,000 or less will be redeemed in part. Notices of redemption will be mailed by first class mail (or sent electronically, or otherwise in accordance with the procedures of DTC), at least 10 but not more than 60 days before the redemption date (*provided* that a redemption notice may be sent earlier than 60 days (i) in connection with a defeasance or satisfaction and discharge or (ii) in the case of a redemption that is subject to one or more conditions precedent, the date of redemption is extended as permitted under the Indenture), to each Holder of Notes to be redeemed at its registered address (with a copy to the Trustee and Paying Agent) or otherwise in accordance with the procedures of DTC.

If any Note is to be redeemed in part only, the notice of redemption that relates to that Note will state the portion of the principal amount thereof to be redeemed. Except in the case of a Global Note, 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 cancellation of the original Note. Notes called for redemption become due on the date fixed for redemption. On and after the redemption date, interest will cease to accrue on Notes or portions thereof called for redemption so long as the Company has deposited with the Paying Agent funds sufficient to pay the principal of, premium, if any, and accrued and unpaid interest, if any, on the Notes to be redeemed to, but excluding, the redemption date.

Neither the Trustee, the Paying Agent nor the Registrar shall be liable for any selections made by it in accordance with the preceding paragraphs.

**Mandatory Redemption; Offers to Purchase; Open-Market and Other Purchases**

The Company is not required to make any mandatory redemption or sinking fund payments with respect to the Notes. However, under certain circumstances, the Company may be required to offer to purchase the Notes as described below under "—Repurchase at the Option of Holders." The Company or its Affiliates may at any time and from time to time purchase Notes or our other Indebtedness. Any such purchases may be made through open-market or privately negotiated transactions with third parties or pursuant to one or more tender or exchange offers or otherwise, upon such terms and at such prices, as well as with such consideration, as the Company or any such Affiliates may determine.

**Repurchase at the Option of Holders**

***Change of Control Triggering Event***

Unless the Company has previously or concurrently delivered a redemption notice with respect to all the outstanding Notes as described under "—Optional Redemption" (which may be conditioned on the consummation of such Change of Control Triggering Event), the Company must commence, prior to or within 30 days of the occurrence of a Change of Control Triggering Event, and consummate an Offer to Purchase for all Notes then outstanding, at a purchase price in cash equal to 101.0% of the aggregate principal amount of the Notes repurchased, *plus* accrued and unpaid interest thereon, to, but excluding, the date of repurchase, subject to the rights of Holders of Notes on the relevant record date to receive interest due on the relevant interest payment date falling prior to or on the repurchase date. An Offer to Purchase may be made in advance of a Change of Control Triggering Event, and conditioned upon such Change of Control Triggering Event.

The Company will not be required to make an Offer to Purchase upon a Change of Control Triggering Event if a third party makes the Offer to Purchase in the manner, at the times and otherwise in compliance with the requirements set forth in the Indenture applicable to an Offer to Purchase made by the Company and purchases all Notes validly tendered and not validly withdrawn under such Offer to Purchase.

The Company's ability to pay cash to the Holders of the Notes following the occurrence of a Change of Control Triggering Event may be limited by the Company's then-existing financial resources. Sufficient funds may not be available when necessary to make any required repurchases. See "Risk Factors—Risk Factors Related to the Notes—We may not be able to raise the funds necessary to finance the change of control offer required by the indenture."

The Change of Control Triggering Event purchase feature of the Notes may in certain circumstances make it more difficult or discourage a sale or takeover of the Company and, thus, the removal of incumbent management. The Change of Control Triggering Event purchase feature is a result of negotiations between the Initial Purchaser and the Company. As of the Issue Date, the Company has no present intention to engage in a transaction involving a Change of Control, although it is possible that the Company could decide to do so in the future. Subject to the limitations discussed below, the Company could, in the future, enter into certain transactions, including asset sales, equity sales, acquisitions, refinancings or other recapitalizations, that would not constitute a Change of Control Triggering Event under the Indenture, but that could increase the amount of Indebtedness outstanding at such time or otherwise affect the Company's capital structure or credit ratings. Restrictions on the Company's ability to Incur additional Indebtedness are contained in the covenants described below under "—Certain Covenants—Limitation on Indebtedness, Disqualified Stock and Preferred Stock" and "—Certain Covenants—Limitation on Liens." Such restrictions in the Indenture can be waived only with the consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding. Except for the limitations contained in such covenants, however, the Indenture will not contain any covenants or provisions that may afford Holders protection in the event of a highly leveraged transaction.

Future credit agreements or other agreements to which the Company becomes a party may prohibit or limit the Company from purchasing any Notes as a result of a Change of Control. In the event a Change of Control occurs at a time when the Company is prohibited from purchasing the Notes, the Company could seek the consent of its lenders or investors to permit the purchase of the Notes or could attempt to refinance the borrowings or securities that contain such prohibition or limitation. If the Company does not obtain such consent or refinance such borrowings or securities, the Company will remain prohibited from purchasing the Notes. In such case, the Company's failure to purchase tendered Notes after any applicable notice and lapse of time would constitute an Event of Default under the Indenture.

Future Indebtedness of the Company may prohibit certain events that would constitute a Change of Control or require such Indebtedness to be repurchased upon a Change of Control. If the Company experiences a change of control that triggers a default under such Indebtedness, we could seek a waiver of such default or seek to refinance such Indebtedness. In the event we do not obtain such a waiver or refinance such Indebtedness, such default could result in amounts outstanding under such Indebtedness being declared due and payable. Moreover, the exercise by the Holders of their right to require the Company to repurchase the Notes could cause a default under such Indebtedness, even if the Change of Control itself does not, due to the financial effect of such purchase on the Company.

The Existing Notes have similar requirements regarding the Company's obligation to offer to purchase such notes upon the occurrence of a Change of Control Triggering Event.

The definition of "Change of Control" includes a phrase relating to the direct or indirect sale, transfer, conveyance or other disposition of "all or substantially all" of the properties or assets of the Company and the Restricted Subsidiaries taken as a whole. Although there is a limited body of case law interpreting the phrase "substantially all," there is no precise established definition of the phrase under applicable law. Accordingly, the ability of a Holder of Notes to require the Company to repurchase such Notes as a result of a sale, transfer, conveyance or other disposition of less than all of the assets of the Company and the Restricted Subsidiaries taken as a whole to another Person or group may be uncertain. See "Risk Factors—Risk Factors Related to the Notes—Holders of the notes may not be able to determine when a change of control giving rise to their right to have the notes repurchased has occurred following a sale of 'substantially all' of our assets."

The provisions under the Indenture relating to the Company's obligation to make an Offer to Purchase as a result of a Change of Control Triggering Event, including the definition of "Change of Control," may be waived or modified, subject to certain restrictions, with the written consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding.

***Asset Sales***

The Company will not, and will not permit any Restricted Subsidiary to, consummate an Asset Sale unless:

(1) the Company (or the Restricted Subsidiary, as the case may be) receives consideration at the time of such Asset Sale at least equal to the Fair Market Value of the assets or Equity Interests issued or sold or otherwise disposed of; and

(2) at least 75.0% of the consideration therefor received by the Company or such Restricted Subsidiary is in the form of:

(a) Cash Equivalents; *provided* that the amount of:

(i) any liabilities (as shown on the Company's or such Restricted Subsidiary's balance sheet or in the notes thereto for the most recent period ended on or prior to such time in respect of which financial statements are internally available or, if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Company's or such Restricted Subsidiary's balance sheet or in the notes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet in the good faith determination of the Company or any direct or indirect parent of the Company) of the Company or such Restricted Subsidiary (other than liabilities that are by their terms subordinated to the Notes) that are extinguished in connection with the transactions relating to such Asset Sale, or that are assumed by the transferee of any such assets or Equity Interests, in each case, pursuant to an agreement that releases or indemnifies the Company or such Restricted Subsidiary, as the case may be, from further liability;

(ii) any notes or other obligations or other securities 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 Equivalents, or by their terms are required to be satisfied for Cash Equivalents (to the extent of the Cash Equivalents received), in each case, within 90 days of the receipt thereof; and

(iii) any Designated Non-cash Consideration received by the Company or any of its Restricted Subsidiaries in such Asset Sale having an aggregate Fair Market Value, taken together with all other Designated Non-cash Consideration received pursuant to this subclause (iii) that is at that time outstanding, not to exceed the greater of (x) $50.0 million and (y) 25.0% of Consolidated Cash Flow for the Reference Period, calculated at the time of the receipt of such Designated Non-cash Consideration (with the Fair Market Value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value);

shall each be deemed to be Cash Equivalents for the purposes of this clause (a);

(b) Replacement Assets; or

(c) any combination of the consideration specified in clauses (a) and (b).

Within 365 days after the receipt of any Net Available Cash by the Company or any Restricted Subsidiary from any Asset Sale, the Company or such Restricted Subsidiary may apply an amount equal to the Net Available Cash from such Asset Sale, as its option:

(a) to invest in Replacement Assets (or, so long as a binding agreement with respect to the purchase of Replacement Assets is entered into within 365 days after the receipt of any Net Available Cash by the Company or any Restricted Subsidiary from any Asset Sale, 90 days after the end of such 365-day period); *provided* that such Replacement Assets shall be pledged as Collateral to the extent required pursuant to the Indenture and the Security Documents;

(b) [reserved];

(c) to prepay, repay, purchase or redeem any (x) Pari Passu Obligations of the Company or the Guarantors, including the Notes, and, if the assets or property disposed of in the Asset Sale were not Collateral, Pari Passu Debt of the Company or the Guarantors, including the Notes and the Existing Notes (*provided* that if the Company or any Guarantor shall so prepay, repay, purchase or redeem such Pari Passu Debt or Pari Passu Obligations, as applicable, other than the Notes, the Company will (A) ratably reduce Obligations under the Notes as provided under "—Optional Redemption" or through open-market purchases at a purchase price equal to or greater than 100.0% of the principal amount thereof or (B) make an offer (in accordance with the procedures set forth below for an Offer to Purchase) to all Holders to purchase at a purchase price equal to 100.0% of the principal amount thereof, *plus* accrued and unpaid interest, if any, the principal amount of Notes then outstanding), or (y) if the assets or property disposed of in the Asset Sale were not Collateral, Indebtedness of a non-Guarantor Restricted Subsidiary, in each case, other than Indebtedness owed to the Company or any Restricted Subsidiary (and, if the Indebtedness being repaid is a Revolving Credit Agreement, to correspondingly reduce commitments with respect thereto); or

(d) any combination of the foregoing.

The amount of such Net Available Cash required to be applied (or to be committed to be applied) during such 365-day period as set forth in the preceding paragraph and not applied (or committed to be applied) as so required by the end of such period shall constitute "*Excess Proceeds*." If, as of the first day of any calendar month, the aggregate amount of Excess Proceeds totals at least the greater of (x) $30.0 million and (y) 15.0% of Consolidated Cash Flow for the Reference Period, the Company must commence, not later than the 15th Business Day of such month, and consummate an Offer to Purchase, from the Holders and all holders of other Pari Passu Debt or Pari Passu Obligations, as applicable, containing provisions similar to those set forth in the Indenture with respect to offers to purchase with the proceeds of sales of assets, the maximum principal amount of Notes and such other Pari Passu Debt that may be purchased out of the Excess Proceeds. The offer price in any such Offer to Purchase will be equal to 100.0% of the principal amount (or accreted value, if applicable) of the Notes and such other Pari Passu Debt or Pari Passu Obligations, as applicable, *plus* accrued and unpaid interest thereon to, but excluding, the date of purchase, subject to the rights of Holders of Notes on the relevant record date to receive interest on the relevant interest payment date falling prior to or on the repurchase date, and will be payable in cash. To the extent that any Excess Proceeds remain after consummation of an Offer to Purchase pursuant to this covenant, the Company may use those Excess Proceeds for any purpose not otherwise prohibited by the Indenture, and those Excess Proceeds shall no longer constitute "Excess Proceeds." If the aggregate principal amount of Notes and Pari Passu Debt or Pari Passu Obligations, as

applicable, tendered or otherwise surrendered by holders thereof exceeds the amount of Excess Proceeds, the Paying Agent or the Registrar shall select the Notes (and the Company or its agents shall select such Pari Passu Debt) to be purchased in the manner described below. Upon completion of any such Offer to Purchase, the amount of Net Available Cash and Excess Proceeds shall be reset at zero. The Company may satisfy the foregoing obligations with respect to any Asset Sale by making an Offer to Purchase at any time prior to the expiration of the 365-day reinvestment period.

Notwithstanding anything to the contrary set forth herein, to the extent that repatriation to the United States of any or all of the Net Available Cash of any Asset Sales by a Foreign Subsidiary (x) is prohibited or delayed by applicable local law or (y) would result in material adverse tax consequences as determined by the Company in its sole discretion, the portion of such Net Available Cash so affected will not be required to be applied in compliance with this covenant; *provided* that clause (x) of this paragraph shall apply to such amounts for so long, but only for so long, as the applicable local law will not permit repatriation to the United States (the Company hereby agreeing to use commercially reasonable efforts to cause the applicable Foreign Subsidiary to take all actions reasonably required by the applicable local law, applicable organizational impediments or other impediment to permit such repatriation), and if such repatriation of any of such affected Net Available Cash is permitted under the applicable local law and is not subject to clause (y) of this paragraph, then such Net Available Cash will be applied (net of additional taxes that would be payable or reserved against as a result of repatriating such amounts) in compliance with this covenant. The time periods set forth in this covenant shall not start until such time as the applicable Net Available Cash may be repatriated (whether or not such repatriation actually occurs).

The provisions under the Indenture with respect to the Company's obligation to make an Offer to Purchase as a result of an Asset Sale may be waived or modified, subject to certain exceptions, with the written consent of the Holders of a majority in aggregate principal amount of the Notes then outstanding.

Future credit agreements or other agreements to which the Company, Cogent Holdco or any Subsidiary of the Company becomes a party may prohibit or limit the Company from purchasing any Notes pursuant to an Offer to Purchase. In the event the Company is prohibited from purchasing the Notes, the Company or one of its Affiliates could seek the consent of its lenders or investors to the purchase of the Notes or attempt to refinance the borrowings that contain such prohibition. If the Company or one of its Affiliates does not obtain such consent or repay such borrowings, the Company will remain prohibited from purchasing the Notes. In such case, the Company's failure to purchase tendered Notes would constitute an Event of Default under the Indenture.

If more Notes are tendered pursuant to an Offer to Purchase than the Company is required to purchase, selection of such Notes for purchase will be made in compliance with the requirements of the securities exchange, if any, on which such Notes are listed (so long as the Paying Agent or the Registrar knows of such listing) or if such Notes are not listed, on a *pro rata* basis (with adjustments so that only Notes in denominations of the minimum denomination of $2,000 or integral multiples of $1,000 in excess thereof shall be purchased (or such lower denomination as may be permitted by DTC), by lot or by such other method as the Paying Agent or the Registrar shall deem fair and appropriate (and in such manner as complies with applicable legal requirements and, in the case of Global Notes, the procedures of DTC); *provided*, that the selection of Notes for purchase shall not result in a Holder with a principal amount of Notes less than the minimum denomination of $2,000 (or such lower denomination as may be permitted by DTC). No Note will be repurchased in part if less than the minimum denomination of such Note would be left outstanding.

Neither the Paying Agent nor the Registrar shall be liable for any selections made by it in accordance with the preceding paragraphs.

**Certain Covenants**

Set forth below are summaries of certain covenants contained in the Indenture. If on any date following the Issue Date (i) the Notes have Investment Grade Ratings from two of the Rating Agencies and (ii) no Default or Event of Default has occurred and is continuing under the Indenture (the occurrence of the events described in the foregoing clauses (i) and (ii) being collectively referred to as a "*Covenant Suspension Event*"), (x) the Note Guarantees will be automatically and unconditionally released and discharged (to the extent that guarantees by the Guarantors of all other Pari Passu Debt is substantially concurrently released, and the Liens on the Collateral securing such Pari Passu Debt (if any) are also substantially concurrently released) and (y) the Company and its Restricted Subsidiaries will not be subject to the following covenants or provisions (collectively, the "*Suspended Covenants*"):

(1) "—Repurchase at the Option of Holders—Asset Sales," but only to the extent related to properties or assets of the Company or its Restricted Subsidiaries that do not constitute Collateral;

(2) "—Limitation on Restricted Payments";

(3) "—Limitation on Indebtedness, Disqualified Stock and Preferred Stock";

(4) "—Limitation on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries";

(5) clause (3) of the first paragraph of "—Merger, Consolidation or Sale of Assets";

(6) "—Limitation on Transactions with Affiliates"; and

(7) "—Future Subsidiary Note Guarantees."

In the event that, after a Covenant Suspension Event, the Notes no longer have an Investment Grade Rating from two of the Rating Agencies (the date of such event, the "*Reversion Date*"), then the Company and its Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants under the Indenture with respect to future events and the Guarantors shall be required to (i) provide the Note Guarantees that were released and discharged and (ii) provide the Liens on the Collateral that were released and discharged.

The period of time between the occurrence of a Covenant Suspension Event and the Reversion Date is referred to in this description as the "*Suspension Period*." Upon the occurrence of a Covenant Suspension Event, the amount of Excess Proceeds from Net Available Cash shall be reset at zero. With respect to Restricted Payments made after the Reversion Date, the amount of Restricted Payments made will be calculated as though the covenant described under "—Limitation on Restricted Payments" had been in effect prior to, but not during, the Suspension Period. No Subsidiary may be designated as an Unrestricted Subsidiary during the Suspension Period, unless such designation would have complied with the covenant described under "—Limitation on Restricted Payments" as if such covenant were in effect during such period. In addition: (i) for purposes of the covenant described under "—Limitation on Indebtedness, Disqualified Stock and Preferred Stock," all Indebtedness Incurred, and Disqualified Stock or Preferred Stock issued, during the Suspension Period will be classified to have been Incurred or issued pursuant to clause (2) of the definition of "Permitted Indebtedness"; (ii) for purposes of the covenant described under "—Limitation on Transactions with Affiliates," all agreements and arrangements entered into by the Company or any Restricted Subsidiary with an Affiliate of the Company during the Suspension Period will be deemed to have been entered into pursuant to clause (5) of the second paragraph of "—Limitation on Transactions with Affiliates"; and (iii) for purposes of the covenant described under "—Limitation on Dividend and Other Payment Restrictions Affecting Subsidiaries," all contracts entered into during the Suspension Period that contain any of the restrictions contemplated by such covenant will be deemed to have been entered into pursuant to clause (1) of the second paragraph of "—Limitation on Dividend and Other Payment Restrictions Affecting Subsidiaries."

During the Suspension Period, the Company and its Restricted Subsidiaries will be entitled to incur Liens permitted under "—Limitation on Liens" (including, without limitation, Permitted Liens). To the extent such covenant and any Permitted Liens refer to one or more Suspended Covenants, such covenant or definition shall be interpreted as though such applicable Suspended Covenant(s) continued to be applicable during the Suspension Period (but solely for purposes of the "—Limitation on Liens" covenant and the "Permitted Liens" definition and for no other covenant).

During the Suspension Period, any reference in the definition of "Unrestricted Subsidiary" or "Permitted Liens" to the covenant described under "—Limitation on Indebtedness, Disqualified Stock and Preferred Stock" or any provision thereof shall be construed as if such covenant had remained in effect since the Issue Date and during the Suspension Period.

Upon the Reversion Date, the obligation to grant Note Guarantees pursuant to the covenant described under "—Future Subsidiary Note Guarantees" will be reinstated.

Notwithstanding that the Suspended Covenants may be reinstated, no Default or Event of Default will be deemed to have occurred as a result of any failure to comply with the Suspended Covenants during any Suspension Period and the Company and any Restricted Subsidiary of the Company will be permitted, without causing a Default or Event of Default or breach of any of the Suspended Covenants (notwithstanding the reinstatement thereof) under the Indenture, to honor, comply with or otherwise perform any contractual commitments or obligations entered into during a Suspension Period (to the extent not entered into in contemplation of the Reversion Date occurring) following a Reversion Date and to consummate the transactions contemplated thereby; *provided* that, to the extent any such commitment or obligation results in the making of a Restricted Payment, such Restricted Payment shall be made under clause (3) of the first paragraph or the second paragraph of the covenant described under "—Limitation on Restricted Payments" and, if not permitted by any of such provisions, such Restricted Payment shall be deemed permitted under clause (3) of the first paragraph of the covenant described under "—

Limitation on Restricted Payments" and shall be deducted for purposes of calculating the amount pursuant to such clause (3) (which may not be less than zero).

We cannot assure you that the Notes will ever achieve or maintain an Investment Grade Rating.

The Company shall provide an Officer's Certificate to the Trustee indicating the occurrence of any Covenant Suspension Event or Reversion Date. The Trustee will have no obligation to (i) independently determine or verify if such events have occurred, (ii) make any determination regarding the impact of actions taken during the Suspension Period on the Company's and its Restricted Subsidiaries' future compliance with their covenants, (iii) notify the Holders of any Covenant Suspension Event or Reversion Date or (iv) monitor the Investment Grade Ratings of the Notes.

***Limitation on Restricted Payments***

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly, take any of the following actions (each, a "*Restricted Payment*"):

(a) declare or pay any dividend or make any other payment or distribution with respect to any of the Company's or any Restricted Subsidiary's Equity Interests (including, without limitation, any payment in connection with any merger or consolidation involving the Company or any Restricted Subsidiary (other than dividends, payments or distributions (x) payable in Equity Interests (other than Disqualified Stock) of the Company or (y) to the Company or a Restricted Subsidiary);

(b) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving the Company or any Restricted Subsidiary) any Equity Interests of the Company;

(c) call for redemption or make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value, prior to the Stated Maturity thereof, any Subordinated Indebtedness except (a) in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, purchase or other acquisition, or (b) intercompany Indebtedness permitted to be Incurred pursuant to clause (6) of the second paragraph of the covenant described below under "—Certain Covenants—Limitation on Indebtedness, Disqualified Stock and Preferred Stock"; or

(d) make any Investment (other than a Permitted Investment);

unless, at the time of and after giving *pro forma* effect to such Restricted Payment:

(1) (x) in the case of an Investment (other than a Permitted Investment), no Specified Event of Default shall have occurred and be continuing or would occur as a consequence thereof, and (y) in the case of any other Restricted Payment, no Event of Default will have occurred and be continuing or would occur as a consequence thereof;

(2) the Company could Incur $1.00 of additional Indebtedness as Ratio Debt; and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Company and the Restricted Subsidiaries after April 1, 2021 (including Restricted Payments permitted by clauses (1) and (7) of the next succeeding paragraph, but excluding all other Restricted Payments permitted by the next succeeding paragraph), is less than the sum, without duplication, of:

    (a) (x) the aggregate Consolidated Cash Flow accrued in the period beginning on the first day of the quarter beginning on April 1, 2021, and ending on the last day of the most recent quarter for which internal financial statements are available prior to the date of such proposed Restricted Payment (or, if such Consolidated Cash Flow for such period is a deficit, *less* 100.0% of such deficit), *less* (y) 1.5 times consolidated interest expense during such period; *plus*

    (b) 100.0% of the aggregate amount received by the Company in cash and the Fair Market Value of property other than cash since April 1, 2021as a contribution to its common equity capital or from the issue or sale of Equity Interests (other than Disqualified Stock) of the Company or any

Restricted Subsidiary and the amount of reduction of Indebtedness of the Company or its Restricted Subsidiaries that has been converted into or exchanged for such Equity Interests (other than Equity Interests sold to, or Indebtedness held by, a Subsidiary of the Company); *plus*

(c) with respect to Investments (other than Permitted Investments) made by the Company and the Restricted Subsidiaries after April 1, 2021, an amount equal to the net reduction in such Investments in any Person (except, in each case, to the extent any such amount is included in the calculation of Consolidated Net Income), resulting from repayment to the Company or any Restricted Subsidiary of loans or advances or from the receipt of proceeds from the sale of any such Investment in an amount equal to 100.0% of the net cash proceeds or the Fair Market Value of the property other than cash, from the release of any Guarantee (except to the extent any amounts are paid under such Guarantee) or from redesignations of Unrestricted Subsidiaries as Restricted Subsidiaries not to exceed, in each case, the amount of such Investments previously made by the Company or any Restricted Subsidiary of such Person; *plus*

(d) the principal amount of any Indebtedness, or the liquidation preference or maximum fixed repurchase price, as the case may be, of any Disqualified Stock, of the Company or any Restricted Subsidiary thereof issued after April 1, 2021 (other than Indebtedness or Disqualified Stock issued to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Company or any Restricted Subsidiary (other than to the extent such employee stock ownership plan or trust has been funded by the Company or any Restricted Subsidiary)) which has been converted into or exchanged for Equity Interests in the Company or any other direct or indirect parent of the Company (other than Disqualified Stock).

