

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549

**FORM 10-K**

**Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the fiscal year ended March 31, 2019

OR

**Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the transition period from

to

Commission file number 001-34003

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**110 West 44th Street**  
**New York, New York**  
(Address of principal executive offices)

**51-0350842**  
(I.R.S. Employer  
Identification No.)

**10036**  
(Zip Code)

Registrant's Telephone Number, Including Area Code: **(646) 536-2842**

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

Title of each class	Trading symbol	Name of each exchange on which registered
Common Stock, \$.01 par value	TTWO	NASDAQ Global Select Market

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

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

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

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company  Emerging growth company

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

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the Registrant's most recently completed second fiscal quarter was approximately \$15,537,179,720.

As of May 2, 2019, there were 112,541,501 shares of the Registrant's Common Stock outstanding, net of treasury stock.

**Documents Incorporated by Reference:**

Portions of the registrant's definitive proxy statement for the 2019 Annual Meeting of Stockholders are incorporated by reference into Part III herein.

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## CAUTIONARY NOTE ABOUT FORWARD-LOOKING STATEMENTS

*The statements contained herein which are not historical facts are considered forward-looking statements under federal securities laws and may be identified by words such as "anticipates," "believes," "estimates," "expects," "intends," "plans," "potential," "predicts," "projects," "seeks," "should," "will," or words of similar meaning and include, but are not limited to, statements regarding the outlook for the Take-Two Interactive Software, Inc.'s ("Take-Two," the "Company," "we," "us," or similar pronouns) future business and financial performance. Such forward-looking statements are based on the current beliefs of our management as well as assumptions made by and information currently available to them, which are subject to inherent uncertainties, risks, and changes in circumstances that are difficult to predict. Actual outcomes and results may vary materially from these forward-looking statements based on a variety of risks and uncertainties including, but not limited to, those discussed under the heading "Risk Factors" included in Part I, Item 1A herein. All forward-looking statements are qualified by these cautionary statements and speak only as of the date they are made. The Company undertakes no obligation to update any forward-looking statement, whether as a result of new information, future events or otherwise.*

### PART I

#### Item 1. Business

##### General

We are a leading developer, publisher and marketer of interactive entertainment for consumers around the globe. We develop and publish products principally through our two wholly-owned labels Rockstar Games and 2K, as well as our Private Division label and Social Point, a leading developer of mobile games. Our products are currently designed for console gaming systems such as the Sony Computer Entertainment, Inc. ("Sony") PlayStation®4 ("PS4"), Microsoft Corporation ("Microsoft") Xbox One® ("Xbox One"), the Nintendo Switch, and personal computers ("PC"), including smartphones and tablets. We deliver our products through physical retail, digital download, online platforms, and cloud streaming services.

We were incorporated under the laws of the State of Delaware in 1993 and are headquartered in New York, New York with approximately 4,894 employees globally. Our website address is [www.take2games.com](http://www.take2games.com). We make all of our filings with the Securities and Exchange Commission ("SEC") available free of charge on our website under the caption "Corporate—SEC Filings." Included in these filings are our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports, which are available as soon as reasonably practicable after we electronically file or furnish such materials with the SEC pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934.

Our website and the information contained therein or connected thereto are not intended to be incorporated into this Annual Report on Form 10-K.

The SEC maintains a website that contains annual, quarterly and current reports, proxy and information statements and other information that issuers (including the Company) file electronically with the SEC. The SEC's website is [www.sec.gov](http://www.sec.gov).

##### Strategy

**Overview.** We endeavor to be the most creative, innovative and efficient company in our industry. Our core strategy is to capitalize on the popularity of video games by developing and publishing high-quality interactive entertainment experiences across a range of genres. We focus on building compelling entertainment franchises by publishing a select number of titles for which we can create sequels and incremental revenue opportunities through virtual currency, add-on content, and in-game purchases. Most of our intellectual property is internally owned and developed, which we believe best positions us financially and competitively. We have established a portfolio of proprietary software content for the major hardware platforms in a wide range of genres, including action, adventure, family/casual, racing, role-playing, shooter, sports and strategy, which we distribute worldwide. We believe that our commitment to creativity and innovation is a distinguishing strength, enabling us to differentiate our products in the marketplace by combining advanced technology with compelling storylines and characters that provide unique gameplay experiences for consumers. We have created, acquired or licensed a group of highly recognizable brands to match the broad consumer demographics that we serve, ranging from adults to children and game enthusiasts to casual gamers. Another cornerstone of our strategy is to support the success of our products in the marketplace through innovative marketing programs and global distribution on platforms and through channels that are relevant to our target audience.

**Support World-Class Creative Teams.** Creativity and innovation remain the core tenets of our organization, and are the lifeblood of our ongoing success. We have 3,784 employees working in game development in studios around the world - including some of the most well-known names in the business. The creative teams at our labels, Rockstar Games and 2K, are renowned for their consistent ability to deliver games that set new benchmarks for excellence. In addition, our Social Point studio further enhances our development capabilities with a track record of producing multiple hits in the free-to-play mobile sector. Whether expanding our portfolio of franchises, launching new intellectual property, or providing innovative ways for audiences

to remain captivated and engaged, we prioritize producing the highest quality entertainment experiences. We support our teams by focusing on talent retention and acquisition, and our label structure enables us to target distinct market segments and opportunities.

***Focus on Core Strength of Producing Select, High Quality Titles.*** We focus on publishing a select number of high-quality titles based on internally-owned and developed intellectual properties. We currently own the intellectual property rights to 26 proprietary brands. In addition, we will selectively develop titles based on licensed properties, including sports, and also publish externally developed titles.

We use a product investment review process to evaluate potential titles for investment, to review existing titles in development, and to assess titles after release to measure their performance in the market and the return on our investment. We apply this process to all of our products, whether internally or externally developed. The product investment review process includes reviews of each project at various stages of development by our executive management team and the senior management of our publishing labels, and includes coordination between our sales and marketing personnel before the launch of titles. This disciplined approach to product investment is expected to enhance the competitiveness and profitability of our titles.

We develop our products using a combination of our internal development teams and external development resources acting under contract with us. We typically select external developers based on their track record and expertise in developing products in the same category or genre. One developer will generally produce the same game for multiple platforms and will also produce sequels to the original game. We believe that selecting and using development resources in this manner allows us to leverage the particular expertise of our internal and external development resources, which we believe increases the quality of our products.

***Leverage Emerging Technologies, Platforms, and Distribution Channels, Including Digitally Delivered Content.*** Interactive entertainment played online and on mobile platforms, including tablets and smartphones, represents exciting opportunities to enhance our growth and profitability. In addition, the interactive entertainment software industry is delivering a growing amount of content for traditional platforms through digital download. We provide a variety of digitally delivered products and offerings, which typically have a higher gross margin than physically delivered products. Virtually all of our titles that are available through retailers as packaged goods products are also available through direct digital download (from websites we own and third-party websites). We aim to drive ongoing engagement and incremental revenue from recurrent consumer spending on our titles through virtual currency, add-on content, and in-game purchases. We also publish an expanding variety of titles for tablets and smartphones, which are delivered to consumers through digital download. We will continue to invest in emerging opportunities in mobile and online gameplay, particularly for our wholly-owned franchises, as well as as downloadable content and microtransactions that enable gamers to pay to download additional content to enhance their game playing experience.

***Expand International Business.*** The global market for interactive entertainment continues to grow and we seek to increase our presence internationally, particularly in Asia, Eastern Europe and Latin America. We are continuing to execute on our growth initiatives in Asia, where our strategy is to broaden the distribution of our existing products and expand our online gaming presence, especially in China and South Korea. We are a direct publisher in Japan and South Korea. While we retain title to all intellectual property, under license agreements local publishers are responsible for localization of software content, distribution, and marketing of the products in their respective local markets. We intend to continue to build upon our licensing relationships and also continue to expand on finished goods distribution strategies to grow our international business.

## **Our Businesses**

Our revenue is primarily derived from the sale of internally developed software titles and software titles developed by third parties. Operating margins are dependent in part upon our ability to release new, commercially successful software products and to manage effectively their development and marketing costs. We have internal development studios located in Australia, Canada, China, Czech Republic, Hungary, India, Spain, the United Kingdom, and the United States. As of March 31, 2019, we had a research and development staff of 3,784 employees with the technical capabilities to develop software titles for all major consoles, PCs, and mobile platforms in multiple languages and territories.

Agreements with third-party developers generally give us exclusive publishing and marketing rights and require us to make development payments, pay royalties based on product sales, and to satisfy other conditions. Development payments for software titles are typically recoupable against royalties otherwise due to developers based on software sales. Our agreements with third-party developers generally provide us with the right to monitor development efforts and to cease making development payments if specified development milestones are not satisfied. We also regularly monitor the level of development payments in light of the expected sales for the related titles.

We continue to engage in evolving business models such as online gaming, virtual currency, add-on content, and in-game purchases, and we expect to continue to generate incremental revenue opportunities from these opportunities.

**Rockstar Games.** Software titles published by our Rockstar Games label are primarily internally developed. We expect Rockstar Games, our wholly-owned publisher of the *Grand Theft Auto*, *Max Payne*, *Midnight Club*, *Red Dead Redemption*, and other popular franchises, to continue to be a leader in the action / adventure product category and to create groundbreaking entertainment by leveraging our existing titles as well as by developing new brands. We believe that Rockstar has established a uniquely original, popular cultural phenomenon with its *Grand Theft Auto* series, which is the interactive entertainment industry's most iconic and critically acclaimed brand and has sold-in over 290 million units. The latest installment, *Grand Theft Auto V*, has sold-in over 105 million units worldwide and includes access to *Grand Theft Auto Online*. On October 26, 2018, Rockstar Games launched *Red Dead Redemption 2*, which has been a critical and commercial success that set numerous entertainment industry records. Rockstar Games is also well known for developing brands in other genres, including the *LA Noire*, *Bully*, and *Manhunt* franchises. Rockstar Games continues to expand on our established franchises by developing sequels, offering downloadable episodes, content, and virtual currency, and releasing titles for smartphones and tablets.

**2K.** Our 2K label has published a variety of popular entertainment properties across all key platforms and across a range of genres including shooter, action, role-playing, strategy, sports and family/casual entertainment. We expect 2K to continue to develop new, successful franchises in the future. 2K's internally owned and developed franchises include the critically acclaimed, multi-million unit selling *BioShock*, *Mafia*, *Sid Meier's Civilization*, and *XCOM* series. 2K also publishes externally developed franchises such as *Borderlands*. 2K's realistic sports simulation titles include our flagship *NBA 2K* series, which continues to be the top-ranked NBA basketball video game, the *WWE 2K* professional wrestling series, and the *Golf Club*.

**Private Division.** Our Private Division label is dedicated to bringing titles from top independent developers to market. Private Division has announced that it will publish three upcoming titles based on new IP from renowned industry creative talent, including *The Outer Worlds* and *Ancestors: The Humankind Odyssey*, both of which are planned for release in calendar 2019. Additionally, Private Division is the publisher of *Kerbal Space Program*.

**Social Point.** Social Point develops and publishes popular free-to-play mobile games that deliver high quality, deeply-engaging entertainment experiences, including its two most successful games, *Dragon City* and *Monster Legends*. In addition, Social Point has a robust development pipeline with a number of exciting games planned for launch in the coming years.

We are continuing to execute on our growth initiatives in Asia, where our strategy is to broaden the distribution of our existing products and establish an online gaming presence, especially in China and South Korea. 2K has secured a multi-year license from the NBA to develop an online version of our NBA simulation game in China, Taiwan, South Korea and Southeast Asia. *NBA 2K Online*, our free-to-play NBA simulation game, which was co-developed by 2K and Tencent, is the top online PC sports game in China with over 45 million registered users. On August 2, 2018, 2K and Tencent commercially launched *NBA 2K Online 2* in China. The title is based on the console edition of *NBA 2K* and includes an array of new features.

In February 2017, we expanded our relationship with the NBA through the creation of the NBA 2K League. Launched in May 2018, this groundbreaking competitive gaming league is jointly owned by us and the NBA and consists of teams operated by actual NBA franchises. The NBA 2K League follows a professional sports league format: the inaugural season included head-to-head competition throughout a regular season, followed by a bracketed playoff system and a finals match-up that was held in August 2018. The NBA 2K League began its second season on April 2, 2019.

## Intellectual Property

Our business is highly dependent on the creation, acquisition, licensing and protection of intellectual property. The intellectual property rights we have created or acquired for our internally-owned portfolio of brands include *BioShock*, *Bully*, *Carnival Games*, *Dragon City*, *Grand Theft Auto*, *Kerbal Space Program*, *L.A. Noire*, *Mafia*, *Manhunt*, *Max Payne*, *Midnight Club*, *Monster Legends*, *Red Dead*, *Sid Meier's Civilization*, and *XCOM*. We believe that content ownership facilitates our internal product development efforts and maximizes profit potential. We attempt to protect our software and production techniques under copyright, patent, trademark and trade secret laws as well as through contractual restrictions on disclosure, copying and distribution.

We also enter into content license agreements, such as those with sports leagues, players associations, music labels and musicians. These licenses are typically limited to use of the licensed rights in products for specific time periods. In addition, we license and include console manufacturer technology in our products on a non-exclusive basis, which allows our games to be played on their respective hardware systems.

## Manufacturing

Sony and Microsoft either manufacture or control the selection of approved manufacturers of software products sold for use on their respective hardware platforms. We place a purchase order for the manufacture of our products with Sony or Microsoft's approved replicator and then send software code and a prototype of the product to the manufacturer, together with related artwork, user instructions, warranty information, brochures and packaging designs for approval, defect testing and manufacture. Games are generally shipped within two to three weeks of receipt of our purchase order and all materials.

Production of PC software is performed by third-party vendors in accordance with our specifications and includes DVD-ROM pressing, assembly of components, printing of packaging and user manuals and shipping of finished goods. We send software code and a prototype of a title, together with related artwork, user instructions, warranty information, brochures and packaging designs to the manufacturers. Games are generally shipped within two weeks of receipt of our manufacturing order.

Our software titles typically carry a 90-day limited warranty.

### **Arrangements with Platform Manufacturers**

We have entered into license agreements with Sony and Microsoft to develop and publish software in Asia, Australia, Europe, North America, and certain Latin American, Middle Eastern, and African countries. We are not required to obtain any licenses from hardware manufacturers to develop titles for the PC.

*Sony.* Effective March 23, 2017, we entered into a PlayStation Global Developer and Publisher Agreement with Sony Computer Entertainment, Inc. and certain of its affiliates, pursuant to which Sony granted us the right and license to develop, publish, have manufactured, market, advertise, distribute and sell PlayStation compatible products for all PlayStation systems, including the PS4. The agreement requires us to submit products to Sony for approval and for us to make royalty payments to Sony based on the number of units manufactured or revenue from downloaded content. In addition, products for PlayStation systems are required to be manufactured by Sony approved manufacturers.

The term of the agreement expires on March 31, 2020, with automatic one-year renewal terms thereafter. Sony may terminate the agreement for any or no reason upon thirty days' notice. The agreement may also be terminated by Sony immediately in the event of a breach by us or our bankruptcy or insolvency. Upon expiration or termination of the agreement, we have certain rights to sell off existing inventories.

*Microsoft.* Under the terms of the license agreements that we have entered into with Microsoft Corporation and its affiliates, Microsoft granted us the right and license to develop, publish, have manufactured, market, advertise, distribute and sell Xbox compatible products for the Xbox One and Xbox 360. The agreements require us to submit products to Microsoft for approval and for us to make royalty payments to Microsoft based on the number of units manufactured or revenue from downloaded content. In addition, products for the Xbox One and Xbox 360 are required to be manufactured by Microsoft approved manufacturers.

The term of the Xbox One license agreement expires on March 31, 2020 and the term of the Xbox 360 license agreement expires on March 31, 2020, each agreement with automatic one-year renewal terms thereafter. The Xbox One and Xbox 360 license agreements may be terminated by Microsoft immediately in the event of a breach by us, and the Xbox One licensee agreement may also be terminated by Microsoft immediately in the event of our bankruptcy or insolvency. Upon expiration or termination of the Xbox One and Xbox 360 license agreements, we have certain rights to sell off existing inventories.

### **Sales**

We sell software titles both physically and digitally in the United States, EMEA, Canada, Latin America, and Asia Pacific through direct relationships with large retail customers and third-party distributors. Our top customers include, among others, GameStop Corporation, Microsoft, Sony, Steam, and Wal-Mart. We have sales operations in Australia, Canada, France, Germany, Japan, the Netherlands, New Zealand, Singapore, South Korea, Spain, Taiwan, the United Kingdom, and the United States.

We are dependent on a limited number of customers that account for a significant portion of our sales. Sales to our five largest customers during the fiscal year ended March 31, 2019 accounted for 70.1% of our net revenue, with Sony, Microsoft, and Gamestop each accounting for more than 10.0% of our net revenue during the fiscal year ended March 31, 2019.

We also distribute our titles, add-on content, and in-game purchases through direct digital download via the Internet to consoles and PCs, including smartphones and tablets. We view digital distribution as an important growth opportunity for our industry and Company; however, we expect that packaged goods and traditional retailers will continue to be a significant channel for the sale of our products for the foreseeable future.

### **Marketing**

Our marketing and promotional efforts are intended to maximize consumer interest in our titles, promote brand name recognition of our franchises, assist retailers and properly position, package and merchandise our titles. From time to time, we also receive marketing support from hardware manufacturers in connection with their own promotional efforts.

We market titles by:

- Implementing public relations campaigns, using print and online advertising, television, radio spots and outdoor advertising. We believe that we label and market our products in accordance with the applicable principles and

guidelines of the Entertainment Software Rating Board, or the ESRB, an independent self-regulatory body that assigns ratings and enforces advertising guidelines for the interactive software industry.

- Satisfying certain shelf life and sales requirements under our agreements with hardware manufacturers in order to qualify for Sony's Greatest Hits Programs and Microsoft's Platinum Hits Program. In connection with these programs, we receive manufacturing discounts from Sony and Microsoft.
- Stimulating continued sales by reducing the wholesale prices of our products to retailers at various times during the life of a product. Price protection may occur at any time in a product's life cycle, but typically occurs three to nine months after a product's initial launch. In certain international markets, we also provide volume rebates to stimulate continued product sales. Price protection, sales returns and other allowances amounted to \$81.7 million, \$59.7 million and \$127.7 million during the fiscal years ended March 31, 2019, 2018 and 2017, respectively.
- Employing various other marketing methods designed to promote consumer awareness, including social media, in-store promotions and point-of-purchase displays, direct mail, co-operative advertising, attendance at trade shows as well as product sampling through demonstration software distributed via the Internet or the digital online services.

As of March 31, 2019, we had a sales and marketing staff of 510 people.

## **Product Procurement**

We procure products from suppliers principally using standard purchase orders based on our assessment of market demand. We carry inventory quantities that we believe are necessary to provide rapid response to retailer orders. We utilize electronic data interchange with many of our customers to enhance the efficiency of placing and shipping orders and receiving payments.

## **Competition**

In our business, we compete with:

- Companies that range in size and cost structure from very small with limited resources to very large with greater financial, marketing and technical personnel and other resources than ours, including Activision Blizzard, Inc., Electronic Arts Inc., and Ubisoft Entertainment S.A.
- Sony and Microsoft for the sale of interactive entertainment software. Each of these competitors is a large developer and marketer of software for their own platforms and has the financial resources to withstand significant price competition and to implement extensive advertising campaigns.
- Other software, hardware, entertainment and media for limited retail shelf space and promotional resources. The competition is intense among an increasing number of newly introduced entertainment software titles and hardware for adequate levels of shelf space and promotional support.
- Other forms of entertainment such as motion pictures, television and audio, social networking, online computer programs, mobile games, and other forms of entertainment, which may be less expensive or provide other advantages to consumers.

Competition in the entertainment software industry is based on innovation, features, playability, product quality, brand name recognition, compatibility with popular platforms, access to distribution channels, price, marketing, and customer service. Our business is driven by hit titles, which require increasing budgets for development and marketing. Competition for our titles is influenced by the timing of competitive product releases and the similarity of such products to our titles and may result in loss of shelf space or a reduction in sell-through of our titles at retail stores.

## ***Trends and Factors Affecting our Business***

*Product Release Schedule.* Our financial results are affected by the timing of our product releases and the commercial success of those titles. Our *Grand Theft Auto* products in particular have historically accounted for a substantial portion of our revenue. Sales of our *Grand Theft Auto* products generated 25.7% of our net revenue for the fiscal year ended March 31, 2019. In October 2018, we released *Red Dead Redemption 2*. Sales of *Red Dead Redemption* products generated 32.1% of our net revenue for the fiscal year ended March 31, 2019. The timing of our *Grand Theft Auto* or *Red Dead Redemption* product releases may affect our financial performance on a quarterly and annual basis.

*Economic Environment and Retailer Performance.* We continue to monitor economic conditions that may unfavorably affect our businesses, such as deteriorating consumer demand, pricing pressure on our products, credit quality of our receivables, and foreign currency exchange rates. Our business is dependent upon a limited number of customers who account for a significant portion of our revenue. Our five largest customers accounted for 70.1%, 70.7% and 65.5% of net revenue during the fiscal years



ended March 31, 2019, 2018 and 2017, respectively. As of March 31, 2019 and 2018, five customers comprised 66.6% and 65.4% of our gross accounts receivable, respectively, with our significant customers (those that individually comprised more than 10% of our gross accounts receivable balance) accounting for 55.8% and 53.2% of such balance at March 31, 2019 and 2018, respectively. We had two customers who accounted for 40.1% and 15.7% of our gross accounts receivable as of March 31, 2019 and two customers who accounted for 37.7% and 15.5% of our gross accounts receivable as of March 31, 2018. We did not have any additional customers that exceeded 10% of our gross accounts receivable as of March 31, 2019 and 2018. The economic environment has affected our customers in the past and may do so in the future. Bankruptcies or consolidations of our large retail customers could seriously hurt our business, due to uncollectible accounts receivables and the concentration of purchasing power among the remaining large retailers. Certain of our large customers sell used copies of our games, which may negatively affect our business by reducing demand for new copies of our games. While the downloadable content that we now offer for certain of our titles may serve to reduce used game sales, we expect used game sales to continue to adversely affect our business.