The preceding provisions will not prohibit the following; *provided* that, in the case of clauses (7) and (8) below only, no Default has occurred and is continuing or would be caused thereby:

(1) the payment of any dividend or distribution within 60 days after the date of declaration thereof, if at said date of declaration such payment would have complied with the provisions of the Indenture, and the redemption of any Equity Interests or Subordinated Indebtedness within 60 days after the date on which notice of such redemption was given, if at said date of the giving of such notice, such redemption would have complied with the provisions of the Indenture;

(2) the payment of any dividend by a Restricted Subsidiary to all the holders of its Common Stock on a *pro rata* basis;

(3) any Restricted Payment in exchange for, or out of the net proceeds of a contribution to the common equity of the Company or a substantially concurrent sale (other than to a Subsidiary of the Company) of, Equity Interests (other than Disqualified Stock) of the Company or, to the extent the proceeds from such contribution or sale of Equity Interests are contributed to the common equity capital of the Company or used to purchase Capital Stock (other than Disqualified Stock) of the Company, a direct or indirect parent of the Company; *provided* that the amount of any such net proceeds that are utilized for such Restricted Payment will be excluded from clause (3)(b) of the first paragraph of this covenant;

(4) the redemption, repurchase, defeasance or other acquisition or retirement for value of Subordinated Indebtedness in exchange for or with the net cash proceeds from a substantially concurrent Incurrence (other than to a Subsidiary of the Company) of Permitted Refinancing Indebtedness;

(5) the repurchase of Capital Stock deemed to occur upon the exercise of options or warrants to the extent that such Capital Stock represents all or a portion of the exercise price thereof and applicable withholding taxes, if any;

(6) the payment of cash in lieu of fractional Equity Interests in connection with any dividend, distribution or split of or upon exercise, exchange or conversion of Equity Interests, warrants, options or other securities exercisable or convertible into, Equity Interests of the Company or any direct or indirect parent of the Company; *provided* that such payment shall not be for the purpose of evading the limitations of this covenant (as determined by the Board of Directors of the Company in good faith);

(7) the declaration and payment of dividends to holders of any class or series of Disqualified Stock of the Company or any Restricted Subsidiary, or Preferred Stock of a Restricted Subsidiary, in each case issued in accordance with the covenant described below under "—Certain Covenants—Limitation on Indebtedness, Disqualified Stock and Preferred Stock";

(8) other Restricted Payments in an aggregate amount not to exceed $250.0 million;

(9) purchases of receivables pursuant to a Receivables Repurchase Obligation in connection with a Qualified Receivables Financing and the payment or distribution of Receivables Fees;

(10) payments or distributions to satisfy dissenters' rights, pursuant to or in connection with a consolidation, merger or transfer of assets that complies with the provisions of the Indenture applicable to mergers, consolidations and transfers of all or substantially all the property and assets of the Company;

(11) the purchase, retirement, redemption or other acquisition for value of Equity Interests of the Company held by any future, present or former employee, director or consultant of the Company or any Subsidiary of the Company (or their permitted transferees) pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement; *provided, however*, that the aggregate amounts paid under this clause (11) shall not exceed the greater of (x) $2.5 million and (y) 1.5% of Consolidated Cash Flow for the Reference Period in any calendar year, with unused amounts in any calendar year being permitted to be carried over for the next succeeding calendar year up to a maximum of the greater of (x) $5.0 million and (y) 3.0% of Consolidated Cash Flow for the Reference Period in the aggregate in any calendar year;

(12) for so long as the Company is a member of a group filing a consolidated, affiliated, unitary or combined tax return with its direct or indirect parent, payments with respect to such group's consolidated, affiliated, unitary or combined income tax liability attributable to the Company and/or its applicable Subsidiaries, in an amount not to exceed, for any taxable period, any such taxes that the Company and/or its applicable Subsidiaries would have been required to pay in respect of such taxable period on a separate group basis if the Company and/or such Subsidiaries had paid such taxes on a consolidated, affiliated, unitary or combined basis on behalf of an affiliated group consisting only of the Company and such Subsidiaries (reduced by any such income taxes paid or to be paid directly by the Company or such Subsidiaries); *provided* that any such tax payments attributable to any Unrestricted Subsidiaries shall not exceed any corresponding payments actually distributed by such Unrestricted Subsidiaries to the Company or any of its Restricted Subsidiaries;

(13) the prepayment, redemption, purchase, defeasance or other satisfaction of any Indebtedness, Disqualified Stock or Preferred Stock (x) existing at the time a Person becomes a Subsidiary or (y) assumed in connection with the acquisition of assets, in each case so long as such Indebtedness, Disqualified Stock or Preferred Stock was not Incurred in contemplation of such Person becoming a Subsidiary or such acquisition;

(14) the payment, purchase, redemption, defeasance or other acquisition or retirement for value of Subordinated Indebtedness, Disqualified Stock or Preferred Stock of the Company and its Restricted Subsidiaries pursuant to provisions similar to those described under "—Repurchase at the Option of Holders—Change of Control" and "—Repurchase at the Option of Holders—Asset Sales"; *provided* that, prior to such payment, purchase, redemption, defeasance or other acquisition or retirement for value, the Company (or a third party to the extent permitted by the Indenture) has made any Offer to Purchase with respect to the Notes, and has repurchased, redeemed, defeased, acquired or retired all Notes validly tendered and not validly withdrawn in connection with such Change of Control or Asset Sale, as the case may be;

(15) the distribution, as a dividend or otherwise, of shares of Capital Stock of, or Indebtedness owed to the Company or a Restricted Subsidiary of the Company by, Unrestricted Subsidiaries (other than Unrestricted Subsidiaries the primary assets of which are cash and/or Cash Equivalents); and

(16) any payment that is intended to prevent any Indebtedness from being treated as an "applicable high yield discount obligation" within the meaning of Section 163(i)(1) of the Code.

The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the Transaction Commitment Date, in the case of an event described under clause (x) of the first paragraph of "—Measuring Compliance," or the date of the Restricted Payment of the assets or securities proposed to be transferred or issued to or by the Company or such Subsidiary, as the case may be, pursuant to the Restricted Payment, as applicable; *provided* that the amount of any Investment outstanding at any time shall be the amount actually invested in such Investment (determined, in the case of any Investment made with assets of the Company or any Restricted Subsidiary, based on the Fair Market Value of the assets invested and without taking into account subsequent increases or decreases in value), reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash, without duplication of any equivalent increase in any basket, by the Company or a Restricted Subsidiary in respect of such Investment and shall be net of any Investment by such Person in the Company or any Restricted Subsidiary.

On April 28, 2021, Cogent Holdco's board of directors approved the payment of a quarterly dividend of $0.78 per share of common stock. This dividend payment of $35.9 million for the second quarter of 2021 is scheduled to be paid on May 28, 2021. Although Cogent Holdco is a guarantor of the Existing Notes and will be a guarantor of the Notes issued on the Issue Date, Cogent Holdco is not subject to the covenants under the indentures governing the Existing Notes and will not be subject to the covenants under the Indenture, and thus the cash at Cogent Holdco is, and will remain, unrestricted and may be used to make dividends in respect of its common stock.

For purposes of the covenant described above, if any Investment or Restricted Payment (or a portion thereof) would be permitted pursuant to one or more provisions described above and/or one or more of the exceptions contained in the definition of "Permitted Investments," the Company may divide and classify such Investment or Restricted Payment in any manner that complies with this covenant and may later divide and reclassify any such Investment or Restricted Payment so long as the Investment or Restricted Payment (as so divided and/or reclassified) would be permitted to be made in reliance on the applicable exception as of the date of such reclassification. In addition, for purposes of the covenant described above, any Restricted Payment permitted hereunder may, at the option of the Company or its Restricted Subsidiaries, be structured in the form of a loan or other Investment.

***Limitation on Indebtedness, Disqualified Stock and Preferred Stock***

The Company will not, and will not permit any Restricted Subsidiary to, Incur any Indebtedness or issue shares of Disqualified Stock; *provided* that the Company or any Guarantor may Incur Indebtedness or issue shares of Disqualified Stock or shares of Preferred Stock if, after giving effect to the Incurrence of such Indebtedness, or the issuance of such Disqualified Stock or Preferred Stock, as the case may be, and the receipt and application of the proceeds therefrom, either (x) the Consolidated Leverage Ratio would be positive and less than 6.00 to 1.00 or (y) the Fixed Charge Coverage Ratio would be 2.00 to 1.00 or greater ("*Ratio Debt*").

The first paragraph of this covenant will not prohibit the Incurrence of any of the following (collectively, "*Permitted Indebtedness*"):

(1) the Incurrence by the Company or any Guarantor of Indebtedness under a Revolving Credit Agreement (including, without limitation, the Incurrence by the Company and the Guarantors of Guarantees thereof) in an aggregate amount at any one time outstanding pursuant to this clause (1) not to exceed $75.0 million;

(2) Existing Indebtedness;

(3) the Incurrence by the Company and the Guarantors of Indebtedness represented by the Notes issued on the Issue Date and the related Note Guarantees;

(4) the Incurrence by the Company or any Restricted Subsidiary of Indebtedness (including Indebtedness represented by Finance Lease Obligations not associated with IRUs, mortgage financings and purchase money obligations) Incurred for the purpose of financing all or any part of the purchase price or cost of lease, construction, installation, repair or improvement of property, plant or equipment or other fixed or capital assets used in the business of the Company or such Restricted Subsidiary (including any reasonably related fees or expenses Incurred in connection with such acquisition, construction or improvement, and whether through the direct purchase of such assets or through the purchase of the Capital Stock of any Person owning such assets), in an aggregate amount, including all Indebtedness Incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness Incurred pursuant to this clause (4), not to exceed, at any time outstanding, the greater of (x) $50.0 million and (y) 20.0% of Consolidated Cash Flow

for the Reference Period; *provided* that Finance Lease Obligations Incurred by the Company or any Restricted Subsidiary pursuant to this clause (4) in connection with a Sale and Leaseback Transaction shall not be subject to the foregoing limitation so long as the proceeds of such Sale and Leaseback Transaction are used by the Company or such Restricted Subsidiary to permanently repay outstanding loans under any Indebtedness secured by a Lien (it being understood that any Indebtedness Incurred pursuant to this clause (4) shall cease to be deemed Incurred and outstanding pursuant to this clause (4) but shall be deemed Incurred and outstanding as Ratio Debt from and after the first date on which the Company or any such Guarantor, as the case may be, could have Incurred such Indebtedness as Ratio Debt (to the extent the Company or any such Guarantor is able to Incur any Liens related thereto as Permitted Liens after such reclassification));

(5) the Incurrence by the Company or any Restricted Subsidiary of Permitted Refinancing Indebtedness in exchange for, or the net cash proceeds of which are used to refund, refinance or replace Indebtedness, Disqualified Stock and Preferred Stock that was permitted by the Indenture to be Incurred as Ratio Debt, under this clause (5) or under clause (2), (3) or (16) of this paragraph or subclause (y) of any of clauses (4) or (14) (*provided* that any amounts Incurred under this clause (5) as Permitted Refinancing Indebtedness in respect of Indebtedness, Disqualified Stock and Preferred Stock Incurred pursuant to subclause (y) of any of these clauses shall reduce the amount available under such subclause (y) of such clause so long as such Permitted Refinancing Indebtedness remains outstanding (but, in each case, not below $0)), including any Increased Amount;

(6) the Incurrence by the Company or any Restricted Subsidiary of Indebtedness or Disqualified Stock owing to and held by the Company or any Restricted Subsidiary; *provided* that:

(a) if the Company or any Guarantor is the obligor on such Indebtedness or Disqualified Stock and such Indebtedness or Disqualified Stock is owed to a non-Guarantor Restricted Subsidiary, such Indebtedness must be unsecured and expressly subordinated in right of payment to the prior payment in full in cash of all Obligations with respect to the Notes, in the case of the Company, or the Note Guarantee, in the case of a Guarantor; and

(b) any event that results in any such Indebtedness or Disqualified Stock being held by a Person other than the Company or a Restricted Subsidiary (except for any pledge of such Indebtedness or Disqualified Stock constituting a Permitted Lien until the pledgee commences actions to foreclose on such Indebtedness or Disqualified Stock) will be deemed, in each case, to constitute an Incurrence of such Indebtedness or Disqualified Stock by the Company or such Restricted Subsidiary, as the case may be, that was not permitted by this clause (6);

(7) (i) the Guarantee by the Company or any Guarantor of Indebtedness of the Company or a Restricted Subsidiary and (ii) the Guarantee by a non-Guarantor Restricted Subsidiary of Indebtedness of another non-Guarantor Restricted Subsidiary, in each case, that was permitted to be Incurred by another provision of this covenant;

(8) the Incurrence by the Company or any Restricted Subsidiary of Hedging Obligations that are Incurred for the purpose of fixing, hedging or swapping interest rate, commodity price or foreign currency exchange rate risk (or to reverse or amend any such agreements previously made for such purposes), and not for speculative purposes;

(9) the Incurrence by the Company or any Restricted Subsidiary of Indebtedness, arising from agreements providing for indemnification, earn-outs, adjustment of purchase price or similar obligations, or Guarantees or letters of credit, surety bonds or performance bonds securing any obligations of the Company or any Restricted Subsidiary pursuant to such agreements, in any case Incurred in connection with the disposition or acquisition of any business, assets or Capital Stock of a Restricted Subsidiary (other than Guarantees of Indebtedness, Incurred by any Person acquiring all or any portion of such business, assets or Capital Stock of a Restricted Subsidiary for the purpose of financing such acquisition), so long as the amount does not exceed the gross proceeds actually received by the Company or any Restricted Subsidiary in connection with such disposition;

(10) the Incurrence by the Company or any Restricted Subsidiary of Indebtedness in respect of bid, performance or surety bonds or letters of credit issued in the ordinary course of business, including letters of credit supporting lease obligations or supporting such bid, performance or surety bonds or in respect of workers' compensation claims, health, disability or other employee benefits (whether current or former) or property, casualty or liability insurance or self-insurance, or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims, health, disability or other employee benefits (whether current or former) or property, casualty or liability insurance;

(11) the Incurrence by the Company or any Restricted Subsidiary of Indebtedness, Disqualified Stock or Preferred Stock to the extent the net cash proceeds thereof are promptly deposited to defease or to satisfy and discharge the Notes as described below under "—Legal Defeasance and Covenant Defeasance" or "—Satisfaction and Discharge";

(12) customer deposits and advance payments received from customers for goods and services sold in the ordinary course of business;

(13) the Incurrence by the Company or any Restricted Subsidiary of Indebtedness (including Finance Lease Obligations) represented by an IRU which is entered into in the ordinary course of the business;

(14) the Incurrence by the Company or any Restricted Subsidiary of additional Indebtedness, Disqualified Stock or Preferred Stock in an aggregate amount at any one time outstanding pursuant to this clause (14), not to exceed $100.0 million; *provided* that the principal amount of Indebtedness, Disqualified Stock or Preferred Stock Incurred by any Restricted Subsidiary that is not a Guarantor pursuant to this clause (14) does not exceed $50.0 million at any one time outstanding (it being understood that any Indebtedness, Disqualified Stock or Preferred Stock Incurred pursuant to this clause (14) shall cease to be deemed Incurred and outstanding pursuant to this clause (14) but shall be deemed Incurred and outstanding as Ratio Debt from and after the first date on which the Company or any such Guarantor, as the case may be, could have Incurred such Indebtedness, Disqualified Stock or Preferred Stock as Ratio Debt);

(15) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(16) Indebtedness, Disqualified Stock or Preferred Stock (i) of the Company or any of its Restricted Subsidiaries Incurred to finance an acquisition and (ii) of Persons that are acquired by the Company or any of its Restricted Subsidiaries or merged into the Company or a Restricted Subsidiary in accordance with the terms of the Indenture; *provided, however*, that after giving effect to such acquisition and the Incurrence of such Indebtedness, Disqualified Stock or Preferred Stock, either:

    (a) the Company would be permitted to Incur at least $1.00 of additional Indebtedness as Ratio Debt; or

    (b) the Consolidated Leverage Ratio or Fixed Charge Coverage Ratio would be less than immediately prior to such acquisition;

(17) Indebtedness owed on a short-term basis to banks and other financial institutions Incurred in the ordinary course of business of the Company and the Restricted Subsidiaries with such banks or financial institutions that arises in connection with ordinary banking arrangements to manage cash balances of the Company and the Restricted Subsidiaries;

(18) Indebtedness incurred by the Company or any Restricted Subsidiary in connection with bankers' acceptances, discounted bills of exchange or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business on arm's-length commercial terms;

(19) shares of Preferred Stock of a Restricted Subsidiary issued to the Company or another Restricted Subsidiary; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any Restricted Subsidiary that holds such shares of Preferred Stock of another Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of

Preferred Stock (except to the Company or another Restricted Subsidiary) shall be deemed, in each case, to be an issuance of shares of Preferred Stock not permitted by this clause (19);

(20) Indebtedness Incurred by a Receivables Subsidiary in a Qualified Receivables Financing that is not recourse to the Company or any Restricted Subsidiary other than a Receivables Subsidiary (except for Standard Securitization Undertakings);

(21) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

(22) Indebtedness of the Company or any Restricted Subsidiary supported by a letter of credit or bank guarantee issued pursuant to any credit facility permitted under the Indenture, so long as such letter of credit has not been terminated and is in a principal amount not in excess of the stated amount of such letter of credit or bank guarantee;

(23) Indebtedness of the Company or any Restricted Subsidiary consisting of (x) the financing of insurance premiums or (y) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(24) (x) Indebtedness, Disqualified Stock or Preferred Stock issued by the Company or any Restricted Subsidiary to future, current or former officers, directors, managers, employees, consultants and independent contractors thereof or any direct or indirect parent thereof, their respective estates, heirs, family members, spouses or former spouses, in each case to finance the purchase or redemption of Equity Interests of the Company or any direct or indirect parent of the Company to the extent permitted under "—Limitation on Restricted Payments";

(25) guarantees Incurred in the ordinary course of business in respect of obligations to suppliers, customers, franchisees, lessors, licensees, sub-licensees and distribution partners; and

(26) unfunded pension fund and other employee benefit plan obligations and liabilities to the extent (i) that they are permitted to remain unfunded under applicable law and (ii) incurred in ordinary course of business consistent with past practices.

For purposes of determining compliance with this covenant, in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) meets the criteria of more than one of the categories of Permitted Indebtedness or is entitled to be Incurred as Ratio Debt, the Company shall, in its sole discretion, at the time of Incurrence, divide, classify or reclassify, or at any later time divide, classify or reclassify, such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) in any manner that complies with this covenant. Guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that are otherwise included in the determination of a particular amount of Indebtedness shall not be included in the determination of such amount of Indebtedness; *provided* that the Incurrence of the Indebtedness represented by such Guarantee or letter of credit, as the case may be, was in compliance with this covenant.

For purposes of determining compliance with this covenant, all Disqualified Stock or Preferred Stock issued by a Person shall be valued at the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price, *plus* accrued dividends. For purposes hereof, the "*maximum fixed repurchase price*" of any Disqualified Stock or Preferred Stock which does not have a fixed repurchase price will be calculated in accordance with the terms of such Disqualified Stock or Preferred Stock, as applicable, as if such Disqualified Stock or Preferred Stock were repurchased on any date on which Indebtedness will be required to be determined pursuant to the Indenture, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock or Preferred Stock, such fair market value shall be determined reasonably and in good faith by the Company or any direct or indirect parent of the Company.

For purposes of determining compliance with any U.S. dollar-denominated restriction on the Incurrence of Indebtedness, Disqualified Stock or Preferred Stock, the U.S. dollar-equivalent principal amount, liquidation preference or maximum fixed repurchase price, as applicable, of Indebtedness, Disqualified Stock or Preferred Stock denominated in a foreign currency shall be calculated based on the relevant currency exchange rate (x) in effect on the date such Indebtedness, Disqualified Stock or Preferred Stock was Incurred (or the date on which it priced), in the case of term debt, first committed or first Incurred (whichever yields the lower U.S. dollar-equivalent), in the case of revolving credit debt or debt financing to fund an acquisition, or first issued, in the case of Disqualified Stock or Preferred Stock; *provided* that if such Indebtedness, Disqualified Stock or Preferred Stock is Incurred to refinance other Indebtedness, Disqualified Stock or Preferred Stock

denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount, liquidation preference or maximum fixed repurchase price of such refinancing Indebtedness, Disqualified Stock or Preferred Stock does not exceed the principal amount of such Indebtedness, Disqualified Stock or Preferred Stock being refinanced (*plus* any Increased Amount).

The principal amount, liquidation preference or maximum fixed repurchase price, as applicable, of any Indebtedness, Disqualified Stock or Preferred Stock Incurred to refinance other Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, if Incurred or issued in a different currency from the Indebtedness, Disqualified Stock or Preferred Stock being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Indebtedness, Disqualified Stock or Preferred Stock is denominated that is in effect on the date of such refinancing.

The Indenture will not treat (1) unsecured Indebtedness as subordinated or junior to Secured Indebtedness merely because it is unsecured or (2) Indebtedness as subordinated or junior to any other Indebtedness merely because it has a junior priority with respect to the same collateral.

***Limitation on Liens***

The Indenture will provide that the Company will not, and will not permit any Guarantor (other than Cogent Holdco) to, directly or indirectly, create, Incur or suffer to exist any Lien (other than Permitted Liens) on any asset or property of the Company or such Guarantor, or any income or profits therefrom, or assign or convey any right to receive income therefrom, that secures any Indebtedness of the Company or such Guarantor, unless, in the case of any asset or property not constituting, or required to be pledged as, Collateral pursuant to the terms of the Indenture and the Security Agreement, the Notes or the applicable Note Guarantee are equally and ratably secured with or prior to such Obligation with a Lien on the same assets of the Company or such Guarantor, as the case may be, pursuant to appropriate security documentation and subject to the terms and provisions of the Intercreditor Agreement.

Any Lien that is granted to secure the Notes or such Note Guarantee pursuant to the preceding paragraph shall be automatically released and discharged at the same time as the release of the Lien (other than a release following enforcement of remedies in respect of such Lien or the Obligations secured by such Lien) that gave rise to the obligation to secure the Notes or such Note Guarantee under the preceding paragraph.

With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the Incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness.

***Limitation on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries***

The Company will not, and will not permit any Restricted Subsidiary (other than the Guarantors) to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary (other than the Guarantors) to:

(1) pay dividends or make any other distributions on its Capital Stock (or with respect to any other interest or participation in, or measured by, its profits) to the Company or any Restricted Subsidiary (it being understood that the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on Common Stock shall not be deemed a restriction on the ability to make distributions on Capital Stock);

(2) pay any liabilities owed to the Company or any of Restricted Subsidiary;

(3) make loans or advances to the Company or any Restricted Subsidiary (it being understood that the subordination of loans or advances made to the Company or any Restricted Subsidiary to other Indebtedness Incurred by the Company or any Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances); or

(4) sell, lease or transfer any of its properties or assets to the Company or any Restricted Subsidiary.