*Hardware Platforms.* We derive most of our revenue from the sale of products made for video game consoles manufactured by third parties, such as Sony's PS4 and Microsoft's Xbox One, which comprised 83.7% of our net revenue by product platform for the fiscal year ended March 31, 2019. The success of our business is dependent upon the consumer acceptance of these platforms and the continued growth in the installed base of these platforms. When new hardware platforms are introduced, demand for software based on older platforms typically declines, which may negatively affect our business during the market transition to the new consoles. We continually monitor console hardware sales. We manage our product delivery on each current and future platform in a manner we believe to be most effective to maximize our revenue opportunities and achieve the desired return on our investments in product development. Accordingly, our strategy is to focus our development efforts on a select number of the highest quality titles for these platforms, while also expanding our offerings for emerging platforms such as tablets, smartphones and online games.

*Online Content and Digital Distribution.* The interactive entertainment software industry is delivering a growing amount of content through digital online delivery methods. We provide a variety of online delivered products and offerings. Virtually all of our titles that are available through retailers as packaged goods products are also available through direct digital download (from websites we own and others owned by third parties). In addition, we aim to drive ongoing engagement and incremental revenue from recurrent consumer spending on our titles through virtual currency, add-on content, and in-game purchases. We also publish an expanding variety of titles for tablets and smartphones, which are delivered to consumers through digital download. Note 2 to the Consolidated Financial Statements, "Revenue from Contracts with Customers," discloses that net revenue from digital online channels comprised 63.0% of our net revenue by distribution channel for the fiscal year ended March 31, 2019. We expect online delivery of games and game offerings to become an increasing part of our business over the long-term.

## **International Operations**

International sales are a significant part of our business. For the fiscal years ended March 31, 2019, 2018 and 2017, 46.5%, 41.3% and 43.9%, respectively, of our net revenue was earned outside the United States. We are continuing to execute on our growth initiatives in Asia, where our strategy is to broaden the distribution of our existing products and expand our online gaming presence, especially in China and South Korea. We are subject to risks inherent in foreign trade, including increased credit risks, tariffs and duties, fluctuations in foreign currency exchange rates, shipping delays and international political, regulatory and economic developments, all of which can have a significant effect on our operating results. See Notes 1 and 19 to the Consolidated Financial Statements.

## **Segment and Geographic Information**

See Notes 1, 2, and 9 to the Consolidated Financial Statements.

## **Employees**

As of March 31, 2019, we had 4,894 full-time employees, of which 2,597 were employed outside of the United States. None of our regular employees is subject to collective bargaining agreements. We consider our relations with employees to be satisfactory.

## Item 1A. Risk Factors

*Our business is subject to many risks and uncertainties, which may affect our future financial performance. Because of the risks and uncertainties described below, as well as other factors affecting our operating results and financial condition, past financial performance should not be considered to be a reliable indicator of future performance and our business and financial performance could be harmed and the market value of our securities could decline.*

### **Risks relating to our business**

***We are dependent on the future success of our Grand Theft Auto products and we must continue to publish "hit" titles or sequels to such "hit" titles in order to compete successfully in our industry.***

*Grand Theft Auto and certain of our other titles, such as Red Dead Redemption or NBA 2K, are "hit" products and have historically accounted for a substantial portion of our revenue. Grand Theft Auto products contributed 25.7% of our net revenue for the fiscal year ended March 31, 2019 and the five best-selling franchises (including Grand Theft Auto), which may change year over year, in the aggregate accounted for 91.8% of our net revenue for the fiscal year ended March 31, 2019. If we fail to continue to develop and sell new commercially successful "hit" titles or sequels to such "hit" titles or experience any delays in product releases or disruptions following the commercial release of our "hit" titles or their sequels, our revenue and profits may decrease substantially and we may incur losses. In addition, competition in our industry is intense and a relatively small number of hit titles account for a large portion of total revenue in our industry. Hit products offered by our competitors may take a larger share of consumer spending than we anticipate, which could cause revenue generated from our products to fall below our expectations. If our competitors develop more successful products or services at lower price points or based on payment models perceived as offering better value, or if we do not continue to develop consistently high quality and well-received products and services, our revenue and profitability may decline. In addition, both the online and mobile games marketplaces are characterized by frequent product introductions, relatively low barriers to entry, and new and evolving business methods, technologies and platforms for development. Widespread consumer adoption of these new platforms for games and other technological advances in and/or new business or payment models in online or mobile game offerings could negatively affect our sales of console and traditional PC products before we have an opportunity to develop profitable businesses in such markets.*

***We are subject to product development risks which could result in delays and additional costs, and we must adapt to changes in software technologies.***

*We depend on our internal development studios and third-party software developers to develop new interactive entertainment software within anticipated release schedules and cost projections. The development cycle for new titles generally ranges from 12 months for annual sports releases, to multiple years for certain of our top-selling titles. Therefore, our development costs can be substantial. If we or our third party developers experience unanticipated development delays, financial difficulties or additional costs, we may not be able to release titles according to our schedule and at budgeted costs. There can be no assurance that our products will be sufficiently successful so that we can recoup these costs or make a profit on these products.*

*Additionally, in order to stay competitive, our internal development studios must anticipate and adapt to rapid technological changes affecting software development. Any inability to respond to technological advances and implement new technologies could render our products obsolete or less marketable. Further, the failure to pursue the development of new technology, platforms, or business models that obtain meaningful commercial success in a timely manner may negatively affect our business, resulting in increased production costs and more strenuous competition.*

***The inability of our products to achieve significant market acceptance, delays in product releases or disruptions following the commercial release of our products may have a material adverse effect on our business, financial condition and operating results.***

*New products may not achieve significant market acceptance, generate sufficient sales or be introduced in a timely manner to permit us to recover development, manufacturing and marketing costs associated with these products. The life cycle of a title generally involves a relatively high level of sales during the first few months after introduction followed by a rapid decline in sales. Because sales associated with an initial product launch generally constitute a high percentage of the total sales associated with the life of a product, delays in product releases or disruptions following the commercial release of one or more new products could have a material adverse effect on our business, financial condition and operating results and cause our operating results to be materially different from our expectations.*

***Our business is subject to our ability to develop commercially successful products for the current video game platforms.***

We derive most of our revenue from the sale of products made for video game platforms manufactured by third parties, such as Sony's PS4 and Microsoft's Xbox One, which comprised 83.7% of our net revenue by product platform for the fiscal year ended March 31, 2019. The success of our business is subject to the continued popularity of these platforms and our ability to develop commercially successful products for these platforms.

***We may experience declines or fluctuations in the recurring portion of our business.***

Our business model includes revenue that we deem recurring in nature, such as revenue from our annualized titles and associated services, and ongoing mobile businesses. While we have been able to forecast the revenue from these areas of our business with greater certainty than for new offerings, we cannot provide assurances that consumers will purchase these games and services on a consistent basis. Furthermore, we may cease to offer games and services that we previously had deemed to be recurring in nature. Consumer purchases of our games and services may decline or fluctuate as a result of a number of factors, including their level of satisfaction with our games and services, our ability to improve and innovate our annualized titles, our ability to adapt our games and services to new platforms, outages and disruptions of online services, the games and services offered by our competitors, our marketing and advertising efforts or declines in consumer activity generally as a result of economic downturns, among others. Any decline or fluctuation in the recurring portion of our business may have a negative impact on our financial and operating results.

***Connectivity issues could affect our ability to sell and provide online services for our products and could affect our profitability.***

We rely upon third-party digital delivery platforms, such as Microsoft's Xbox Live, PlayStation Network, Steam and other third-party service providers, to provide connectivity from the consumer to our digital products and our online services. Connectivity issues could prevent customers from accessing this content and our ability to successfully market and sell our products could be adversely affected. In addition, we could experience similar issues related to services we host on our internal servers. Such issues also could affect our ability to provide online services and could have a material adverse effect on our business, financial condition and operating results.

***Our business could be adversely affected if our consumer data protection measures are not seen as adequate or there are breaches of our security measures or unintended disclosures of our consumer data.***

We are collecting and storing consumer information, including personal information. We take measures to protect our consumer data from unauthorized access or disclosure. It is possible that our security controls over consumer data may not prevent the improper access or disclosure of personally identifiable information. In addition, due to the high profile nature of our products, we may draw a disproportionately higher amount of attention and attempts to breach our security controls than companies with lower profile products. A security breach that leads to disclosure of consumer account information (including personally identifiable information) could harm our reputation, compel us to comply with disparate breach notification laws in various jurisdictions and otherwise subject us to liability under laws that protect personal data, resulting in increased costs or loss of revenue. A resulting perception that our products or services do not adequately protect the privacy of personal information could result in a loss of current or potential consumers and business partners. In addition, if any of our business partners experience a security breach that leads to disclosure of consumer account information, our reputation could be harmed, resulting in loss of revenue.

In addition, certain of our products are online enabled. The ability of our products to offer online functionality, and our ability to offer content through a video game platform's digital distribution channel, is dependent upon the continued operation and security of such platform's online network. These third party networks, as well as our own internal systems and websites, and the security measures related thereto may be breached as a result of third-party action, including intentional misconduct by computer hackers, employee error, malfeasance or otherwise, and result in someone obtaining unauthorized access to our customers' data or our data, including our intellectual property and other confidential business information, or our information technology systems. Because the techniques used to obtain unauthorized access, or to sabotage systems, change frequently and generally are not recognized until launched against a target, we may be unable to anticipate these techniques or to implement adequate preventative measures. If an actual or perceived breach of our security occurs, we may lose business, suffer irreparable damage to our reputation, and/or incur significant costs and expenses relating to the investigation and possible litigation of claims relating to such event.

***The laws and regulations concerning data privacy and certain other aspects of our business are continually evolving. Failure to comply with these laws and regulations could harm our business.***

We are subject to certain privacy and data protection laws, including those in the United States ("U.S."). Certain activities related to processing the personal data of European Union ("E.U.") individuals are conducted by our United Kingdom ("U.K.")-based data controller or our local entities in the E.U. The U.S. Children's Online Privacy Protection Act also regulates the collection, use, and disclosure of personal information from children under 13 years of age. Failure to comply with privacy laws, data protection

laws, or age restrictions may increase our costs, subject us to expensive and distracting government investigations, and result in substantial fines.

Privacy and data protection laws are rapidly changing and likely will continue to do so for the foreseeable future, which could have an impact on our approach to operating and marketing our games. For example, the E.U. General Data Protection Regulation ("GDPR") became effective on May 25, 2018, replacing Data Protection Directive 95/46/EC. GDPR applies to us because we receive and process the personal data of individuals in the E.U., and we maintain certain local entities in the E.U. responsible for processing personal data. GDPR contains significant penalties for non-compliance. Countries in the E.U. are still enacting national laws that correspond to certain portions of the GDPR. In the U.S., the State of California enacted the California Consumer Privacy Act ("CCPA") on June 28, 2018. The CCPA will become effective on January 1, 2020 and will apply to processing of personal data of California residents. However, several proposed amendments to the CCPA are still being considered by the California legislature. The U.S. government, including the Federal Trade Commission and the Department of Commerce, also continue to review the need for greater or different regulation over the collection of personal information and information about consumer behavior on the Internet and on mobile devices. Various government and consumer agencies worldwide have also called for new regulation and changes in industry practices.

Player use of our games is subject to our privacy policy, end user license agreements ("EULA"), and terms of service. If we fail to comply with our posted privacy policy, EULA, or terms of service, or if we fail to comply with existing privacy-related or data protection laws and regulations, it could result in proceedings or litigation against us by governmental authorities or others, which could result in fines or judgments against us, damage our reputation, affect our financial condition and harm our business. If regulators, the media, or consumers raise any concerns about our privacy and data protection or consumer protection practices, even if unfounded, this could also result in fines or judgments against us, damage our reputation, negatively affect our financial condition, and damage our business.

It is possible that a number of laws and regulations may be adopted or construed to apply to us in the U.S. and elsewhere that could restrict the interactive entertainment industry, including player privacy, advertising, taxation, content suitability, copyright, distribution and antitrust. Furthermore, the growth and development of electronic commerce and virtual goods may prompt calls for more stringent consumer protection laws that may impose additional burdens on companies such as ours conducting business through digital sales. Any such changes would require us to devote legal and other resources to address such regulation. For example, existing laws or new laws regarding the regulation of currency, banking institutions and unclaimed property may be interpreted to cover virtual currency or virtual goods. If that were to occur we may be required to seek licenses, authorizations or approvals from relevant regulators, the granting of which may be dependent on us meeting certain capital and other requirements and we may be subject to additional regulation and oversight, all of which could significantly increase our operating costs. Changes in current laws or regulations or the imposition of new laws and regulations in the U.S. or elsewhere regarding these activities may lessen the growth of the interactive entertainment industry and impair our business, financial condition, and operating results.

Although we have structured and operate our skill tournaments with applicable laws in mind, including any applicable laws relating to gambling, and believe that playing these games does not constitute gambling, our skill tournaments could in the future become subject to gambling-related rules and regulations and expose us to civil and criminal penalties. We also sometimes offer consumers of our online and casual games various types of contests and promotional opportunities. We are subject to laws in a number of jurisdictions concerning the operation and offering of such activities and games, many of which are still evolving and could be interpreted in ways that could harm our business. Further, some of our online games and other services include random digital item mechanics, which may become subject to regulations in various jurisdictions. If these were to occur, we might be required to seek licenses, authorizations, or approvals from relevant regulators, the granting of which may be dependent on us meeting certain capital and other requirements, and we may be subject to additional regulation and oversight, such as reporting to regulators, all of which could significantly increase our operating costs. Changes in current laws or regulations or the imposition of new laws and regulations in the U.S., Europe, or elsewhere regarding these activities may lessen the growth of casual game services and impair our business. Also, existing laws or new laws regarding the marketing of in-game or in-app purchases, regulation of currency, banking institutions, unclaimed property, or money laundering may be interpreted to cover virtual currency or goods.

***Security breaches involving the source code for our products or other sensitive and proprietary information could adversely affect our business.***

We securely store the source code for our interactive entertainment software products as it is created. A breach, whether physical, electronic or otherwise, of the systems on which such source code and other sensitive data are stored could lead to damage or piracy of our software. In addition, certain parties with whom we do business are given access to our sensitive and proprietary information in order to provide services and support our team. These third parties may misappropriate our information and engage in unauthorized use of it. If we are subject to data security breaches, we may have a loss in sales or increased costs arising from the restoration or implementation of additional security measures which could materially and adversely affect our business, financial condition and operating results. Any theft and/or unauthorized use or publication of our trade secrets and other confidential business information as a result of such an event could adversely affect our competitive position, reputation, brand, and future sales of our

products. Our business could be subject to significant disruption, and we could suffer monetary and other losses and reputational harm, in the event of such incidents and claims.

***We rely on complex information technology systems and networks to operate our business. Any significant system or network disruption could have a negative impact on our business.***

We rely on the efficient and uninterrupted operation of complex information technology systems and networks, some of which are within Take-Two and some of which are managed and/or hosted by third-party providers. All information technology systems and networks are potentially vulnerable to damage or interruption from a variety of sources, including but not limited to cyber-attacks, computer viruses, malicious software, security breach, energy blackouts, natural disasters, terrorism, war and telecommunication failures. We may also face sophisticated attacks, referred to as advanced persistent threats, which are cyber-attacks aimed at compromising our intellectual property and other commercially-sensitive information, such as the source code and game assets for our software or confidential customer or employee information, which remain undetected for prolonged periods of time. Information technology system or network failure or security breach could negatively affect our business continuity, operations and financial results. These risks extend to the networks and e-commerce sites of console platform providers and other partners who sell and host our content online. Along with our partners, we have expended, and expect to continue to expend, financial and operational resources to implement certain systems, processes and technologies to guard against cyber risks and to help protect our data and systems. However, the techniques used to exploit, disable, damage, disrupt or gain access to our networks, our products and services, supporting technological infrastructure, intellectual property and other assets change frequently, continue to evolve in sophistication and volume, and often are not detected for long periods of time. Our systems, processes and technologies, and the systems, processes and technologies of our business partners or our third-party service providers, may not be adequate against all eventualities. In addition, the costs to respond to, mitigate, and/or notify affected parties of cyber-attacks and other security vulnerabilities are significant. Any failure to prevent or mitigate security breaches or cyber risks, or detect or respond adequately to a security breach or cyber risk, could result in a loss of anticipated revenue, interruptions to our products and services, cause us to incur significant remediation and notification costs, degrade the user experience, cause consumers to lose confidence in our products and services and significant legal and financial costs.

Successful exploitation of our systems can have other negative effects upon the products, services and user experience we offer. In particular, the virtual economies that we have established in many of our games are subject to abuse, exploitation and other forms of fraudulent activity that can negatively affect our business. Virtual economies involve the use of virtual currency and/or virtual assets that can be used or redeemed by a player within a particular game or service. The abuse or exploitation of our virtual economies include the illegitimate generation and sale of virtual items in black markets. These kinds of activities and the steps that we take to address these issues may result in a loss of anticipated revenue, interfere with players' enjoyment of a balanced game environment and cause reputational harm.

***Our efforts to expand into new products and services may subject us to additional risks.***

In recent years, we have invested in emerging opportunities in interactive entertainment played on mobile platforms, including tablets and smartphones, and online platforms, including social networks. We have also grown our product offerings that are available through digital download, including virtual currency, through our existing franchises such as *Grand Theft Auto* and *NBA 2K* as well as through product offerings by Social Point and other mobile product offerings. We are actively investing to capitalize on these trends in order to diversify our product mix, reduce our operating risks, and increase our revenue. There are risks and uncertainties associated with these efforts, particularly in instances where the markets are not fully developed. There is no assurance that we will be able to attract a sufficiently large number of customers or recover costs incurred for developing and marketing any of these new products or services. For example, we may offer games that do not attract sufficient purchases of virtual currency, which may cause our investments into this product space, such as through our acquisition of Social Point, to fail to realize the expected benefits. External factors, such as competitive alternatives and shifting market preferences, may also have an impact on the successful implementation of any new products or services. Failure to successfully manage these risks in the development and implementation of new products or services could have a material adverse effect on our business, financial condition and operating results.

***We depend on our key management and product development personnel.***

Our continued success will depend to a significant extent on our senior management team and our relationship with ZelnickMedia Corporation ("ZelnickMedia"). Our Executive Chairman/Chief Executive Officer and President are partners of ZelnickMedia. We are also highly dependent on the expertise, skills and knowledge of certain of our Rockstar employees and other key creative personnel responsible for content creation and development of our *Grand Theft Auto* titles and titles based on other brands. We may not be able to continue to retain these personnel at current compensation levels, or at all.

The loss of the services of our executive officers, ZelnickMedia, our key Rockstar employees or other key creative personnel could significantly harm our business. In addition, if one or more key employees were to join a competitor or form a competing

company, we may lose additional personnel, experience material interruptions in product development, delays in bringing products to market and difficulties in our relationships with licensors, suppliers and customers, which would significantly harm our business. Failure to continue to attract and retain other qualified management and creative personnel could adversely affect our business and prospects.

***Declines in consumer spending and other adverse changes in the economy could have a material adverse effect on our business, financial condition and operating results.***

Most of our products involve discretionary spending on the part of consumers. We believe that consumer spending is influenced by general economic conditions and the availability of discretionary income. This makes our products particularly sensitive to general economic conditions and economic cycles as consumers are generally more willing to make discretionary purchases, including purchases of products like ours, during periods in which favorable economic conditions prevail. Adverse economic conditions such as a prolonged U.S. or international general economic downturn, including periods of increased inflation, unemployment levels, tax rates, interest rates, energy prices or declining consumer confidence could also reduce consumer spending. Reduced consumer spending has and may in the future continue to result in reduced demand for our products and may also require increased selling and promotional expenses, which has had and may continue to have an adverse effect on our business, financial condition and operating results. In addition, during periods of relative economic weakness, our consolidated credit risk, reflecting our counterparty dealings with distributors, customers, capital providers and others may increase, perhaps materially so. Furthermore, uncertainty and adverse changes in the economy could also increase the risk of material losses on our investments, increase costs associated with developing and publishing our products, increase the cost and availability of sources of financing, and increase our exposure to material losses from bad debts, any of which could have a material adverse effect on our business, financial condition and operating results. If economic conditions worsen, our business, financial condition and operating results could be adversely affected.

***Changes in our tax rates or exposure to additional tax liabilities could adversely affect our earnings and financial condition.***

On December 22, 2017, the U.S. enacted comprehensive tax legislation commonly referred to as the Tax Cuts and Jobs Act (herein referred to as the "Act"). The Act made broad and complex changes to the U.S. tax code that could materially affect us. The Act reduced the U.S. federal corporate income tax rate from 35% to 21%, effective January 1, 2018 and required companies to pay a one-time transition tax on the previously untaxed earnings of certain foreign subsidiaries. In addition, the Act made other changes that may affect us, including but not limited to (1) a Base Erosion Anti-abuse Tax ("BEAT"), which is a new minimum tax, (2) generally eliminating U.S. federal income taxes on dividends from foreign subsidiaries, (3) a new provision that taxes global intangible low-taxed income ("GILTI"), (4) the repeal of the domestic production activity deduction, and (5) other base broadening provisions.

We have completed accounting for the income tax effects of the Act. See Note 15 - Income Tax to our Consolidated Financial Statements for further information. We are continuing to evaluate the impact of the Act on us. It is possible that these changes could have an adverse impact on our effective tax rate, tax payments, financial condition, or results of operations. The new tax law is complex and additional interpretive guidance may be issued that could affect the interpretations and assumptions we have made, as well as actions we may take as a result of the Act.

We are a multinational corporation with operations in the U.S. and various other jurisdictions around the world. Accordingly, we are subject to tax in the U.S. and in various other jurisdictions. Significant judgment is required in determining our worldwide provision for income taxes, and, in the ordinary course of business, there are many transactions and calculations where the ultimate tax determination is uncertain. We are required to estimate future taxes. Although we currently believe our tax estimates are reasonable, the estimation process is inherently uncertain, and such estimates are not binding on tax authorities. Further, our effective tax rate could be adversely affected by a variety of factors, including changes in the business, the mix of earnings in countries with differing statutory tax rates, changes in tax elections, and changes in applicable tax laws. Additionally, tax determinations are regularly subject to audit by tax authorities, and developments in those audits could adversely affect our income tax provision. Should the ultimate tax liability exceed estimates, our income tax provision and net income or loss could be materially affected.

In addition, numerous countries are evaluating their existing tax laws due in part to recommendations made by the Organization for Economic Co-operation and Development's ("OECD's") Base Erosion and Profit Shifting ("BEPS") project. Although we cannot predict whether, or in what form, any legislation based on such proposals may be adopted by the countries in which we do business, future tax reform based on such proposals may increase the amount of taxes we pay and adversely affect our operating results and cash flows.

Historically, we recorded a valuation allowance against most of our U.S. deferred tax assets. In the current fiscal year, we released our valuation allowance on certain U.S. deferred tax assets as a result of a determination that it was more-likely-than-not that such deferred tax assets would be realized. Our determination took into account the successful launch of *Red Dead Redemption 2* during

the year along with our recent positive trend of earnings. We will continue to evaluate our ability to realize our U.S. deferred tax assets. If future evidence suggests that any changes are required to reflect the amount of our U.S. deferred tax asset that is more-likely-than-not to be realized, we will adjust our valuation allowance as needed in the appropriate period.

On June 21, 2018, the U.S. Supreme Court issued its decision in *South Dakota v. Wayfair*, which overturned previous case law that precluded states from requiring retailers to collect and remit sales tax on sales made to in-state customers unless the retailer had a physical presence in the state. Although this case is limited to sales tax collection obligations, we continue to monitor the potential impact of this decision on our state income tax footprint.

The ultimate amount of tax payable in a given financial statement period may be materially affected by sudden or unforeseen changes in tax laws, changes in the mix and level of earnings by taxing jurisdictions, or changes to existing accounting rules or regulations. For example, on July 24, 2018, the Ninth Circuit Court of Appeals issued an opinion in *Altera Corp. v. Commissioner* requiring related parties in an intercompany cost-sharing arrangement to share expenses related to stock compensation. On August 7, 2018, the opinion was withdrawn to allow time for a reconstituted panel to confer. We will continue to monitor ongoing developments and the final opinion could have a material impact on our Consolidated Financial Statements.

We earn a significant amount of our operating income and continue to hold a significant portion of our cash outside the U.S. Our current intention is to reinvest indefinitely earnings of our foreign subsidiaries, and therefore we have not recorded any tax liabilities associated with the repatriation of foreign earnings.

We are also required to pay taxes other than income taxes, such as payroll, sales, use, value-added, net worth, property, and goods and services taxes, in both the U.S. and foreign jurisdictions. We are regularly under examination by tax authorities with respect to these non-income taxes. There can be no assurance that the outcomes from these examinations, changes in our business or changes in applicable tax law or interpretations will not have an adverse effect on our net income or loss and financial condition.

***Our quarterly operating results are dependent on the release of "hit" titles and are highly seasonal which may cause our quarterly operating results to fluctuate significantly.***

We have experienced and may continue to experience wide fluctuations in quarterly operating results. The release of a "hit" title typically leads to a high level of sales during the first few months after introduction followed by a rapid decline in sales. In addition, the interactive entertainment industry is highly seasonal, with sales typically higher during the fourth calendar quarter, due primarily to increased demand for games during the holiday season. Demand for and sales of titles in our *NBA 2K* series are also seasonal in that they are typically released just prior to the start of the NBA season. If a key event or sports season to which our product release schedule is tied were to be delayed or canceled, our sales might also suffer disproportionately. Our failure or inability to produce "hit" titles or introduce products on a timely basis to meet seasonal fluctuations in demand could adversely affect our business, financial condition and operating results. The uncertainties associated with software development, manufacturing lead times, production delays and the approval process for products by hardware manufacturers and other licensors make it difficult to predict the quarter in which our products will ship and therefore may cause us to fail to meet financial expectations.

***Price protection granted to our customers and returns of our published titles by our customers may adversely affect our operating results.***

We are exposed to the risk of price protection and product returns with respect to our customers. Our distribution arrangements with customers generally do not give them the right to return titles to us or to cancel firm orders. However, we sometimes accept product returns from our distribution customers for stock balancing and negotiate accommodations for customers, which include credits and returns, when demand for specific products falls below expectations. We grant price protection and accept returns in connection with our publishing arrangements and revenue is recognized after deducting estimated price protection and reserves for returns. While we believe that we can reliably estimate future price protection and returns, if price protection and return rates for our products exceed our reserves, our revenue could decline, which could have a material adverse effect on our business, financial condition and operating results.

***Increased sales of used video game products could lower our sales.***

Certain of our larger customers sell used video games, which are generally priced lower than new video games. If our customers increase their sales of used video games, it could negatively affect our sales of new video games and have an adverse influence on our business, financial condition and operating results.

***A limited number of customers account for a significant portion of our sales. The loss of a principal customer or other significant business relationship could seriously hurt our business.***

A substantial portion of our product sales are made to a limited number of customers. Sales to our five largest customers during the fiscal year ended March 31, 2019 accounted for 70.1% of our net revenue, with Sony, Microsoft, and Gamestop each accounting for more than 10.0% of our net revenue during the fiscal year ended March 31, 2019. Our sales are made primarily pursuant to

purchase orders without long-term agreements or other commitments, and our customers may terminate their relationship with us at any time. Certain of our customers may decline to carry products containing mature content. The loss of our relationships with principal customers or a decline in sales to principal customers, including as a result of a product being rated "AO" (age 18 and over) could materially adversely affect our business, financial condition and operating results. In addition, if our customers are subject to pricing pressures due to deteriorating demand for our products, competitive pressure, or otherwise, such customers may pass those pricing pressures through to us, which could materially adversely affect our business, financial condition and operating results.

Furthermore, our customers may also be placed into bankruptcy, become insolvent or be liquidated due to economic downturns, global contractions of credit or for other factors. Bankruptcies or consolidations of certain large retail customers could seriously hurt our business, including as a result of uncollectible accounts receivable from such customers and the concentration of purchasing power among remaining large retailers. In addition, our results of operations may be adversely affected if certain of our customers who purchase on credit terms are no longer eligible to purchase on such terms due to their financial distress, which may reduce the quantity of products they demand from us.

***If our marketing and advertising efforts fail to resonate with consumers, our business, financial condition and operating results could be adversely affected.***

Our products are marketed worldwide through a diverse spectrum of advertising and promotional programs such as television and online advertising, social media advertising, print advertising, retail merchandising, website development and event sponsorship. Our ability to sell our products and services is dependent in part on the success of these programs. If the marketing for our products and services fails to resonate with consumers, particularly during the holiday season or other key selling periods, or if advertising rates or other media placement costs increase, these factors could have a material adverse influence on our business, financial condition and operating results.

***The interactive entertainment software industry is highly competitive.***

We compete for both licenses to properties and the sale of interactive entertainment software with Sony and Microsoft, each of which is a large developer and marketer of software for its own platforms. We also compete with game publishers, such as Activision Blizzard, Inc. and Electronic Arts Inc. and Ubisoft Entertainment S.A. As our business is dependent upon our ability to develop hit titles, which require increasing budgets for development and marketing, the availability of significant financial resources has become a major competitive factor in developing and marketing software games. Some of our competitors have greater financial, technical, personnel and other resources than we do and are able to finance larger budgets for development and marketing and make higher offers to licensors and developers for commercially desirable properties. Our titles also compete with other forms of entertainment, such as social media and casual games, in addition to motion pictures, television and audio and video products featuring similar themes, online computer programs and other entertainment, which may be less expensive or provide other advantages to consumers.

A number of software publishers who compete with us have developed and commercialized or are currently developing online games for use by consumers over the Internet. If technological advances significantly increase the availability of online games and if consumer acceptance of online gaming grows substantially, it could result in a decline in our platform-based software sales and negatively affect sales of such products.

***Increased competition for limited shelf space and promotional support from retailers could affect the success of our business and require us to incur greater expenses to market our titles.***

While digital sales are increasingly important to our business, for physical sales, retailers have limited shelf space and promotional resources and competition is intense among newly introduced interactive entertainment software titles for adequate levels of shelf space and promotional support. Competition for retail shelf space is expected to continue to increase, which may require us to increase our marketing expenditures to maintain desirable sales levels of our titles. Competitors with more extensive lines and more popular titles may have greater bargaining power with retailers. Accordingly, we may not be able, or we may have to pay more than our competitors, to achieve similar levels of promotional support and shelf space.

***The increasing importance of digital sales to our business exposes us to the risks of that business model, including greater competition.***

The proportion of our revenues derived from digital content delivery, as compared to traditional retail sales, may continue to increase. The increased importance of digital content delivery in our industry increases our potential competition, as the minimum capital needed to produce and publish a digitally delivered game is significantly less than that needed to produce and publish one that is purchased through retail distribution and is played on a game console. This will also require us to dedicate capital to developing and implementing alternative marketing strategies, which we may not do successfully. If either occurs, we may be unable to effectively market and distribute our products, which could materially adversely affect our business, financial condition



and operating results. In addition, a continuing shift to digital delivery could result in a deprioritization of our products by traditional retailers. The increasing importance of digital sales to our business could also result in increasing issues with our digital distribution process, including difficulties our distributors have with collecting from consumers and any associated rebates we would owe.

***Our business is partly dependent on our ability to enter into successful software development arrangements with third parties.***

Our success depends on our ability to continually identify and develop new titles on a timely basis. We rely on third-party software developers for the development of some of our titles. Quality third-party developers are continually in high demand. Software developers who have developed titles for us in the past may not be available to develop software for us in the future. Due to the limited number of third-party software developers and the limited control that we exercise over them, these developers may not be able to complete titles for us on a timely basis or within acceptable quality standards, if at all. We have entered into agreements with third parties to acquire the rights to publish and distribute interactive entertainment software as well as to use licensed intellectual properties in our titles. These agreements typically require us to make development payments, pay royalties and satisfy other conditions. Our development payments may not be sufficient to permit developers to develop new software successfully, which could result in material delays and significantly increase our costs to bring particular products to market. Software development costs, promotion and marketing expenses and royalties payable to software developers and third-party licensors have increased significantly in recent years and reduce potential profits derived from sales of our software. Future sales of our titles may not be sufficient to recover development payments and advances to software developers and licensors, and we may not have adequate financial and other resources to satisfy our contractual commitments to such developers. If we fail to satisfy our obligations under agreements with third-party developers and licensors, the agreements may be terminated or modified in ways that are burdensome to us, and have a material adverse effect on our business, financial condition and operating results.

***We cannot publish our titles without the approval of hardware licensors that are also our competitors.***

We are required to obtain licenses from certain of our competitors, including Sony and Microsoft, to develop and publish titles for their respective hardware platforms. Our existing platform licenses require that we obtain approval for the publication of new titles on a title-by-title basis. As a result, the number of titles we are able to publish for these hardware platforms, our ability to manage the timing of the release of these titles and, accordingly, our net revenue from titles for these hardware platforms, may be limited. If a licensor chooses not to renew or extend our license agreement at the end of its current term, or if a licensor were to terminate our license for any reason or does not approve one or more of our titles, we may be unable to publish that title as well as additional titles for that licensor's platform. Termination of any such agreements or disapproval of titles could seriously hurt our business and prospects. We may be unable to continue to enter into license agreements for certain current generation platforms on satisfactory terms or at all. Failure to enter into any such agreement could also seriously hurt our business.

***We rely on a limited number of channel partners some of whom influence the fee structures for online distribution of our games on their platforms.***

We rely on a limited number of channel partners, some of whom have retained the right to change the fee structures for online distribution of both paid content and free content (including patches and corrections) that we license to them for distribution on their platforms. Such channel partners' ability to set or influence royalty rates may increase costs, which could negatively affect our operating margins. We may be unable to distribute our content in a cost-effective or profitable manner through such distribution channel, which could adversely affect our business, financial condition and operating results.

Outside of fee arrangements, our agreements with our channel partners sometimes give them significant control over other aspects of the distribution of our products and services that we develop for their platform. If our channel partners establish terms that restrict our offerings through their channels, or significantly affect the financial terms on which these products or services are offered to our customers, we may be unable to distribute our product offerings through them or be forced to do so on a materially worse financial or business terms.

***We may not be able to adequately adjust our cost structure in a timely fashion in response to a sudden decrease in demand.***

In the event of a significant decline in revenue, we may not be able to dispose of facilities, reduce personnel or make other changes to our cost structure without disruption to our operations or without significant termination and exit costs. Management may not be able to implement such actions in a timely manner, if at all, to offset an immediate shortfall in revenue and profit. Moreover, reducing costs may impair our ability to produce and develop software titles at sufficient levels in the future.

***We use open source software in connection with certain of our games and services, which may pose particular risks to our proprietary software, products, and services in a manner that could have a negative impact on our business.***

We use open source software in connection with certain of our games and the services we offer. Some open source software licenses require users who distribute open source software as part of their software to publicly disclose all or part of the source code to such software or make available any derivative works of the open source code on unfavorable terms or at no cost. The terms of

various open source licenses have not been interpreted by courts, and there is a risk that such licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our use of the open source software. Were it determined that our use was not in compliance with a particular license, we may be required to release our proprietary source code, pay damages for breach of contract, re-engineer our games, discontinue distribution in the event re-engineering cannot be accomplished on a timely basis or take other remedial action that may divert resources away from our game development efforts, any of which could harm our business.

***We depend on servers and Internet bandwidth to operate our games and digital services with online features. If we were to lose server capacity or lack sufficient Internet bandwidth for any reason, our business could suffer.***

We rely on data servers, including those owned or controlled by third parties, to enable our customers to download our games and other downloadable content, and to operate our online games and other products with online functionality. Events such as limited hardware failure, any broad-based catastrophic server malfunction, a significant intrusion by hackers that circumvents security measures, or a failure of disaster recovery services would likely interrupt the functionality of our games with online services and could result in a loss of sales for games and related services. An extended interruption of service could materially adversely affect our business, financial condition and operating results.

We expect a significant portion of our games to be on-line enabled in the future, and therefore we must project our future server needs and make advance purchases of servers or server capacity to accommodate expected business demands. If we underestimate the amount of server capacity our business requires or if our business were to grow more quickly than expected, our consumers may experience service problems, such as slow or interrupted gaming access. Insufficient server capacity may result in decreased sales, a loss of our consumer base and adverse consequences to our reputation. Conversely, if we overestimate the amount of server capacity required by our business, we may incur additional operating costs.

Because of the potential importance of our online business to our revenues and results of operations, our ability to access adequate Internet bandwidth and online computational resources to support our business is critical. If the price of either such resource increases, we may not be able to increase our prices or subscriber levels to compensate for such costs, which could materially adversely affect our business, financial condition and operating results.

***We submit our products for rating by the Entertainment Software Rating Board ("ESRB") in the United States and other voluntary or government ratings organizations in foreign countries. Failure to obtain a target rating for certain of our products could negatively affect our ability to distribute and sell those games, as could the re-rating of a game for any reason.***

We voluntarily submit our game products to the ESRB, a U.S.-based non-profit and independent ratings organization. The ESRB system provides consumers with information about game content using a rating symbol that generally suggests the appropriate player age group and specific content descriptors, such as graphic violence, profanity or sexually explicit material. The ESRB may impose significant penalties on game publishers for violations of its rules related to rating or marketing games, including revocation of a rating or monetary fines. Other countries require voluntary or government backed ratings as prerequisites for product sales. In some instances, we may have to modify our products in order to market them under the target rating, which could delay or disrupt the release of our products. In addition, some of our titles may not be sold at all or without extensive edits in certain countries, such as Germany.

In the U.S., if the ESRB rates a game as "AO" (age 18 and older), platform licensors may not certify the game and retailers may refuse to sell it. In addition, some consumers have reacted to re-ratings or controversial game content by refusing to purchase such games, demanding refunds for games that they had already purchased, and refraining from buying other games published by us. Many of our Rockstar titles and certain of our 2K titles have been rated "M" (age 17 and older) by the ESRB. If we are unable to obtain "M" ratings and instead receive "AO" ratings on future versions of those or similar titles as a result of changes in the ESRB's ratings standards or for other reasons, including the adoption of legislation in this area, our business and prospects could be negatively affected. If any of our games are re-rated by the ESRB or other foreign based ratings organizations, we could be exposed to litigation, administrative fines and penalties and other potential liabilities, and our operating results and financial condition could be significantly affected.

We have implemented processes to comply with the requirements of the ESRB and other ratings organizations and properly display the designated rating symbols and content descriptions. Nonetheless, these processes are subject to human error, circumvention, overriding and reasonable resource constraints. If a video game we published were found to contain undisclosed pertinent content, the ESRB could re-rate a game, retailers could refuse to sell it and demand that we accept the return of any unsold copies or returns from customers, and consumers could refuse to buy it or demand that we refund their money. This could have a material negative affect on our operating results and financial condition. In addition, we may be exposed to litigation, administrative fines and penalties and our reputation could be harmed, which could affect sales of other video games we sell. If any of these consequences were to occur, our business and financial performance could be significantly harmed.

***Content policies adopted by retailers, consumer opposition and litigation could negatively affect sales of our products.***

Retailers may decline to sell interactive entertainment software containing what they judge to be graphic violence or sexually explicit material or other content that they deem inappropriate for their businesses. If retailers decline to sell our products based upon their opinion that they contain objectionable themes, graphic violence or sexually explicit material or other generally objectionable content, or if any of our previously "M" rated series products are rated "AO," we might be required to significantly change or discontinue particular titles or series, which in the case of our best-selling *Grand Theft Auto* titles could seriously affect our business. Consumer advocacy groups have opposed sales of interactive entertainment software containing objectionable themes, violence or sexual material or other objectionable content by pressing for legislation in these areas and by engaging in public demonstrations and media campaigns. Additionally, although lawsuits seeking damages for injuries allegedly suffered by third parties as a result of video games have generally been unsuccessful in the courts, claims of this kind have been asserted against us from time to time and may be asserted and be successful in the future. An increase in the number of lawsuits filed by the families of victims of violence may trigger supplemental governmental scrutiny, damage our reputation, and negatively affect the sale of our products. Further, in 2018, gaming disorder was listed in a version of the World Health Organization's International Classification of Diseases, and some countries have introduced legislation attempting to address this issue. Moreover, the public dialogue concerning interactive entertainment may have an adverse impact on our reputation and our customer's willingness to purchase our products.

***Our results of operations or reputation may be harmed as a result of offensive consumer-created content.***

We are subject to risks associated with the collaborative online features in our games which allow consumers to post narrative comments, in real time, that are visible to other consumers. From time to time, objectionable and offensive consumer content may be posted to a gaming or other site with online chat features or game forums which allow consumers to post comments. We may be subject to lawsuits, governmental regulation or restrictions, and consumer backlash (including decreased sales and harmed reputation), as a result of consumers posting offensive content. We may also be subject to consumer backlash from comments made in response to postings we make on social media sites such as Facebook, YouTube and Twitter.

***We are subject to risks and uncertainties of international trade, including fluctuations in the values of local foreign currencies against the dollar.***

Sales in international markets, primarily in Europe, have accounted for a significant portion of our net revenue. For the fiscal year ended March 31, 2019, 46.5% of our net revenue was earned outside the U.S. We are continuing to execute on our growth initiatives in Asia, where our strategy is to broaden the distribution of our existing products and expand our online gaming presence, especially in China and South Korea. We are subject to risks inherent in foreign trade, including increased credit risks, tariffs and duties, fluctuations in foreign currency exchange rates, shipping delays, and international political, regulatory and economic developments, all of which can have a significant influence on our operating results. Many of our international sales are made in local currencies, which could fluctuate against the dollar. While we may use forward exchange contracts to a limited extent to seek to mitigate foreign currency risk, our operating results could be adversely affected by unfavorable foreign currency fluctuations.

***We face risks from our international operations.***

We are subject to certain risks because of our international operations, particularly as we continue to grow our business and presence in Asia, Latin America and other parts of the world. Changes to and compliance with a variety of foreign laws and regulations may increase our cost of doing business and our inability or failure to obtain required approvals could harm our international and domestic sales. Trade legislation in either the U.S. or other countries, such as a change in the current tariff structures, import/export compliance laws or other trade laws or policies, could adversely affect our ability to sell or to distribute in international markets.

The current U.S. administration has voiced concerns about imports from countries potentially engaging in unfair trade practices, increased tariffs on certain goods imported into the U.S. from those countries, including China and other countries to which we sell products, and raised the possibility of imposing significant additional tariff increases. The announcement of tariffs and proposed tariffs on imported products by the U.S. has triggered actions from certain foreign governments, including China, and may trigger additional actions by those and other foreign governments that could have a negative impact on our business. Further, the enforcement of regulations relating to mobile and other games with an online element in China remains uncertain, and further changes, either in the regulation or their enforcement could have a negative impact on our business in China. In order to operate in China, all games must have regulatory approval. A decision by the Chinese government to revoke its approval for any of our games or to decline to approve any products we desire to sell in China in the future could have a negative impact on our business.

We incur additional legal compliance costs associated with our international operations and could become subject to legal penalties in foreign countries if we do not comply with local laws and regulations which may be substantially different from those in the U.S. In many foreign countries, particularly in those with developing economies, it may be common to engage in business practices that are prohibited by U.S. laws and regulations, such as the Foreign Corrupt Practices Act, and by local laws, such as laws

prohibiting corrupt payments to government officials. Although we implement policies and procedures designed to ensure compliance with these laws, there can be no assurance that all of our employees, contractors and agents, as well as those companies to which we outsource certain of our business operations, including those based in or from countries where practices which violate such laws may be customary, will not take actions in violation of our policies. Any such violation, even if prohibited by our policies, could have a material adverse effect on our business.

On June 23, 2016, the U.K. held a referendum in which voters approved an exit from the E.U., commonly referred to as “Brexit.” On March 29, 2017, the U.K. notified the European Council, in accordance with Article 50 of the Treaty on European Union, of the U.K.’s intention to withdraw from the E.U. As a result, the British government has been negotiating the terms of the U.K.’s future relationship with the E.U. A substantial amount of uncertainty remains regarding the outcome of the ongoing negotiations. We continue to assess and monitor the risks our business is likely to face as a result of Brexit. We are preparing to mitigate those risks with operational and commercial changes to the extent possible and warranted. However, the legal and regulatory landscape remains uncertain, and we have no assurance that such preparations will enable us to avoid a material adverse impact on our business from Brexit.