However, the preceding restrictions will not apply to encumbrances or restrictions existing under, by reason of or with respect to:

(1) the Existing Indebtedness or any other agreements in effect on the Issue Date and any amendments, modifications, restatements, renewals, extensions, supplements, refundings, replacements or refinancings thereof; *provided* that the encumbrances and restrictions in any such amendments, modifications, restatements, renewals, extensions, supplements, refundings, replacements or refinancings, taken as a whole, are not, as determined by the Company or a direct or indirect parent of the Company in good faith, materially more restrictive than those contained in the Existing Indebtedness or such other agreements, as the case may be, as in effect on the Issue Date;

(2) the Indenture, the Notes, the Note Guarantees, the Security Documents, the Intercreditor Agreement and other documents relating to the Indenture, the Notes, the Note Guarantees, the Security Documents or the Intercreditor Agreement;

(3) applicable law, rule, regulation or order;

(4) any agreement or other instrument of a Person acquired by or merged or consolidated with or into the Company or any Restricted Subsidiary that was in existence at the time of such acquisition (but not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired;

(5) customary encumbrances or restrictions contained in contracts or agreements for the sale of assets applicable to such assets pending consummation of such sale, including customary restrictions with respect to a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of all or substantially all the Capital Stock or assets of such Restricted Subsidiary;

(6) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(7) encumbrances or restrictions arising or agreed to in the ordinary course of business, not relating to any Indebtedness, and that do not, individually or in the aggregate, (x) detract from the value of the property or assets of the Company or any Restricted Subsidiary in any manner material to the Company or any Restricted Subsidiary or (y) affect the Company's ability to make anticipated principal or interest payment on the Notes in any material respect (in each case as determined by the Company or a direct or indirect parent of the Company in good faith);

(8) encumbrances or restrictions that restrict distributions or transfers by a Restricted Subsidiary if such restrictions exist under, by reason of or with respect to any agreement for the sale or other disposition of all or substantially all of the Capital Stock of, or property and assets of, that Restricted Subsidiary and are pending such sale or other disposition;

(9) customary provisions contained in leases, licenses, contracts and other similar agreements entered into in the ordinary course of business to the extent imposing restrictions of the type described in clause (4) of the first paragraph of this covenant above on the property subject to such lease;

(10) customary provisions in joint venture agreements and other similar agreements entered into in the ordinary course of business and which the Board of Directors of the Company or a direct or indirect parent of the Company determines in good faith will not adversely affect the Company's ability to make payments of principal or interest on the Notes;

(11) Secured Indebtedness otherwise permitted to be Incurred pursuant to the covenants described under "—Limitation on Indebtedness, Disqualified Stock and Preferred Stock" and "—Limitation on Liens" to the extent limiting the right of the debtor to dispose of the assets securing such Indebtedness;

(12) any agreement or instrument relating to Indebtedness, Disqualified Stock or Preferred Stock of the Company or a Restricted Subsidiary permitted to be Incurred under the Indenture following the Issue Date if (A) the encumbrances or restrictions are not materially more disadvantageous to the Holders than is customary in comparable financings (as determined in good faith by the Company or a direct or indirect parent of the Company) and (B) either (x) the Company determines that such encumbrance or restriction will not adversely affect the Company's ability to make principal and interest payments on the Notes as and

when they come due or (y) such encumbrances and restrictions only apply during the continuance of a default in respect of a payment or financial maintenance covenant default in respect of such Indebtedness;

(13) customary provisions in (x) joint venture agreements entered into in the ordinary course of business with respect to the Equity Interests subject to the joint venture and (y) operating or other similar agreements, asset sale agreements and stock sale agreements entered into in connection with the entering into of such transaction, which limitation is applicable only to the assets that are the subject of those agreements;

(14) purchase money obligations for property acquired, IRUs and Finance Lease Obligations in the ordinary course of business to the extent imposing restrictions on the property so acquired;

(15) any encumbrance or restriction of a Receivables Subsidiary effected in connection with a Qualified Receivables Financing; *provided, however*, that such restrictions apply only to such Receivables Subsidiary and its assets;

(16) other Indebtedness, Disqualified Stock or Preferred Stock of the Company or any Restricted Subsidiary that is Incurred subsequent to the Issue Date pursuant to the covenant described under "—Limitation on Indebtedness, Disqualified Stock and Preferred Stock"; *provided* that such encumbrances and restrictions contained in any agreement or instrument will not materially affect the Company's ability to make anticipated principal or interest payment on the Notes (as determined by the Company or a direct or indirect parent of the Company in good faith);

(17) Permitted Refinancing Indebtedness; *provided* that the encumbrances and restrictions contained in the agreements governing that Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced (as determined by the Company or a direct or indirect parent of the Company in good faith);

(18) Indebtedness of non-Guarantor Subsidiaries permitted to be Incurred pursuant to the provisions of the covenant described under the caption "—Limitation on Indebtedness, Disqualified Stock and Preferred Stock"; and

(19) any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (18) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Company or a direct or indirect parent of the Company, not materially more restrictive as a whole with respect to such encumbrances or restrictions than prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

***Merger, Consolidation or Sale of Assets***

*The Company.* The Company will not, directly or indirectly: (x) consolidate or merge with or into another Person (whether or not the Company is the surviving corporation) or (y) sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of the properties and assets of the Company and the Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person, unless:

(1) immediately after giving effect to such transaction, no Default or Event of Default exists;

(2) either:

(a) the Company is the surviving corporation; or

(b) the Person formed by or surviving any such consolidation or merger (if other than the Company) or to which such sale, assignment, transfer, lease, conveyance or other disposition will have been made (i) is a Person organized or existing under the laws of the United States, any state thereof or the District of Columbia or any territory thereof (*provided* that in the case where such Person is not a corporation, a co-obligor of the Notes is a corporation organized or existing under such laws) and (ii) assumes all the obligations of the Company under the Notes, the Indenture and the

Security Documents pursuant to a supplemental indenture and joinders or supplements to the applicable Security Documents, as applicable;

(3) immediately after giving effect to such transaction on a *pro forma* basis, (i) the Company or the Person formed by or surviving any such consolidation or merger (if other than the Company), or to which such sale, assignment, transfer, conveyance or other disposition will have been made, will be permitted to Incur at least $1.00 of additional Indebtedness as Ratio Debt; or (ii) (x) the Consolidated Leverage Ratio is positive and less than or equal to the Company's Consolidated Leverage Ratio immediately prior to such transaction or (y) the Fixed Charge Coverage Ratio is greater than or equal to the Company's Fixed Charge Coverage Ratio immediately prior to such transaction;

(4) if the Person formed by or surviving any such consolidation or merger is other than the Company, each Guarantor, unless such Guarantor is the Person with which the Company has entered into a transaction under this covenant, will have confirmed to the Trustee in writing that its Note Guarantee will apply to the obligations of the surviving Person in accordance with the Notes and the Indenture;

(5) the Company delivers to the Trustee and the Collateral Agent an Officer's Certificate and Opinion of Counsel, in each case stating that such transaction, such agreement, such supplemental indenture and such joinders or supplements to the Security Documents comply with this covenant and that all conditions precedent provided for in the Indenture and the Security Documents relating to such transaction have been complied with;

(6) the Company or the surviving entity, as applicable, promptly causes such amendments, joinders, supplements or other instruments to be executed, delivered, filed and recorded, as applicable, in such jurisdictions as may be reasonably required by applicable law to preserve and protect the Lien of the Collateral Agent pursuant to the Indenture and the Security Documents on the Collateral owned by or transferred to the Company or the surviving entity;

(7) the Collateral owned by or transferred to the Company or the surviving entity, as applicable, shall (a) continue to constitute Collateral under the Indenture and the Security Documents, (b) be subject to a perfected first-priority Lien in favor of the Collateral Agent for the benefit of itself, the Trustee and the Holders of the Notes and (c) not be subject to any Lien other than Permitted Liens or other Liens as permitted under the covenant described above under "—Limitation on Liens"; and

(8) the property and assets of the Person merged or consolidated with or into the Company or the surviving entity, as applicable, to the extent that they are property or assets or of the types that would constitute Collateral under the Security Documents, shall be treated as After-Acquired Property and the Company or the surviving entity shall take such action as may be reasonably necessary to cause such property and assets to be made subject to a perfected first-priority Lien of the Collateral Agent pursuant to the Indenture and the Security Documents in the manner and to the extent required in the Indenture and the Security Documents;

*provided* that clause (3) above will not apply: (i) if, in the good faith determination of the Board of Directors of the Company or a direct or indirect parent of the Company, whose determination shall be evidenced by a Board Resolution, the principal purpose of such transaction is to change the state of incorporation of the Company, and such transaction does not have as one of its purposes the evasion of the foregoing limitations; or (ii) to any consolidation, merger, sale, assignment, transfer, conveyance or other disposition of assets between or among the Company and any Guarantor.

Upon any consolidation, merger, sale, assignment, transfer, conveyance or other disposition in accordance with this covenant, the successor Person formed by such consolidation or into or with which the Company is merged or to which such sale, assignment, transfer, conveyance or other disposition is made will succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, assignment, conveyance or other disposition, the provisions of the Indenture referring to the "Company" will refer instead to the successor Person and not to the Company), and may exercise every right and power of, the Company under the Indenture and the Security Documents with the same effect as if such successor Person had been named as the Company in the Indenture and the Security Documents, and the Company will automatically be released and discharged from its obligations under the Indenture, the Security Documents and the Notes. Notwithstanding the foregoing, and so long as the requirements of clauses (2), (6), (7) and (8) of the preceding paragraph, to the extent applicable, are complied with, (a) any Restricted Subsidiary may consolidate with, merge into or sell, assign,

transfer, lease, convey or otherwise dispose of all or part of its properties and assets to the Company, (b) the Company may merge or consolidate with an Affiliate incorporated or organized solely for the purpose of reincorporating or reorganizing the Company in another state of the United States, the District of Columbia or any territory of the United States so long as the amount of Indebtedness and Liens of the Company and its Restricted Subsidiaries is not increased thereby (unless such increase is permitted by the Indenture), (c) the Company may convert into a limited partnership or limited liability company existing under the laws of the jurisdiction of organization of the Company so long as the Company causes a corporation to be a co-obligor under the Notes and (d) the Company may change its name.

Although there is a limited body of case law interpreting the phrase "all or substantially all," there is no precise established definition of the phrase under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve "all or substantially all" of the property or assets of a Person. See "Risk Factors—Risk Factors Related to the Notes—Holders of the notes may not be able to determine when a change of control giving rise to their right to have the notes repurchased has occurred following a sale of 'substantially all' of our assets."

*The Guarantors.* Other than Cogent Holdco, a Guarantor will not, directly or indirectly: (x) consolidate or merge with or into another Person (whether or not such Guarantor is the surviving Person) or (y) sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of the properties and assets of the Guarantor, in one or more related transactions, to another Person, other than the Company or another Guarantor, unless:

(1) immediately after giving effect to such transaction, no Default or Event of Default exists; and

(2) either:

(a) (x) the Guarantor is the surviving corporation or (y) the Person formed by or surviving any such consolidation or merger (if other than the Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition which has been made (i) is a Person organized or existing under the laws of the United States, any state thereof or the District of Columbia or any territory thereof and (ii) assumes all the obligations of that Guarantor under the Indenture, including its Note Guarantee, and the Security Documents pursuant to a supplemental indenture and joinders or supplements to the applicable Security Documents, as applicable; *provided* that:

(A) the Guarantor or the surviving entity, as applicable, promptly causes such amendments, joinders, supplements or other instruments to be executed, delivered, filed and recorded, as applicable, in such jurisdictions as may be reasonably required by applicable law to preserve and protect the Lien of the Collateral Agent pursuant to the Indenture and the Security Documents on the Collateral owned by or transferred to the Guarantor or the surviving entity;

(B) the Collateral owned by or transferred to the Guarantor or the surviving entity, as applicable, shall (x) continue to constitute Collateral under the Indenture and the Security Documents, (y) be subject to a perfected first-priority Lien in favor of the Collateral Agent for the benefit of itself, the Trustee and the Holders of the Notes and (z) not be subject to any Lien other than Permitted Liens or other Liens as permitted under the covenant described above under "—Limitation on Liens"; and

(C) the property and assets of the Person merged or consolidated with or into the Guarantor or the surviving entity, as applicable, to the extent that they are property or assets or of the types that would constitute Collateral under the Security Documents, shall be treated as After-Acquired Property and the Guarantor or the surviving entity shall take such action as may be reasonably necessary to cause such property and assets to be made subject to a perfected first-priority Lien of the Collateral Agent pursuant to the Indenture and the Security Documents in the manner and to the extent required in the Indenture and the Security Documents; or

(b) such sale, assignment, transfer, lease, conveyance or other disposition or consolidation or merger complies with the covenant described above under "—Repurchase at the Option of Holders—Asset Sales" to the extent applicable on the date of the subject transaction.

Subject to certain limitations described in the Indenture, the successor Guarantor will succeed to, and be substituted for, such Guarantor under the Indenture, the Security Documents and such Guarantor's Note Guarantee, and such Guarantor will automatically be released and discharged from its obligations under the Indenture, the Security Documents and such Guarantor's Note Guarantee. Notwithstanding the foregoing, and so long as the requirements of clause (2) of the preceding paragraph, to the extent applicable, are complied with, (a) any Restricted Subsidiary may consolidate with, merge into or sell, assign, transfer, lease, convey or otherwise dispose of all or part of its properties and assets to a Guarantor, (b) a Guarantor may merge or consolidate with an Affiliate incorporated or organized solely for the purpose of reincorporating or reorganizing such Guarantor in another state of the United States, the District of Columbia or any territory of the United States, so long as the amount of Indebtedness and Liens of the Guarantor is not increased thereby (unless such increase is permitted by the Indenture), (c) a Guarantor may merge into or sell, assign, transfer, lease, convey or otherwise dispose of all or part of its properties and assets to another Guarantor or the Company and (d) a Guarantor may convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of such Guarantor or the laws of the United States, any state thereof or the District of Columbia or any territory thereof so long as the Note Guarantee provided by such Guarantor under the laws of such other jurisdiction is substantially equivalent to the Note Guarantee provided under the laws of the jurisdiction of formation of such Guarantor prior to such conversion and (e) any Guarantor may change its name.

Notwithstanding the foregoing, for the avoidance of doubt, no restriction under this covenant shall limit the ability of any non-Guarantor Subsidiary or Unrestricted Subsidiary to engage in any merger, consolidation or sale of all or substantially all assets so long as such transaction is otherwise permitted under the Indenture.

***Limitation on Transactions with Affiliates***

The Company will not, and will not permit any Restricted Subsidiary to, directly or indirectly 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, make, amend, renew or extend any transaction, contract, agreement, understanding, loan, advance or Guarantee with, or for the benefit of, any of their Affiliates (each, an "*Affiliate Transaction*"), unless:

(1) such Affiliate Transaction is on terms that are not less favorable, taken as a whole, in any material respect to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable arm's-length transaction by the Company or such Restricted Subsidiary with an unrelated Person (as determined in good faith by the Company or a direct or indirect parent of the Company); and

(2) the Company delivers to the Trustee with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of the greater of (x) $5.0 million and (y) 3.0% of Consolidated Cash Flow for the Reference Period, a Board Resolution accompanied by an Officer's Certificate certifying that such Affiliate Transaction or series of related Affiliate Transactions complies with clause (1) above and that such Affiliate Transaction or series of related Affiliate Transactions has been approved by a majority of the Disinterested Members.

The following items will be deemed not to be Affiliate Transactions and, therefore, will not be subject to the provisions of the prior paragraph:

(1) (a) transactions between or among the Company and/or any of its Restricted Subsidiaries (or an entity that becomes a Restricted Subsidiary as a result of such transaction) and (b) any merger or consolidation of the Company and Cogent Holdco or any other direct or indirect parent of the Company (provided that such parent entity shall have no material liabilities and no material assets (other than Cash Equivalents and the Capital Stock of the Company) and such merger or consolidation is otherwise in compliance with the terms of the Indenture and effected for a *bona fide* business purpose);

(2) (a) Restricted Payments permitted by the Indenture and (b) Permitted Investments;

(3) 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 accounting, appraisal or investment banking firm of national standing (as determined in good faith by the Company or a direct or indirect parent of the Company) stating that such transaction is fair to the Company or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (1) of the preceding paragraph;

(4) payments, loans or advances to employees or consultants or guarantees in respect thereof (or cancellation of loans, advances or guarantees) for *bona fide* business purposes or in the ordinary course of business;

(5) any agreement or arrangement as in effect as of the Issue Date and as thereafter amended, supplemented or replaced (so long as such amendment, supplement or replacement is not more disadvantageous to the Holders of the Notes in any material respect than the original agreement or arrangement as in effect on the Issue Date) or any transaction or payments contemplated thereby;

(6) (a) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, in each case, in the ordinary course of business and otherwise in compliance with the terms of the Indenture, which are fair to the Company and its Restricted Subsidiaries in the reasonable determination of the Board of Directors or the senior management of the Company or a direct or indirect parent of the Company or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party and (b) transactions with Unrestricted Subsidiaries in the ordinary course of business;

(7) the sale or issuance of Equity Interests (other than Disqualified Stock) of the Company;

(8) any contribution to the capital of the Company (other than Disqualified Stock) or any investments by Cogent Holdco or a direct or indirect parent of the Company in Equity Interests (other than Disqualified Stock) of the Company (and payment of reasonable out-of-pocket expenses incurred by Cogent Holdco or a direct or indirect parent of the Company in connection therewith);

(9) any transaction with a Person (other than an Unrestricted Subsidiary) which would constitute an Affiliate Transaction solely because the Company or a Restricted Subsidiary owns an Equity Interest in or otherwise controls such Person; *provided* that no Affiliate of the Company or any of its Subsidiaries other than the Company or a Restricted Subsidiary shall have a beneficial interest or otherwise participate in such Person;

(10) transactions between the Company or any of its Restricted Subsidiaries and any Person who is a director, or such Person has a director who is also a director, of the Company or any direct or indirect parent of the Company; *provided, however*, that such director abstains from voting as a director of the Company or such direct or indirect parent of the Company, as the case may be, on any matter involving such other Person;

(11) pledges of Equity Interests of Unrestricted Subsidiaries;

(12) transactions with Affiliates solely in their capacity as holders of Indebtedness or Equity Interests of the Company or any of its Subsidiaries, so long as such transaction is with all holders of such class (and there are such non-Affiliate holders) and such Affiliates are treated no more favorably than all other holders of such class generally;

(13) the existence of, or the performance by the Company or any of its Restricted Subsidiaries of their obligations under the terms of, any customary registration rights or shareholders' agreement to which they are a party or become a party in the future;

(14) any employment agreements entered into by the Company or any of its Restricted Subsidiaries in the ordinary course of business and the payment of reasonable and customary fees and reimbursements paid to, and customary indemnity and similar arrangements provided on behalf of, officers, directors, employees or consultants of the Company or any Restricted Subsidiary or (to the extent relating to the business of the Company and its Subsidiaries) any other direct or indirect parent of the Company;

(15) any transaction effected as part of a Qualified Receivables Financing permitted hereunder;

(16) the issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock option and stock ownership plans or similar employee benefit plans approved by the Board of Directors of the Company or of a Restricted Subsidiary of the Company, as appropriate, in good faith;

(17) (i) any employment, consulting, service or termination agreement, or customary indemnification arrangements, entered into by the Company or any of its Restricted Subsidiaries with current, former or future officers, directors, employees and consultants of the Company or any of its Restricted Subsidiaries

(or of any direct or indirect parent of the Company to the extent such agreements or arrangements are in respect of services performed for the Company or any of its Restricted Subsidiaries) and the payment of compensation to officers, directors, employees and consultants of the Company or any of its Restricted Subsidiaries (including amounts paid pursuant to employee benefit plans, employee stock option or similar plans) (or of any direct or indirect parent of the Company to the extent such agreements or arrangements are in respect of services performed for the Company or any of its Restricted Subsidiaries), in each case in the ordinary course of business; and (ii) any payment of compensation or other employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers officers, directors, employees or consultants of the Company or any of its Restricted Subsidiaries or any direct or indirect parent of the Company (including amounts paid pursuant to any management equity plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, stock option or similar plans and any successor plan thereto and any supplemental executive retirement benefit plans or arrangements), in each case, in the ordinary course of business or as otherwise approved in good faith by the Board of Directors of the Company or a direct or indirect parent of the Company;

(18) investments by a direct or indirect parent of the Company in securities of the Company or any Restricted Subsidiary (and payment of reasonable out-of-pocket expenses incurred by a direct or indirect parent of the Company in connection therewith);

(19) any lease entered into between the Company or any Restricted Subsidiary, as lessee, and any Affiliate of the Company, as lessor, in the ordinary course of business; and

(20) (i) intellectual property licenses in the ordinary course of business and (ii) intercompany intellectual property licenses and research and development agreements in the ordinary course of business.

***Designation of Restricted and Unrestricted Subsidiaries***

The Board of Directors of the Company may designate any Restricted Subsidiary to be an Unrestricted Subsidiary; *provided* that:

(1) any Guarantee by the Company or any Restricted Subsidiary of any Indebtedness of the Subsidiary being so designated will, except to the extent repaid, be deemed to be an Incurrence of Indebtedness by the Company or such Restricted Subsidiary, as the case may be, at the time of such designation, and such Incurrence of Indebtedness would be permitted under the covenant described above under "—Limitation on Indebtedness, Disqualified Stock and Preferred Stock";

(2) the aggregate Fair Market Value of all outstanding Investments owned by the Company and the Restricted Subsidiaries in the Subsidiary being so designated (including any Guarantee by the Company or any Restricted Subsidiary of any Indebtedness of such Subsidiary) will, except to the extent repaid, be deemed to be an Investment made as of the time of such designation and that such Investment would be permitted under the covenant described above under "—Limitation on Restricted Payments";

(3) such Subsidiary does not hold any Capital Stock or Indebtedness of, or own or hold any Lien on any property or assets of, or have any Investment in, the Company or any Restricted Subsidiary;

(4) the Subsidiary being so designated:

(a) is not party to any agreement, contract, arrangement or understanding with the Company or any Restricted Subsidiary unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Company or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Company;

(b) is a Person with respect to which neither the Company nor any Restricted Subsidiary has any direct or indirect obligation (i) to subscribe for additional Equity Interests or (ii) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results; and

(c) has not Guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Company or any Restricted Subsidiary, except to the extent such Guarantee or credit support would be released upon such designation; and

(5) no Default or Event of Default would be in existence following such designation.

Any designation of a Restricted Subsidiary as an Unrestricted Subsidiary will be evidenced to the Trustee by delivering to the Trustee the Board Resolution giving effect to such designation and an Officer's Certificate and an Opinion of Counsel certifying that such designation complied with the preceding conditions and was permitted by the Indenture. If, at any time, any Unrestricted Subsidiary would fail to meet any of the preceding requirements described in clause (4) above, it will thereafter cease to be an Unrestricted Subsidiary for purposes of the Indenture, and any Indebtedness, Investments or Liens on the property of such Subsidiary will be deemed to be Incurred or made by a Restricted Subsidiary as of such date, and if such Indebtedness, Investments or Liens are not permitted to be Incurred or made as of such date under the Indenture, the Company will be in default under the Indenture.

The Board of Directors of the Company may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that:

(1) such designation will be deemed to be an Incurrence of Indebtedness by a Restricted Subsidiary of any outstanding Indebtedness of such Unrestricted Subsidiary and such designation will only be permitted if such Indebtedness is permitted under the covenant described above under "—Limitation on Indebtedness, Disqualified Stock and Preferred Stock";

(2) all outstanding Investments owned by such Unrestricted Subsidiary will be deemed to be made as of the time of such designation and such designation will only be permitted if such Investments would be permitted under the covenant described above under "—Limitation on Restricted Payments";

(3) all Liens upon property or assets of such Unrestricted Subsidiary existing at the time of such designation would be permitted under the covenant described above under "—Limitation on Liens"; and

(4) no Default or Event of Default would be in existence following such designation.