The effects of Brexit will depend on any agreements the U.K. makes to retain access to the E.U. markets either during a transitional period or more permanently. The measures could potentially disrupt the markets we serve and may cause us to lose customers, distributors and employees. If the U.K. loses access to the single E.U. market and the global trade deals negotiated by the E.U., it could have a detrimental impact on our U.K. growth. Such a decline could also make our doing business in Europe more difficult, which could negatively affect sales to consumers of our products. Without access to the single E.U. market, it may be more challenging and costly to distribute our products in Europe. In addition, Brexit could lead to legal uncertainty and potentially divergent national laws and regulations as the U.K. determines which E.U. laws to replace and replicate. If there are changes to U.K. immigration policy as a result of Brexit, this could affect our employees and their ability to move freely between the E.U. member states for work related matters.

***If we are unable to protect the intellectual property relating to our software, the commercial value of our products will be adversely affected and our competitive position could be harmed.***

We develop proprietary software and have obtained the rights to publish and distribute software developed by third-parties. We attempt to protect our software and production techniques under patent, copyright, trademark and trade secret laws as well as through contractual restrictions on disclosure, copying and distribution. Nonetheless, our software is susceptible to piracy and unauthorized copying, and third parties may potentially exploit or misappropriate our intellectual property and proprietary information, causing significant reputational damage. Unauthorized third parties, for example, may be able to copy or to reverse engineer our software to obtain and use programming or production techniques that we regard as proprietary. Well organized piracy operations have also proliferated in recent years, resulting in the ability to download pirated copies of our software over the Internet. Although we attempt to incorporate protective measures into our software, piracy of our products could negatively affect our future profitability. In addition, “cheating” programs or other unauthorized software tools and modifications that enable consumers to cheat in games harm the experience of players who play fairly and could negatively impact the volume of microtransactions or purchases of downloadable content. Also, vulnerabilities in the design of our applications and of the platforms upon which they run could be discovered after their release. This may lead to lost revenues from paying consumers or increased cost of developing technological measures to respond to these, either of which could negatively affect our business.

***If we infringe on or are alleged to infringe on the intellectual property rights of third parties, our business could be adversely affected.***

As our industry grows, we may be subject to an increasing amount of litigation that is common in the software industry based on allegations of infringement or other alleged violations of patent, copyright and/or trademarks. In addition, we believe that interactive entertainment software will increasingly become the subject of claims that such software infringes on the intellectual property rights of others with both the growth of online functionality and advances in technology, game content and software graphics as games become more realistic. From time to time, we receive notices from third parties or are named in lawsuits by third parties alleging infringement of their proprietary rights. Although we believe that our software and technologies and the software and technologies of third-party developers and publishers with whom we have contractual relations do not and will not infringe or violate proprietary rights of others, it is possible that infringement of proprietary rights of others may occur. Any claims of infringement, with or without merit, could be time consuming, costly and difficult to defend. Moreover, intellectual property litigation or claims could require us to discontinue the distribution of products, obtain a license or redesign our products, which could result in additional substantial costs and material delays.

***Our software is susceptible to errors, which can harm our financial results and reputation.***

The technological advancements of new hardware platforms result in the development of more complex software products. As software products become more complex, the risk of undetected errors in new products increases. We may need to produce and

distribute patches in order to repair such errors, which could be costly and may distract our developers from working on new products. If, despite testing, errors are found in new products or releases after shipments have been made, we may have to consider suspending distribution of defective products or offering refunds, and we could experience a loss of or delay in timely market acceptance, product returns, loss of revenue, increases in costs relating to the repair of such errors and damage to our reputation.

***If we acquire or invest in other businesses, intellectual properties or other assets, we may be unable to integrate them with our business, our financial performance may be impaired and/or we may not realize the anticipated financial and strategic goals for such transactions.***

If appropriate opportunities present themselves, we may acquire or make investments in businesses, intellectual properties and other assets that we believe are strategic. We may not be able to identify, negotiate or finance any future acquisition or investment successfully. Even if we do succeed in acquiring or investing in a business, intellectual property or other asset, such acquisitions and investments involve a number of risks, including:

- retaining key employees and maintaining the key business and customer relationships of the businesses we acquire;
- cultural challenges associated with integrating employees from an acquired company or business into our organization;
- the possibility that the combined company would not achieve the expected benefits, including any anticipated operating and product synergies, of the acquisition as quickly as anticipated or that the costs of, or operational difficulties arising from, an acquisition would be greater than anticipated;
- significant acquisition-related accounting adjustments, particularly relating to an acquired company's deferred revenue, that may cause reported revenue and profits of the combined company to be lower than the sum of their stand-alone revenue and profits;
- significant accounting charges resulting from the completion and integration of a sizable acquisition and increased capital expenditures, including potential impairment charges incurred to write down the carrying amount of intangible assets generated as a result of an acquisition;
- the possibility that significant acquisitions, when not managed cautiously, may result in the over-extension of our existing operating infrastructures, internal controls and information technology systems;
- the possibility that we will not discover important facts during due diligence that could have a material adverse effect on the value of the businesses we acquire, including the possibility that a change of control of a company we acquire triggers a termination of contractual or intellectual property rights important to the operation of its business;
- the need to integrate an acquired company's accounting, management information, human resource and other administrative systems to permit effective management and timely reporting, and the need to implement or remediate controls, procedures and policies appropriate for a public company in an acquired company that, prior to the acquisition, lacked these controls, procedures and policies;
- litigation or other claims in connection with, or inheritance of claims or litigation risks as a result of, an acquisition, including claims from terminated employees, customers or other third-parties; and
- to the extent that we engage in strategic transactions outside of the U.S., we face additional risks, including risks related to integration of operations across different cultures and languages, currency risks and the particular economic, political and regulatory risks associated with specific countries.

Future acquisitions and investments could also involve the issuance of our equity and equity-linked securities (potentially diluting our existing stockholders), the incurrence of debt, contingent liabilities or amortization expenses, write-offs of goodwill, intangibles, or acquired in-process technology, or other increased cash and non-cash expenses such as stock-based compensation. Any of the foregoing factors could harm our financial condition or prevent us from achieving improvements in our financial condition and operating performance that could have otherwise been achieved by us on a stand-alone basis. Our stockholders may not have the opportunity to review, vote on or evaluate future acquisitions or investments.

***Our ability to acquire and maintain licenses to intellectual property, especially for sports titles, affects our revenue and profitability. Competition for these licenses may make them more expensive and increase our costs.***

Certain of our products are based on or incorporate intellectual property owned by others. For example, certain of our 2K products include rights licensed from major sports leagues and players' associations. Similarly, some of our other titles are based on licenses of popular entertainment products. Competition for these licenses is intense. If we are unable to maintain and renew these licenses or obtain additional licenses on reasonable economic terms or with significant commercial value, our revenue and profitability could decline significantly. Competition for these licenses may also increase the advances, guarantees and royalties that we must

pay to the licensor, which could significantly increase our costs and adversely affect our profitability. In addition, on certain intellectual property licenses, we are subject to guaranteed minimum payments, royalties or standards of performance and may not be able to terminate these agreements prior to their stated expiration. If such licensed products do not generate revenues in excess of such minimum guarantees, our profitability will be adversely affected.

***We are subject to contractual covenants which place certain limitations on how we manage our business.***

Our New Credit Agreement (the "New Credit Agreement") may limit our ability to take various actions, including incurring additional debt, paying dividends, repurchasing shares and acquiring or disposing of assets or businesses. In addition, we have granted a security interest in connection with certain compensatory arrangements which limits our ability to incur senior debt in excess of certain amounts. Accordingly, we may be restricted from taking actions that management believes would be desirable and in the best interests of us and our stockholders. Our New Credit Agreement also requires us to satisfy specified financial covenants and comply with other affirmative and negative covenants. A breach of any of the covenants contained in our New Credit Agreement could result in an event of default, which would allow our lenders to pursue various remedies, including accelerating the repayment of any outstanding indebtedness under our New Credit Agreement.

***Our business and products are subject to potential legislation. The adoption of such proposed legislation could limit the retail market for our products.***

Several proposals have been made for federal legislation to regulate our industry. Such proposals seek to prohibit the sale of products containing certain content included in some of our games. If any such proposals are enacted into law, it may limit the potential market for some of our games in the U.S., and adversely affect our business, financial condition and operating results. Other countries, such as Germany, have adopted laws regulating content both in packaged games and those transmitted over the Internet that are stricter than current U.S. laws. In the U.S., proposals have also been made by numerous state legislators to regulate and prohibit the sale of interactive entertainment software products containing certain types of violent or sexual content to under 17 or 18 audiences, such as the State of California's "ultraviolent video games law" that sought to ban the sale or rental of violent video games to minors. While such legislation to date has been enjoined by industry and retail groups or been found unconstitutional, the adoption into law of such legislation in federal and/or in state jurisdictions in which we do significant business could severely limit the retail market for some of our games.

***Change in government regulations relating to the Internet could have a negative impact on our business.***

We rely on our consumers' access to significant levels of Internet bandwidth for the sale and digital delivery of our content and the functionality of our games with online features. Changes in laws or regulations that adversely affect the growth, popularity or use of the Internet, including laws affecting "net neutrality," could decrease the demand for our products and services or increase our cost of doing business. Although certain jurisdictions have implemented laws and regulations intended to prevent Internet service providers from discriminating against particular types of legal traffic on their networks, other jurisdictions may lack such laws and regulations or repeal existing laws or regulations. For example, on December 14, 2017, the Federal Communications Commission voted to repeal net neutrality regulations in the U.S. Given uncertainty around these rules, including changing interpretations, amendments, or repeal, coupled with the potentially significant political and economic power of local Internet service providers and the relatively significant level of Internet bandwidth access our products and services require, we could experience discriminatory or anti-competitive practices that could impede our growth, cause us to incur additional expenses, or otherwise negatively affect our business.

***We may be required to record a significant charge to earnings if our goodwill becomes impaired.***

We are required under U.S. generally accepted accounting principles to review our goodwill for impairment at least annually or more frequently when events or changes in circumstances indicate the carrying value may not be recoverable. Factors that may be considered a change in circumstances, indicating a requirement to reevaluate whether our goodwill continues to be recoverable, include a significant decline in stock price and market capitalization, slower growth rates in our industry or other materially adverse events. We may be required to record a significant charge to earnings in our financial statements during the period in which any impairment of our goodwill is determined. This may adversely affect our operating results.

***Our reported financial results could be adversely affected by the application of existing or future accounting standards to our business as it evolves.***

Our reported financial results are affected by the accounting policies promulgated by the SEC and national accounting standards bodies and the methods, estimates, and judgments that we use in applying our accounting policies. For example, standards regarding revenue recognition have and could further significantly affect the way we account for revenue related to our products and services. We expect that an increasing number of our games will be supported with material post-release activities, such as content updates and online-enabled features, and we could therefore be required to recognize more of the related revenues for those games over

a period of time rather than at the time of sale. Further, as we increase our downloadable content and add new features to our online services, user playing patterns can affect our estimate of the service period may change and we could be required to recognize revenues, and defer related costs, over a shorter or longer period of time than we initially allocated. As we enhance, expand and diversify our business and product offerings, the application of existing or future financial accounting standards, particularly those relating to the way we account for revenue, could have a significant adverse effect on our reported results although not necessarily on our cash flows.

***We are subject to risks related to corporate and social responsibility and reputation.***

Many factors influence our reputation including the perception held by our customers, business partners and other key stakeholders. Our business faces increasing scrutiny related to environmental, social and governance activities. We risk damage to our reputation if we fail to act responsibly in a number of areas, such as diversity and inclusion, environmental stewardship, supply chain management, climate change, workplace conduct, human rights and philanthropy. Any harm to our reputation could impact employee engagement and retention and the willingness of customers and our partners to do business with us, which could have a material adverse effect on our business, results of operations and cash flows.

**Risks relating to our common stock**

For purposes of this section "Risks relating to our common stock," references to "the Company," "we," "our," and "us" refer only to Take-Two Interactive Software, Inc. and not to its subsidiaries.

***Additional issuances or sales of equity securities by us would dilute the ownership of our existing stockholders and could adversely affect the market price of our common stock.***

We may issue equity or equity-based securities in the future in connection with acquisitions or strategic transactions, to adjust our ratio of debt to equity, including through repayment of outstanding debt, to fund expansion of our operations or for other purposes. To the extent we issue additional equity securities, the percentage ownership of our existing stockholders would be reduced. The sale of substantial amounts of our common stock could adversely affect its price. The sale or the availability for sale of a large number of shares of our common stock in the public market could cause the price of our common stock to decline.

***There is no guarantee that we will do additional share repurchases in the future.***

The share repurchase program authorized by the Board of Directors, which authorized the repurchase of up to 14.2 million shares of our common stock and had 3.8 million shares available for repurchase as of the date of this filing, does not obligate us to make any purchases at any specific time or situation. Discontinuing repurchases could adversely affect the price of our common stock. The program may be suspended or discontinued at any time for any reason.

***Our stock price has been volatile and may continue to fluctuate significantly.***

The market price of our common stock historically has been, and we expect will continue to be, subject to significant fluctuations. These fluctuations may be due to factors specific to us including those discussed in the risk factors in this section as well as others not currently known to us or that we currently do not believe are material, to changes in securities analysts' earnings estimates or ratings, to our results or future financial guidance falling below our expectations and analysts' and investors' expectations, to factors affecting the computer, software, entertainment, media or electronics industries, or to national or international economic conditions.

Stock markets, in general, have experienced over the years, and continue to experience significant price and volume fluctuations that have affected market prices for companies such as ours and that may be unrelated or disproportionate to the operating performance of the affected companies. These broad market and industry fluctuations may adversely affect the price of our stock, regardless of our operating performance.

***Delaware law, our charter documents, and provisions of our debt agreements may impede or discourage a takeover, which could cause the market price of our shares to decline.***

We are a Delaware corporation, and the anti-takeover provisions of Delaware law impose various impediments to the ability of a third party to acquire control of us, even if a change in control would be beneficial to our existing stockholders. Our Board of Directors has the power, without stockholder approval, to adopt a stockholder rights plan and/or to designate the terms of one or more series of preferred stock and issue shares of preferred stock. The ability of our Board of Directors to create and issue a new series of preferred stock and certain provisions of Delaware law, our certificate of incorporation and bylaws could impede a merger, takeover or other business combination involving us or discourage a potential acquirer from making a tender offer for our common stock, which, under certain circumstances, could reduce the market price of our common stock and the value of any outstanding notes.

*Our ability to use net operating loss and tax credit carryforwards to reduce future years' taxes could be substantially limited under Internal Revenue Code Sections 382 and 383 if we experience an ownership change as defined in the Internal Revenue Code Section 382.*

Section 382 of the Internal Revenue Code contains rules that limit the ability of a company to use its net operating loss and tax credit carryforwards in years after an ownership change, which is generally defined as any change in ownership of more than 50% of its stock over a three-year testing period. These rules generally operate by focusing on ownership changes among stockholders owning directly or indirectly 5% or more of the stock of a company and/or any change in ownership arising from a new issuance of stock by the company. If, as a result of future transactions involving our common stock, including purchases or sales of stock by 5% stockholders, we undergo cumulative ownership changes which exceed 50% over the testing period, our ability to use our net operating loss and tax credit carryforwards would be subject to additional limitations under Sections 382 and 383.

Generally, if an ownership change occurs, the annual taxable income limitation on the use of net operating loss and tax credit carryforwards is equal to the product of the applicable long-term tax-exempt rate and the value of the company's stock immediately before the ownership change. Depending on the resulting limitation, a portion of our net operating loss and tax credit carryforwards could expire before we would be able to use them.

Our inability to fully utilize any net operating losses or tax credit carryforwards to reduce tax liability in the future could have a material and negative affect on our future financial position and results of operations.

#### **Item 1B. Unresolved Staff Comments**

None.

#### **Item 2. Properties**

Our principal executive offices are located at 110 West 44th Street (also known as 1133 Avenue of the Americas), New York, New York, in approximately 76,000 square feet of space under a lease expiring in December 2032.

We also lease approximately 64,000 square feet of space under a lease expiring in March 2023 at 622 Broadway, New York, New York.

Take-Two Interactive Software Europe Ltd, our wholly-owned subsidiary, leases 12,500 square feet of office space in Windsor, United Kingdom, which expires in January 2022. Rockstar North, our wholly-owned subsidiary, leases 72,000 square feet of office space in Edinburgh, Scotland, which expires in June 2024.

2K corporate offices and two development studios occupy approximately 123,000 square feet of leased office space in Novato, California. The lease expires in June 2023 with respect to approximately 59,000 square feet and July 2025 with respect to approximately 64,000 square feet.

In addition, our other subsidiaries lease office space in Sydney, Australia; Oakville, Canada; Chengdu and Shanghai, China; Bmo, Czech Republic; Paris, France; Munich, Germany; Budapest, Hungary; Bangalore, India; Tokyo, Japan; Breda, Netherlands; Auckland, New Zealand; Singapore; Seoul, South Korea; Madrid and Barcelona, Spain; Lucerne, Switzerland; Taipei, Taiwan; Brighton, London, Lincoln, Leeds, and Oxford, United Kingdom; and, in the United States, Carlsbad, Petaluma, and Moorpark, California; Sparks, Maryland; Andover and Westwood, Massachusetts; Las Vegas, Nevada; Bethpage and New York, New York; and Kirkland, Washington.

For information regarding our lease commitments, see Note 14 to the Consolidated Financial Statements.

#### **Item 3. Legal Proceedings**

We are, or may become, subject to demands and claims (including intellectual property claims) and are involved in routine litigation in the ordinary course of business which we do not believe to be material to our business or financial statements. We have appropriately accrued amounts related to certain of these claims and legal and other proceedings. While it is reasonably possible that a loss may be incurred in excess of the amounts accrued in our financial statements, we believe that such losses, unless otherwise disclosed, would not be material.

On February 7, 2019, all of the previously disclosed lawsuits, claims, and counterclaims that had been pending since April 2016 with Mr. Leslie Benzies, the former president of one of our subsidiaries, were resolved.



**Item 4. Mine Safety Disclosures**

Not applicable.

## PART II

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

#### *Market Information and Holders*

Our common stock trades on the NASDAQ Global Select Market under the symbol "TTWO." The number of record holders of our common stock was 55 as of May 10, 2019.

#### *Dividend Policy*

We have never declared or paid cash dividends. We currently anticipate that all future earnings will be retained to finance the growth of our business and we do not expect to declare or pay any cash dividends in the foreseeable future. The payment of dividends in the future is within the discretion of our Board of Directors and will depend upon future earnings, capital requirements and other relevant factors. Our New Credit Agreement requires us to meet certain incurrence tests prior to paying a dividend. See "Liquidity and Capital Resources" under Item 7 for additional information on our New Credit Agreement.

#### *Securities Authorized for Issuance under Equity Compensation Plans*

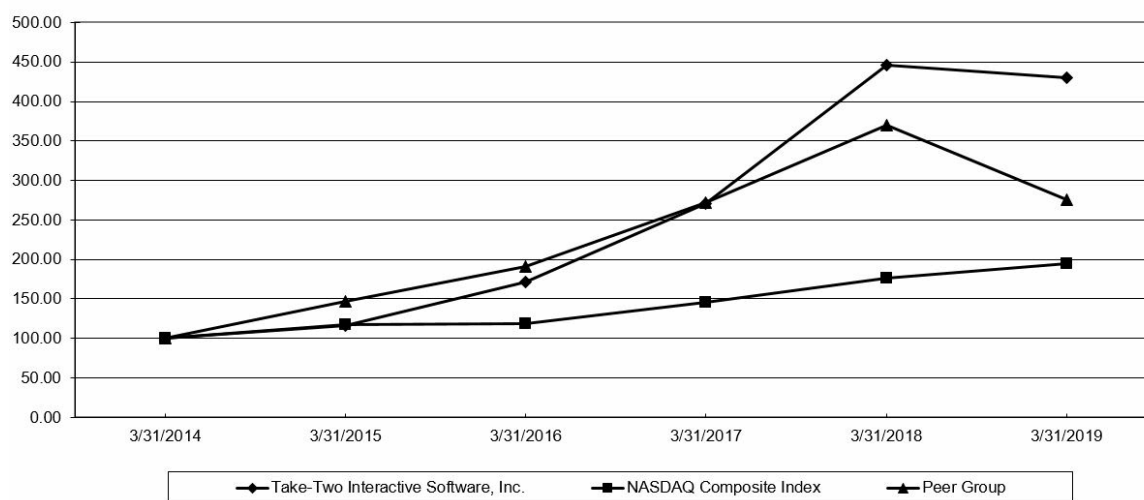
The table setting forth this information is included in Part III—Item 12, Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

#### *Stock Performance Graph*

This performance graph shall not be deemed "filed" for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities under that Section, and shall not be deemed to be incorporated by reference into any filing of the Company under the Exchange Act or the Securities Act of 1933.

The following line graph compares, from March 31, 2014 through March 31, 2019, the cumulative total stockholder return on our common stock with the cumulative total return on the stocks comprising the NASDAQ Composite Index and the stocks comprising a peer group index consisting of Activision Blizzard, Inc. and Electronic Arts Inc. The comparison assumes \$100 was invested on March 31, 2014 in our common stock and in each of the following indices and assumes reinvestment of all cash dividends, if any, paid on such securities. We have not paid any cash dividends and, therefore, our cumulative total return calculation is based solely upon stock price appreciation and not upon reinvestment of cash dividends. Historical stock price is not necessarily indicative of future stock price performance.

**Comparison of 5 Year Cumulative Total Return\***  
**Among Take-Two Interactive Software, Inc., the NASDAQ Composite Index and a Peer Group**  
**March 2019**



\* \$100 invested on March 31, 2014 in stock or index - including reinvestment of dividends.

	March 31,					
	2014	2015	2016	2017	2018	2019
Take-Two Interactive Software, Inc.	\$ 100.00	\$ 116.10	\$ 171.77	\$ 270.27	\$ 445.87	\$ 430.32
NASDAQ Composite Index	100.00	118.12	118.77	145.94	176.24	194.97
Peer Group	100.00	146.81	191.27	272.47	369.88	276.19

*Issuer Purchases of Equity Securities*

**Share Repurchase Program**—Our Board of Directors has authorized the repurchase of up to 14,217,683 shares of our common stock. Under this program, we may purchase shares from time to time through a variety of methods, including in the open market or through privately negotiated transactions, in accordance with applicable securities laws. Repurchases are subject to the availability of stock, prevailing market conditions, the trading price of the stock, our financial performance and other conditions. The program does not require us to repurchase shares and may be suspended or discontinued at any time for any reason.

During the fiscal years ended March 31, 2019, 2018, and 2017 we repurchased 3,715,642, 1,512,557, and 0 shares of our common stock in the open market, respectively, for \$362.4 million, \$154.8 million, and \$0.0 million, respectively, including commissions, as part of the program. As of March 31, 2019, we had repurchased a total of 10,399,529 shares of our common stock under the program, and 3,818,154 shares of our common stock remained available for repurchase under the share repurchase program. All of the repurchased shares are classified as Treasury stock in our Consolidated Balance Sheets.

**Summary Table**—The table below details the share repurchases that were made by us during the three months ended March 31, 2019:

Period	Shares purchased	Average price per share	Total number of shares purchased as part of publicly announced plans or programs	Maximum number of shares that may yet be purchased under the repurchase program
January 1 - 31, 2019	—	—	—	4,937
February 1 - 28, 2019	1,119	\$ 89.53	1,119	3,818
March 1 - 31, 2019	—	\$ —	—	3,818

## Item 6. Selected Financial Data

The following Selected Financial Data should be read in conjunction with our Consolidated Financial Statements and related Notes, and Management's Discussion and Analysis of Financial Condition and Results of Operations included elsewhere in this Annual Report on Form 10-K. (in thousands, except per share data)

STATEMENT OF OPERATIONS DATA:	Fiscal Year Ended March 31,				
	2019 <sup>(1)</sup>	2018	2017	2016	2015
Net revenue	\$ 2,668,394	\$ 1,792,892	\$ 1,779,748	\$ 1,413,698	\$ 1,082,938
Gross profit	1,144,750	894,581	756,789	599,825	288,071
Net income (loss)	\$ 333,837	\$ 173,533	\$ 67,303	\$ (8,302)	\$ (279,470)
Earnings per share:					
Basic:					
Earnings (loss) per share:	\$ 2.95	\$ 1.57	\$ 0.73	\$ (0.10)	\$ (3.48)
Diluted:					
Earnings (loss) per share:	\$ 2.90	\$ 1.54	\$ 0.72	\$ (0.10)	\$ (3.48)
	As of March 31,				
BALANCE SHEET DATA:	2019	2018	2017	2016	2015 <sup>(2)</sup>
Total assets	\$ 4,243,065	\$ 3,737,841	\$ 3,149,154	\$ 2,590,277	\$ 2,228,073
Long-term debt	—	8,068	251,929	497,935	473,030

(1) During fiscal 2019, we adopted Accounting Standards Update 2014-09, "Revenue from Contracts with Customers (Topic 606)," using a modified retrospective method. Therefore, prior periods were not restated.

(2) During fiscal 2016, we retrospectively adopted Accounting Standards Update 2015-03, "Simplifying the Presentation of Debt Issuance Costs," and as a result previously reported Total assets and Long-term debt have both decreased from previously reported amounts by \$3,027 as of March 31, 2015, to reflect the deduction of debt issuance costs from the carrying amount of the related debt liability.

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

### Overview

#### *Our Business*

We are a leading developer, publisher and marketer of interactive entertainment for consumers around the globe. Our products are currently designed for console gaming systems, such as Sony's PS4 and Microsoft's Xbox One, and PC, including smartphones and tablets. We deliver our products through physical retail, digital download, online platforms and cloud streaming services.

We endeavor to be the most creative, innovative and efficient company in our industry. Our core strategy is to capitalize on the popularity of video games by developing and publishing high-quality interactive entertainment experiences across a range of genres. We focus on building compelling entertainment franchises by publishing a select number of titles for which we can create sequels and incremental revenue opportunities through virtual currency, add-on content, and in-game purchases. Most of our intellectual property is internally owned and developed, which we believe best positions us financially and competitively. We have established a portfolio of proprietary software content for the major hardware platforms in a wide range of genres, including action, adventure, family/casual, racing, role-playing, shooter, sports and strategy, which we distribute worldwide. We believe that our commitment to creativity and innovation is a distinguishing strength, enabling us to differentiate our products in the marketplace by combining advanced technology with compelling storylines and characters that provide unique gameplay experiences for consumers. We have created, acquired or licensed a group of highly recognizable brands to match the broad consumer demographics that we serve, ranging from adults to children and game enthusiasts to casual gamers. Another cornerstone of our strategy is to support the success of our products in the marketplace through innovative marketing programs and global distribution on platforms and through channels that are relevant to our target audience.

Our revenue is primarily derived from the sale of internally developed software titles and software titles developed by third parties. Operating margins are dependent in part upon our ability to release new, commercially successful software products and to manage effectively their development and marketing costs. We have internal development studios located in Australia, Canada, China, Czech Republic, Hungary, India, Spain, South Korea, the United Kingdom, and the United States.

Software titles published by our Rockstar Games label are primarily internally developed. We expect Rockstar Games, our wholly-owned publisher of the *Grand Theft Auto*, *Max Payne*, *Midnight Club*, *Red Dead Redemption*, and other popular franchises, to continue to be a leader in the action / adventure product category and to create groundbreaking entertainment by leveraging our existing titles as well as by developing new brands. We believe that Rockstar Games has established a uniquely original, popular cultural phenomenon with its *Grand Theft Auto* series, which is the interactive entertainment industry's most iconic and critically acclaimed brand and has sold-in over 290 million units. The latest installment, *Grand Theft Auto V*, has sold-in over 105 million units worldwide and includes access to *Grand Theft Auto Online*. On October 26, 2018, Rockstar Games launched *Red Dead Redemption 2*, which has been a critical and commercial success that set numerous entertainment industry records. Rockstar Games is also well known for developing brands in other genres, including the *L.A. Noire*, *Bully* and *Manhunt* franchises. Rockstar Games continues to expand on our established franchises by developing sequels, offering downloadable episodes, content and virtual currency, and releasing titles for smartphones and tablets.

Our 2K label has published a variety of popular entertainment properties across all key platforms and across a range of genres including shooter, action, role-playing, strategy, sports and family/casual entertainment. We expect 2K to continue to develop new, successful franchises in the future. 2K's internally owned and developed franchises include the critically acclaimed, multi-million unit selling *BioShock*, *Mafia*, *Sid Meier's Civilization*, and *XCOM* series. 2K also publishes successful externally developed franchises, such as *Borderlands*. 2K's realistic sports simulation titles include our flagship *NBA 2K* series, which continues to be the top-ranked NBA basketball video game, the *WWE 2K* professional wrestling series, and the *Golf Club*.

Our Private Division label is dedicated to bringing titles from top independent developers to market. Private Division will publish three upcoming titles based on new IP from renowned industry creative talent, including *The Outer Worlds* and *Ancestors: The Humankind Odyssey*, both of which are planned for release in calendar 2019. Additionally, Private Division is the publisher of *Kerbal Space Program*, which we acquired in May 2017.

Social Point develops and publishes popular free-to-play mobile games that deliver high quality, deeply-engaging entertainment experiences, including its two most successful games, *Dragon City* and *Monster Legends*. In addition, Social Point has a robust development pipeline with a number of exciting games planned for launch in the coming years.

We are continuing to execute on our growth initiatives in Asia, where our strategy is to broaden the distribution of our existing products and expand our online gaming presence, especially in China and South Korea. 2K has secured a multi-year license from the NBA to develop an online version of the NBA simulation game in China, Taiwan, South Korea, and Southeast Asia. *NBA 2K Online*, our free-to-play NBA simulation game, which was co-developed by 2K and Tencent, is the top online PC

sports game in China with over 45 million registered users. On August 2, 2018, 2K and Tencent commercially launched *NBA 2K Online 2* in China. The title is based on the console edition of NBA 2K and includes an array of new features.

In February 2017, we expanded our relationship with the NBA through the creation of the NBA 2K League. Launched in May 2018, this groundbreaking competitive gaming league is jointly owned by us and the NBA and consists of teams operated by actual NBA franchises. The NBA 2K League follows a professional sports league format: the inaugural season included head-to-head competition throughout a regular season, followed by a bracketed playoff system and a finals match-up that was held in August 2018. The NBA 2K League began its second season on April 2, 2019.

#### ***Trends and Factors Affecting our Business***

***Product Release Schedule.*** Our financial results are affected by the timing of our product releases and the commercial success of those titles. Our *Grand Theft Auto* products in particular have historically accounted for a significant portion of our revenue. Sales of *Grand Theft Auto* products generated 25.7% of our net revenue for the fiscal year ended March 31, 2019. In October 2018, we released *Red Dead Redemption 2*. Sales of *Red Dead Redemption* products generated 32.1% of our net revenue for the fiscal year ended March 31, 2019. The timing of our *Grand Theft Auto* or *Red Dead Redemption* product releases may affect our financial performance on a quarterly and annual basis.

***Economic Environment and Retailer Performance.*** We continue to monitor economic conditions that may unfavorably affect our businesses, such as deteriorating consumer demand, pricing pressure on our products, credit quality of our receivables, and foreign currency exchange rates. Our business is dependent upon a limited number of customers that account for a significant portion of our revenue. Our five largest customers accounted for 70.1%, 70.7% and 65.5% of net revenue during the fiscal years ended March 31, 2019, 2018 and 2017, respectively. As of March 31, 2019 and 2018, five customers comprised 66.6% and 65.4% of our gross accounts receivable, respectively, with our significant customers (those that individually comprised more than 10% of our gross accounts receivable balance) accounting for 55.8% and 53.2% of such balance at March 31, 2019 and 2018, respectively. We had two customers who accounted for 40.1% and 15.7% of our gross accounts receivable as of March 31, 2019 and two customers who accounted for 37.7% and 15.5% of our gross accounts receivable as of March 31, 2018. We did not have any additional customers that exceeded 10% of our gross accounts receivable as of March 31, 2019 and 2018. The economic environment has affected our customers in the past, and may do so in the future. Bankruptcies or consolidations of our large retail customers could seriously hurt our business, due to uncollectible accounts receivables and the concentration of purchasing power among the remaining large retailers. Certain of our large customers sell used copies of our games, which may negatively affect our business by reducing demand for new copies of our games. While the downloadable content that we now offer for certain of our titles may serve to reduce used game sales, we expect used game sales to continue to adversely affect our business.

***Hardware Platforms.*** We derive most of our revenue from the sale of products made for video game consoles manufactured by third parties, such as Sony's PS4 and Microsoft's Xbox One, which comprised 83.7% of our net revenue by product platform for the fiscal year ended March 31, 2019. The success of our business is dependent upon the consumer acceptance of these platforms and the continued growth in the installed base of these platforms. When new hardware platforms are introduced, demand for software used on older platforms typically declines, which may negatively affect our business during the market transition to the new consoles. We continually monitor console hardware sales. We manage our product delivery on each current and future platform in a manner we believe to be most effective to maximize our revenue opportunities and achieve the desired return on our investments in product development. Accordingly, our strategy is to focus our development efforts on a select number of the highest quality titles for these platforms, while also expanding our offerings for emerging platforms such as tablets, smartphones and online games.

***Online Content and Digital Distribution.*** The interactive entertainment software industry is delivering a growing amount of content through digital online delivery methods. We provide a variety of online delivered products and offerings. Virtually all of our titles that are available through retailers as packaged goods products are also available through direct digital download (from websites we own and others owned by third parties) as well as a larger selection of our catalog titles. In addition, we aim to drive ongoing engagement and incremental revenue from recurrent consumer spending on our titles through virtual currency, add-on content, and in-game purchases. We also publish an expanding variety of titles for tablets and smartphones, which are delivered to consumers through digital download. Our "Results of Operations," discloses that net revenue from digital online channels comprised 63.0% of our net revenue for the fiscal year ended March 31, 2019. We expect online delivery of games and game offerings to continue to grow and to become an increasing part of our business over the long-term.

## Product Releases

We released the following key titles in fiscal year 2019:

Title	Publishing Label	Internal or External Development	Platform(s)	Date Released
<i>Grand Theft Auto V Premium Online Edition</i>	Rockstar Games	Internal	PS4, Xbox One, PC	April 20, 2018
<i>The Golf Club 2019 Featuring PGA TOUR (Digital)</i>	2K	External	PS4, Xbox One, PC	August 27, 2018
<i>NBA 2K Online 2</i>	2K	External	Tencent (China only)	August 2, 2018
<i>NBA 2K19 20th Anniversary Edition</i>	2K	Internal	PS4, Xbox One, Nintendo Switch, PC	September 7, 2018
<i>NBA 2K19 Standard Edition</i>	2K	Internal	PS4, Xbox One, Nintendo Switch, PC	September 11, 2018
<i>WWE 2K19 Woooo! Deluxe Edition</i>	2K	Internal/External	PS4, Xbox One, PC	October 5, 2018
<i>WWE 2K19</i>	2K	Internal/External	PS4, Xbox One, PC	October 9, 2018
<i>NBA 2K Playgrounds 2</i>	2K	External	PS4, Xbox One, Nintendo Switch, PC	October 16, 2018
<i>Red Dead Redemption 2</i>	Rockstar Games	Internal	PS4, Xbox One	October 26, 2018
<i>Carnival Games</i>	2K	Internal	PS4, Xbox One, Nintendo Switch	November 6, 2018
<i>The Golf Club 2019 Featuring PGA TOUR (Physical)</i>	2K	External	PS4, Xbox One, PC	November 13, 2018 (North America) November 16, 2018 (International)
<i>Sid Meier's Civilization VI</i>	2K	External	Nintendo Switch	November 16, 2018
<i>Red Dead Online Beta</i>	Rockstar Games	Internal	PS4, Xbox One	November 27, 2018
<i>Sid Meier's Civilization VI: Gathering Storm</i>	2K	Internal	PC	February 14, 2019
<i>Borderlands: Game of the Year Edition</i>	2K	Internal/External	PS4, Xbox One, PC	April 3, 2019

## Product Pipeline

We have announced the following key titles to date (this list does not represent all titles currently in development):

Title	Publishing Label	Internal or External Development	Platform(s)	Expected Release Date
<i>Borderlands 3</i>	2K/Gearbox Software	Internal/External	PS4, Xbox One, PC	September 13, 2019
<i>NBA 2K20</i>	2K	Internal	TBA	TBA
<i>WWE 2K20</i>	2K	Internal	TBA	TBA
<i>Ancestors: The Humankind Odyssey</i>	Private Division	External	PS4, Xbox One, PC (digital only)	2019 (fiscal 2020)
<i>The Outer Worlds</i>	Private Division	External	PS4, Xbox One, PC	2019 (fiscal 2020)

## Fiscal 2019 Financial Summary

On April 1, 2018, we adopted ASU 2014-09, *Revenue from Contracts with Customers (Topic 606)* and related amendments (the "New Revenue Accounting Standard") using the modified retrospective method. Therefore, no prior amounts have been restated in our tables and discussion below. Refer to Note 1 to our Consolidated Financial Statements for our accounting policy disclosure for revenue recognition. In general, the adoption of Topic 606 results in a more accelerated revenue pattern, due primarily to (i) the elimination of the requirement for vendor-specific objective evidence ("VSOE") of fair value when allocating between multiple performance obligations and (ii) the change of our estimated service period to a user life. However, the impact on a given period may differ from this general trend. In October 2018, we released *Red Dead Redemption 2*. The acceleration of revenue for this title was material and is the primary component of the significant increases in certain of our operating results as a result of the adoption of Topic 606 throughout the discussion in our "Results of Operations" below. See Notes 1 and 2 to our Consolidated Financial Statements for further information.

Our Net revenue for fiscal year ended March 31, 2019 was led by titles from a variety of our top franchises, primarily *Red Dead Redemption 2*, *Grand Theft Auto*, *NBA 2K*, and *WWE 2K*. Our Net revenue increased to \$2,668.4 million, an increase of \$875.5 million or 48.8% compared to the fiscal year ended March 31, 2018. This increase included a \$741.2 million increase

in Net revenue as a result of the adoption of Topic 606, as described above. The remaining increase was driven by sales of the titles described above.

During the fiscal year ended March 31, 2019, we recognized a tax benefit of \$107.1 million from a reduction in our valuation allowance on certain U.S. deferred tax assets as a result of a determination that it was more-likely-than-not that such deferred tax assets would be realized. Our determination took into account the successful launch of *Red Dead Redemption 2* during the current fiscal year along with our recent positive trend of earnings.

For the fiscal year ended March 31, 2019, our Net income was \$333.8 million, as compared to Net income of \$173.5 million in the prior year. Diluted earnings per share for the fiscal year ended March 31, 2019 was \$2.90, as compared to Diluted income per share of \$1.54 for the fiscal year ended March 31, 2018. Our operating income for the fiscal year ended March 31, 2019 increased compared to the operating income for fiscal year ended March 31, 2018, due primarily to higher Gross profit due primarily to higher revenue as a result of the adoption of Topic 606 as described above and the successful launch *Red Dead Redemption 2*, partially offset by higher Operating expenses primarily due to higher Selling and marketing expense for titles released during the current fiscal year.

At March 31, 2019, we had \$1,392.0 million of Cash and Cash equivalents and Restricted cash, compared to 1,246.4 million at March 31, 2018. The increase in Cash and cash equivalents and Restricted cash from March 31, 2018 was due primarily to Net cash provided by operating activities from sales, primarily of *Red Dead Redemption 2*, partially offset by investments in software development and licenses as well as royalty payments. These net increases were offset by Net cash used in financing activities, which was primarily related to repurchases of common stock under our share repurchase program and tax payments related to net share settlements of our restricted stock, and to a lesser extent Net cash used in investing activities, which was primarily related to bank time deposits and purchases of fixed assets.

### Critical Accounting Policies and Estimates

Our most critical accounting policies, which are those that require significant judgment, include revenue recognition; price protection and allowances for returns; capitalization and recognition of software development costs and licenses; fair value estimates including valuation of goodwill, intangible assets, and long-lived assets; valuation and recognition of stock-based compensation; and income taxes. See Note 1 - Basis of Presentation and Significant Accounting Policies in the Notes to our Consolidated Financial Statements in this Annual Report on Form 10-K.

### Recently Adopted and Recently Issued Accounting Pronouncements

See Note 1 - Basis of Presentation and Significant Accounting Policies.

### Operating Metric

#### Net Bookings

We monitor Net Bookings as a key operating metric in evaluating the performance of our business. Net Bookings is defined as the net amount of products and services sold digitally or sold-in physically during the period and includes licensing fees, merchandise, in-game advertising, strategy guides, and publisher incentives. Net Bookings were as follows:

	Fiscal Year Ended March 31,			
	2019	2018	Increase/(decrease)	Increase/(decrease) %
Net Bookings	\$ 2,928,724	\$ 1,990,602	\$ 938,122	47.1%

For the fiscal year ended March 31, 2019, Net Bookings increased by \$938.1 million as compared to the prior year period due primarily to *Red Dead Redemption 2*, which released in October 2018, and our *NBA 2K* franchise, partially offset by a decrease from *Grand Theft Auto V* and *Grand Theft Auto Online*.



## Results of Operations

The following table sets forth, for the periods indicated, our statements of operations, net revenue by geographic region, net revenue by platform and net revenue by distribution channel:

	Fiscal Year Ended March 31,					
	2019		2018		2017	
Net revenue	\$ 2,668,394	100.0 %	\$ 1,792,892	100.0 %	\$ 1,779,748	100.0 %
Cost of goods sold	1,523,644	57.1 %	898,311	50.1 %	1,022,959	57.5 %
Gross profit	1,144,750	42.9 %	894,581	49.9 %	756,789	42.5 %
Selling and marketing	391,400	14.7 %	256,092	14.3 %	285,453	16.0 %
General and administrative	281,234	10.5 %	247,828	13.8 %	211,409	11.9 %
Research and development	230,170	8.6 %	196,373	11.0 %	137,915	7.8 %
Depreciation and amortization	40,232	1.5 %	43,969	2.5 %	30,707	1.7 %
Business reorganization	(4,958)	(0.2)%	14,742	0.8 %	—	— %
Total operating expenses	938,078	35.2 %	759,004	42.3 %	665,484	37.4 %
Income from operations	206,672	7.7 %	135,577	7.6 %	91,305	5.1 %
Interest and other, net	26,113	1.0 %	1,048	0.1 %	(15,690)	(0.9)%
Gain on long-term investments, net	—	— %	—	— %	1,350	0.1 %
Income before income taxes	232,785	8.7 %	136,625	7.6 %	76,965	4.3 %
(Benefit from) provision for income taxes	(101,052)	(3.8)%	(36,908)	(2.1)%	9,662	0.5 %
Net income	\$ 333,837	12.5 %	\$ 173,533	9.7 %	\$ 67,303	3.8 %

	Fiscal Year Ended March 31,					
	2019		2018		2017	
<b>Net revenue by geographic region:</b>						
United States	\$ 1,426,906	53.5%	\$ 1,052,313	58.7%	\$ 999,128	56.1%
International	1,241,488	46.5%	740,579	41.3%	780,620	43.9%
<b>Net revenue by platform:</b>						
Console	\$ 2,233,861	83.7%	\$ 1,463,306	81.6%	1,440,724	81.0%
PC and other	434,533	16.3%	329,586	18.4%	339,024	19.0%
<b>Net revenue by distribution channel:</b>						
Digital online	\$ 1,681,609	63.0%	\$ 1,130,946	63.1%	921,734	51.8%
Physical retail and other	986,785	37.0%	661,946	36.9%	858,014	48.2%
<b>Net revenue by content:</b>						
Full game and other	\$ 1,597,478	59.9%	\$ 1,046,176	58.4%	\$ 1,320,890	74.2%
Recurrent consumer spending	1,070,916	40.1%	746,716	41.6%	458,858	25.8%

### Fiscal Years ended March 31, 2019 and 2018

(thousands of dollars)	2019	% of net revenue	2018	% of net revenue	Increase/(decrease)	% Increase/(decrease)
Net revenue	\$ 2,668,394	100.0%	\$ 1,792,892	100.0%	\$ 875,502	48.8%
Internal royalties	610,804	22.9%	383,020	21.4%	227,784	59.5%
Product costs	322,148	12.1%	203,301	11.3%	118,847	58.5%
Software development costs and royalties <sup>(1)</sup>	449,198	16.8%	191,400	10.7%	257,798	134.7%
Licenses	141,494	5.3%	120,590	6.7%	20,904	17.3%
Cost of goods sold	1,523,644	57.1%	898,311	50.1%	625,333	69.6%
<b>Gross profit</b>	<b>\$ 1,144,750</b>	<b>42.9%</b>	<b>\$ 894,581</b>	<b>49.9%</b>	<b>\$ 250,169</b>	<b>28.0%</b>

(1) Includes \$149,075 and \$24,610 of stock-based compensation expense in 2019 and 2018, respectively.