***Future Subsidiary Note Guarantees***

If the Company or any Restricted Subsidiary acquires, creates or becomes a Material Domestic Subsidiary on or after the Issue Date, then that newly acquired or created Material Domestic Subsidiary must become a Guarantor and (i) execute a supplemental indenture, (ii) execute supplements to the applicable Security Documents in order to grant a Lien in the Collateral owned by such entity to the same extent as that set forth in the Indenture and the Security Documents and (iii) take all actions required by the Security Documents to perfect such Lien on a first-priority basis.

Each Guarantee will be limited to an amount not to exceed the maximum amount that can be guaranteed by that Restricted Subsidiary without rendering the Note Guarantee, as it relates to such Restricted Subsidiary, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally. See "Risk Factors—Risk Factors Related to the Notes—A court could void Cogent Holdco's and/or the Issuer's subsidiaries' guarantees of the notes or the related liens under fraudulent transfer laws."

Each Note Guarantee shall be released in accordance with the provisions of the Indenture described under "—Note Guarantees."

***Reports***

Whether or not the Company is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company will deliver to the Trustee and, upon written request, the Holders of the Notes:

(1) all quarterly and annual financial information that would be required to be contained in a filing with the SEC on Forms 10-Q and 10-K if the Company was required to file such forms, including, but not limited to, 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 SEC on Form 8-K if the Company was required to file such reports.

In the event that the Company is not required to file such reports, documents and information with the SEC pursuant to the Exchange Act, the Company will nevertheless deliver such Exchange Act information to the Trustee and the Holders of the Notes as if the Company were subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act (a) in the case of quarterly reports, within 15 days after the time period specified in the SEC's rules and regulations and (b) in the case of annual reports, within 30 days after the time period specified in the SEC's rules and regulations. The posting of such reports, documents and information to the SEC's or the Company's website shall constitute delivery of such information to the Trustee and the Holders of Notes. In addition, in the event the Company and Cogent Holdco are not required to file reports under Section 13 or 15(d) of the Exchange Act, the Company will hold a quarterly conference call with Holders, qualified prospective investors and securities analysts to discuss the information contained in the annual and quarterly reports required hereunder not later than ten Business Days following the time the Company furnishes such reports to the Trustee.

If the Company has designated as Unrestricted Subsidiaries any of its Subsidiaries that is a Significant Subsidiary or that, when taken together with all other Unrestricted Subsidiaries, would be a Significant Subsidiary, then the quarterly and annual financial information required by this covenant will include a reasonably detailed presentation (which need not be audited or reviewed by the auditors), either on the face of the financial statements or in the footnotes thereto, and in "Management's Discussion and Analysis of Financial Condition and Results of Operations," of the financial condition and results of operations of the Company and the Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries.

In addition, the Company and the Guarantors have agreed that, for so long as any Notes remain outstanding, they will furnish to the Holders and to prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

Notwithstanding the foregoing, for so long as the Company is a wholly owned Subsidiary of Cogent Holdco, the financial statements referred to above may be the financial statements of Cogent Holdco or a Subsidiary so long as reasonably detailed information (which need not be audited or reviewed by the auditors) is provided showing the assets, liabilities and operating results that are not attributable to the Company and its Subsidiaries. The Company expects to rely upon the preceding sentence to provide financial statements, information and other documents of Cogent Holdco.

The Company will be deemed to have satisfied the information and reporting requirements of the first paragraph of this covenant with respect to the Holders if (a) the Company or a Subsidiary or a direct or indirect parent has filed such reports containing such information (including the information required pursuant to the first sentence of the immediately preceding paragraph, which, for the avoidance of doubt, need not be filed with the SEC via EDGAR to the extent it is otherwise provided to Holders pursuant to this covenant) with the SEC via the EDGAR (or a successor) filing system or (b) the Company or such Subsidiary or such parent has made such reports available electronically (including by posting to a non-public, password-protected website as provided above) pursuant to this covenant.

The Trustee shall have no duty to determine if any of the filings described above have been made. Delivery of reports, information and documents to the Trustee under the Indenture is for informational purposes only and the Trustee's receipt of the foregoing shall not constitute actual or constructive notice of any information contained therein, or determinable from information contained therein, including the Company's compliance with any of its covenants under the Indenture (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate). The Trustee shall have no duty to review or analyze reports delivered to it.

**Events of Default and Remedies**

Each of the following is an "*Event of Default*":

(1) default for 30 days in the payment when due of interest on the Notes;

(2) default in payment when due (whether at maturity, upon acceleration, redemption or otherwise) of the principal of, or premium, if any, on the Notes;

(3) [reserved];

(4) failure by the Company or any Restricted Subsidiary for 60 days after written notice by the Trustee or Holders representing 25.0% or more of the aggregate principal amount of Notes outstanding to comply with any of the other agreements in the Indenture or the Security Documents;

(5) default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness by the Company or any Significant Subsidiary (or the payment of which is Guaranteed by the Company or any Restricted Subsidiary) (other than Indebtedness owing to the Company or a Restricted Subsidiary) whether such Indebtedness or Guarantee now exists, or is created after the Issue Date, if that default:

(a) is caused by a failure to make any payment within any applicable grace period when due at the final maturity of such Indebtedness (a "*Payment Default*"); or

(b) results in the acceleration of such Indebtedness prior to its express maturity;

and, in each case, the amount of any such Indebtedness, together with the amount of any other such Indebtedness that is then subject to a Payment Default or the maturity of which has been so accelerated, aggregates to an amount equal to or greater than the greater of (x) $40.0 million and (y) 20.0% of Consolidated Cash Flow for the Reference Period;

(6) failure by the Company or any Significant Subsidiary to pay final and non-appealable judgments (to the extent such judgments are not paid or covered by insurance provided by a reputable and solvent carrier) aggregating in excess of the greater of (x) $40.0 million and (y) 20.0% of Consolidated Cash Flow for the Reference Period, which judgments are not paid, discharged or stayed for a period of 60 days;

(7) except as permitted by the Indenture, any Note Guarantee is held in any judicial proceeding to be unenforceable or invalid or ceases for any reason to be in full force and effect or any Guarantor, or any Person acting on behalf of any Guarantor, denies or disaffirms its obligations under its Note Guarantee and such default continues for ten days;

(8) certain events of bankruptcy or insolvency with respect to the Company or any Significant Subsidiary of the Company (or any Restricted Subsidiaries that together would constitute a Significant Subsidiary of the Company); and

(9) unless all of the Collateral has been released from the Liens in accordance with the provisions of the Security Documents, (i) default by the Company or any Guarantor in the performance of any obligation under the Security Documents that adversely affects the enforceability, validity, perfection or priority of the Liens securing the Notes on a material portion of the Collateral (except (a) to the extent that any such perfection or priority is not required pursuant to the Indenture and the Security Documents or results from the failure of the Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Security Documents or (B) as to Collateral consisting of Real Property, to the extent that such losses are covered by a title insurance policy in favor of the Collateral Agent for the benefit of itself, the Trustee and the Holders of the Notes and such insurers have been informed of such loss and not denied or failed to acknowledge coverage), (ii) any material provision of any Security Document or the Intercreditor Agreement, at any time after delivery thereof other than as expressly permitted under the Indenture, any Security Document or the Intercreditor Agreement, including as a result of a transaction permitted under the Indenture, any Security Document or the Intercreditor Agreement or the satisfaction in full of the Obligations (other than contingent obligations not yet due) in accordance with the Indenture, (a) ceases to be in full force and effect for any reason other than in accordance with the terms of the Indenture, the Security Documents and the Intercreditor Agreement or (b) is declared invalid or unenforceable by a court of competent jurisdiction, (iii) the Company or any Guarantor contests in writing the validity or enforceability of any Security Document or the Intercreditor Agreement or (z) the Company or any Guarantor denies in writing that it has any further liability under the Indenture or any Security Document or the Intercreditor Agreement (other than as a result of the repayment in full of the Obligations (other than contingent obligations not yet due) in accordance with the Indenture) or gives written notice to revoke or rescind any Security Document (other than in accordance with its terms) or the perfected first-priority Liens created thereby with respect to the Notes as required by the Security Documents on a material portion of the Collateral, other than in accordance with the terms of the Indenture, the Security Documents and the

Intercreditor Agreement or (iv) any Security Document after delivery thereof to the extent required by the Indenture and the Security Documents, covering the Collateral for any reason (other than pursuant to the terms thereof, including as a result of a transaction not prohibited under the Indenture) ceases to create a valid and perfected first-priority Lien on, and security interest in, any Collateral covered thereby to the extent required by such Security Documents with respect to the Notes in any material portion of the Collateral purported to be covered thereby, subject to Permitted Liens, except (x) to the extent that any such perfection or priority is not required pursuant to the Indenture or the Security Documents or results from the failure of the Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Security Documents or (y) as to Collateral consisting of real property, to the extent that such losses are covered by a title insurance policy in favor of the Collateral Agent for the benefit of itself, the Trustee and the Holders of the Notes and such insurers have not denied coverage.

In the case of an Event of Default described in clause (8) above, all outstanding Notes will become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Trustee or the Holders of at least 25.0% in aggregate principal amount of the then-outstanding Notes may declare all the Notes to be due and payable immediately by notice in writing to the Company (with a copy to the Trustee if notice is provided by the Holders) specifying the Event of Default. Under certain circumstances, the Holders of a majority in aggregate principal amount of outstanding Notes may rescind any such acceleration with respect to the Notes and its consequences.

Holders of the Notes may not enforce the Indenture or the Notes except as provided in the Indenture. Subject to certain limitations, Holders of a majority in aggregate principal amount of the then-outstanding Notes may direct the Trustee in its exercise of any right or power. The Trustee may withhold from Holders of the Notes notice of any Default or Event of Default (except a Default or Event of Default relating to the payment of principal or interest) if it determines that withholding notice is in their interest.

The Holders of a majority in aggregate principal amount of the Notes then outstanding by notice to the Trustee may, on behalf of the Holders of all of the Notes, waive, rescind or cancel any existing Default or Event of Default and its consequences under the Indenture if such waiver, rescission or cancellation would not conflict with any judgment or decree, except a continuing Default or Event of Default in the payment of premium or interest on, or the principal of, the Notes (other than such nonpayment of principal or interest that has become due as a result of such acceleration). Upon any such waiver, rescission or cancellation of a Default or Event of Default, any such Default or Event of Default shall cease to exist, and any Event of Default arising from any such Default shall be deemed to have been cured; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

In the event of any Event of Default specified in clause (5) of the first paragraph above, such Event of Default and all consequences thereof will be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders of the Notes, if prior to 30 days after such Event of Default arose, the Company delivers an Officer's Certificate to the Trustee stating that (x) the Indebtedness or Guarantee that is the basis for such Event of Default has been discharged, (y) the holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default or (z) the default that is the basis for such Event of Default has been cured.

Subject to the terms of the Intercreditor Agreement, the Indenture, the Security Documents and provision of an indemnity satisfactory to the Trustee or the Collateral Agent, as applicable, the Holders of a majority in aggregate principal amount of the then-outstanding Notes will have the right to direct the time, method and place of conducting any proceeding for exercising any right, power or remedy available to the Trustee or the Collateral Agent. However, the Trustee and the Collateral Agent may refuse to follow any direction that conflicts with law or the Indenture, that may involve the Trustee's or the Collateral Agent's personal liability or that the Trustee or the Collateral Agent determines in good faith may be unduly prejudicial to the rights of Holders of Notes not joining in the giving of such direction, and may take any other action it deems proper that is not inconsistent with any such direction received from Holders of Notes (it being understood that neither the Trustee nor the Collateral Agent shall have any duty to determine whether such action is prejudicial to any Holder). A Holder may not pursue any remedy with respect to the Indenture or the Notes unless:

(1) the Holder gives the Trustee written notice of a continuing Event of Default;

(2) the Holders of at least 25.0% in aggregate principal amount of outstanding Notes make a written request to the Trustee or the Collateral Agent, as applicable, to pursue the remedy;

(3) such Holder or Holders offer and, if requested, provide to the Trustee or the Collateral Agent, as applicable, indemnity satisfactory to the Trustee or the Collateral Agent, as applicable, against any costs, liability, loss or expense;

(4) the Trustee or the Collateral Agent, as applicable, does not comply with the request within 60 days after receipt of the request and the provision of indemnity; and

(5) during such 60-day period, the Holders of a majority in aggregate principal amount of the then-outstanding Notes do not give the Trustee or the Collateral Agent, as applicable, a written direction that is inconsistent with the request.

However, such limitations do not apply to the right of any Holder of a Note to receive payment of the principal of, premium or interest on, such Note or to bring suit for the enforcement of any such payment, on or after the due date expressed in the Notes, which right will not be impaired or affected without the consent of the Holder.

Notwithstanding the foregoing, in no event may any Holder of Notes directly enforce any Lien of the Collateral Agent pursuant to the Security Documents.

The Company is required to deliver to the Trustee annually within 120 days after the end of each fiscal year an Officer's Certificate regarding compliance with the Indenture. Within 30 days of an Officer of the Company becoming aware of any Default or Event of Default, the Company is required to deliver to the Trustee an Officer's Certificate specifying such Default or Event of Default (unless such Default or Event of Default has been cured or waived within such 30-day time period).

**No Personal Liability of Directors, Officers, Employees and Stockholders**

No director, officer, employee, incorporator, stockholder, member, manager or partner of the Company, any Subsidiary or any direct or indirect parent of the Company, as such, will have any liability for any obligations of the Company or the Guarantors under the Notes, the Indenture, the Note Guarantees, the Security Documents or the Intercreditor Agreement or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes, by accepting a Note, waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

**Legal Defeasance and Covenant Defeasance**

The Company may, at its option and at any time, elect to have all of its obligations discharged with respect to the outstanding Notes and all obligations of the Guarantors discharged with respect to their Note Guarantees and cure all then-existing Defaults and Events of Default ("*Legal Defeasance*") except for:

(1) the rights of Holders of outstanding Notes to receive payments in respect of the principal of, or interest or premium on, such Notes when such payments are due from the trust referred to below;

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

(3) the rights, powers, trusts, duties and immunities of the Trustee and the Collateral Agent, and the Company's and the Guarantors' obligations in connection therewith; and

(4) the Legal Defeasance provisions of the Indenture.

In addition, the Company may, at its option and at any time, elect to have the obligations of the Company and the Guarantors released with respect to certain covenants in the Indenture ("*Covenant Defeasance*") and thereafter any omission to comply with those covenants will not constitute a Default or Event of Default with respect to the Notes. In the event Covenant Defeasance occurs, certain events (not including nonpayment and bankruptcy, receivership, rehabilitation and insolvency events with respect to the Company) described under "—Events of Default and Remedies" will no longer constitute Events of Default with respect to the Notes. The Company may exercise its Legal Defeasance option notwithstanding its prior exercise of its Covenant Defeasance option.

If the Company exercises the Legal Defeasance or Covenant Defeasance option, the Liens on the Collateral will be released, the Note Guarantees in effect at such time will terminate and each Guarantor will be released from all of its obligations with respect to its Note Guarantee, the Indenture and the Security Documents.

In order to exercise either Legal Defeasance or Covenant Defeasance:

(1) the Company must irrevocably deposit or cause to be deposited with the Paying Agent, for the benefit of the Holders of the Notes, cash in U.S. dollars, Government Securities or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, and interest and premium on, the outstanding Notes on the Stated Maturity or on the applicable redemption date, as the case may be, and the Company must specify whether the Notes are being defeased to maturity or to a particular redemption date;

(2) in the case of Legal Defeasance, the Company will have delivered to the Trustee an Opinion of Counsel stating that (a) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (b) since the Issue Date, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel will state that, the Holders of the outstanding Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(3) in the case of Covenant Defeasance, the Company will have delivered to the Trustee an Opinion of Counsel stating that the Holders of the outstanding Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(4) no Default or Event of Default from bankruptcy or insolvency events will have occurred and be continuing at any time in the period ending on the 91st day after the date of deposit;

(5) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument to which the Company is a party or by which the Company is bound;

(6) the Company must have delivered to the Trustee an Opinion of Counsel to the effect that, assuming no intervening bankruptcy of any Company or any Guarantor between the date of deposit and the 91st day following the deposit and assuming that no Holder is an "insider" of the Company under applicable bankruptcy law, after the 91st day following the deposit, the trust funds will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally, including Section 547 of the United States Bankruptcy Code and Section 15 of the New York Debtor and Creditor Law;

(7) the Company must deliver to the Trustee an Officer's Certificate stating that the deposit was not made by the Company with the intent of defeating, hindering, delaying or defrauding creditors of the Company or others;

(8) if the Notes are to be redeemed prior to their Stated Maturity, the Company must deliver to the Trustee and the Paying Agent irrevocable instructions to redeem all of the Notes on the specified redemption date under arrangement satisfactory to each of the Trustee and the Paying Agent for the giving of notice of such redemption by the Paying Agent in the Company's name and at the Company's expense; and

(9) the Company must deliver to the Trustee and the Collateral Agent an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent relating to the Legal Defeasance or the Covenant Defeasance, as applicable, have been complied with.

Notwithstanding the foregoing, the Opinion of Counsel required by clause (2) of this paragraph with respect to a Legal Defeasance need not be delivered if all Notes not theretofore delivered to the Registrar for cancellation (x) have become due and payable or (y) will become due and payable at their Stated Maturity within one year under arrangements

satisfactory to the Trustee and Paying Agent for the giving of notice of redemption by the Paying Agent in the name, and at the expense, of the Company.

**Satisfaction and Discharge**

The Indenture will be discharged and will cease to be of further effect (except as to certain surviving rights of the Trustee and the Collateral Agent and the Company's obligations with respect thereto) as to all outstanding Notes and the Liens on the Collateral shall be released when:

(1) either (a) all of the Notes theretofore authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust) have been delivered to the Trustee or Registrar for cancellation or (b) all of the Notes not previously delivered to the Trustee or Registrar for cancellation (i) have become due and payable, (ii) will become due and payable at their Stated Maturity within one year or (iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee and Paying Agent for the giving of notice of redemption by the Paying Agent in the name, and at the expense, of the Company, and the Company or any Guarantor has irrevocably deposited or caused to be deposited with the Paying Agent funds in an amount sufficient to pay and discharge the entire Indebtedness on the Notes not theretofore delivered to the Trustee or Registrar for cancellation, for principal of, premium, if any, and interest on the Notes to the date of deposit together with irrevocable instructions from the Company directing the Paying Agent to apply such funds to the payment thereof at maturity or redemption, as the case may be;

(2) the Company and/or the Guarantors have paid all other sums payable under the Indenture; and

(3) the Company has delivered to the Trustee and the Collateral Agent an Officer's Certificate and an Opinion of Counsel stating that all conditions precedent under the Indenture relating to the satisfaction and discharge of the Indenture have been complied with.

If requested in writing by the Company to the Trustee and Paying Agent (which request may be included in the applicable notice of redemption or pursuant to the above referenced Officer's Certificate) no later than five Business Days prior to such distribution, the Trustee or Paying Agent shall distribute to the Holders any amounts deposited with it prior to the Stated Maturity or the redemption date, as the case may be. For the avoidance of doubt, the distribution and payment to Holders prior to the Stated Maturity or redemption date as set forth above shall not include any negative interest, present value adjustment, break cost or any additional premium on such amounts. To the extent the Notes are represented by a Global Note deposited with a depositary for a clearing system, any payment to the beneficial holders holding interests as a participant of such clearing system shall be subject to the then applicable procedures of the clearing system.

**Amendment, Supplement and Waiver**

Except as provided in the succeeding paragraphs, the Indenture, the Notes, the Note Guarantees, the Security Documents and the Intercreditor Agreement, if entered into, may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), and any existing or past default or compliance with any provision of the Indenture, the Notes, the Note Guarantees, the Security Documents and the Intercreditor Agreement may be waived with the consent of the Holders of a majority in aggregate principal amount of the then-outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), other than the Notes beneficially owned by the Company or its Affiliates.

A Note does not cease to be outstanding because the Company or any Affiliate of the Company holds the Note; *provided* that, in determining whether the Holders of the requisite majority of outstanding Notes have given any request, demand, authorization, direction, notice, consent or waiver under the Indenture, Notes owned by the Company or any Affiliate of the Company shall be disregarded and deemed not to be outstanding.

Without the consent of each Holder of an outstanding Note affected (including Notes beneficially owned by the Company or its Affiliates), an amendment or waiver may not (with respect to any Notes held by a non-consenting Holder):

(1) reduce the percentage or amount of the aggregate principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(2) change the Stated Maturity of the principal of any Note, or change the date on which any installment of interest is due or scheduled to be paid on, any Note;

(3) reduce the principal amount of, or premium, if any, or interest on, any Note;

(4) change the optional redemption dates or optional redemption prices of the Notes from those stated under "—Optional Redemption" (other than any change to the notice periods with respect to such redemption);

(5) waive a Default or Event of Default in the payment of principal of, or interest or premium on, the Notes (except, upon a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the Notes, a waiver of a nonpayment default and a waiver of the payment default that resulted from such acceleration);

(6) make any Note payable in money other than U.S. dollars;

(7) make any change in the amendment and waiver provisions of the Indenture that requires each Holder's consent;

(8) release any Guarantor from any of its obligations under its Note Guarantee or the Indenture, except in accordance with the terms of the Indenture;

(9) impair the right to institute suit for the enforcement of any payment on or with respect to the Notes or the Note Guarantees; and

(10) amend, change or modify the obligation of the Company to make and consummate an Offer to Purchase with respect to any Asset Sale in accordance with the covenant described above under "—Repurchase at the Option of Holders—Asset Sales" after the obligation to make such Offer to Purchase has arisen, or the obligation of the Company to make and consummate an Offer to Purchase in the event of a Change of Control in accordance with the covenant described above under "—Repurchase at the Option of Holders—Change of Control Triggering Event" after such Change of Control has occurred, including, in each case, amending, changing or modifying any definition relating thereto.

In addition, any amendment to, or waiver of, any provision of the Indenture or any Security Document that has the effect of (x) releasing all or substantially all of the Collateral from the Liens of the Notes or (y) making any change in the Security Documents, the Indenture or the Intercreditor Agreement dealing with the application of proceeds of Collateral that would adversely affect the Holders of Notes will require consent of the Holders of at least 66⅔% in aggregate principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes).

Notwithstanding the preceding, without the consent of any Holder of Notes, the Company, the Guarantors, the Trustee and the Collateral Agent, as applicable, may amend or supplement the Indenture, the Notes, the Note Guarantees, the Security Documents or the Intercreditor Agreement:

(1) to cure any ambiguity, omission, mistake, defect or inconsistency;

(2) to provide for uncertificated Notes in addition to or in place of certificated Notes (*provided* that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code);

(3) to provide for the assumption of the Company's or any Guarantor's obligations to Holders of Notes and Note Guarantees in accordance with the Indenture and the Security Documents in the case of a merger or consolidation or sale of all or substantially all of the Company's or such Guarantor's assets;

(4) to make any change that would not materially adversely affect the legal or contractual rights under the Indenture of any such Holder;

(5) 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 or any Guarantor;

(6) (a) to add or release Note Guarantees in accordance with the terms of the Indenture with respect to the Notes or (b) to add one or more co-issuers of the Notes as required under "—Merger, Consolidation or Sale of Assets";

(7) to evidence and provide for the acceptance of appointment by a successor Trustee or Collateral Agent;

(8) to conform the Indenture, the Notes, any Note Guarantee, any Security Document or the Intercreditor Agreement to any provision of this "Description of Notes" to the extent such provision is intended to be a verbatim recitation thereof;

(9) to amend the Intercreditor Agreement to add additional holders of Additional Obligations permitted under the Indenture, the Intercreditor Agreement and any Additional Agreements then in effect;

(10) to amend the Security Documents to add any holders of Additional Pari Passu Obligations to the extent permitted under the Indenture, Intercreditor Agreement and any Additional Pari Passu Agreement then in effect;

(11) to (x) to make, complete or confirm any grant of Collateral permitted or required by the Indenture, any of the Security Documents or the Intercreditor Agreement, or any release of Collateral pursuant to the terms of the Indenture, any of the Security Documents or the Intercreditor Agreement or (y) add to the Collateral securing the Notes;

(12) to comply with any requirement of the SEC in connection with any qualification of the Indenture under the U.S. Trust Indenture Act of 1939, as amended;

(13) to make any amendment to the provisions of the Indenture relating to the transfer and legending of the Notes as permitted by the Indenture, including, without limitation, to facilitate the issuance and administration of the Notes; *provided, however*, that (i) compliance with the Indenture as so amended would not result in Notes being transferred in violation of the Securities Act or any applicable securities law and (ii) such amendment does not materially and adversely affect the rights of Holders to transfer Notes; or

(14) to provide for the issuance of Additional Notes under the Indenture in compliance with the terms hereof.