In general, the adoption of Topic 606 results in a more accelerated revenue pattern, due primarily to (i) the elimination of the requirement for vendor-specific objective evidence ("VSOE") of fair value when allocating between multiple performance obligations and (ii) the change of our estimated service period to a user life. However, the impact on a given period may differ from this general trend. In October 2018, we released *Red Dead Redemption 2*. The acceleration of revenue for this title due to the adoption of Topic 606 was material and is the primary component of the significant increases as a result of the adoption of Topic 606 throughout the discussion below. See Note 1 and Note 2 to our Consolidated Financial Statements for further information.

For the fiscal year ended March 31, 2019, net revenue increased by \$875.5 million, as compared to the prior year. This increase included a \$741.2 million increase in net revenue as a result of the adoption of Topic 606, as described above. The remaining increase was due to (i) an increase of \$129.6 million in net revenue from *Red Dead Redemption 2*, (ii) an increase of \$53.4 million in net revenue from *Grand Theft Auto Online*, and (iii) an increase of \$43.9 million in net revenue from our *NBA 2K* franchise. These increases were partially offset by (i) a decrease of \$51.5 million in net revenue from *Grand Theft Auto V*, (ii) a decrease of \$27.8 million in net revenue from our *WWE 2K* franchise and (ii) a decrease of \$18.0 million in net revenue from *L.A. Noire*.

Net revenue from console games increased by \$770.6 million and accounted for 83.7% of our total net revenue in the fiscal year ended March 31, 2019, as compared to 81.6% in the prior year. The increase in net revenue from console games included a \$658.8 million increase in net revenue as a result of the adoption of Topic 606, as described above. The remaining increase was due to an increase in net revenue from *Red Dead Redemption 2*, *Grand Theft Auto Online*, and our *NBA 2K* franchise. These increases were partially offset by a decrease in net revenue from *Grand Theft Auto V* and our *WWE 2K* franchise. Net revenue from PC and other increased by \$104.9 million as compared to the prior year and decreased as a percentage of net revenue to 16.3% compared to 18.4% in the prior year. The increase in net revenue from PC and other included an \$82.4 million increase in net revenue as the result of the adoption of Topic 606, as described above. The remaining increase was due to an increase in net revenue from *Grand Theft Auto Online*, *Red Dead Redemption 2* merchandise, our *Civilization* franchise, *Monster Legends*, our *NBA 2K* franchise, and *L.A. Noire*. These increases were partially offset by a decrease in net revenue from *XCOM 2* and *Grand Theft Auto V*.

Net revenue from digital online channels increased by \$550.7 million and accounted for 63.0% of our total net revenue for the fiscal year ended March 31, 2019, as compared to 63.1% in the prior year. The increase in net revenue from digital online channels included a \$353.2 million increase in net revenue as a result of the adoption of Topic 606, as described above. The remaining increase was due to an increase in net revenue from our *NBA 2K* franchise, *Grand Theft Auto Online*, and *Red Dead Redemption 2*, partially offset by a decrease in net revenue from *XCOM 2*. Net revenue from physical retail and other channels increased by \$324.8 million and accounted for 37.0% of our total net revenue for the fiscal year ended March 31, 2019, as compared to 36.9% for the prior year. The increase in net revenue from physical retail and other channels included a \$388.1 million increase in net revenue as a result of the adoption of Topic 606, as described above. Offsetting this increase was a net decrease due to a decrease in net revenue from *Grand Theft Auto V*, our *NBA 2K* franchise, our *WWE 2K* franchise, and *L.A. Noire*, partially offset by an increase in net revenue from *Red Dead Redemption 2*.

Net revenue from recurrent consumer spending on our titles through virtual currency, add-on content, and in-game purchases increased by \$324.2 million and accounted for 40.1% of net revenue for the fiscal year ended March 31, 2019, as compared to 41.6% for the prior year. The increase in net revenue from recurrent consumer spending included a \$164.4 million increase in net revenue as a result of the adoption of Topic 606, as described above. The remaining increase was due to an increase in net revenue from our *NBA 2K* franchise, *Grand Theft Auto Online*, our *Civilization* franchise, and *Red Dead Redemption 2*, partially offset by a decrease in net revenue from *Mafia III*. Net revenue from full game and other increased by \$551.3 million and accounted for 59.9% of net revenue for the fiscal year ended March 31, 2019, as compared to 58.4% for the prior year. The increase in net revenue from full game and other included a \$576.9 million increase in net revenue as a result of the adoption of Topic 606, as described above. Offsetting this increase was a net decrease due to a decrease in net revenue from *Grand Theft Auto V*, our *NBA 2K* franchise, our *WWE 2K* franchise, *L.A. Noire*, and *Mafia III*, partially offset by an increase in net revenue from *Red Dead Redemption 2*.

Gross profit as a percentage of net revenue for the fiscal year ended March 31, 2019 was 42.9%, as compared to 49.9% in the prior year. The adoption of Topic 606 resulted in a 6.1% increase in gross profit percentage. The remaining percentage decrease was due to higher internal royalties as a percentage of net revenue due to the timing of when royalties are earned and to a lesser extent higher software development costs as a percentage of net revenue due to the timing of our releases.

Net revenue earned outside of the United States increased by \$500.9 million and accounted for 46.5% of our total net revenue in the fiscal year ended March 31, 2019, as compared to 41.3% in the prior year. The increase in net revenue earned outside the United States included a \$438.0 million increase as a result of the adoption of Topic 606, as described above. The remaining increase was due to an increase in net revenue from *Red Dead Redemption 2*, *Grand Theft Auto Online*, and our *NBA*

2K franchise, partially offset by a decrease in net revenue from *Grand Theft Auto V*. Changes in foreign currency exchange rates decreased net revenue and gross profit by \$10.0 million and \$5.7 million, respectively, in the fiscal year ended March 31, 2019 as compared to the prior year.

### ***Operating Expenses***

<b>(thousands of dollars)</b>	<b>2019</b>	<b>% of net revenue</b>	<b>2018</b>	<b>% of net revenue</b>	<b>Increase/(decrease)</b>	<b>% Increase/(decrease)</b>
Selling and marketing	\$ 391,400	14.7 %	\$ 256,092	14.3%	\$ 135,308	52.8 %
General and administrative	281,234	10.5 %	247,828	13.8%	33,406	13.5 %
Research and development	230,170	8.6 %	196,373	11.0%	33,797	17.2 %
Depreciation and amortization	40,232	1.5 %	43,969	2.5%	(3,737)	(8.5)%
Business reorganization	(4,958)	(0.2)%	14,742	0.8%	(19,700)	(133.6)%
<b>Total operating expenses</b>	<b>\$ 938,078</b>	<b>35.2 %</b>	<b>\$ 759,004</b>	<b>42.3%</b>	<b>\$ 179,074</b>	<b>23.6 %</b>

Includes stock-based compensation expense, which was allocated as follows (in thousands):

	<b>2019</b>	<b>2018</b>
Selling and marketing	\$ 23,685	\$ 13,258
General and administrative	\$ 51,903	\$ 58,037
Research and development	\$ 23,037	\$ 18,020
Business reorganization	—	2,424

Foreign currency exchange rates decreased total operating expenses by \$5.1 million in the fiscal year ended March 31, 2019 as compared to the prior year.

#### Selling and marketing

Selling and marketing expenses increased by \$135.3 million in the fiscal year ended March 31, 2019 as compared to the prior year, due primarily to \$108.5 million in higher advertising expenses. Advertising expenses were higher in the current year due primarily to the release of *Red Dead Redemption 2* in October 2018, our *NBA 2K* franchise, and *Grand Theft Auto Online*. The remaining increase is due to higher personnel expenses, primarily due to increased headcount.

#### General and administrative

General and administrative expenses increased by \$33.4 million for the fiscal year ended March 31, 2019, as compared to the prior year, due primarily to (i) increases in personnel expenses due to additional headcount, (ii) a reduction of expense in the prior period related to updating the fair value of contingent consideration from our acquisition of Social Point, (iii) increases in IT related expenses for cloud-based services, and (iv) increases in rent expense. These increases were partially offset by a decrease in stock compensation expense, related primarily to share based awards granted under our management agreement with ZelnickMedia, and insurance recoveries.

General and administrative expenses for the fiscal years ended March 31, 2019 and 2018 include occupancy expense (primarily rent, utilities and office expenses) of \$22.0 million and \$18.2 million, respectively, related to our development studios.

#### Research and development

Research and development expenses increased by \$33.8 million for the fiscal year ended March 31, 2019, as compared to the prior year, due primarily to increased personnel expense due to (i) increased headcount and (ii) higher stock-based compensation as well as an increase in production and development expenses for titles for which technological feasibility has not been established.

#### Depreciation and amortization

Depreciation and amortization expenses decreased by \$3.7 million for the fiscal year ended March 31, 2019, as compared to the prior year, due primarily to the recognition of a \$11.3 million impairment charge in September 2017, as a result of our decision not to proceed with further development of a certain in-process research and development ("IPR&D") intangible asset from our acquisition of Social Point. The decrease was partially offset by an increase in depreciation expense due primarily to the move to our new corporate headquarters in December 2017 and an increase in IT infrastructure costs.

## Business Reorganization

During the fiscal year ended March 31, 2019, business reorganization expense decreased \$19.7 million as a result of a benefit due to updating estimates for and completing our 2016 Plan as well as costs related to our 2018 Plan in the prior year period with significantly decreased costs in the current year period. Although we may record additional expense or benefit in future periods to true-up estimates, we do not expect to incur additional reorganization costs in connection with these reorganizations. See Note 20 - Business Reorganization to our Consolidated Financial Statements.

## *Interest and other, net*

(thousands of dollars)	2019	% of net revenue	2018	% of net revenue	Increase/(decrease)	% Increase/(decrease)
Interest income	\$ 38,019	1.4 %	\$ 21,264	1.2 %	\$ 16,755	78.8 %
Interest expense	(8,032)	(0.3)%	(22,269)	(1.2)%	14,237	(63.9)%
Foreign currency exchange (loss) gain	(505)	— %	(3,038)	(0.2)%	2,533	(83.4)%
Other	(3,369)	(0.1)%	5,091	0.3 %	(8,460)	(166.2)%
<b>Interest and other, net</b>	<b>\$ 26,113</b>	<b>1.0 %</b>	<b>\$ 1,048</b>	<b>0.1 %</b>	<b>\$ 25,065</b>	<b>2,391.7 %</b>

Interest and other, net was \$26.1 million for the fiscal year ended March 31, 2019, as compared to \$1.0 million for the fiscal year ended March 31, 2018. The increase was due primarily to a \$16.8 million increase in interest income due primarily to the size of, nature of, and return on our investment portfolio and a \$14.2 million decrease in interest expense primarily as a result of the settlement of our 1.00% Convertible Notes due 2018 ("Convertible Notes"), which matured July 1, 2018. The net increase was partially offset by gains in the prior period on the early conversion of our Convertible Notes, with no corresponding gains in the current period.

## *Provision/Benefit from income taxes*

We recognized a tax benefit of \$107.1 million from a reduction in our valuation allowance on certain U.S. deferred tax assets as a result of a determination that it was more-likely-than-not that such deferred tax assets would be realized. Our determination took into account the successful launch of *Red Dead Redemption 2* during the year along with our recent positive trend of earnings.

On December 22, 2017, the U.S. enacted comprehensive tax legislation commonly referred to as the Tax Cuts and Jobs Act (herein referred to as the "Act"). The Act made broad and complex changes to the U.S. tax code. The Act reduced the U.S. federal corporate income tax rate from 35% to 21%, effective January 1, 2018 and required companies to pay a one-time transition tax on the previously untaxed earnings of certain foreign subsidiaries. In addition, the Act made other changes, including, but not limited to, (1) a Base Erosion Anti-abuse Tax ("BEAT"), which is a new minimum tax, (2) generally eliminating U.S. federal income taxes on dividends from foreign subsidiaries, (3) a new provision that taxes global intangible low-taxed income ("GILTI"), (4) the repeal of the domestic production activity deduction, and (5) other base broadening provisions.

The SEC issued Staff Accounting Bulletin No. 118, *Income Tax Accounting Implications of the Tax Cuts and Jobs Acts* ("SAB 118"), which provides guidance on accounting for the Act's impact. SAB 118 provides a measurement period, which should not extend beyond one year from the Act enactment date, during which a company acting in good faith may complete the accounting for the impact of the Act under ASC 740. In accordance with SAB 118, the income tax effects of the Act must be reflected in the reporting period in which the accounting under ASC Topic 740 is complete. We completed the accounting and recorded a decrease to income tax expense of \$4.6 million to adjust the provisional estimates related to the one-time transition tax on the previously untaxed earnings of certain foreign subsidiaries as a result of the Act. The impact of the Act differs from these estimates due to changes in interpretations and assumptions we have made, guidance that was issued, and actions taken as a result of the Act.

The Act subjects a U.S. shareholder to current tax on GILTI earned by foreign subsidiaries. The FASB Staff Q&A Topic No. 5, *Accounting for Global Intangible Low-Taxed Income*, states that an entity can make an accounting policy election either to recognize deferred taxes for temporary differences that are expected to reverse as GILTI in future years or provide for the tax expense related to GILTI resulting from those items in the year the tax is incurred. We have elected to recognize the resulting tax on GILTI as an expense in the period incurred.

Our income tax benefit was \$101.1 million for the fiscal year ended March 31, 2019 as compared to \$36.9 million for the fiscal year ended March 31, 2018.

When compared to the statutory rate of 21.0%, the effective tax rate of (43.4)% for the fiscal year ended March 31, 2019 was primarily due to a \$107.1 million tax benefit from changes in valuation allowance, a benefit of \$35.0 million for tax credits,

\$13.3 million from excess tax benefits from employee stock compensation, and \$9.0 million from our geographic mix of earnings, partially offset by tax expense from other immaterial items, which include the impact of the Act.

When compared to the statutory rate of 31.6%, the effective tax rate of (27.0)% for the fiscal year ended March 31, 2018 was primarily due to \$53.2 million from excess tax benefits from employee stock compensation as a component of the benefit from income taxes (previously excess tax benefit and tax deficiencies were recognized in additional paid-in-capital), a benefit of \$22.6 million for tax credits anticipated to be utilized, a benefit of \$15.1 million from changes in unrecognized tax benefits primarily due to expiration of statute of limitations, and a benefit of \$7.9 million from our geographic mix of earnings, partially offset by provisional amounts recorded as a result of the Act and \$10.4 million for changes in our valuation allowance.

The effective tax rate in the current year was lower compared to the prior year primarily due to a lower U.S. statutory rate, increased tax benefits from changes in valuation allowance, increased tax benefits from tax credits, reduced tax expense from the one-time transition tax, partially offset by reduced benefits from excess tax benefits related to employee stock compensation and changes in unrecognized tax benefits.

We anticipate that additional excess tax benefits from employee stock compensation and tax credits could have a significant impact on our effective tax rate in future periods.

The accounting for share-based compensation will increase or decrease our effective tax rate based upon the difference between our share-based compensation expense and the deductions taken on our tax return, which depends upon the stock price at the time of employee award vesting. Since we recognize excess tax benefits on a discrete basis, we anticipate that our effective tax rate will vary from quarter to quarter depending on our stock price in each period.

On June 21, 2018, the U.S. Supreme Court issued its decision in *South Dakota v. Wayfair*, which overturned previous case law that precluded states from requiring retailers to collect sales tax on sales made to in-state customers unless the retailer had physical presence in the state. Although this case is limited to sales tax collection obligations, we continue to monitor the potential impact of this decision on our state income tax footprint.

The ultimate amount of tax payable in a given financial statement period may be materially affected by sudden or unforeseen changes in tax laws, changes in the mix and level of earnings by taxing jurisdictions, or changes to existing accounting rules or regulations. For example, on July 24, 2018, the Ninth Circuit Court of Appeals issued an opinion in *Altera Corp. v. Commissioner* requiring related parties in an intercompany cost-sharing arrangement to share expenses related to stock compensation. On August 7, 2018, the opinion was withdrawn to allow time for a reconstituted panel to confer. We will continue to monitor ongoing developments and the final opinion could have a material impact on our Consolidated Financial Statements.

As of March 31, 2019, we had gross unrecognized tax benefits, including interest and penalties, of \$139.0 million, of which \$23.9 million would affect our effective tax rate if realized. For the fiscal year ended March 31, 2019, gross unrecognized tax benefits increased by \$10.5 million.

We are no longer subject to audit for U.S. federal income tax returns for periods prior to our fiscal year ended March 31, 2016 and state income tax returns for periods prior to the fiscal year ended March 31, 2014. With few exceptions, we are no longer subject to income tax examinations in non-U.S. jurisdictions for years prior to fiscal year ended March 31, 2013. Certain U.S. state and foreign taxing authorities are currently examining our income tax returns for the fiscal years ended March 31, 2014 through March 31, 2017.

We are regularly audited by domestic and foreign taxing authorities. We believe that our tax positions comply with applicable tax law and that we have adequately provided for reasonably foreseeable tax assessments. It is possible that settlement of audits or the expiration of the statute of limitations may impact our effective tax rate in future periods.

#### ***Net income and earnings per share***

For the fiscal year ended March 31, 2019, our net income was \$333.8 million, as compared to \$173.5 million in the prior year. Diluted earnings per share for the fiscal year ended March 31, 2019 was \$2.90, as compared to \$1.54 for the fiscal year ended March 31, 2018. Diluted weighted average shares outstanding of 115.2 million were 2.4 million higher compared to the prior fiscal year due primarily to the settlement on conversion of our 1.00% Convertible Notes with shares of our common stock using the stated conversion rate and, to a lesser extent, normal stock compensation activity including grants and forfeitures, offset by share repurchases. See Note 1 - Basis of Presentation and Significant Accounting Policies and Note 13 - Earnings Per Share to the Consolidated Financial Statements for additional information.

## Fiscal Years Ended March 31, 2018 and 2017

(thousands of dollars)	2018	% of net revenue	2017	% of net revenue	Increase/(decrease)	% Increase/(decrease)
Net revenue	\$ 1,792,892	100.0%	\$ 1,779,748	100.0%	\$ 13,144	0.7 %
Internal royalties	383,020	21.4%	330,782	18.6%	52,238	15.8 %
Product costs	203,301	11.3%	255,914	14.4%	(52,613)	(20.6)%
Software development costs and royalties <sup>(1)</sup>	191,400	10.7%	335,675	18.9%	(144,275)	(43.0)%
Licenses	120,590	6.7%	100,588	5.6%	20,002	19.9 %
Cost of goods sold	898,311	50.1%	1,022,959	57.5%	(124,648)	(12.2)%
<b>Gross profit</b>	<b>\$ 894,581</b>	<b>49.9%</b>	<b>\$ 756,789</b>	<b>42.5%</b>	<b>\$ 137,792</b>	<b>18.2 %</b>

(1) Includes \$24,610 and \$21,056 of stock-based compensation expense in 2018 and 2017, respectively.

For the fiscal year ended March 31, 2018, net revenue increased by \$13.1 million, as compared to the prior year. This increase was due primarily to an increase of \$159.4 million in net revenue from our *NBA 2K* franchise, partially offset by a decrease of \$134.9 million in net revenue from *Mafia III*, which released in October 2016. Net revenue from our *Grand Theft Auto* franchise increased \$32.0 million as compared to the prior year. This increase was due primarily to an increase of \$114.9 million in net revenue from *Grand Theft Auto Online*, partially offset by a decrease of \$78.0 million from *Grand Theft Auto V*.

Net revenue from console games increased by \$22.6 million and accounted for 81.6% of our total net revenue in the fiscal year ended March 31, 2018, as compared to 81.0% in the prior year. The increase in net revenue from console games was due primarily to higher net revenue from our *NBA 2K* franchise, partially offset by lower net revenue from *Mafia III*, which released in October 2016. Net revenue from PC and other decreased by \$9.4 million as compared to the prior year and decreased as a percentage of net revenue to 18.4% compared to 19.0% in the prior year. The decrease in net revenue from PC and other was due primarily to lower net revenue from *Civilization VI*, which released on the PC in the prior year, partially offset by higher net revenue from Social Point titles for which we had only two months of net revenue in the prior year as it was acquired in January 2017.

Net revenue from digital online channels increased by \$209.2 million and accounted for 63.1% of our total net revenue for the fiscal year ended March 31, 2018, as compared to 51.8% in the prior year. The increase in net revenue from digital online channels was due primarily to higher revenue related to our *NBA 2K* franchise and *Grand Theft Auto Online*, partially offset by lower net revenue from *Civilization VI* and *Grand Theft Auto V*. Net revenue from physical retail and other channels decreased by \$196.1 million and accounted for 36.9% of our total net revenue for the fiscal year ended March 31, 2018, as compared to 48.2% for the prior year. The decrease in net revenue from physical retail and other channels was due primarily to lower net revenue from *Mafia III*, *Grand Theft Auto V*, and *BioShock: The Collection*, which released in September 2016, partially offset by higher net revenue from *L.A. Noire* due to releases on PS4, Xbox One, Switch, and HTC Vive.

Net revenue from recurrent consumer spending on our titles through virtual currency, add-on content, and microtransactions increased by \$287.9 million and accounted for 41.6% of net revenue for the fiscal year ended March 31, 2018, as compared to 25.8% for the prior year. The increase in recurrent consumer spending was due primarily to higher virtual currency net revenue from *Grand Theft Auto Online*, our *NBA 2K* franchise, and Social Point titles with only two months of net revenue in the prior year as it was acquired in January 2017.

Gross profit as a percentage of net revenue for the fiscal year ended March 31, 2018 was 49.9%, as compared to 42.5% in the prior year. The percentage increase was due primarily to lower software development costs as a percentage of net revenue due to *Mafia III* and *Civilization VI* releasing in the prior year, as well as lower product costs as a percentage of net revenue due to the decrease in net revenue from physical retail sales. The increase was offset by higher internal royalties as a percentage of net revenue due to the timing of when royalties are earned and to a lesser extent higher stock-based compensation costs as a percentage of net revenue.

Net revenue earned outside of the United States decreased by \$40.0 million and accounted for 41.3% of our total net revenue in the fiscal year ended March 31, 2018, as compared to 43.9%. The decrease in net revenue was due primarily to a decrease in net revenue from *Mafia III*, partially offset by higher net revenue from our *NBA 2K* franchise. Changes in foreign currency exchange rates increased net revenue and gross profit by \$9.8 million and \$6.7 million, respectively, in the fiscal year ended March 31, 2018 as compared to the prior year.

## Operating Expenses

(thousands of dollars)	2018	% of net revenue	2017	% of net revenue	Increase/(decrease)	% Increase/(decrease)
Selling and marketing	\$ 256,092	14.3%	\$ 285,453	16.0%	\$ (29,361)	(10.3)%
General and administrative	247,828	13.8%	211,409	11.9%	36,419	17.2 %
Research and development	196,373	11.0%	137,915	7.8%	58,458	42.4 %
Depreciation and amortization	43,969	2.5%	30,707	1.7%	13,262	43.2 %
Business reorganization	14,742	0.8%	—	—%	14,742	100.0 %
<b>Total operating expenses</b>	<b>\$ 759,004</b>	<b>42.3%</b>	<b>\$ 665,484</b>	<b>37.4%</b>	<b>\$ 93,520</b>	<b>14.1 %</b>

Includes stock-based compensation expense, which was allocated as follows (in thousands):

	2018	2017
Selling and marketing	\$ 13,258	\$ 9,963
General and administrative	\$ 58,037	\$ 42,908
Research and development	\$ 18,020	\$ 7,952
Business reorganization	\$ 2,424	\$ —

Foreign currency exchange rates increased total operating expenses by \$8.4 million in the fiscal year ended March 31, 2018 as compared to the prior year.

### Selling and marketing

Selling and marketing expenses decreased by \$29.4 million in the fiscal year ended March 31, 2018 as compared to the prior year, due primarily to \$44.2 million in lower advertising expenses. Advertising expenses were lower in the current year due primarily to the releases of *Mafia III* and *Civilization VI* in October 2016 and *Battleborn* in May 2016, partially offset by higher marketing in the current year period for *Grand Theft Auto Online* and *Red Dead Redemption 2*. The decrease was partially offset by higher personnel expenses, primarily due to higher incentive compensation expense.

### General and administrative

General and administrative expenses increased by \$36.4 million for the fiscal year ended March 31, 2018, as compared to the prior year, due primarily to (i) increases in personnel expenses, including stock and incentive compensation expense, due to additional headcount, including our acquisition of Social Point, (ii) increases in professional fees, related primarily to our management agreement with ZelnickMedia as a result of the increase in our share price, (iii) increases in IT related expenses from the purchase of computer hardware and software, and (iv) increases in rent expense due to new locations, including our new corporate headquarters in New York and for Social Point, as well as increased rent in other locations. This overall increase was partially offset primarily by a \$6.5 million reduction of expense related to reversing a contingent consideration liability recognized in connection with the Social Point acquisition as we determined that the fair value of this contingent consideration was \$0 based on the lower probability of Social Point achieving certain performance measures in the 24-month period following the acquisition.

General and administrative expenses for the fiscal years ended March 31, 2018 and 2017 include occupancy expense (primarily rent, utilities and office expenses) of \$18.2 million and \$15.8 million, respectively, related to our development studios.

### Research and development

Research and development expenses increased by \$58.5 million for the fiscal year ended March 31, 2018, as compared to the prior year, due primarily to increased personnel expense due to (i) increased headcount, including our acquisition of Social Point, and (ii) higher stock-based compensation. These increases were partially offset by lower production expenses for titles that have not reached technological feasibility.

### Depreciation and amortization

Depreciation and amortization expenses increased by \$13.3 million for the fiscal year ended March 31, 2018, as compared to the prior year, due primarily to the recognition of a \$11.3 million impairment charge as a result of our decision not to proceed with further development of a certain in-process research and development ("IPR&D") intangible asset from our acquisition of Social Point.

## Business Reorganization

During the fiscal year ended March 31, 2018, we announced and initiated actions to implement a strategic reorganization at one of our labels. In connection with this initiative we incurred business reorganization expenses of \$14.7 million for the fiscal year ended March 31, 2018, due primarily to employee separation costs with no corresponding costs in the prior year. Although we may record additional expense or benefit in future periods to true-up estimates, we do not expect to incur additional reorganization costs in connection with this reorganization. See Note 20 - Business Reorganization.

## Interest and other, net

(thousands of dollars)	2018	% of net revenue	2017	% of net revenue	(Increase)/ decrease	% Increase/ (decrease)
Interest expense, net	\$ (1,005)	(0.1)%	\$ (21,700)	(1.2)%	\$ 20,695	(95.4)%
Foreign currency exchange (loss) gain	(3,038)	(0.2)%	4,990	0.3 %	(8,028)	(160.9)%
Other	5,091	0.3 %	1,020	0.1 %	4,071	399.1 %
<b>Interest and other, net</b>	<b>\$ 1,048</b>	<b>0.1 %</b>	<b>\$ (15,690)</b>	<b>(0.9)%</b>	<b>\$ 16,738</b>	<b>(106.7)%</b>

Interest and other, net was income of \$1.0 million for the fiscal year ended March 31, 2018, as compared to an expense of \$15.7 million for the fiscal year ended March 31, 2017. The increase was due primarily to a \$20.7 million decrease in interest expense as a result of the settlement of our 1.75% Convertible Notes in December 2016 and higher gains on early conversions of our 1.00% Convertible Notes as well as higher interest income due to the nature of our investments and the rise of interest rates, partially offset by foreign exchange transaction losses for the fiscal year ended March 31, 2018 as compared to foreign exchange transaction gains in the prior year.

## Provision/Benefit from income taxes

On December 22, 2017, the U.S. enacted comprehensive tax legislation commonly referred to as the Tax Cuts and Jobs Act (herein referred to as the "Act"). The Act makes broad and complex changes to the U.S. tax code that could materially affect us. The Act reduces the U.S. federal corporate income tax rate from 35% to 21%, effective January 1, 2018 and requires companies to pay a one-time transition tax on the previously untaxed earnings of certain foreign subsidiaries. In addition, the Act makes other changes that may affect us, beginning April 1, 2018. These changes include but are not limited to (1) a Base Erosion Anti-abuse Tax (BEAT), which is a new minimum tax, (2) generally eliminating U.S. federal income taxes on dividends from foreign subsidiaries, (3) a new provision that taxes global intangible low-taxed income (GILTI), (4) the repeal of the domestic production activity deduction, and (5) other base broadening provisions.

The FASB Staff Q&A, Topic 740, No. 5, *Accounting for Global Intangible Low-Taxed Income*, states that an entity can make an accounting policy election to either recognize deferred taxes for temporary basis differences expected to reverse as GILTI in future years or provide for the tax expense related to GILTI in the year the tax is incurred. Given the complexity of the GILTI provisions, the Company is still evaluating the effects of the GILTI provisions and has not yet determined its accounting policy. As of March 31, 2018, the Company is still evaluating the GILTI provisions and analysis of future taxable income that is subject to GILTI and therefore is unable to make a reasonable estimate and has not reflected any adjustments related to GILTI in the Consolidated Financial Statements.

We recorded an estimated increase to income tax expense of \$18.1 million related to the one-time transition tax on the previously untaxed earnings of certain foreign subsidiaries as a result of the Act. The estimated increase was a result of a transition tax of \$26.6 million, offset by increased benefits from domestic production deductions and tax credits. In addition, as a result of the decrease in the U.S. federal corporate income tax rate from 35% to 21%, we recorded a decrease to net deferred tax assets of \$47.7 million and a corresponding decrease to the valuation allowance of \$39.8 million after taking into account a portion of the deferred tax liability from indefinite lived intangibles as a source of income against deferred tax assets, resulting in a tax benefit of \$7.9 million. The re-measurement of the deferred tax liability relating to indefinite lived intangibles, due to the rate change, resulted in a tax benefit of \$6.2 million.

We are currently evaluating the potential impact of the Act, and the amounts recorded represent provisional estimates for certain identified income tax effects for which the accounting is incomplete but a reasonable estimate can be determined, in accordance with Staff Accounting Bulletin No. 118 (SAB 118). Further analysis is required to review historical practices used to calculate the untaxed earnings of certain foreign subsidiaries and additional time to evaluate the complexities of the new tax law along with additional interpretative guidance that may be issued. The impact of the Act may differ from these estimates, possibly materially, due to changes in interpretations and assumptions we have made, guidance that may be issued, and actions we may



take as a result of the Act. We expect to continue to analyze the Act and its impact and expect to record any adjustments to provisional estimates no later than the third quarter of fiscal 2019.

Our income tax benefit was \$36.9 million for the fiscal year ended March 31, 2018 as compared to income tax expense of \$9.7 million for the fiscal year ended March 31, 2017.

When compared to the statutory rate of 31.6%, the effective tax rate of (27.0)% for the fiscal year ended March 31, 2018 was primarily due to \$53.2 million from excess tax benefits from employee stock compensation as a component of the benefit from income taxes (previously excess tax benefit and tax deficiencies were recognized in additional paid-in-capital), a benefit of \$22.6 million for tax credits anticipated to be utilized, a benefit of \$15.1 million from changes in unrecognized tax benefits primarily due to expiration of statute of limitations, and a benefit of \$7.9 million from our geographic mix of earnings, partially offset by provisional amounts recorded as a result of the Act and \$10.4 million for changes in our valuation allowance.

The effective tax rate in the current year was lower compared to the prior year primarily due to \$53.2 million from excess tax benefits related to employee stock compensation reflected as a component of the benefit from income taxes in the current year, an increased benefit from changes in unrecognized tax benefits of \$17.3 million primarily due to expiration of statute of limitations, and \$11.0 million of increased tax benefits due to mix of earnings, partially offset by a reduced benefit from tax credits of \$12.7 million and provisional amounts recorded as a result of the Act.

We anticipate that additional excess tax benefits from employee stock compensation, tax credits, changes in valuation allowance, and changes as a result of the Act may arise in future periods, which could have a significant impact on our effective tax rate.

The accounting for share-based compensation will increase or decrease our effective tax rate based upon the difference between our share-based compensation expense and the deductions taken on our tax return, which depends upon the stock price at the time of employee award vesting. Since we recognize excess tax benefits on a discrete basis, we anticipate that our effective tax rate will vary from quarter to quarter depending on our stock price in each period.

As of March 31, 2018, we had gross unrecognized tax benefits, including interest and penalties, of \$128.5 million, of which \$22.8 million would affect our effective tax rate if realized. For the fiscal year ended March 31, 2018, gross unrecognized tax benefits increased by \$8.3 million.

We are no longer subject to audit for U.S. federal income tax returns for periods prior to our fiscal year ended March 31, 2016 and state income tax returns for periods prior to the fiscal year ended March 31, 2013. With few exceptions, we are no longer subject to income tax examinations in non-U.S. jurisdictions for years prior to fiscal year ended March 31, 2012. Certain U.S. state and foreign taxing authorities are currently examining our income tax returns for the fiscal years ended March 31, 2012 through March 31, 2016.

We are regularly audited by domestic and foreign taxing authorities. We believe that our tax positions comply with applicable tax law and that we have adequately provided for reasonably foreseeable tax assessments. It is possible that settlement of audits or the expiration of the statute of limitations may impact our effective tax rate in future periods.

#### ***Net income and earnings per share***

For the fiscal year ended March 31, 2018, our net income was \$173.5 million, as compared to \$67.3 million in the prior year. Diluted earnings per share for the fiscal year ended March 31, 2018 was \$1.54, as compared to \$0.72 for the fiscal year ended March 31, 2017. Basic weighted average shares outstanding of 110.1 million were 19.9 million higher compared to the prior fiscal year due primarily to the settlement on conversion of our 1.75% Convertible Notes and our 1.00% Convertible Notes with shares of our common stock using the stated conversion rate and, to a lesser extent the vesting of restricted stock awards. See Note 1 - Basis of Presentation and Significant Accounting Policies and Note 13 - Earnings Per Share for additional information.

#### **Liquidity and Capital Resources**

Our primary cash requirements have been to fund (i) the development, manufacturing and marketing of our published products, (ii) working capital, (iii) acquisitions and (iv) capital expenditures. We expect to rely on cash and cash equivalents as well as on short-term investments, funds provided by our operating activities, and our New Credit Agreement to satisfy our working capital needs.

#### ***Short-term Investments***

As of March 31, 2019, we had \$744.5 million of short-term investments, which are highly-liquid in nature and represent an investment of cash that is available for current operations. From time to time, we may purchase additional short-term investments depending on future market conditions and liquidity needs.

### ***New Credit Agreement***

On February 8, 2019, we entered into an unsecured Credit Agreement (the "New Credit Agreement"). The New Credit Agreement replaced our existing Credit Agreement, which was terminated on the same day. The New Credit Agreement runs through February 8, 2024. The New Credit Agreement provides for an unsecured five-year revolving credit facility with commitments of \$200,000, including sublimits for (i) the issuance of letters of credit in an aggregate face amount of up to \$25,000 and (ii) borrowings and letters of credit denominated in Pounds Sterling, Euros and Canadian Dollars in an aggregate principal amount of up to \$25,000. In addition, the New Credit Agreement contains uncommitted incremental capacity permitting the incurrence of up to an additional \$250,000 in term loans or revolving credit facilities. Loans under the New Credit Agreement will bear interest at a margin of (a) 0.125% to 0.750% above a certain base rate (5.50% at March 31, 2019), or (b) 1.125% to 1.750% above LIBOR (approximately 2.49% at March 31, 2019), which margins are determined by reference to our consolidated total net leverage ratio.

As of March 31, 2019, there was \$198.3 million available to borrow under the New Credit Agreement and we had \$1.7 million of letters of credit outstanding. At March 31, 2019, we had no outstanding borrowings under the Credit Agreement.

The New Credit Agreement also includes, among other terms and conditions, maximum leverage ratio, minimum cash reserves and, in certain circumstances, minimum interest coverage ratio financial covenants, as well as limitations on the Company's and each of its subsidiaries' ability to: create, incur, assume or be liable for indebtedness; dispose of assets outside the ordinary course; acquire, merge or consolidate with or into another person or entity; create, incur or allow any lien on any of its property; make investments; or pay dividends or make distributions, in each case subject to certain exceptions. In addition, the New Credit Agreement provides for certain events of default such as nonpayment of principal and interest when due thereunder, breaches of representations and warranties, noncompliance with covenants, acts of insolvency and default on indebtedness held by third parties (subject to certain limitations and cure periods).

### ***1.00% Convertible Notes Due 2018***

On June 18, 2013, we issued \$250.0 million aggregate principal amount of 1.00% Convertible Notes due 2018. The Convertible Notes were issued at 98.5% of par value for proceeds of \$283.2 million, which included a \$37.5 million overallotment option that was exercised. Interest on the Convertible Notes was payable semi-annually in arrears on July 1st and January 1st of each year, commencing on January 1, 2014. The Convertible Notes matured on July 1, 2018.

### ***Financial Condition***

We are subject to credit risks, particularly if any of our receivables represent a limited number of customers or are concentrated in foreign markets. If we are unable to collect our accounts receivable as they become due, it could adversely affect our liquidity and working capital position.

Generally, we have been able to collect our accounts receivable in the ordinary course of business. We do not hold any collateral to secure payment from customers. We have trade credit insurance on the majority of our customers to mitigate accounts receivable risk.

A majority of our trade receivables are derived from sales to major retailers and distributors. Our five largest customers accounted for 70.1%, 70.7%, and 65.5% of net revenue during the fiscal years ended March 31, 2019, 2018, and 2017, respectively. As of March 31, 2019 and 2018, five customers accounted for 66.6% and 65.4% of our gross accounts receivable, respectively. Customers that individually accounted for more than 10% of our gross accounts receivable balance comprised 55.8% and 53.2% of such balances at March 31, 2019 and 2018, respectively. We had two customers who accounted for 40.1% and 15.7% of our gross accounts receivable as of March 31, 2019 and two customers who accounted for 37.7%, and 15.5% of our gross accounts receivable as of March 31, 2018. We did not have any additional customers that exceeded 10% of our gross accounts receivable as of March 31, 2019 and 2018. Based upon performing ongoing credit evaluations, maintaining trade credit insurance on a majority of our customers and our past collection experience, we believe that the receivable balances from these largest customers do not represent a significant credit risk, although we actively monitor each customer's credit worthiness and economic conditions that may affect our customers' business and access to capital. We are monitoring the current global economic conditions, including credit markets and other factors as it relates to our customers in order to manage the risk of uncollectible accounts receivable.

We believe our current cash, short-term investments and projected cash flow from operations, along with availability under our New Credit Agreement will provide us with sufficient liquidity to satisfy our cash requirements for working capital, capital expenditures, and commitments on both a short-term and long-term basis.

As of March 31, 2019, the amount of cash and cash equivalents held outside of the U.S. by our foreign subsidiaries was \$292.7 million. These balances are dispersed across various locations around the world. We believe that such dispersion meets

the business and liquidity needs of our foreign affiliates. In addition, we expect to have the ability to generate sufficient cash domestically to support ongoing operations for the foreseeable future.

On December 22, 2017, the U.S. enacted comprehensive tax legislation commonly referred to as the "Tax Cuts and Jobs Act" (herein referred to as the "Act"). The Act made broad and complex changes to the U.S. tax code, which could materially affect us. The Act included a number of provisions, including international provisions, which generally establish a territorial-style system for taxing foreign income of domestic multinational corporations. Our current intention is to reinvest indefinitely earnings of our foreign subsidiaries, and therefore we have not recorded any tax liabilities associated with the repatriation of foreign earnings.

Our Board of Directors has authorized the repurchase of up to 14.2 million shares of our common stock. Under this program, we may purchase shares from time to time through a variety of methods, including in the open market or through privately negotiated transactions, in accordance with applicable securities laws. Repurchases are subject to the availability of stock, prevailing market conditions, the trading price of the stock, our financial performance and other conditions. The program does not require us to repurchase shares and may be suspended or discontinued at any time for any reason. During the fiscal years ended March 31, 2019, 2018, and 2017, we repurchased 3.7 million, 1.5 million, and 0.0 million shares of our common stock, respectively, in the open market for \$362.4 million, \$154.8 million, and \$0.0 million, respectively, including commissions as part of the program. As of March 31, 2019, we had repurchased a total of 10.4 million shares of our common stock under the program, and 3.8 million shares of our common stock remained available for repurchase under the share repurchase program.

Our changes in cash flows were as follows:

(thousands of dollars)	Fiscal Year Ended March 31,		
	2019	2018	2017
Net cash provided by operating activities	\$ 843,515	\$ 493,527	\$ 407,903
Net cash used in investing activities	(223,576)	(271,827)	(129,030)
Net cash used in financing activities	(463,685)	(281,467)	(49,772)
Effects of foreign currency exchange rates on cash, cash equivalents, and restricted cash	(10,639)	24,924	(7,798)
<b>Net change in cash, cash equivalents, and restricted cash</b>	<b>\$ 145,615</b>	<b>\$ (34,843)</b>	<b>\$ 221,303</b>

At March 31, 2019, we had 1,392.0 million of Cash, cash equivalents, and Restricted cash, compared to 1,246.4 million at March 31, 2018. The increase in Cash, cash equivalents, and Restricted cash from March 31, 2018 was due primarily to Net cash provided by operating activities from sales, primarily of *Red Dead Redemption 2*, partially offset by investments in software development and licenses as well as royalty payments. These net increases were offset by Net cash used in financing activities, which was primarily related to repurchases of common stock under our share repurchase program and tax payments related to net share settlements of our restricted stock, and to a lesser extent Net cash used in investing activities, which was primarily related to bank time deposits and purchases of fixed assets.

#### ***Contractual Obligations and Commitments***

We have entered into various agreements in the ordinary course of business that require substantial cash commitments over the next several years. Generally, these include:

- *Software Development and Licensing:* We make payments to third-party software developers that include contractual payments to developers under several software development agreements that expire at various times through March 2025. Our aggregate outstanding software development commitments assume satisfactory performance by third-party software developers. We also have licensing commitments that primarily consist of obligations to holders of intellectual property rights for use of their trademarks, copyrights, technology or other intellectual property rights in the development of our products.
- *Marketing:* We have certain minimum marketing support commitments where we commit to spend specified amounts related to marketing our products. Marketing commitments expire at various times through September 2024.
- *Operating Leases:* Our offices are occupied under non-cancelable operating leases expiring at various times through December 2032. We also lease certain furniture, equipment and automobiles under non-cancelable leases expiring through June 2023. Some of the leases have fixed rent increases and also include inducements to enter into the lease. The effect of such amounts are deferred and recognized on a straight-line basis over the related lease term.
- *Purchase obligations:* These obligations are primarily related to agreements to purchase services that are enforceable and legally binding on us that specifies all significant terms, including fixed, minimum or variable pricing provisions; and the approximate timing of the transactions, expiring at various times through March 2024.

A summary of annual minimum contractual obligations and commitments as of March 31, 2019 is as follows (in thousands of dollars):

Fiscal Year Ending March 31,	Software Development and Licensing	Marketing	Operating Leases	Purchase Obligations	Total
2020	\$ 183,309	\$ 52,953	\$ 28,365	\$ 23,707	\$ 288,334
2021	120,008	28,830	27,882	9,559	186,279
2022	114,734	28,661	26,272	5,063	174,730
2023	56,884	78,100	23,787	623	159,394
2024	51,792	24,600	16,474	484	93,350
Thereafter	55,792	49,200	82,570	—	187,562
<b>Total</b>	<b>\$ 582,519</b>	<b>\$ 262,344</b>	<b>\$ 205,350</b>	<b>\$ 39,436</b>	<b>\$ 1,089,649</b>

*Income Taxes:* At March 31, 2019, we had recorded a liability for gross unrecognized tax benefits, including interest and penalties, of \$23.9 million, for which we are unable to make a reasonable and reliable estimate of the period in which these liabilities will be settled with the respective tax authorities; therefore, these liabilities have not been included in the contractual obligations table.

*Legal and Other Proceedings:* We are, or may become, subject to demands and claims (including intellectual property claims) and are involved in routine litigation in the ordinary course of business which we do not believe to be material to our business or financial statements. We have appropriately accrued amounts related to certain of these claims and legal and other proceedings. While it is reasonably possible that a loss may be incurred in excess of the amounts accrued in our financial statements, we believe that such losses, unless otherwise disclosed, would not be material.