The consent of the Holders is not necessary under the Indenture to approve the particular form of any proposed amendment. It is sufficient if such consent approves the substance of the proposed amendment. For the avoidance of doubt, no amendment to, or waiver or deletion of, any of the covenants described under "—Repurchase at the Option of Holders" or "—Certain Covenants," shall be deemed to impair or affect any rights of Holders of Notes to institute suit for the enforcement of any payment on or with respect to, or to receive payment of principal of, or premium, if any, or interest on, the Notes.

**Concerning the Trustee**

If the Trustee becomes a creditor of the Company or any Guarantor, the Indenture will limit its right to obtain payment of claims in certain cases, or to realize on certain property received in respect of any such claim as security or otherwise. The Trustee will be permitted to engage in other transactions; *provided* that if it acquires any conflicting interest, it must eliminate such conflict within 90 days, apply to the SEC for permission to continue or resign.

The Indenture will provide that in case an Event of Default occurs and is continuing, the Trustee will be required, in the exercise of its power, to use the degree of care of a prudent person in the conduct of such person's own affairs. Neither the Trustee nor the Collateral Agent will be under any obligation to exercise any of its rights, powers or remedies under the Indenture or the Security Documents at the request of any Holder of Notes, unless such Holder will have offered and, if requested, provided, to the Trustee or the Collateral Agent, as applicable, security and indemnity satisfactory to the Trustee or the Collateral Agent, as applicable, against any loss, liability or expense.

The Indenture will provide that neither the Trustee nor the Collateral Agent shall be responsible for the existence, genuineness, value or protection of any Collateral or the legality, effectiveness or sufficiency of any Security Document, or for the creation, perfection, priority, sufficiency or protection of any Lien created by a Note.

By their acceptance of the Notes, the holders of the Notes will be deemed to have authorized the Collateral Agent and the Trustee, as applicable, to enter into and to perform each of the Security Documents and the Intercreditor Agreement.

**Governing Law**

The Indenture will provide that it, the Notes and the Note Guarantees will be governed by, and construed in accordance with, the laws of the State of New York. The Security Documents will be governed by, and construed in accordance with, the laws of the State of New York; however, the mortgages will be governed by, and construed in accordance with, the laws of the state in which the applicable Real Property is located.

**Measuring Compliance**

With respect to (x) any Limited Condition Transaction and (y) any repayment, repurchase or refinancing of Indebtedness, Disqualified Stock or Preferred Stock with respect to which an irrevocable notice of repayment has been delivered (an "*Irrevocable Repayment*"):

(1) whether any Indebtedness, Disqualified Stock or Preferred Stock (including acquired Indebtedness, Disqualified Stock and Preferred Stock) that is being Incurred, or that is being Incurred in connection with such Limited Condition Transaction or Irrevocable Repayment is permitted to be Incurred in compliance with the covenant described under the caption "—Certain Covenants—Limitation on Indebtedness, Disqualified Stock and Preferred Stock";

(2) whether any Lien being Incurred, or that is being Incurred in connection with such Limited Condition Transaction or Irrevocable Repayment is permitted to be Incurred in compliance with the covenant described under the caption "—Certain Covenants—Limitation on Liens" or the definition of "Permitted Liens";

(3) whether any other transaction to be undertaken in connection with such Limited Condition Transaction or Irrevocable Repayment or Incurrence of Indebtedness, Disqualified Stock or Preferred Stock (including any dispositions, investments, acquisitions, Restricted Payments, mergers, fundamental changes or designations of Restricted Subsidiaries or Unrestricted Subsidiaries) complies with the covenants or agreements contained in the Indenture or the Notes; and

(4) any calculation of the ratios, baskets or financial metrics, including Consolidated Cash Flow, Consolidated Leverage Ratio, Consolidated Net Income, Consolidated Total Assets, Fixed Charge Coverage Ratio, Fixed Charges and Secured Leverage Ratio and baskets determined by reference to Consolidated Cash Flow, Consolidated Total Assets, Indebtedness or Secured Indebtedness, and whether a Default, Event of Default or Specified Event of Default exists, in each case, in connection with such Limited Condition Transaction or Irrevocable Repayment;

at the option of the Company (the "*Testing Party*"), the date that the definitive agreements (or other relevant definitive documentation) are entered into for such Limited Condition Transaction or Irrevocable Repayment (the "*Transaction Commitment Date*") may be used as the applicable date of determination, as the case may be, in each case, with such *pro forma* adjustments as are appropriate and consistent with the *pro forma* adjustment provisions set forth in the definition of "Consolidated Leverage Ratio" or "Consolidated Net Income." For the avoidance of doubt, if the Company elects to use the Transaction Commitment Date as the applicable date of determination in accordance with the foregoing, (a) (x) any fluctuation or change in (i) Consolidated Cash Flow, Consolidated Leverage Ratio, Consolidated Net Income, Consolidated Total Assets, Fixed Charge Coverage Ratio, Fixed Charges, Indebtedness, Secured Indebtedness and Secured Leverage Ratio and/or (ii) the applicable exchange rate utilized in calculating compliance with any dollar-based provision of the Indenture from the Transaction Commitment Date to the date of consummation of such Restricted Payment, Investment, acquisition, merger or similar transaction or repayment, repurchase or refinancing or Incurrence of Indebtedness, Disqualified Stock or Preferred Stock, in each case, in connection with such Limited Condition Transaction or Irrevocable Repayment, will not be taken into account for purposes of determining whether any Indebtedness, Disqualified Stock, Preferred Stock or Lien that is being Incurred in connection with the foregoing, or in connection with compliance by the Company or any of its Restricted Subsidiaries with any other provision of the Indenture or the Notes or any other transaction or action undertaken in connection with such Restricted Payment, Investment, acquisition, merger or similar transaction or repayment, repurchase or refinancing or Incurrence of Indebtedness, Disqualified Stock or Preferred Stock, is permitted to be Incurred, and (y) such baskets, ratios or financial metrics shall not be tested at the time of consummation of such Restricted Payment, Investment,

acquisition, merger or similar transaction or repayment, repurchase or refinancing or Incurrence of Indebtedness, Disqualified Stock or Preferred Stock, in each case, in connection with such Limited Condition Transaction or Irrevocable Repayment (*provided, however*, that until such Limited Condition Transaction or Irrevocable Repayment is consummated or such definitive agreements (or other relevant definitive documentation) are terminated (or notice expires), such Investment, acquisition, merger or similar transaction or repayment, repurchase or refinancing and all transactions proposed to be undertaken in connection therewith (including the Incurrence of Indebtedness, Disqualified Stock, Preferred Stock and Liens) will be given *pro forma* effect when determining compliance of other transactions (including the Incurrence of Indebtedness, Disqualified Stock, Preferred Stock and Liens unrelated to such Investment, acquisition, merger or similar transaction or repayment, repurchase or refinancing) that are consummated after the Transaction Commitment Date and on or prior to the date of consummation of such Investment, acquisition, merger or similar transaction or repayment, repurchase or refinancing, and any such transactions (including any incurrence of Indebtedness, Disqualified Stock or Preferred Stock and the use of proceeds thereof) will be deemed to have occurred on the date the definitive agreements (or other relevant definitive documentation) are entered into, and deemed to be outstanding thereafter for purposes of calculating any baskets, ratios or financial metrics under the Indenture after the date of such definitive agreement (or other relevant definitive documentation) and before the date of consummation of such Investment, acquisition, merger or similar transaction or repayment, repurchase or refinancing. In addition, the Indenture will provide that compliance with any requirement relating to the absence of a Default, Event of Default or Specified Event of Default may be determined as of the Transaction Commitment Date and not as of any later date as would otherwise be required under the Indenture. Notwithstanding anything to the contrary, in connection with a Testing Party's election to use a Transaction Commitment Date pursuant to this paragraph, any reference to "date of incurrence" or "time of incurrence" or other similar phrases with respect to the date or time an action is taken herein will mean the Transaction Commitment Date.

Accrual of interest, the accretion of accreted value, the accretion or amortization of original issue discount, the payment of interest or dividends in the form of additional Indebtedness with the same terms, the payment of dividends on Disqualified Stock or Preferred Stock in the form of additional shares of Disqualified Stock or Preferred Stock of the same class, the accretion of liquidation preference or maximum fixed repurchase price and increases in the amount of Indebtedness, Disqualified Stock or Preferred Stock outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness, Disqualified Stock or Preferred Stock will not be deemed to be an Incurrence of Liens, Indebtedness, Disqualified Stock or Preferred Stock for purposes of the Indenture.

For purposes of calculating any ratio-based basket, with respect to any revolving Indebtedness, delayed draw facility or other committed debt financing Incurred under such ratio-based basket, the Company may elect (which election may not be changed with respect to such Indebtedness), at any time, to either (x) give *pro forma* effect to the Incurrence of the entire committed amount of such Indebtedness, in which case such committed amount may thereafter be borrowed or reborrowed, in whole or in part, from time to time, without further compliance with any ratio-based component of any provision of the Indenture, or (y) give *pro forma* effect to the Incurrence of the actual amount drawn under such revolving Indebtedness, delayed draw facility or other committed debt financing, in which case, the ability to Incur the amounts committed to under such Indebtedness will be subject to such ratio-based basket (to the extent being Incurred pursuant to such ratio) at the time of each such Incurrence. To the extent clause (x) of the immediately preceding sentence is elected, such revolving Indebtedness, delayed draw facility or other committed debt financing shall be deemed to be Incurred (and the fully committed amount of Indebtedness as outstanding) at all times thereafter for purposes of testing any ratio-based baskets, regardless of whether such Indebtedness is outstanding, until such commitments have been permanently terminated in full.

Notwithstanding anything in the Indenture to the contrary, unless the Company elects otherwise, if, on any date, the Company or any of its Restricted Subsidiaries in connection with any transaction or series of related transactions (A) utilizes a ratio-based basket and (B) utilizes a non-ratio-based basket, then the applicable ratio will be calculated on such date with respect to any usage under the applicable ratio-based basket without giving effect to the usage under such non-ratio-based basket made in connection with such transaction or series of related transactions.

To the extent the date of any delivery of any document required to be delivered pursuant to any provision of the Indenture falls on a day that is not a Business Day, the applicable required date of delivery shall be deemed to be the next succeeding Business Day.

For purposes of determining the maturity date of any Indebtedness, customary bridge loans that are subject to customary conditions (including no payment or bankruptcy event of default) that would either automatically be extended as, converted into or required to be exchanged for permanent refinancing shall be deemed to have the maturity date as so extended, converted or exchanged.

Any reference in the Indenture to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer or similar term, shall be deemed to apply to a division of or by a limited liability company, limited partnership or trust, or an allocation of assets to a series of a limited liability company, limited partnership or trust (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale or transfer or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company, limited partnership or trust shall constitute a separate Person hereunder (and each division of any limited liability company, limited partnership or trust that is a Subsidiary, Restricted Subsidiary, Unrestricted Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

**Certain Definitions**

Set forth below are certain defined terms used in the Indenture. Reference is made to the Indenture for a full description of all such terms, as well as any other capitalized terms used herein for which no definition is provided.

"*Additional Agreement*" means any Additional Pari Passu Agreement and any Junior Lien Priority Agreement.

"*Additional Notes*" has the meaning set forth under the recitals of "Description of Notes."

"*Additional Obligations*" means any Additional Pari Passu Obligation and any Junior Lien Priority Obligation.

"*Additional Pari Passu Agreement*" means any loan agreement, credit agreement, indenture or other agreement entered into by the Company after the Issue Date, if any, pursuant to which the Company or any of its Restricted Subsidiaries will incur Additional Pari Passu Obligations, and which has been designated as Permitted Additional Pari Passu Obligations under the Security Agreement and other applicable Security Documents.

"*Additional Pari Passu Obligations*" means all advances to, and debts, liabilities, obligations, covenants and duties of, the Company or any of its Restricted Subsidiaries, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against the Company or any of its Restricted Subsidiaries or any Affiliate thereof of any proceeding under any bankruptcy or insolvency law naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding, in each case that constitutes Pari Passu Debt that has been designated as Permitted Additional Pari Passu Obligations under the Security Agreement and other applicable Security Documents and is permitted to be Incurred as Permitted Additional Pari Passu Obligations under the Indenture.

"*Additional Pari Passu Secured Parties*" means the holders of any Additional Pari Passu Obligations and any Authorized Representative with respect thereto.

"*Additional Secured Parties*" means the Additional Pari Passu Secured Parties and the Junior Lien Priority Secured Parties.

"*Additional Security Documents*" means the Pari Passu Security Documents and/or the Junior Lien Priority Security Documents.

"*Affiliate*" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. The terms "*controlling*," "*controlled by*" and "*under direct or indirect common control with*" will have correlative meanings.

"*Affiliate Transactions*" has the meaning set forth under "—Certain Covenants—Limitation on Transactions with Affiliates."

"*After-Acquired Property*" means any property of the Company or any Subsidiary Guarantor acquired after the Issue Date of a type that secures the obligations under the Indenture, the Notes, the Security Documents and Additional Obligations.

"*Applicable Authorized Representative*" means (i) until the occurrence of the Non-Controlling Authorized Representative Enforcement Date (if any), the Controlling Authorized Representative and (ii) from and after the occurrence of the Non-Controlling Authorized Representative Enforcement Date, the Major Non-Controlling Authorized Representative.

"*Applicable Premium*" means, with respect to any Note on any applicable redemption date, as calculated by the Company, the greater of:

(i) 1.0% of the then-outstanding principal amount of such Note; and

(ii) the excess, if any, of:

(A) the present value at such redemption date of (1) the redemption price of such Note at February 1, 2026 (as described above under "—Optional Redemption") *plus* (2) all remaining required interest payments due on such Note through February 1, 2026 (excluding accrued but unpaid interest to, but excluding, the redemption date), in the case of each of clauses (1) and (2) above, computed using a discount rate equal to the Treasury Rate *plus* 50 basis points; over

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

None of the Trustee, the Paying Agent or the Registrar shall have any duty to calculate or verify the Company's calculation of the Applicable Premium.

"*Asset Sale*" means:

(1) the sale, lease, conveyance or other disposition of any assets of (including Equity Interests owned by) the Company or any Restricted Subsidiary; and

(2) the issuance of Equity Interests (other than to the Company or a Restricted Subsidiary and other than directors' qualifying shares or shares or interests required to be held by foreign nationals or other third parties to the extent required by applicable law) of any Restricted Subsidiary

(each of the foregoing referred to in this definition as a "*disposition*").

Notwithstanding the preceding, the following items will be deemed not to be Asset Sales:

(1) a sale, exchange or other disposition of Cash Equivalents or Investment Grade Securities or obsolete, damaged, unnecessary, unsuitable or worn out equipment or other assets in the ordinary course of business, including the termination or amendment of any IRU or Finance Lease Obligation in the ordinary course of business, or other dispositions of property no longer used, useful or economically practicable to maintain in the conduct of the business of the Company and its Restricted Subsidiaries (including allowing any registrations or any applications for registration of any intellectual property or other intellectual property rights to lapse or become abandoned);

(2) the sale, conveyance, lease or other disposition of all or substantially all of the assets of the Company in a manner pursuant to the provisions described above under "—Certain Covenants—Merger, Consolidation or Sale of Assets" or any disposition that constitutes a Change of Control;

(3) any Permitted Investment or Restricted Payment that is permitted to be made, and is made, under the covenant described above under "—Certain Covenants—Limitation on Restricted Payments";

(4) any disposition of assets or issuance or sale of Equity Interests of any Restricted Subsidiary in a single transaction or series of related transactions that involves assets or Equity Interests having a Fair Market Value of less than the greater of (x) $5.0 million and (y) 3.0% of Consolidated Cash Flow for the Reference Period;

(5) any transfer or disposition of property or assets by a Restricted Subsidiary of the Company to the Company or by the Company or a Restricted Subsidiary of the Company to a Restricted Subsidiary of the Company;

(6) the creation of any Lien permitted under the Indenture;

(7) any issuance or sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(8) the sale, lease, assignment, license or sublease of inventory, equipment, accounts receivable, notes receivable or other current assets held for sale in the ordinary course of business or the conversion of accounts receivable and related assets to notes receivable or dispositions of accounts receivable and related assets in connection with the collection or compromise thereof in the ordinary course of business;

(9) the lease, assignment, license, sublease or sublicense of any real or personal property in the ordinary course of business;

(10) any exchange of assets for assets (including a combination of assets and Cash Equivalents) related to a Permitted Business of comparable or greater market value or usefulness to the business of the Company and its Restricted Subsidiaries as a whole, as determined in good faith by the Company or a direct or indirect parent of the Company;

(11) the grant in the ordinary course of business of any license or sub-license of patents, trademarks, know-how and any other intellectual property;

(12) the surrender or waiver of obligations of trade creditors or customers or other contract rights or settlement, release or surrender of a contract, tort or other litigation claim in the ordinary course of business;

(13) foreclosures, condemnations, eminent domain, seizure, nationalization or any similar action on assets not prohibited by the Indenture;

(14) a transfer of accounts receivable and related assets of the type specified in the definition of "Receivables Financing" (or a fractional undivided interest therein) by a Receivables Subsidiary in a Qualified Receivables Financing;

(15) any Sale/Leaseback Transaction of any property acquired or built after the Issue Date;

(16) dispositions of Investments (including Equity Interests) in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements or rights of first refusal between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(17) to the extent allowable under Section 1031 of the Code, any exchange of like property (excluding any boot thereon) for use in a Permitted Business; and

(18) (i) the disposition of assets acquired pursuant to any Permitted Investment, which assets are not used or useful to the core or principal business of the Company and its Restricted Subsidiaries, and (ii) the disposition of assets that are required in order to obtain the approval of any governmental authority to consummate or avoid the prohibition or other restrictions on the consummation of any Permitted Investment or acquisition.

"*Authorized Representative*" means (i) with respect to the Holders of the Notes and the Notes Obligations, the Trustee, (ii) in the case of any Series of Additional Pari Passu Obligations (and the Additional Pari Passu Secured Parties thereunder) that become subject to the Intercreditor Agreement after the Issue Date, the Authorized Representative named for such Series in the Intercreditor Agreement or in the applicable Joinder Agreement and (iii) in the case of any Series of Junior Lien Priority Obligations (and the Junior Lien Priority Secured Parties thereunder) that become subject to the Intercreditor Agreement after the Issue Date, the Authorized Representative named for such Series the Intercreditor Agreement or in the applicable Joinder Agreement.

"*Bankruptcy Code*" shall have the meaning set forth under "—Certain Covenants with Respect to the Collateral—Certain Bankruptcy Limitations."

"*Board of Directors*" means as to any Person, the board of directors, board of managers, sole member or managing member or other governing body of such Person, or if such Person is owned or managed by a single entity, the board of directors, board of managers, sole member or managing member or other governing body of such entity, or in each case, any duly authorized committee thereof, and the term "*directors*" means members of the Board of Directors.

"*Board Resolution*" means a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors of the Company and to be in full force and effect on the date of such certification.

"*Business Day*" means any day other than a Saturday, a Sunday or a day on which banking institutions are authorized or required by law, regulation or executive order to remain closed in the City of New York or, with respect to payments to be made under the Indenture, at a place of payment.

"*Capital Markets Indebtedness*" means any notes or term loans of the Company or a Guarantor constituting Indebtedness.

"*Capital Stock*" of any Person means any and all shares, interests (including general or limited partnership interests, limited liability company or membership interests or limited liability partnership interests), participations or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock, or any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

"*Cash Equivalents*" means:

(1) U.S. dollars, the national currency of any participating member state of the European Union (as it is constituted on the Issue Date) and such local currencies held by the Company or any Restricted Subsidiary from time to time in the ordinary course of business;

(2) securities issued or directly and fully guaranteed or insured by the government of the United States or any country that is a member of the European Union (as it is constituted on the Issue Date) or any agency or instrumentality thereof, in each case, with maturities not exceeding two years from the date of acquisition;

(3) certificates of deposit, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances, in each case, with maturities not exceeding one year and overnight bank deposits, in each case, with any commercial bank having capital and surplus in excess of $500.0 million (or the foreign currency equivalent thereof, and whose long-term debt is rated "A" or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another internationally recognized ratings agency));

(4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above and clause (6) below entered into with any financial institution or securities dealer of recognized national standing meeting the qualifications specified in clause (3) above;

(5) commercial paper or variable or fixed rate notes issued by a corporation or other Person (other than an Affiliate of the Company) rated at least "A-2" or "P-2" or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another internationally recognized ratings agency) and in each case maturing within one year after the date of acquisition;

(6) readily marketable direct obligations issued by any state, commonwealth or territory of the United States of America or any political subdivision or taxing authority thereof having Investment Grade Ratings from either Moody's or S&P (or reasonably equivalent ratings of another internationally recognized ratings agency), in each case, with maturities not exceeding two years from the date of acquisition;

(7) Indebtedness issued by Persons with a rating of "A" or higher from S&P or "A-2" or higher from Moody's (or reasonably equivalent ratings of another internationally recognized ratings agency), in each case, with maturities not exceeding two years from the date of acquisition;

(8) investment funds investing at least 95.0% of their assets in securities of the types described in clauses (1) through (7) above or (9) and (10) below;

(9) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's (or reasonably equivalent ratings of another internationally recognized ratings agency); and

(10) in the case of Investments by any Restricted Subsidiary that is a Foreign Subsidiary or Investments made in a country outside of the United States of America, (x) such local currencies in those countries in which such Foreign Subsidiary transacts business from time to time in the ordinary course of business and (y) Investments of comparable tenor and credit quality to those described in the foregoing clauses (1) through (9) customarily utilized in countries in which such Foreign Subsidiary operates or in which such Investment is made.

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

(1) the sale, lease or transfer, in one or a series of related transactions, of all or substantially all the assets of the Company and its Subsidiaries, taken as a whole, to a Person; or

(2) the Company becomes aware 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) other than Cogent Holdco, in a single transaction or in a series of related transactions, by way of merger, consolidation or other business combination or purchase of Equity Interests or otherwise, of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision, except that a Person shall be deemed to have "beneficial ownership" of any securities that such Person has the right to acquire upon conversion of, or the exercise of rights under, other securities, whether such right is exercisable immediately or only after the passage of time), of Voting Stock of the Company representing 50% or more of the total voting power of the Voting Stock of the Company; or

(3) the adoption of a plan of liquidation or dissolution of the Company.

"*Change of Control Triggering Event*" means the occurrence of both a Change of Control and a Ratings Decline with respect to the Notes.

"*Code*" means the U.S. Internal Revenue Code of 1986, as amended from time to time.

"*Cogent Holdco*" means Cogent Communications Holdings, Inc., a Delaware corporation, and its successors.

"*Collateral*" has the meaning set forth under "—Collateral and Security—Collateral Generally."

"*Collateral Agent*" means Wilmington Trust, National Association, as collateral agent under the Indenture, Security Agreement and the other Security Documents, and any successor thereto in such capacity.

"*Common Stock*" means, with respect to any Person, any Capital Stock (other than Preferred Stock) of such Person, whether outstanding on the Issue Date or issued thereafter.

"*Consolidated Cash Flow*" means, for any period, the Consolidated Net Income of the Company for such period, *plus*:

(1) provision for taxes based on income or profits of the Company and the Restricted Subsidiaries for such period, to the extent that such provision for taxes was deducted in computing Consolidated Net Income; *plus*

(2) Fixed Charges of the Company and the Restricted Subsidiaries for such period, to the extent that any such Fixed Charges were deducted in computing Consolidated Net Income; *plus*

(3) depreciation, amortization (including amortization of intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) and other non-cash expenses (excluding any such non-cash expense to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period) of the Company and the Restricted Subsidiaries for such period to the extent that such depreciation, amortization or other non-cash expenses were deducted in computing Consolidated Net Income; *minus*

(4) non-cash items increasing Consolidated Net Income for such period, other than the accrual of revenue in the ordinary course of business;

in each case, on a consolidated basis and determined in accordance with GAAP.

Notwithstanding the preceding, the provision for taxes based on the income or profits of a Restricted Subsidiary, and the Fixed Charges of and the depreciation and amortization and other non-cash expenses of a Restricted Subsidiary, will be added to Consolidated Net Income to compute Consolidated Cash Flow of the Company (A) in the same proportion that the net income (loss) of such Restricted Subsidiary was added to compute Consolidated Net Income of the Company and (B) only to the extent that a corresponding amount would be permitted at the date of determination to be dividended or distributed to the Company by such Restricted Subsidiary without prior governmental approval (that has not been obtained), and without direct or indirect restriction pursuant to the terms of its charter or any agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to that Subsidiary or its stockholders.

"*Consolidated Leverage Ratio*" means, as of any date of determination, the ratio of (1) the aggregate amount of consolidated Indebtedness (or, in the case of Indebtedness issued at less than its principal amount at maturity, the accreted value thereof) of the Company and its Restricted Subsidiaries as of the last day of the Reference Period to (2) Consolidated Cash Flow for the Company for the Reference Period; *provided* that:

(1) if the transaction giving rise to the need to calculate the Consolidated Leverage Ratio is an Incurrence of Indebtedness, the amount of such Indebtedness shall be calculated after giving effect on a *pro forma* basis to such Indebtedness and the use of proceeds thereof;

(2) if the Company or any Restricted Subsidiary has repaid, repurchased, defeased or otherwise discharged any Indebtedness that was outstanding as of the end of the Reference Period, or if any Indebtedness is to be repaid, repurchased, defeased or otherwise discharged on the date of the transaction giving rise to the need to calculate the Consolidated Leverage Ratio (other than, in each case, Indebtedness Incurred under any Revolving Credit Agreement), the aggregate amount of Indebtedness shall be calculated on a *pro forma* basis, after giving effect to such repayment, repurchase, defeasement or discharge;

(3) if since the beginning of the Reference Period the Company or any Restricted Subsidiary shall have made any Asset Sale, the Consolidated Cash Flow for the Reference Period shall be reduced by an amount equal to the Consolidated Cash Flow (if positive) directly attributable to the assets which are the subject of such Asset Sale for the Reference Period or increased by an amount equal to the Consolidated Cash Flow (if negative) directly attributable thereto for the Reference Period;

(4) if since the beginning of the Reference Period the Company or any Restricted Subsidiary (by merger or otherwise) shall have made an Investment in any Restricted Subsidiary (or any Person which becomes a Restricted Subsidiary) or other acquisition of assets which constitutes all or substantially all of an operating unit of a business, Consolidated Cash Flow for the Reference Period shall be calculated after giving *pro forma* effect thereto (including the Incurrence of any Indebtedness) as if such Investment or acquisition occurred on the first day of the Reference Period; and

(5) if since the beginning of the Reference Period any Person (that subsequently became a Restricted Subsidiary or was merged with or into the Company or any Restricted Subsidiary since the beginning of such Reference Period) shall have made any Asset Sale, any Investment or acquisition of assets that would have required an adjustment pursuant to clause (3) or (4) above if made by the Company or a Restricted Subsidiary during the Reference Period, Consolidated Cash Flow for the Reference Period shall be calculated after giving *pro forma* effect thereto as if such Asset Sale, Investment or acquisition had occurred on the first day of the Reference Period.

For purposes of this definition, whenever *pro forma* effect is to be given to an acquisition or disposition of assets, such *pro forma* calculation shall be made in good faith by a responsible financial or accounting officer of the Company or a direct or indirect parent of the Company. Any such *pro forma* calculation may include adjustments appropriate, in the reasonable determination of the Company or a direct or indirect parent of the Company, to reflect operating expense reductions and other operating improvements or synergies reasonably expected to result from any acquisition or disposition or operational change to the extent such adjustments, without duplication, continue to be applicable to the Reference Period; *provided* that (x) such operating expense reductions and other operating improvements or synergies are reasonably

identifiable and factually supportable and (y) such actions are reasonably expected to be taken no later than 24 months after the relevant transaction.

For purposes of this definition, in calculating the Consolidated Cash Flow and the aggregate amount of Indebtedness of the Company and its Restricted Subsidiaries, the Consolidated Cash Flow and Indebtedness attributable to discontinued operations will be excluded.

For purposes of making any computation referred to above:

(1) if any Indebtedness bears a floating rate of interest and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Hedging Obligation applicable to such Indebtedness if such Hedging Obligation has a remaining term in excess of 12 months);

(2) interest on a Finance Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer, in his or her capacity as such and not in his or her personal capacity, of the Company or a direct or indirect parent of the Company to be the rate of interest implicit in such Finance Lease Obligation in accordance with GAAP;

(3) interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate as the Company may designate;

(4) if any Indebtedness is Incurred under a revolving credit facility or a Qualified Receivables Financing and is being given *pro forma* effect, the interest on such Indebtedness shall be calculated based on the average daily balance of such Indebtedness for the Reference Period; and

(5) to the extent not already covered above, any such calculation may include adjustments calculated in accordance with Regulation S-X under the Securities Act.

"*Consolidated Net Income*" means, for any period, the aggregate of the net income (loss) of the Company and the Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; *provided* that:

(1) the net income (loss) of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting will be included only to the extent of the amount of dividends or distributions paid in cash (or converted into cash) to the Company or a Restricted Subsidiary;

(2) the net income (but not the net loss) of any Restricted Subsidiary will be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that net income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its equityholders;

(3) the net income (loss) of any Person acquired during the specified period for any period prior to the date of such acquisition will be excluded;

(4) the net income (loss) of any Person that is not a Restricted Subsidiary on a consolidated basis allocable to minority interests in unconsolidated Persons or Unrestricted Subsidiaries to the extent that cash dividends or distributions have not actually been received by such a Person or one of its consolidated Restricted Subsidiaries will be excluded;

(5) any gain or loss, together with any related provision for taxes on such gain or loss, realized in connection with (a) any sale of assets outside the ordinary course of business of the Company or (b) the disposition of any securities by the Company or a Restricted Subsidiary or the extinguishment of any Indebtedness of the Company or any Restricted Subsidiary will be excluded;

(6) any extraordinary gain or loss, together with any related provision for taxes on such extraordinary gain or loss, will be excluded;

(7) any non-cash compensation expense realized for grants of restricted stock, performance shares, stock options or other rights with respect to equity to officers, directors and employees of the Company and any Restricted Subsidiary will be excluded; *provided* that such shares, options or other rights can be redeemed at the option of the holder only for Capital Stock (other than Disqualified Stock of the Company); and

(8) the cumulative effect of a change in accounting principles will be excluded.

"*Consolidated Total Assets*" means the consolidated total assets of such Person and its Restricted Subsidiaries, as set forth in the most recent consolidated balance sheet of such Person, determined on a *pro forma* basis.

"*continuing*" means, with respect to any Default or Event of Default, that such Default or Event of Default has not been cured or waived.

"*Controlling Authorized Representative*" has the meaning set forth under "—Intercreditor Agreement—Enforcement of Security Interests."

"*Controlling Secured Parties*" means the Series of Pari Passu Secured Parties whose Authorized Representative is the Controlling Authorized Representative.

"*Covenant Defeasance*" has the meaning set forth under "—Legal Defeasance and Covenant Defeasance."

"*Covenant Suspension Event*" has the meaning set forth under "—Certain Covenants."

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

"*Designated Non-cash Consideration*" means the Fair Market Value of non-cash consideration received by the Company or any of its Restricted Subsidiaries in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer's Certificate, less the amount of Cash Equivalents received in connection with a subsequent sale of or collection on such Designated Non-cash Consideration.

"*Discharge of Junior Lien Priority Obligations*" means the payment in full and discharge of all Junior Lien Priority Obligations that are outstanding and unpaid at the time the Junior Lien Priority Indebtedness is paid in full and discharged (other than any obligations for taxes, costs, indemnifications, reimbursements, damages and other liabilities in respect of which no claim or demand for payment has been made at such time).

"*Discharge of Pari Passu Obligations*" means the payment in full and discharge of all Pari Passu Obligations that are outstanding and unpaid at the time the Pari Passu Debt is paid in full and discharged (other than any obligations for taxes, costs, indemnifications, reimbursements, damages and other liabilities in respect of which no claim or demand for payment has been made at such time), termination of all commitments to make advances thereunder and termination or cash collateralization on the term acceptable to any issuer thereunder of all letters of credit, hedging obligations and cash management obligations that constitute Pari Passu Obligations.

"*Disinterested Member*" means, with respect to any transaction or series of related transactions, a member of the Company's Board of Directors who does not have any material direct or indirect financial interest in or with respect to such transaction or series of related transactions and is not an Affiliate, or an officer, director, member of a supervisory, executive, or management board or employee of any Person (other than the Company or a Restricted Subsidiary) who has any direct or indirect financial interest in or with respect to such transaction or series of related transactions.

"*Disqualified Stock*" means, with respect to any Person, any Capital Stock of such Person that (i) by its terms, (ii) by the terms of any security into which it is convertible or for which it is exchangeable or (iii) by contract or otherwise, is, or upon the happening of any event or passage of time would be, required to be redeemed on or prior to the date that is 91 days after the earlier of the date on which the Notes mature and the date the Notes are no longer outstanding, or is redeemable at the option of the holder thereof, in any such case on or prior to such date; *provided* that only the portion of Capital Stock that so matures or is mandatorily redeemable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock; *provided, further*, that if such Capital Stock is issued to any employee or to any plan for the benefit of employees of the Company or its Subsidiaries or a direct or indirect parent of the Company or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Company or its Subsidiaries or a direct or indirect parent of the Company in order to satisfy applicable

statutory or regulatory obligations or as a result of such employee's termination, death or disability; *provided, further*, that any class of Capital Stock of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Capital Stock that is not Disqualified Stock shall not be deemed to be Disqualified Stock. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require the Company to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Stock if (i) the "asset sale" or "change of control" provisions applicable to such Capital Stock are no more favorable to the holders of such Capital Stock than the covenants described above under "—Repurchase at the Option of Holders—Asset Sales" and "—Repurchase at the Option of Holders—Change of Control Triggering Event" and (ii) such Capital Stock specifically provides that such Person will not repurchase or redeem any such stock pursuant to such provision prior to the Company's repurchase of such Notes as are required to be repurchased pursuant to the covenants described above under "—Repurchase at the Option of Holders—Asset Sales" and "—Repurchase at the Option of Holders—Change of Control Triggering Event." The term "Disqualified Stock" will also include any options, warrants or other rights that are convertible into Disqualified Stock or that are redeemable at the option of the holder, or are required to be redeemed, prior to the date that is 91 days after the date on which the Notes mature.

"*Domestic Subsidiary*" means a Restricted Subsidiary that is not a Foreign Subsidiary.

"*Equity Interests*" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any Capital Stock that arises only by reason of the happening of a contingency or any debt security that is convertible into, or exchangeable for, Capital Stock).

"*Equity Offering*" means any public sale or private placement of Capital Stock (other than Disqualified Stock) of the Company or any direct or indirect parent of the Company (other than pursuant to a registration statement on Form S-8 or otherwise relating to equity securities issuable under any employee benefit plan of the Company) to any Person other than any Restricted Subsidiary thereof.

"*Event of Default*" has the meaning set forth under "—Events of Default and Remedies."

"*Exchange Act*" means the U.S. Securities and Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"*Existing Indebtedness*" means the aggregate amount of Indebtedness, Disqualified Stock and Preferred Stock of the Company and the Restricted Subsidiaries (other than Indebtedness under the Notes and the related Note Guarantees) in existence on the Issue Date, including the Existing Notes.

"*Existing Notes*" means the Company's 4.375% Senior Notes due 2024 outstanding on the Issue Date.

"*Fair Market Value*" means the price that would be negotiated in an arm's-length transaction between an informed and willing seller under no compulsion to sell and an informed and willing buyer under no compulsion to buy, as determined in good faith by the Board of Directors of the Company or a direct or indirect parent of the Company, whose determination will be conclusive for all purposes under the Indenture.

"*Finance Lease Obligation*" means, at the time any determination thereof is to be made, an obligation that is required to be classified and accounted for as a financing lease (and, for the avoidance of doubt, not a straight-line or operating lease) on both the balance sheet and income statement for financial reporting purposes in accordance with GAAP as in effect on the Issue Date, and the amount of Indebtedness represented thereby at such time shall be the amount of the liability in respect thereof that would at that time be required to be reflected as a liability on a balance sheet in accordance with GAAP as in effect on the Issue Date.

"*Fitch*" means Fitch Ratings, Inc. or any successor to the rating agency business thereof.

"*Fixed Charge Coverage Ratio*" means, as of any date of determination, the ratio of (1) Consolidated Cash Flow for the Company for the Reference Period to (2) the Fixed Charges for the Reference Period. The Fixed Charge Coverage Ratio shall be calculated in a manner consistent with the definition of "Consolidated Leverage Ratio"; *provided* that, in the event that the Company shall classify Indebtedness Incurred on the date of determination as Incurred in part as Ratio Debt and in part pursuant to one or more clauses of the definition of "Permitted Indebtedness" (other than clause (16) thereof), any calculation of Fixed Charges pursuant to this definition on such date (but not in respect of any future calculation following such date) shall not include any such Indebtedness (and shall not give effect to any repayment, repurchase, redemption,

defeasance or other acquisition, retirement or discharge of Indebtedness from the proceeds thereof) to the extent Incurred pursuant to any such other clause of such definition.

"*Fixed Charges*" means, for any period, the sum, without duplication, of:

(1) the consolidated interest expense of the Company and the Restricted Subsidiaries for such period, whether paid or accrued, including, without limitation, amortization of debt issuance costs and original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Finance Lease Obligations, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers' acceptance financings, and net of the effect of all payments made or received pursuant to Hedging Obligations; *plus*

(2) to the extent not included within clause (1) of this definition of Fixed Charges, the consolidated interest of the Company and the Restricted Subsidiaries that was capitalized during such period; *plus*

(3) any interest expense on Indebtedness of another Person that is Guaranteed by the Company or one of the Restricted Subsidiaries or secured by a Lien on assets of the Company or a Restricted Subsidiary, whether or not such Guarantee or Lien is called upon; *plus*

(4) the product of (a) all dividends, whether paid or accrued and whether or not in cash, on any series of Disqualified Stock of the Company or a Restricted Subsidiary or Preferred Stock of a Restricted Subsidiary, other than dividends on Equity Interests payable solely in Equity Interests (other than Disqualified Stock) of the Company or to the Company or a Restricted Subsidiary, and (b) a fraction, the numerator of which is one and the denominator of which is one minus the then-current combined federal, state and local statutory tax rate of the Company of such Disqualified Stock or Preferred Stock, expressed as a decimal;

in each case, on a consolidated basis and in accordance with GAAP.

"*Foreign Subsidiary*" means (1) a Subsidiary not organized or existing under the laws of the United States of America, any state thereof or the District of Columbia, (2) any Subsidiary that has no material assets other than equity interests or debt issued by one or more "controlled foreign corporations" under Section 956 of the Code and (3) any direct or indirect Subsidiary of any Subsidiary that is described in the preceding clause (1) or (2); *provided* that in the case of clause (2) of this definition, any Subsidiary that provides a Guarantee of the Existing Notes or any Permitted Refinancing Indebtedness of the Existing Notes will not be deemed a "Foreign Subsidiary."

"*GAAP*" means generally accepted accounting principles in the United States of America as in effect from time to time including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants, in the opinions and pronouncements of the Public Company Accounting Oversight Board and in the statements and pronouncements of the Financial Accounting Standards Board, or in such other statements by such other entity as have been approved by a significant segment of the accounting profession (except as set forth in the definition of Finance Lease Obligations). In addition, for purposes of the Indenture, all references to codified accounting standards specifically named herein shall be deemed to include any successor, replacement, amended or updated accounting standard under GAAP.

"*Government Securities*" means securities that are direct obligations of, or obligations guaranteed by, the United States of America (including any agency or instrumentality thereof) for the payment of which obligations or guarantees the full faith and credit of the United States of America is pledged and that are not callable or redeemable at the issuer's option.

"*Grantor*" means the Company and each Guarantor that is, from time to time, party to the Security Agreement as a "grantor" thereunder.

"*Guarantee*" means, as to any Person, a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner, including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness of another Person, but excluding endorsements for collection or deposit in the normal course of business.

"*Guarantors*" means, collectively:

(1) the Initial Guarantors; and

(2) any Material Domestic Subsidiary that executes a Note Guarantee in accordance with the provisions of the Indenture;

and their respective successors and assigns until released from their obligations under their Note Guarantees and the Indenture in accordance with the terms of the Indenture.

"*Hedging Obligations*" means, with respect to any specified Person, the obligations of such Person under:

(1) any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement or arrangement;

(2) any commodity forward contract, commodity swap agreement, commodity option agreement or other similar agreement or arrangement;

(3) any foreign exchange contract, currency swap agreement or other similar agreement or arrangement; and

(4) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange, interest rates or commodity prices.

"*Holder*" means a Person in whose name a Note is registered on the Registrar's books.

"*Increased Amount*" means, with respect to any Indebtedness, Disqualified Stock or Preferred Stock, any increase in the amount of such Indebtedness, Disqualified Stock or Preferred Stock in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness, Disqualified Stock or Preferred Stock with the same terms, accretion of original issue discount, liquidation preference or maximum fixed repurchase price, any fees, underwriting discounts, accrued and unpaid interest, dividends, premiums and other costs and expenses incurred in connection therewith and increases in the amount of Indebtedness, Disqualified Stock or Preferred Stock outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness, Disqualified Stock or Preferred Stock.

"*Incur*" means, with respect to any Indebtedness, Capital Stock or Lien, to incur, create, issue, assume, Guarantee or otherwise become directly or indirectly liable for or with respect to, or become responsible for, the payment of, contingently or otherwise, such Indebtedness, Capital Stock or Lien (the terms "*Incurrence*" and "*Incurred*" have correlative meanings); *provided* that any Indebtedness, Capital Stock or Lien of a Person existing at the time such Person becomes a Restricted Subsidiary will be deemed to be Incurred by such Person at the time it becomes a Restricted Subsidiary.

"*Indebtedness*" means, with respect to any specified Person, whether or not contingent:

(1) all indebtedness of such Person in respect of borrowed money;

(2) all obligations of such Person evidenced by bonds, notes, debentures or similar instruments;

(3) all obligations of such Person in respect of banker's acceptances, letters of credit or similar instruments (or, without duplication, reimbursement obligations in respect thereof);

(4) all Finance Lease Obligations of such Person (including any IRU that constitutes a Finance Lease Obligation);

(5) all obligations of such Person in respect of the deferred and unpaid balance of the purchase price of any property or services, except any such balance that constitutes an accrued expense or trade payable;

(6) all Hedging Obligations of such Persons;

(7) all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person); *provided* that the amount of such Indebtedness will be the lesser of (A) the Fair Market Value of such asset at such date of determination and (B) the amount of such Indebtedness; and

(8) to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person;

*provided* that the foregoing shall only constitute Indebtedness if and to the extent that such items (other than letters of credit and Hedging Obligations) would appear as a liability on a balance sheet of such Person prepared in accordance with GAAP.

The term "Indebtedness" shall not include Indebtedness of Cogent Holdco or any direct or indirect parent thereof appearing on the balance sheet of the Company solely by reason of push-down accounting.

Notwithstanding the above provisions, in no event shall the following constitute Indebtedness:

(i) contingent obligations Incurred in the ordinary course of business or consistent with past practices;

(ii) Obligations under or in respect of Receivables Financings or any operating lease, straight-line lease or other lease obligation (including any IRU that does not constitute a Finance Lease Obligation) that is not required to be accounted for as a finance lease on both the balance sheet and the income statement for financial reporting purposes in accordance with GAAP as in effect on the Issue Date;

(iii) any balance that constitutes a trade payable, accrued expense or similar obligation to a trade creditor, in each case, Incurred in the ordinary course of business;

(iv) intercompany liabilities that would be eliminated on the consolidated balance sheet of the Company and its consolidated Subsidiaries;

(v) prepaid or deferred revenue arising in the ordinary course of business;

(vi) any of the following to the extent not constituting a line of credit (other than an overnight draft facility that is not in default): automated clearing house transactions, treasury and/ or cash management services, including, without limitation, treasury, depository, overdraft, credit, purchasing or debit card, non-card e-payables services, electronic funds transfer, treasury management services (including controlled disbursement services, overdraft automatic clearing house fund transfer services, return items and interstate depository network services), other demand deposit or operating account relationships, foreign exchange facilities and merchant services, in each case, entered into in ordinary course of business;

(vii) obligations, to the extent such obligations would otherwise constitute Indebtedness, under any agreement that has been defeased or satisfied and discharged pursuant to the terms of such agreement;

(viii) for the avoidance of doubt, any obligations in respect of workers' compensation claims, early retirement or termination obligations of employees, deferred compensatory or employee or director equity plans pension fund obligations or contributions or similar claims, obligations or contributions or social security or wage taxes; or

(ix) Capital Stock.

The amount of any Indebtedness outstanding as of any date will be the outstanding balance at such date of all unconditional obligations as described above and, with respect to contingent obligations, the maximum liability upon the occurrence of the contingency giving rise to the obligation. The amount of any Indebtedness described in clauses (1) and (2) of the third preceding paragraph will be:

(1) the accreted value thereof, in the case of any Indebtedness issued with original issue discount; and

(2) the principal amount thereof in the case of any other Indebtedness.

For purposes of determining any particular amount of Indebtedness, (x) Guarantees, Liens or obligations with respect to letters of credit supporting Indebtedness otherwise included in the determination of such particular amount shall not be included and (y) any Liens granted pursuant to the equal and ratable provisions in the covenant described above under "—Certain Covenants—Limitation on Liens" covenant shall not be treated as Indebtedness.

"*Indenture*" has the meaning set forth under the recitals of "Description of Notes."

"*Initial Guarantors*" means (i) Cogent Holdco and (ii) all of the Domestic Subsidiaries of the Company as of the Issue Date.

"*Initial Purchaser*" means the initial purchaser party to the purchase agreement entered into in connection with the offer and sale of the Notes.

"*Intercreditor Agreement*" has the meaning set forth under "—Intercreditor Agreement."

"*Intercreditor Event of Default*" means an "Event of Default" under and as defined in the Indenture or any other agreement governing any Secured Credit Document.

"*Intervening Creditor*" has the meaning set forth under "—Intercreditor Agreement—Restrictions on Enforcement of Priority Liens."

"*Investment Grade Rating*" means a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB− (or the equivalent) by Fitch or S&P, or an equivalent rating by any other Rating Agency.

"*Investment Grade Securities*" means:

(1) debt securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents) and in each case with maturities not exceeding two years from the date of acquisition;

(2) debt securities that have an Investment Grade Rating;

(3) investments in any fund that invests at least 95.0% of its assets in investments of the type described in clauses (1) and (2) above and clause (4) below which fund may also hold immaterial amounts of cash pending investment and/or distribution; and

(4) corresponding debt instruments in countries other than the United States customarily utilized for high-quality investments, in each case, with maturities not exceeding two years from the date of acquisition.

"*Investments*" means, with respect to any Person, all direct or indirect investments in another Person in the form of loans or other extensions of credit (including Guarantees), advances, capital contributions (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others) (excluding accounts receivable, credit card and debit card receivables, trade credit and advances or other payments to customers, dealers, suppliers and distributors and payroll, commission, travel and similar advances to officers, employees and consultants made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by such Person, together with all items that are or would be required to be classified as investments on a balance sheet prepared in accordance with GAAP.

If the Company or any Restricted Subsidiary sells or otherwise disposes of any Equity Interests of any direct or indirect Restricted Subsidiary such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary, the Company will be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of the Investment in such Restricted Subsidiary not sold or disposed of. The acquisition by the Company or any Restricted Subsidiary of a Person that holds an Investment in a third Person will be deemed to be an Investment by the Company or such Restricted Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investment held by the acquired Person in such third Person unless such Investment in such third Person was not made in anticipation or contemplation of the Investment by the Company or such Restricted Subsidiary and such third-party Investment is incidental to the primary business of such Person in whom the Company or such Restricted Subsidiary is making such Investment. In no event shall a guarantee of an operating lease of the Company or any Restricted Subsidiary be deemed an Investment.

"*IRU*" means an indefeasible right to use dark fiber optic or other transmission technology, such as those to which the Company and the Restricted Subsidiaries are currently a party, without regard to the accounting treatment of any such arrangement.

"*Issue Date*" means May 7, 2021, the first date the Notes are to be issued under the Indenture.

"*Joinder Agreement*" means an agreement in form and substance substantially similar to Exhibit A to the form of Intercreditor Agreement, pursuant to which any additional Series of Additional Obligations becomes a party to the Intercreditor Agreement, in accordance with the applicable terms thereof.

"*joint venture*" means any joint venture or similar arrangement (in each case, regardless of legal formation), including, but not limited to, collaboration arrangements, profit sharing arrangements or other contractual arrangements.

"*Junior Lien*" means a Lien granted by a security document for the benefit of the holders of Junior Lien Priority Indebtedness which secures Junior Lien Priority Obligations.

"*Junior Lien Priority Agreement*" means any loan agreement, credit agreement, indenture or other agreement entered into by the Company after the Issue Date, if any, pursuant to which the Company or any of its Restricted Subsidiaries will incur Junior Lien Priority Obligations, and which has been designated as Permitted Junior Lien Priority Obligations under the Intercreditor Agreement.

"*Junior Lien Priority Indebtedness*" means (a) any Indebtedness of the Company that is secured by Liens on the Collateral on a basis that ranks junior to the Notes or (b) any Indebtedness of a Guarantor that is secured by Liens on the Collateral on a basis that ranks junior to such Guarantor's Note Guarantee.

"*Junior Lien Priority Obligations*" means obligations under any loan agreement, credit agreement, indenture or other agreement entered into by the Company after the Issue Date, if any, pursuant to which the Company or any of its Restricted Subsidiaries will incur Junior Lien Priority Indebtedness, and which has been designated as Junior Lien Priority Obligations under the Intercreditor Agreement and is permitted to be Incurred as Junior Lien Priority Obligations.

"*Junior Lien Priority Secured Parties*" means the holders of any Junior Lien Priority Obligations and any Authorized Representative with respect thereto.

"*Junior Lien Priority Security Documents*" means each security agreement, pledge agreement, deed of trust, mortgage and other agreement entered into in favor of the Junior Lien Priority Secured Parties for purposes of securing the Junior Lien Priority Obligations and each financing statement and other document or instrument delivered to create, perfect or continue the Liens thereby created.

"*Legal Defeasance*" has the meaning set forth under "—Legal Defeasance and Covenant Defeasance."

"*Lien*" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; *provided* that in no event shall an operating lease be deemed to constitute a Lien.

"*Limited Condition Transaction*" means any acquisition or Investment, including by way of merger, amalgamation, consolidation or similar transaction, by the Company or one or more of its Restricted Subsidiaries (or any successor of the Company or of such Restricted Subsidiary) whose consummation is not conditioned upon the availability of, or on obtaining, third-party financing.

"*Major Non-Controlling Authorized Representative*" has the meaning set forth under "—Intercreditor Agreement—Enforcement of Security Interests."

"*Material Domestic Subsidiary*" means any Domestic Subsidiary of the Company that, as of the last day of the fiscal quarter of the Company most recently ended, has assets (including Equity Interests in Subsidiaries) with a value in excess of 3.0% of the Consolidated Total Assets of the Company and its Domestic Subsidiaries; *provided*, that in the event Domestic Subsidiaries that would otherwise not be Material Domestic Subsidiaries shall in the aggregate account for a percentage in excess of 5.0% of the Consolidated Total Assets of the Company and its Domestic Subsidiaries as of the end of the most recently completed fiscal quarter of the Company, then one or more of such Domestic Subsidiaries designated by the Company (or, if the Company shall make no designation, one or more of such Domestic Subsidiaries in descending order based on their respective contributions to the Consolidated Total Assets of the Company), shall be included as Material Domestic Subsidiaries to the extent necessary to eliminate such excess.

"*Moody's*" means Moody's Investors Service, Inc. or any successor to the rating agency business thereof.

"*Net Available Cash*" means the aggregate proceeds, including payments in respect of deferred payment obligations (to the extent corresponding to the principal, but not the interest component, thereof), received in Cash Equivalents by the Company or any Restricted Subsidiary in respect of any Asset Sale (including, without limitation, any Cash Equivalents received upon the sale or other disposition of any non-cash consideration received in any Asset Sale), net of (1) the direct costs relating to such Asset Sale, including, without limitation, legal, accounting, investment banking and brokerage fees, sales commissions and any relocation expenses incurred as a result thereof, (2) taxes paid or payable as a result thereof, in each case, after taking into account any available tax credits or deductions and any tax sharing arrangements relating to such Asset Sale, (3) in the case of any Asset Sale by a Restricted Subsidiary, payments to holders of Equity Interests in such Restricted Subsidiary in such capacity (other than such Equity Interests held by the Company or any Restricted Subsidiary) to the extent that such payment is required to permit the distribution of such proceeds in respect of the Equity Interests in such Restricted Subsidiary held by the Company or any Restricted Subsidiary, (4) amounts required to be applied to the repayment of principal, premium, if any, and interest on Indebtedness that is secured by such assets and is required to be paid as a result of such transaction, together with any applicable premiums, penalties, interest or breakage costs, other than Indebtedness owed to the Company or any Restricted Subsidiary and (5) appropriate amounts to be provided by the Company or the Restricted Subsidiaries as a reserve against liabilities associated with such Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale, all as determined in accordance with GAAP; *provided* that (a) excess amounts set aside for payment of taxes pursuant to clause (2) above remaining after such taxes have been paid in full or the statute of limitations therefor has expired and (b) amounts initially held in reserve pursuant to clause (5) no longer so held, will, in the case of each of subclause (a) and (b), at that time become Net Available Cash.

"*Non-Controlling Authorized Representative Enforcement Date*" has the meaning set forth under "—Intercreditor Agreement—Enforcement of Security Interests."

"*Non-Controlling Secured Parties*" means the Pari Passu Secured Parties and the Junior Lien Priority Secured Parties that are not Controlling Secured Parties.

"*Note Guarantee*" means a Guarantee of the Notes pursuant to the Indenture.

"*Notes*" has the meaning set forth under the recitals of "Description of Notes."

"*Notes Obligations*" means Obligations under the Notes, the Indenture and the Note Guarantees, and shall include any interest and fees accruing after commencement of a bankruptcy or insolvency proceeding against the Company or any Guarantor, whether or not allowed in such proceeding.

"*Notes Secured Parties*" has the meaning set forth in the definition of "Series."

"*Obligations*" with respect to any Indebtedness means any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing such Indebtedness (including all interest, fees and other amounts accruing during any insolvency proceeding, regardless of whether or not allowed or allowable in such proceeding); *provided* that Obligations with respect to the Notes shall not include fees or indemnification in favor of other third parties other than the Trustee and the Holders of the Notes.

"*Offering Memorandum*" means this offering memorandum related to this offering of Notes, dated April 30, 2021.

"*Offer to Purchase*" means an offer by the Company to purchase Notes from the Holders commenced by mailing (or sending electronically, or otherwise in accordance with the procedures of DTC) a notice to the Trustee and each Holder (with a copy to the Paying Agent) stating:

(1) the provision of the Indenture pursuant to which the offer is being made and that all Notes validly tendered will be accepted for payment on a *pro rata* basis;

(2) the purchase price and the date of purchase, which shall be a Business Day no earlier than 10 days nor later than 60 days from the date such notice is delivered (unless delivered in advance of the occurrence of a Change of Control) (the "*Payment Date*");

(3) that any Note not tendered will continue to accrue interest pursuant to its terms;

(4) that, unless the Company defaults in the payment of the purchase price, any Note accepted for payment pursuant to the Offer to Purchase shall cease to accrue interest on and after the Payment Date;

(5) that Holders electing to have a Note purchased pursuant to the Offer to Purchase will be required to surrender the Note, together with the completed form entitled "Option of the Holder to Elect Purchase" on the reverse side of the Note completed, to the Issuer or Paying Agent at the address specified in the notice prior to the close of business on the Business Day immediately preceding the Payment Date;

(6) that Holders will be entitled to withdraw their election if the Issuer or Paying Agent receives, not later than the close of business on the third Business Day immediately preceding the Payment Date, a facsimile transmission or letter setting forth the name of such Holder, the principal amount of Notes delivered for purchase and a statement that such Holder is withdrawing its election to have such Notes purchased;

(7) that Holders whose Notes are being purchased only in part (other than a Global Note) will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered; *provided* that each Note purchased and each new Note issued shall be in a principal amount of $2,000 or an integral multiple of $1,000 in excess thereof (or such lower denomination as may be permitted by DTC);

(8) if such notice is delivered prior to the occurrence of a Change of Control Triggering Event, stating that the Offer to Purchase is conditional on the occurrence of such Change of Control Triggering Event; and

(9) the other instructions determined by the Company, consistent with this covenant, that a Holder must follow in order to have its Notes purchased.

On the Payment Date, the Company shall (a) accept for payment on a *pro rata* basis Notes or portions thereof (and, in the case of an Offer to Purchase made pursuant to the covenant described above under "—Repurchase at the Option of Holders—Asset Sales," any other Pari Passu Debt included in such Offer to Purchase) validly tendered and not validly withdrawn pursuant to an Offer to Purchase; (b) deposit with the Paying Agent money sufficient to pay the purchase price of all Notes or portions thereof so accepted; and (c) deliver, or cause to be delivered, to the Trustee or the Registrar all Notes or portions thereof so accepted together with an Officer's Certificate specifying the Notes or portions thereof accepted for payment by the Company. The Paying Agent shall promptly deliver to the Holders of Notes so accepted payment in an amount equal to the purchase price, and the Trustee (or authentication agent) shall (except with respect to a Global Note) promptly authenticate and deliver to such Holders a new Note equal in principal amount to any unpurchased portion of the Note surrendered; *provided* that each Note purchased and each new Note issued shall be in a principal amount of $2,000 or an integral multiple of $1,000 in excess thereof (or such lower denomination as may be permitted by DTC). The Company will announce the results of an Offer to Purchase as soon as practicable after the Payment Date. The Company will comply with Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder, to the extent such laws and regulations are applicable, in the event that the Company is required to repurchase Notes pursuant to an Offer to Purchase. To the extent that the provisions of any securities laws or regulations conflict with the provisions of the Indenture relating to an Offer to Purchase, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under such provisions of the Indenture by virtue of such conflict.

While the Notes are in global form and the Company makes an Offer to Purchase, a Holder of the Notes may exercise its option to elect for the purchase of the Notes to be made through the facilities of DTC in accordance with the rules and regulations thereof.

"*Officer*" means, with respect to any Person, the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice President of such Person (or of any direct or indirect parent, general partner, managing member or sole member of such Person) or any individual designated as an "Officer" for purposes of the Indenture by the Board of Directors of such Person (or the Board of Directors of any direct or indirect parent, general partner, managing member or sole member of such Person).

"*Officer's Certificate*" means a certificate signed on behalf of the Company or a direct or indirect parent of the Company by an Officer of the Company or such parent that meets the requirements of the Indenture.

"*Opinion of Counsel*" means an opinion from legal counsel who is reasonably acceptable to the Trustee (who may be counsel to or an employee of the Company) and that meets the requirements of the Indenture.

"*Pari Passu Debt*" means (a) any Indebtedness of the Company that ranks equally in right of payment with the Notes or (b) any Indebtedness of a Guarantor that ranks equally in right of payment with such Guarantor's Note Guarantee, in each case, without giving effect to collateral arrangements.

"*Pari Passu Obligations*" means, collectively the Notes Obligations, and each Series of Additional Pari Passu Obligations.

"*Pari Passu Secured Parties*" means, collectively, the Collateral Agent and the Notes Secured Parties, and any Additional Pari Passu Secured Parties.

"*Pari Passu Security Documents*" means each security agreement, pledge agreement, deed of trust, mortgage and other agreement entered into in favor of the Collateral Agent for purposes of securing the Pari Passu Obligations and each financing statement and other document or instrument delivered to create, perfect or continue the Liens thereby created.

"*Payment Default*" has the meaning set forth under "—Events of Default and Remedies."

"*Permitted Additional Pari Passu Obligations*" means any Obligation under any other Indebtedness equally and ratably secured on a first-lien basis with the Notes by Liens on the Collateral that is permitted to be Incurred under the Indenture.

"*Permitted Business*" means any business conducted or proposed to be conducted (as described in this Offering Memorandum) by the Company and the Restricted Subsidiaries on the Issue Date, and other businesses or activities reasonably similar, related, complementary or ancillary thereto, or an extension, development or expansion of, the businesses in which the Company or any of its Subsidiaries is engaged on the Issue Date.

"*Permitted Indebtedness*" has the meaning set forth under "—Certain Covenants—Limitation on Indebtedness, Disqualified Stock and Preferred Stock."

"*Permitted Investments*" means:

(1) any Investment in the Company (including the Notes) or in a Restricted Subsidiary;

(2) any Investment in Cash Equivalents or Investment Grade Securities;

(3) any Investment 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 all or substantially all of its assets to, or is liquidated into, the Company or a Restricted Subsidiary;

and any Investment held by such Person that was not acquired by such Person in contemplation of so becoming a Restricted Subsidiary or in contemplation of such merger, consolidation, amalgamation, transfer, conveyance or liquidation;

(4) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with the covenant described above under "—Repurchase at the Option of Holders—Asset Sales";

(5) Hedging Obligations permitted under clause (8) of the covenant entitled "—Certain Covenants—Limitation on Indebtedness, Disqualified Stock and Preferred Stock";

(6) (i) Investments received in satisfaction of judgments, foreclosure of Liens or settlement of Indebtedness and (ii) any Investments received in compromise of obligations of any trade creditor or customer that were incurred in the ordinary course of business, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any such Person;

(7) advances to customers or suppliers in the ordinary course of business that are, in conformity with GAAP, recorded as accounts receivable, prepaid expenses or deposits on the balance sheet of the Company or the

Restricted Subsidiaries and endorsements for collection or deposit arising in the ordinary course of business;

(8) commission, payroll, travel, relocation and similar advances to officers and employees of the Company or any Restricted Subsidiary that are expected at the time of such advance ultimately to be recorded as an expense in conformity with GAAP;

(9) Investments by the Company or any Restricted Subsidiary in an aggregate amount at the time of such Investment not to exceed, at any one time outstanding, $75.0 million; *provided, however*, that if any Investment pursuant to this clause (9) is made in any Person that is not a Restricted Subsidiary of the Company at the date of the making of such Investment and such Person subsequently becomes a Restricted Subsidiary of the Company after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (9) for so long as such Person continues to be a Restricted Subsidiary;

(10) lease, utility and other similar deposits in the ordinary course of business;

(11) Investments (x) existing on the Issue Date, (y) made pursuant to binding commitments in effect on the Issue Date or (z) that replace, refinance, refund, renew, modify, amend or extend any Investment described under either of the immediately preceding clauses (x) or (y); *provided* that any such Investment is in an amount that does not exceed the amount replaced, refinanced, refunded, renewed, modified, amended or extended, except as contemplated pursuant to the terms of such Investment in existence on the Issue Date or as otherwise permitted under this definition or the covenant described under "—Certain Covenants—Limitation on Restricted Payments";

(12) other Investments in any Unrestricted Subsidiary or joint venture having an aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (12) since the Issue Date, not to exceed the greater of (x) $30.0 million and (y) 15.0% of Consolidated Cash Flow for the Reference Period; *provided, however*, that if at any time such Person becomes a Restricted Subsidiary of the Company, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (12) for so long as such Person continues to be a Restricted Subsidiary;

(13) loans and advances to, or guarantees of Indebtedness of, employees not in excess of the greater of (x) $2.0 million and (y) 1.0% of Consolidated Cash Flow for the Reference Period outstanding at any one time in the aggregate;

(14) any Investment by the Company or any of its Restricted Subsidiaries in a Permitted Business (other than an Investment in an Unrestricted Subsidiary) having an aggregate Fair Market Value, taken together with all other Investments made pursuant to this clause (14) that are at the time outstanding, not to exceed the greater of (x) $10.0 million and (y) 5.0% of Consolidated Cash Flow for the Reference Period, at the time of such Investment (with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value), at any one time outstanding; *provided, however*, that if any Investment pursuant to this clause (14) is made in any Person that is not a Restricted Subsidiary of the Company at the date of the making of such Investment and such Person becomes a Restricted Subsidiary of the Company after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (14) for so long as such Person continues to be a Restricted Subsidiary;

(15) Investments the payment for which consists of Equity Interests (other than Disqualified Stock) of the Company or any direct or indirect parent of the Company, as applicable; *provided, however*, that such Equity Interests will not increase the amount available for Restricted Payments under the first paragraph of the covenant described under "—Certain Covenants—Limitation on Restricted Payments";

(16) Investments consisting of the licensing or contribution of intellectual property in the ordinary course of business or pursuant to joint marketing arrangements with other Persons;

(17) Investments consisting of purchases and acquisitions of inventory, supplies, materials and equipment or purchases of contract rights or licenses or leases of intellectual property or other rights or assets or services, in each case, in the ordinary course of business; and

(18) any Investment in a Receivables Subsidiary or any Investment by a Receivables Subsidiary in any other Person in connection with a Qualified Receivables Financing, including Investments of funds held in accounts permitted or required by the arrangements governing such Qualified Receivables Financing or any related Indebtedness; *provided, however*, that any Investment in a Receivables Subsidiary is in the form of a purchase money note, contribution of additional receivables or an equity interest;

(19) repurchases of the Notes and the Existing Notes;

(20) any transaction to the extent it constitutes an Investment that is permitted and made in accordance with the provisions of the second paragraph of the covenant described under "—Certain Covenants—Transactions with Affiliates" (except transactions described in clause (2), (3), (4), (6)(b), (9), (10), (11) or (15) of such paragraph);

(21) Investments consisting of (x) Liens permitted under "—Certain Covenants—Limitation on Liens," (y) Indebtedness (including Guarantees and other Obligations) permitted under "—Certain Covenants—Limitation on Indebtedness, Disqualified Stock and Preferred Stock" or (z) mergers, consolidations and transfers of all or substantially all assets permitted under "—Certain Covenants—Merger, Consolidation or Sale of Assets," in each case of subclauses (x), (y) and (z) other than by reference to Permitted Investments;

(22) acquisitions of obligations of one or more officers or other employees of any direct or indirect parent of the Company, the Company or any Subsidiary of the Company in connection with such officer's or employee's acquisition of Equity Interests of any direct or indirect parent of the Company, so long as no cash is actually advanced by the Company or any Restricted Subsidiary to such officers or employees in connection with the acquisition of any such obligations;

(23) guarantees of operating leases (for the avoidance of doubt, excluding Finance Lease Obligations) or of other obligations that do not constitute Indebtedness, in each case, entered into by the Company or any Restricted Subsidiary in the ordinary course of business;

(24) non-cash Investments made in connection with tax planning and reorganization activities of the Company and its Restricted Subsidiaries, so long as such activities are not materially adverse to the Holders of the Notes; and

(25) Investments made in the ordinary course of business in connection with obtaining, maintaining or renewing client and customer contracts and loans or advances made to, and guarantees with respect to obligations of, distributors, suppliers, licensors and licensees in the ordinary course of business.

"*Permitted Junior Lien Priority Obligations*" means Junior Lien Priority Indebtedness that is permitted to be Incurred pursuant to the terms of the Indenture.

"*Permitted Liens*" means:

(1) Liens on Collateral securing Indebtedness in respect of Permitted Additional Pari Passu Obligations or Permitted Junior Lien Priority Obligations Incurred under clause (1) of the second paragraph of the covenant described above under "—Certain Covenants—Limitation on Indebtedness, Disqualified Stock and Preferred Stock" and obligations secured ratably thereunder to the extent such obligations do not constitute Indebtedness; *provided* that such Indebtedness is subject to the Intercreditor Agreement;

(2) Liens in favor of the Company or any Restricted Subsidiary that is a Guarantor;

(3) Liens on assets or property at the time the Company or any Restricted Subsidiary acquires the assets or property, including any acquisition by means of a merger or consolidation with or into the Company or such Restricted Subsidiary; *provided* that such Liens were in existence prior to the contemplation of such

acquisition, merger or consolidation and do not extend to any assets other than those acquired or of the Person merged into or consolidated with the Company or the Restricted Subsidiary;

(4) Liens on property of, or Equity Interests in, a Person existing at the time of acquisition thereof by the Company or any Restricted Subsidiary of the Company; *provided* that such Liens were in existence prior to the contemplation of such acquisition and do not extend to any property other than the property so acquired by the Company or the Restricted Subsidiary;

(5) Liens on Collateral securing Indebtedness in respect of Permitted Additional Pari Passu Obligations or Permitted Junior Lien Priority Obligations so long as, after giving *pro forma* effect thereto, the Secured Leverage Ratio is less than 4.00 to 1.00 and such Indebtedness is subject to the Intercreditor Agreement;

(6) Liens existing on the Issue Date (excluding Liens described under clause (1) above and clause (33) below);

(7) Liens securing (i) Permitted Refinancing Indebtedness (to the extent the Indebtedness being refinanced was secured by such Liens; *provided* that (x) the Liens securing such Permitted Refinancing Indebtedness do not extend to any property or assets other than the property or assets that secure (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness, Disqualified Stock or Preferred Stock being refinanced (*plus* any replacements, additions, accessions and improvements on such property) and (y) the priority of such Liens shall be *pari passu* or junior to the Liens securing such Indebtedness being refinanced, refunded, extended, renewed or replaced) and (ii) any refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements), as a whole or in part, of any Indebtedness secured by a Lien referred to in clauses (1), (3), (4), (5), (9) and (10) and subclause (y) of clause (22) of this definition (*provided* that any Liens Incurred under this clause (7) as Liens securing any refinancing, refunding, extension, renewal or replacement of Indebtedness secured by a Lien referred to in subclause (y) of clause (22) shall reduce the amount available under such subclause (y) of clause (22) so long as such Indebtedness secured by such Lien remains outstanding (but not below $0)); *provided* that (x) such Liens do not extend to any property or assets other than the property or assets that secure (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness, Disqualified Stock or Preferred Stock being refinanced (*plus* any replacements, additions, accessions and improvements on such property), (y) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (A) the outstanding principal amount or, if greater, committed amount (if incurred and outstanding or deemed to be incurred and outstanding) of such Permitted Refinancing Indebtedness or the Indebtedness described under clause (1), (3), (4), (5), (9), (10) or (22) of this definition at the time the original Lien became a Permitted Lien under the Indenture, and (B) an amount necessary to pay all accrued and unpaid interest thereon and the amount of any reasonably determined premium necessary to accomplish such refinancing and such reasonable expenses related to such refinancing, refunding, extension, renewal or replacement and (z) the priority of such Liens shall be *pari passu* or junior to the Liens securing such Indebtedness being refinanced, refunded, extended, renewed or replaced;

(8) Liens on property or assets securing Indebtedness used to redeem, repay, defease or satisfy and discharge the Notes in their entirety; *provided* that such redemption, repayment defeasance or satisfaction and discharge is not prohibited by the Indenture;

(9) Liens to secure Indebtedness (including, without limitation, Finance Lease Obligations and purchase money security interests) permitted by clause (4) of the second paragraph of the covenant described above under "—Certain Covenants—Limitation on Indebtedness, Disqualified Stock and Preferred Stock"; *provided* that any such Lien (i) covers only the assets acquired, constructed or improved with such Indebtedness, any products and proceeds of such assets, any fixtures, improvements, accessions, replacements and substitutions of such assets and any rights and interests relating to or arising from such assets and (ii) is created within 180 days of such acquisition, construction or improvement; *provided, further*, that individual financings provided by a lender may be cross-collateralized to other financings provided by such lender or its affiliates;

(10) Liens securing Hedging Obligations of the Company or any Restricted Subsidiary (a) that are Incurred for the purpose of fixing, hedging or swapping interest rate, commodity price or foreign currency exchange rate risk (or to reverse or amend any such agreements previously made for such purposes), and not for

speculative purposes or (b) securing letters of credit that support such Hedging Obligations; *provided* that such Hedging Obligations are permitted to be Incurred under the Indenture;

(11) Liens Incurred or deposits made in the ordinary course of business in connection with worker's compensation, unemployment insurance or other social security obligations;

(12) survey exceptions, encumbrances, easements or reservations of, or rights of other for, rights-of-way, zoning or other restrictions as to the use of properties, and defects in title which, in the case of any of the foregoing, were not Incurred or created to secure the payment of Indebtedness, and which in the aggregate do not materially adversely affect the value of such properties or materially impair the use for the purposes of which such properties are held by the Company or any Restricted Subsidiary;

(13) judgment and attachment Liens not giving rise to an Event of Default pursuant to clause (5) or (6) of the definition thereof and notices of *lis pendens* and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;

(14) Liens, deposits or pledges to secure public or statutory obligations, surety, stay, appeal, indemnity, performance or other similar bonds or obligations; and Liens, deposits or pledges in lieu of such bonds or obligations, or to secure such bonds or obligations, or to secure letters of credit in lieu of or supporting the payment of such bonds or obligations;

(15) Liens in favor of collecting or payor banks having a right of setoff, revocation, refund or chargeback with respect to money or instruments of the Company or any Subsidiary thereof on deposit with or in possession of such bank;

(16) any interest or title of a lessor, licensor or sublicensor in the property subject to any lease, license or sublicense;

(17) Liens for taxes, assessments and governmental charges (i) not yet delinquent for 30 days, (ii) being contested in good faith and for which adequate reserves have been established to the extent required by GAAP, or for property taxes on property such Person or one of its Subsidiaries has determined to abandon if the sole recourse for such tax, assessment, charge, levy or claim is to such property or (iii) with respect to which the failure to make payment could not reasonably be expected to have a material adverse effect as determined in good faith by management of the Company or a direct or indirect parent of the Company;

(18) Liens arising from Uniform Commercial Code financing statements regarding operating leases or consignments;

(19) Liens of franchisors in the ordinary course of business not securing Indebtedness;

(20) Liens on assets of Restricted Subsidiaries that are not Guarantors securing Indebtedness of such Restricted Subsidiaries permitted to be Incurred under the covenant described above under "—Certain Covenants—Limitation on Indebtedness, Disqualified Stock and Preferred Stock";

(21) Liens on assets of the Company and the Restricted Subsidiaries representing terms of IRUs entered into in the ordinary course of business to the extent any such Lien relates solely to the fiber or transmission asset subject to such IRU;

(22) other Liens securing Obligations in an amount not to exceed the greater of (x) $20.0 million and (y) 10.0% of Consolidated Cash Flow for the Reference Period at any one time outstanding (it being understood that any Lien Incurred pursuant to this clause (22) shall cease to be deemed Incurred and outstanding pursuant to this clause (22) but shall be deemed Incurred and outstanding pursuant to clause (5) of this definition from and after the first date on which the Company or any such Guarantor, as the case may be, could have Incurred such Lien pursuant to clause (5) of this definition); *provided* that such Indebtedness is subject to the Intercreditor Agreement;

(23) pledges or deposits by such Person under workers' compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory

obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case, Incurred in the ordinary course of business;

(24) Liens imposed by law, such as carriers', warehousemen's and mechanics' Liens, in each case for sums not yet due or being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review (or which, if due and payable, are being contested in good faith by appropriate proceedings and for which adequate reserves are being maintained, to the extent required by GAAP and such proceedings have the effect of preventing the forfeiture or sale of the property or assets subject to any such Lien);

(25) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(26) Liens on the Equity Interests of Unrestricted Subsidiaries or joint ventures to secure Obligations relating to such Unrestricted Subsidiaries or joint ventures, as applicable;

(27) grants of software and other technology and intellectual property licenses in the ordinary course of business;

(28) Liens Incurred to secure cash management services (and other "bank products") owed to a lender under a Revolving Credit Agreement (or any Affiliate of such lender) or in the ordinary course of business;

(29) Liens on equipment of the Company or any Restricted Subsidiary of the Company granted in the ordinary course of business to the Company's or such Restricted Subsidiary's client at which such equipment is located;

(30) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation and exportation of goods in the ordinary course of business;

(31) (a) Liens on Receivables Assets or created in respect of bank accounts into which only the collections in respect of Receivables Assets have been, sold, conveyed, assigned or otherwise transferred or purported to be so sold, conveyed, assigned or otherwise transferred in connection with a Qualified Receivables Financing Incurred under clause (20) of the second paragraph of the covenant described above under "—Certain Covenants—Limitation on Indebtedness, Disqualified Stock and Preferred Stock" and (b) Liens on assets of a Receivables Subsidiary in respect of a Qualified Receivables Financing of such Receivables Subsidiary;

(32) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;

(33) Liens securing the Notes and the Note Guarantees issued on the Issue Date;

(34) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks or other Persons not given in connection with the issuance of Indebtedness and Incurred in the ordinary course of business; (ii) relating to pooled deposit or sweep accounts of the Company or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations Incurred in the ordinary course of business of the Company and its Restricted Subsidiaries; or (iii) relating to purchase orders and other agreements entered into with customers of the Company or any Restricted Subsidiary in the ordinary course of business;

(35) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(36) Liens on vehicles or equipment of the Company or any of its Restricted Subsidiaries granted in the ordinary course of business;

(37) Liens disclosed by title insurance policies in respect of properties acquired after the Issue Date to the extent such Liens existed at the time such property was acquired and any replacement, extension or renewal of any such Liens (so long as the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by the Indenture); *provided* that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(38) (a) Liens solely on any cash earnest money deposits made by the Company or any Restricted Subsidiary in connection with any letter of intent or other agreement in respect of any Permitted Investment, (b) Liens on advances of Cash Equivalents in favor of the seller of any property to be acquired in a Permitted Investment to be applied against the purchase price for such Investment and (c) Liens on cash collateral in respect of letters of credit entered into in the ordinary course of business;

(39) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;

(40) Liens on securities that are the subject of repurchase agreements constituting Cash Equivalents under clause (4) of the definition thereof;

(41) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts Incurred in the ordinary course of business and not for speculative purposes;

(42) rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Company or any of its Restricted Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(43) restrictive covenants affecting the use to which real property may be put; *provided* that such covenants are complied with; and

(44) Liens on cash proceeds of Indebtedness (and on the related escrow accounts) in connection with the issuance of such Indebtedness into (and pending the release from) a customary escrow arrangement, to the extent such Indebtedness is Incurred in compliance with the covenant described under "—Certain Covenants—Limitation on Indebtedness, Disqualified Stock and Preferred Stock."

"*Permitted Refinancing Indebtedness*" means any Indebtedness, Disqualified Stock or Preferred Stock of the Company or any Restricted Subsidiary issued in exchange for, or the net cash proceeds of which are used to extend, refinance, renew, replace, defease or refund other Indebtedness, Disqualified Stock or Preferred Stock of the Company or any Restricted Subsidiary (other than Indebtedness, Disqualified Stock or Preferred Stock owed to the Company or to any Subsidiary of the Company); *provided* that:

(1) the amount of such Permitted Refinancing Indebtedness does not exceed the amount of the Indebtedness, Disqualified Stock or Preferred Stock so extended, refinanced, renewed, replaced, defeased or refunded (*plus* all accrued and unpaid interest thereon and the amount of any reasonably determined premium necessary to accomplish such refinancing and such reasonable expenses incurred in connection therewith);

(2) such Permitted Refinancing Indebtedness (other than with respect to Indebtedness, Incurred to extend, refinance, renew, replace, defease or refund any Finance Lease Obligations or IRU) has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness, Disqualified Stock or Preferred Stock being extended, refinanced, renewed, replaced, defeased or refunded (which, in the case of bridge loans or extendable bridge loans or other interim debt, shall be determined by reference to the notes or loans into which such bridge loans or extendable bridge loans or other interim debt are converted or for which such bridge loans or extendable bridge loans or interim debt are exchanged at maturity, and may be subject to other customary offers to repurchase or mandatory prepayments upon a change of control, asset sale or event of loss and customary acceleration rights after an event of default);

(3) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is (i) subordinated in right of payment to the Notes or the Note Guarantees, such Permitted Refinancing Indebtedness is subordinated in right of payment to the Notes or the Note Guarantees, as applicable, or (ii) Disqualified Stock or Preferred Stock, such Permitted Refinancing Indebtedness is Disqualified Stock or Preferred Stock, as applicable;

(4) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is Pari Passu Debt, such Permitted Refinancing Indebtedness ranks equally in right of payment with, or is subordinated in right of payment to, the Notes or such Note Guarantees; and

(5) such Indebtedness is Incurred by either (a) the Restricted Subsidiary that is the obligor on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded or, if such Restricted Subsidiary is a non-Guarantor Subsidiary, another non-Guarantor Subsidiary that is a Restricted Subsidiary, or (b) the Company or a Guarantor;

*provided* that clause (2) will not apply to any refunding or refinancing of any Secured Indebtedness.

"*Person*" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or any agency or political subdivision thereof or any other entity.

"*Preferred Stock*" means, with respect to any Person, any Equity Interest of such Person that has preferential rights to any other Equity Interest of such Person with respect to dividends or redemptions upon liquidation.

"*Priority Lien*" means a Lien granted by a Pari Passu Security Document to the Collateral Agent for the benefit of the holders of Pari Passu Debt which secures Pari Passu Obligations.

"*Qualified Receivables Financing*" means any Receivables Financing; *provided* that all obligations in respect of a Qualified Receivables Financing shall be treated as Indebtedness for purposes of the covenant "—Certain Covenants—Limitation on Indebtedness, Disqualified Stock and Preferred Stock" and the definitions of Consolidated Leverage Ratio, Fixed Charge Coverage Ratio and Secured Leverage Ratio, whether or not such obligations are Indebtedness, and must be Incurred in compliance with clause (20) of the definition of "Permitted Indebtedness," as applicable, and all Liens, encumbrances and other restrictions relating to such Qualified Receivables Financing shall be limited as set forth in clause (31) of the definition of "Permitted Liens."

"*Rating Agencies*" means S&P, Moody's and Fitch; *provided*, that if S&P, Moody's or Fitch (or all) shall cease issuing a rating on the Notes for reasons outside the control of the Company, the Company may select a nationally recognized statistical rating agency to substitute for S&P, Moody's or Fitch (or all).

"*Ratings Decline*" means the occurrence of a decrease in the rating of the Notes by one or more gradations by Moody's, S&P or Fitch (including gradations within the rating categories as well as between categories), within 60 days before or after the earlier of (x) a Change of Control, (y) the date of public notice of the occurrence of a Change of Control or (z) public notice of the intention of the Company to effect a Change of Control (which 60-day period shall be extended so long as the rating of the Notes is under publicly announced consideration for possible downgrade by Moody's, S&P or Fitch).

"*Ratio Debt*" has the meaning set forth under "—Certain Covenants—Limitation on Indebtedness, Disqualified Stock and Preferred Stock."

"*Real Property*" means any estates or interests in real property now owned or hereafter acquired by any Person and the improvements thereto.

"*Receivables Assets*" means accounts receivable (whether now existing or arising in the future) of the Company or any of its Subsidiaries, and all collateral securing such accounts receivable, all contracts and all guarantees or other payment support obligations (including, without limitation, letters of credit, promissory notes or trade credit insurance) in respect of such accounts receivable, proceeds of such accounts receivable and other assets that are customarily transferred or in respect of which security interests are customarily granted in connection with non-recourse asset securitization or factoring transactions involving accounts receivable and any Hedging Obligations entered into by the Company or any such Subsidiary in connection with such accounts receivable.

"*Receivables Fees*" means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees paid to a Person that is not a Restricted Subsidiary in connection with, any Receivables Financing.

"*Receivables Financing*" means any transaction or series of transactions that may be entered into by the Company or any of its Subsidiaries pursuant to which the Company or any of its Subsidiaries may sell, convey or otherwise transfer Receivables Assets to (a) a Receivables Subsidiary (in the case of a transfer by the Company or any of its Subsidiaries), and (b) any other Person (in the case of a transfer by a Receivables Subsidiary).

"*Receivables Repurchase Obligation*" means any obligation of a seller of receivables in a Qualified Receivables Financing to repurchase receivables arising as a result of a breach of a representation, warranty or covenant or otherwise, including as a result of a receivable or portion thereof becoming subject to any asserted defense, dispute, off-set or counterclaim of any kind as a result of any action taken by, any failure to take action by or any other event relating to the seller.

"*Receivables Subsidiary*" means a Restricted Subsidiary of the Company (or another Person formed for the purposes of engaging in a Qualified Receivables Financing with the Company in which the Company or any Subsidiary of the Company makes an Investment and to which the Company or any Subsidiary of the Company transfers Receivables Assets) that engages in no activities other than in connection with the purchase, acquisition and financing of Receivables Assets, all proceeds thereof and all rights (contractual or other), collateral and other assets relating thereto, and any business or activities incidental or related to such business, and which is designated by the Board of Directors of the Company (as provided below) as a Receivables Subsidiary, and:

(a) no portion of the Indebtedness or any other obligations (contingent or otherwise) of which (i) is Guaranteed by the Company or any other Subsidiary of the Company (other than a Receivables Subsidiary) (excluding Guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to Standard Securitization Undertakings), (ii) is recourse to or obligates the Company or any other Subsidiary of the Company (other than a Receivables Subsidiary) in any way other than pursuant to Standard Securitization Undertakings or (iii) subjects any property or asset of the Company or any other Subsidiary of the Company (other than a Receivables Subsidiary), directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to Standard Securitization Undertakings;

(b) with which neither the Company nor any other Subsidiary of the Company (other than a Receivables Subsidiary) has any material contract, agreement, arrangement or understanding other than on terms which the Company reasonably believes to be no less favorable to the Company or such Subsidiary than those that might be obtained at the time from Persons that are not Affiliates of the Company; and

(c) to which neither the Company nor any other Subsidiary of the Company (other than a Receivables Subsidiary) has any obligation to maintain or preserve such entity's financial condition or cause such entity to achieve certain levels of operating results.

Any such designation by the Board of Directors of the Company shall be evidenced to the Trustee by delivering to the Trustee a certified copy of the Board Resolution giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing conditions.

"*Reference Period*" means, at any time of determination, the most recent period of four consecutive fiscal quarters of the Company ended on or prior to such time (taken as one accounting period) in respect of which financial statements for each such quarter or fiscal year are internally available (as determined in good faith by the Company or any direct or indirect parent of the Company).

"*Registrar*" has the meaning set forth under "—Payments on the Notes; Paying Agent and Registrar."

"*Replacement Assets*" means (1) assets that will be used or useful in a Permitted Business, (2) substantially all the assets of a Permitted Business or (3) a majority of the Voting Stock of any Person engaged in a Permitted Business that will become on the date of acquisition thereof a Restricted Subsidiary.

"*Restricted Payment*" has the meaning set forth under "—Certain Covenants—Limitation on Restricted Payments."

"*Restricted Subsidiary*" means any Subsidiary of a Person that is not an Unrestricted Subsidiary of such Person. Unless otherwise indicated in this "Description of Notes," all references to Restricted Subsidiaries shall mean Restricted Subsidiaries of the Company.

"*Revolving Credit Agreement*" means one or more debt facilities or other financing arrangements providing for revolving credit loans and letters of credit, including any notes, mortgages, guarantees, collateral documents, instruments and agreements executed in connection therewith, in each case, with the same or different borrower(s) or issuer(s) and, in each case, as amended, supplemented, modified, extended, restructured, renewed, refinanced, restated, increased (*provided* that such increase in borrowings is permitted under the Indenture), replaced or refunded in whole or in part from time to time and whether by the same or any other agent, lender or investor or group of lenders or investors.

"*S&P*" means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business, or any successor to the rating agency business thereof.

"*Sale and Leaseback Transaction*" means, with respect to any Person, any transaction involving any of the assets or properties of such Person whether now owned or hereafter acquired, whereby such Person sells or otherwise transfers such assets or properties and then or thereafter leases such assets or properties or any part thereof or any other assets or properties, other than leases between the Company and a Restricted Subsidiary of the Company or between Restricted Subsidiaries of the Company, which such Person intends to use for substantially the same purpose or purposes as the assets or properties sold or transferred.

"*SEC*" means the U.S. Securities and Exchange Commission or any governmental authority succeeding to any of its principal functions.

"*Secured Credit Documents*" means, collectively, (i) the Indenture and the Note Guarantees, (ii) each loan agreement, credit agreement, indenture or other agreement entered into by the Company after the Issue Date, if any, pursuant to which the Company or any of its Restricted Subsidiaries will incur Additional Pari Passu Obligations and (iii) each loan agreement, credit agreement, indenture or other agreement entered into by the Company after the Issue Date, if any, pursuant to which the Company or any of its Restricted Subsidiaries will incur Junior Lien Priority Obligations.

"*Secured Indebtedness*" means any Indebtedness secured by a Lien on any assets of the Company or any of the Restricted Subsidiaries.

"*Secured Leverage Ratio*" means, as of any date of determination, the ratio of (1) the aggregate amount of consolidated Secured Indebtedness (or, in the case of Secured Indebtedness issued at less than its principal amount at maturity, the accreted value thereof) of the Company and the Restricted Subsidiaries as of the last day of the Reference Period to (2) Consolidated Cash Flow for the Company for the Reference Period. The Secured Leverage Ratio shall be calculated in a manner consistent with the definition of "Consolidated Leverage Ratio." In the event that the Company shall classify Indebtedness Incurred on the date of determination as secured in part pursuant to clause (5) of the definition of "Permitted Liens" and in part pursuant to one or more other clauses of such definition, any calculation of consolidated Secured Indebtedness for purposes of clause (1) of this definition on such date (but not in respect of any future calculation following such date) shall not include any such Indebtedness (and shall not give effect to any repayment, repurchase, redemption, defeasance or other acquisition, retirement or discharge of Indebtedness from the proceeds thereof) to the extent secured pursuant to any such other clause of the definition of "Permitted Liens."

"*Secured Parties*" means Pari Passu Secured Parties and/or Junior Lien Priority Secured Parties.

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

"*Security Agreement*" means that certain Security Agreement, dated as of the Issue Date, made by and among the Company, the Guarantors and the Collateral Agent, as amended, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms.

"*Security Documents*" means the Security Agreement, and all other pledge agreements, collateral assignments, mortgages, collateral agency agreements, deeds of trust or other grants or transfers for security executed and delivered by the Company, or a Guarantor (or purporting to create) a Lien upon the Collateral as contemplated by the Indenture or the Security Agreement, in each case, as amended, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms.

"*Series*" means (a) with respect to the Pari Passu Secured Parties, (i) the Holders of the Notes, the Collateral Agent and the Trustee (in their capacities as such, the "*Notes Secured Parties*") and (ii) the Additional Pari Passu Secured Parties that become subject to the Intercreditor Agreement after the Issue Date and that are represented by a common Authorized Representative; and (b) with respect to any Pari Passu Obligations, the Notes Obligations and the Additional Pari Passu Obligations incurred pursuant to any applicable agreement, which are to be represented under the Intercreditor Agreement by a common Authorized Representative.

"*Significant Subsidiary*" means with respect to any Person, any Restricted Subsidiary that would constitute a "significant subsidiary" within the meaning of Article 1 of Regulation S-X of the Securities Act.

"*Specified Event of Default*" means an Event of Default pursuant to clause (1), (2) or (8) of the definition of "Event of Default."

"*Standard Securitization Undertakings*" means representations, warranties, covenants, indemnities and guarantees of performance entered into by the Company or any Subsidiary of the Company which the Company or a direct or indirect parent of the Company has determined in good faith to be customary in a Receivables Financing, including, without limitation, those relating to the servicing of the assets of a Receivables Subsidiary, it being understood that any Receivables Repurchase Obligation shall be deemed to be a Standard Securitization Undertaking.

"*Stated Maturity*" means, with respect to any Indebtedness, the date on which the final payment of principal of such Indebtedness was scheduled to be paid in the original documentation governing such Indebtedness, and will not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

"*Subordinated Indebtedness*" means (a) with respect to the Company, any Indebtedness of the Company which is by its terms subordinated in right of payment to the Notes, and (b) with respect to any Guarantor, any Indebtedness of such Guarantor which is by its terms subordinated in right of payment to its Guarantee. No Indebtedness shall be considered to be subordinated in right of payment by virtue of being unsecured or by virtue of being secured on a junior priority basis.

"*Subsidiary*" means, with respect to any Person:

(1) a corporation a majority of whose Voting Stock is at the time owned or controlled, directly or indirectly, by such Person, one or more Subsidiaries thereof or such Person and one or more Subsidiaries thereof; and

(2) any other Person (other than a corporation), including, without limitation, a partnership, limited liability company, business trust or joint venture, in which such Person, one or more Subsidiaries thereof or such Person and one or more Subsidiaries thereof, directly or indirectly, at the date of determination thereof, has at least a majority ownership interest entitled to vote in the election of directors, managers or trustees thereof (or other Person performing similar functions).

"*Suspended Covenants*" has the meaning set forth under "—Certain Covenants."

"*Suspension Period*" has the meaning set forth under "—Certain Covenants."

"*Testing Party*" has the meaning set forth under "—Measuring Compliance."

"*Transaction Commitment Date*" has the meaning set forth under "—Measuring Compliance."

"*Treasury Rate*" means the yield to maturity as of the date of the relevant redemption notice of the most recently issued United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (or is obtainable from the Federal Reserve System's Data Download Program as of the date of such H.15) that has become publicly available at least two Business Days prior to such 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 the date of such redemption notice to February 1, 2026; *provided, however*, that if the period from such date to February 1, 2026 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.

"*Trustee*" has the meaning set forth under the recitals of "Description of Notes."

"*U.S. dollar-equivalent*" means with respect to any monetary amount in a currency other than U.S. dollars, at any time for determination thereof, the amount of U.S. dollars obtained by converting such foreign currency involved in such computation into U.S. dollars at the spot rate for the purchase of U.S. dollars with the applicable foreign currency as published in The Wall Street Journal in the "Exchange Rates" column under the heading "Currency Trading" on the date two Business Days prior to such determination.

"*Unrestricted Subsidiary*" means any Subsidiary of the Company that is designated by the Board of Directors of the Company or any direct or indirect parent of the Company as an Unrestricted Subsidiary pursuant to a Board Resolution in compliance with the covenant described above under "—Certain Covenants—Designation of Restricted and Unrestricted Subsidiaries," and any Subsidiary of such Subsidiary.

"*Voting Stock*" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"*Weighted Average Life to Maturity*" means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing (1) the sum of the products of (x) the number of years (calculated to the nearest one-twelfth) from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock and (y) the amount of such payment by (2) the sum of all such payments.