On February 7, 2019, all of the previously disclosed lawsuits, claims, and counterclaims that had been pending since April 2016 with Mr. Leslie Benzie, the former president of one of our subsidiaries, were resolved.

#### **Off-Balance Sheet Arrangements**

As of March 31, 2019 and 2018, we did not have any material relationships with unconsolidated entities or financial parties, such as entities often referred to as structured finance or variable interest entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. As such, we are not exposed to any financing, liquidity, market or credit risk that could arise if we had engaged in such relationships.

#### **International Operations**

Net revenue earned outside of the United States is principally generated by our operations in Europe, Asia, Australia, Canada and Latin America. For the fiscal years ended March 31, 2019, 2018 and 2017, 46.5%, 41.3% and 43.9%, respectively, of our net revenue was earned outside the United States. We are subject to risks inherent in foreign trade, including increased credit risks, tariffs and duties, fluctuations in foreign currency exchange rates, shipping delays and international political, regulatory and economic developments, all of which can have a significant effect on our operating results.

#### **Fluctuations in Quarterly Operating Results and Seasonality**

We have experienced fluctuations in quarterly and annual operating results as a result of the timing of the introduction of new titles; variations in sales of titles developed for particular platforms; market acceptance of our titles; development and promotional expenses relating to the introduction of new titles; sequels or enhancements of existing titles; projected and actual changes in platforms; the timing and success of title introductions by our competitors; product returns; changes in pricing policies by us and our competitors; the accuracy of retailers' forecasts of consumer demand; the size and timing of acquisitions; the timing of orders from major customers; and order cancellations and delays in product shipment. Sales of our products are also seasonal, with peak shipments typically occurring in the fourth calendar quarter as a result of increased demand for products during the holiday season. For certain of our software products with multiple element revenue arrangements, we defer the recognition of our net revenue over an estimated service period which generally ranges from 9 to 15 months. As a result, the quarter in which we generate the highest net sales volume may be different from the quarter in which we recognize the highest amount of net revenue. Quarterly comparisons of operating results are not necessarily indicative of future operating results.

## Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Market risk is the potential loss arising from fluctuations in market rates and prices. Our market risk exposures primarily include fluctuations in interest rates and foreign currency exchange rates.

### *Interest Rate Risk*

Our exposure to fluctuations in interest rates relates primarily to our short-term investment portfolio and variable rate debt under the New Credit Agreement.

We seek to manage our interest rate risk by maintaining a short-term investment portfolio that includes corporate bonds with high credit quality and maturities less than two years. Since short-term investments mature relatively quickly and can be reinvested at the then-current market rates, interest income on a portfolio consisting of short-term securities is more subject to market fluctuations than a portfolio of longer-term maturities. However, the fair value of a short-term portfolio is less sensitive to market fluctuations than a portfolio of longer-term securities. We do not currently use derivative financial instruments in our short-term investment portfolio. Our investments are held for purposes other than trading.

As of March 31, 2019, we had \$744.5 million of short-term investments, which included \$356.8 million of available-for-sale securities. The available-for-sale securities were recorded at fair market value with unrealized gains or losses resulting from changes in fair value reported as a separate component of accumulated other comprehensive income (loss), net of tax, in stockholders' equity. We also had \$826.5 million of cash and cash equivalents that are comprised primarily of money market funds and bank-time deposits. We determined that, based on the composition of our investment portfolio, there was no material interest rate risk exposure to our Consolidated Financial Statements or liquidity as of March 31, 2019.

Historically, fluctuations in interest rates have not had a significant effect on our operating results. Under our New Credit Agreement, loans will bear interest at a rate of (a) 0.250% to 0.750% above a certain base rate (5.50% at March 31, 2019) or (b) 1.125% to 1.750% above LIBOR (approximately 2.49% at March 31, 2019), which rates are determined by reference to our consolidated total net leverage ratio. Changes in market rates may affect our future interest expense if there is an outstanding balance on our line of credit. At March 31, 2019, there were no outstanding borrowings under our New Credit Agreement.

### *Foreign Currency Exchange Rate Risk*

We transact business in foreign currencies and are exposed to risks resulting from fluctuations in foreign currency exchange rates. Accounts relating to foreign operations are translated into United States dollars using prevailing exchange rates at the relevant period end. Translation adjustments are included as a separate component of stockholders' equity on our Consolidated Balance Sheets. For the fiscal years ended March 31, 2019 and 2018, our foreign currency translation adjustment was a loss of \$28.8 million and a gain of \$43.4 million, respectively. We recognized a foreign currency exchange transaction loss of \$0.5 million, a loss of \$3.0 million, and a gain of \$5.0 million for the fiscal years ended March 31, 2019, 2018, and 2017, respectively, in Interest and other, net in our Consolidated Statements of Operations.

### *Balance Sheet Hedging Activities*

We use foreign currency forward contracts to mitigate foreign currency exchange rate risk associated with non-functional currency denominated cash balances and inter-company funding loans, non-functional currency denominated accounts receivable and non-functional currency denominated accounts payable. These transactions are not designated as hedging instruments and are accounted for as derivatives whereby the fair value of the contracts is reported as either assets or liabilities on our Consolidated Balance Sheets, and gains and losses resulting from changes in the fair value are reported in interest and other, net, in our Consolidated Statements of Operations. We do not enter into derivative financial contracts for speculative or trading purposes. At March 31, 2019, we had \$116.6 million of forward contracts outstanding to buy foreign currencies in exchange for U.S. dollars and \$87.8 million of forward contracts outstanding to sell foreign currencies in exchange for U.S. dollars all of which have maturities of less than one year. At March 31, 2018, we had \$4.4 million of forward contracts outstanding to buy foreign currencies in exchange for U.S. dollars and \$67.6 million of forward contracts outstanding to sell foreign currencies in exchange for U.S. dollars all of which have maturities of less than one year. For the fiscal years ended March 31, 2019, 2018 and 2017, we recorded a gain of \$16.8 million, a loss of \$19.5 million, and a gain of \$7.2 million, respectively, related to foreign currency forward contracts in Interest and other, net on the Consolidated Statements of Operations. As of March 31, 2019 and 2018, the fair value of these outstanding forward contracts were losses of \$0.4 million and \$0.0 million, respectively, and is included in accrued and other current liabilities. The fair value of these outstanding forward contracts is estimated based on the prevailing exchange rates of the various hedged currencies as of the end of the period.

Our hedging programs are designed to reduce, but do not entirely eliminate, the effect of currency exchange rate movements. We believe the counterparties to these foreign currency forward contracts are credit-worthy multinational commercial banks and that the risk of counterparty nonperformance is not material. Notwithstanding our efforts to mitigate some foreign

currency exchange rate risks, there can be no assurance that our hedging activities will adequately protect us against the risks associated with foreign currency fluctuations. For the fiscal year ended March 31, 2019, 46.5% of our revenue was generated outside the United States. Using sensitivity analysis, a hypothetical 10% increase in the value of the U.S. dollar against all currencies would decrease revenue by 4.7%, while a hypothetical 10% decrease in the value of the U.S. dollar against all currencies would increase revenue by 4.7%. In the opinion of management, a substantial portion of this fluctuation would be offset by cost of goods sold and operating expenses incurred in local currency.

#### **Item 8. Financial Statements and Supplementary Data**

The financial statements and supplementary data appear in a separate section of this report following Part IV. We provide details of our valuation and qualifying accounts in Note 21 - Supplementary Financial Information to the Consolidated Financial Statements. All schedules have been omitted since the information required to be submitted has been included on the Consolidated Financial Statements or notes thereto or has been omitted as not applicable or not required.

#### **Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure**

None.

#### **Item 9A. Controls and Procedures**

##### *Definition and Limitations of Disclosure Controls and Procedures*

Our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) are designed to reasonably ensure that information required to be disclosed in our reports filed under the Exchange Act is (i) recorded, processed, summarized, and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and (ii) accumulated and communicated to management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosures.

There are inherent limitations to the effectiveness of any system of disclosure controls and procedures. These limitations include the possibility of human error; the circumvention or overriding of the controls and procedures and reasonable resource constraints. In addition, because we have designed our system of controls based on certain assumptions, which we believe are reasonable, about the likelihood of future events, our system of controls may not achieve its desired purpose under all possible future conditions. Accordingly, our disclosure controls and procedures provide reasonable assurance, but not absolute assurance, of achieving their objectives.

##### *Evaluation of Disclosure Controls and Procedures*

Our management, with the participation of our principal executive officer and principal financial officer, has evaluated the effectiveness of our disclosure controls and procedures at March 31, 2019, the end of the period covered by this report. Based on this evaluation, the principal executive officer and principal financial officer concluded that, at March 31, 2019, our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is (i) recorded, processed, summarized, and reported on a timely basis, and (ii) accumulated and communicated to management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosures.

##### *Management's Report on Internal Control Over Financial Reporting*

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act). Management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the criteria set forth in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission 2013 framework ("COSO"). Based on this evaluation, management has concluded that our internal control over financial reporting was effective as of March 31, 2019.

Our independent registered public accounting firm, Ernst & Young LLP, has issued an audit report on our internal control over financial reporting. The report on the audit of internal control over financial reporting is included in this Form 10-K.

##### *Changes in Internal Control Over Financial Reporting*

There were no changes in our internal control over financial reporting during the fiscal quarter ended March 31, 2019, which were identified in connection with management's evaluation required by paragraph (d) of Rules 13a-15 and 15d-15 under the Exchange Act, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**Item 9B. Other Information**

None.

## **PART III**

### **Item 10. Directors, Executive Officers and Corporate Governance**

The information required by this Item is incorporated herein by reference to the sections entitled "Proposal 1—Election of Directors" and "Executive Compensation—Section 16(a) Beneficial Ownership Reporting Compliance" in our definitive Proxy Statement (the "Proxy Statement") for the Annual Meeting of Stockholders to be held in 2019. We intend to file the Proxy Statement within 120 days after the end of the fiscal year (i.e. on or before July 29, 2019). Our Code of Business Conduct and Ethics applicable to our directors and all employees, including senior financial officers, is available on our website at [www.take2games.com](http://www.take2games.com). If we make any amendment to our Code of Business Conduct and Ethics that is required to be disclosed pursuant to the Exchange Act, we will make such disclosures on our website.

### **Item 11. Executive Compensation**

The information required by this Item is incorporated herein by reference to the section entitled "Executive Compensation" in our Proxy Statement.

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

The information required by this Item is incorporated herein by reference to the sections entitled "Voting Security Ownership of Certain Beneficial Owners and Management" and "Equity Compensation Plan Information" in our Proxy Statement.

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

The information required by this Item is incorporated herein by reference to the section entitled "Certain Relationships and Related Transactions" in our Proxy Statement.

### **Item 14. Principal Accounting Fees and Services**

The information required by this Item is incorporated herein by reference to the section entitled "Independent Auditor Fee Information" in our Proxy Statement.



## PART IV

### Item 15. Exhibits, Financial Statement Schedules

(a) The following documents are filed as part of this Report:

- (i) Financial Statements. See Index to Financial Statements on page 53 of this Report.
- (ii) Financial Statement Schedule. See Note 21 to the Consolidated Financial Statements.
- (iii) Index to Exhibits:

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Filing Date	Exhibit	
2.1	<a href="#">Share Sale and Purchase Agreement, dated January 31, 2017, by and among Take-Two Interactive Software, Inc., Take-Two Invest Espana, S.L., Andres Bou Ortiz, Horacio Martos Borja, Marc Canaleta Caupena, Voladuras Hinojo, S.L., Nauta Tech Invest III, S.C.R., S.A., Bilbao Vizcaya Holding, S.A., La Banque Postale Innovation 11 FCPI, Capital Croissance 4, Objectif Innovation Patrimoine 4 FCPI, Strategie PME 2011 FCPI, Idinvest Patrimoine FCPI, Allianz Eco Innovation 3 FCPI, Objectif Innovation 5 FCPI, Idinvest Crossance FCPI, SG Innovation 2011 FCPI, Allianz Eco Innovation 2 FCPI, Objectif Innovation 4 FCPI, Idinvest Flexible 2016 FCPI, Capital Croissance 5 FCPI, Objectif Innovation Patrimoine 5 FCPI, Idinvest Patrimoine 2 FCPI, Objectif Innovation Patrimoine 6 FCPI, Idinvest Patrimoine 3 FCPI, Greylock Israel Investment Vehicle in Social Point, LTD, and HCPESP, S.a.r.l. †</a>	8-K	2/3/2017	2.1	
3.1	<a href="#">Restated Certificate of Incorporation</a>	10-K	2/12/2004	3.1	
3.1.1	<a href="#">Certificate of Amendment of Restated Certificate of Incorporation, dated April 30, 1998</a>	10-K	2/12/2004	3.1.2	
3.1.2	<a href="#">Certificate of Amendment of Restated Certificate of Incorporation, dated November 17, 2003</a>	10-K	2/12/2004	3.1.3	
3.1.3	<a href="#">Certificate of Amendment of Restated Certificate of Incorporation, dated April 23, 2009</a>	8-K	4/23/2009	3.1	
3.1.4	<a href="#">Certificate of Amendment of Restated Certificate of Incorporation, dated September 21, 2012</a>	8-K	9/24/2012	3.1	
3.2	<a href="#">Certificate of Designation of Series A Preferred Stock, dated March 11, 1998</a>	10-K	2/12/2004	3.1.1	
3.3	<a href="#">Certificate of Designation of Series B Preferred Stock, dated March 26, 2008</a>	8-A12B	3/26/2008	4.2	
3.4	<a href="#">Amended and Restated Bylaws of Take-Two Interactive Software, Inc., effective as of September 15, 2017</a>	8-K	9/18/2017	3.1	
10.1	<a href="#">Take-Two Interactive Software, Inc. Change in Control Employee Severance Plan<sup>+</sup></a>	8-K	3/7/2008	10.1	
10.2	<a href="#">Amended and Restated Take-Two Interactive Software, Inc. 2009 Stock Incentive Plan, effective as of July 21, 2016<sup>+</sup></a>	14A	7/28/2016	Annex A	

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Filing Date	Exhibit	
10.3	<a href="#">Form of Employee Restricted Stock Agreement</a> <sup>+</sup>	10-Q	6/5/2009	10.2	
10.4	<a href="#">Form of Non-Employee Director Restricted Stock Agreement</a> <sup>+</sup>	10-Q	6/5/2009	10.3	
10.5	<a href="#">Form of Employee Restricted Unit Agreement</a> <sup>+</sup>	10-Q	8/1/2012	10.1	
10.6	<a href="#">Form of Employee Restricted Unit Agreement</a> <sup>+</sup>	10-Q	10/30/2013	10.1	
10.7	<a href="#">Form of Employee Global Restricted Unit Agreement</a> <sup>+</sup>	10-Q	10/30/2013	10.2	
10.8	<a href="#">Form of Employee Restricted Unit Agreement</a> <sup>+</sup>	10-Q	10/30/2013	10.3	
10.9	<a href="#">Form of Employee Global Restricted Unit Agreement</a> <sup>+</sup>	10-Q	10/30/2013	10.4	
10.10	<a href="#">Form of Employee Global Restricted Unit Agreement Pursuant to the Take-Two Interactive Software, Inc. 2009 Stock Incentive Plan</a> <sup>+</sup>	10-Q	10/30/2013	10.5	
10.11	<a href="#">Take-Two Interactive Software, Inc. 2017 Stock Incentive Plan, effective as of September 15, 2017</a> <sup>+</sup>	14A	7/27/2017	Annex B	
10.12	<a href="#">Take-Two Interactive Software, Inc. 2017 Stock Incentive Plan Qualified RSU Sub-Plan for France, effective as of September 15, 2017</a> <sup>+</sup>	14A	7/27/2017	Annex C	
10.13	<a href="#">Take-Two Interactive Software, Inc. 2017 Second Amended and Restated Global Employee Stock Purchase Plan, effective as of March 28, 2019</a> <sup>+</sup>				X
10.14	<a href="#">Form of Global Restricted Stock Unit Agreement Pursuant to the Take-Two Interactive Software, Inc. 2017 Stock Incentive Plan</a> <sup>+</sup>	10-Q	11/8/2017	10.4	
10.15	<a href="#">Form of Global Restricted Stock Performance Unit Agreement Pursuant to the Take-Two Interactive Software, Inc. 2017 Stock Incentive Plan</a> <sup>+</sup>	10-Q	11/8/2017	10.5	
10.16	<a href="#">Form of Non-Employee Director Restricted Stock Agreement Pursuant to the Take-Two Interactive Software Inc. 2017 Stock Incentive Plan</a> <sup>+</sup>	10-Q	11/8/2017	10.6	
10.17	<a href="#">Form of Non-Employee Director Stock Grant Agreement Pursuant to the Take-Two Interactive Software Inc. 2017 Stock Incentive Plan</a> <sup>+</sup>	10-Q	11/8/2017	10.7	
10.18	<a href="#">Employment Agreement, dated May 12, 2010, between the Company and Lainie Goldstein</a> <sup>+</sup>	8-K	5/14/2010	10.1	
10.19	<a href="#">First Amendment to Employment Agreement, dated October 25, 2010, between the Company and Lainie Goldstein</a> <sup>+</sup>	8-K	10/25/2010	10.1	
10.20	<a href="#">Second Amendment to Employment Agreement, dated August 27, 2012, between the Company and Lainie Goldstein</a> <sup>+</sup>	10-Q	10/31/2012	10.6	
10.21	<a href="#">Third Amendment to Employment Agreement dated May 7, 2018, between the Company and Lainie Goldstein</a> <sup>+</sup>	10-Q	8/3/2018	10.2	

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Filing Date	Exhibit	
10.22	<a href="#">Employment Agreement, dated February 14, 2008, by and between the Company and Karl Slatoff</a> <sup>+</sup>	8-K	2/15/2008	10.3	
10.23	<a href="#">Employment Agreement dated January 28, 2015 between the Company and Daniel Emerson</a> <sup>+</sup>	10-Q	2/6/2015	10.1	
10.24	<a href="#">Management Agreement, dated as of March 10, 2014, by and between the Company and ZelnickMedia Corporation</a> <sup>+</sup>	8-K	3/10/2014	10.1	
10.25	<a href="#">Restricted Unit Agreement, dated as of May 20, 2015, by and between the Company and ZelnickMedia Corporation</a> <sup>+</sup>	S-3 ASR	5/20/2015	10.2	
10.26	<a href="#">Amended and Restated Restricted Unit Agreement Pursuant to the Take-Two Interactive Software, Inc. 2009 Incentive Stock Plan, dated as of June 30, 2015</a> <sup>+</sup>	10-Q	8/10/2015	10.1	
10.27	<a href="#">Amendment to the Restricted Stock Unit Agreement, dated as of March 31, 2016, by and between Take-Two Interactive Software, Inc. and ZelnickMedia Corporation</a> <sup>+</sup>	10-K	5/19/2016	10.50	
10.28	<a href="#">Restricted Unit Agreement, dated as of May 20, 2016, by and between Take-Two Interactive Software, Inc. and ZelnickMedia Corporation</a> <sup>+</sup>	S-3 ASR	5/20/2016	10.2	
10.29	<a href="#">Amendment to Amended and Restated Restricted Unit Agreement Pursuant to the Take Two Interactive Software, Inc. 2009 Incentive Stock Plan, dated as of February 7, 2017</a> <sup>+</sup>	10-Q	2/8/2017	10.3	
10.30	<a href="#">Restricted Unit Agreement, dated as of May 25, 2017, by and between Take-Two Interactive Software, Inc. and ZelnickMedia Corporation</a> <sup>+</sup>	S-3 ASR	5/25/2017	10.2	
10.31	<a href="#">Amendment to Amended and Restated Restricted Unit Agreement Pursuant to the Take-Two Interactive Software, Inc. 2009 Incentive Stock Plan, dated as of December 15, 2017</a> <sup>+</sup>	10-Q	2/8/2018	10.4	
10.32	<a href="#">Management Agreement, dated as of November 17, 2017, by and between the Company and ZelnickMedia Corporation</a> <sup>+</sup>	8-K	11/22/2017	10.1	
10.33	<a href="#">Restricted Unit Agreement, dated as of April 13, 2018, by and between Take-Two Interactive Software, Inc. and ZelnickMedia Corporation</a> <sup>+</sup>	S-3 ASR	4/13/2018	10.2	
10.34	<a href="#">Restricted Unit Agreement, dated as of April 15, 2019, by and between Take-Two Interactive Software, Inc. and ZelnickMedia Corporation</a> <sup>+</sup>	S-3 ASR	4/15/2019	10.2	

Exhibit Number	Exhibit Description	Incorporated by Reference		
		Form	Filing Date	Exhibit
10.35	<a href="#">Credit Agreement, dated as of February 8, 2019, by and among Take-Two Interactive Software, Inc., the lender parties thereto, Wells Fargo Bank, National Association, as administrative agent for the Lenders, Wells Fargo Securities, LLC and JP Morgan Chase Bank, N.A., as joint lead arrangers and joint bookrunners, and JPMorgan Chase Bank, N.A. as syndication agent</a>			
				Filed Herewith X
10.36	<a href="#">Xbox 360 Publisher License Agreement dated November 17, 2005, between Microsoft Licensing, GP and the Company*</a>	10-Q	11/8/2011	10.3
10.37	<a href="#">Amendment to Xbox 360 Publisher License Agreement, dated December 4, 2008, between Microsoft Licensing, GP and the Company*</a>	10-Q	6/5/2009	10.1
10.38	<a href="#">Amendment to the Xbox 360 Publisher License Agreement, dated November 22, 2011, between the Company and Microsoft Licensing, GP*</a>	10-Q	2/3/2012	10.1
10.39	<a href="#">Amendment to the Xbox 360 Publisher License Agreement, dated December 11, 2012, between the Company and Microsoft Licensing, GP*</a>	10-Q	2/6/2013	10.2
10.40	<a href="#">Amendment to the Xbox 360 Publisher License Agreement, dated November 13, 2013, between the Company and Microsoft Licensing, GP*</a>	10-Q	2/4/2014	10.2
10.41	<a href="#">Amendment to the Xbox 360 Publisher License Agreement, dated September 30, 2014, between Microsoft Corporation and the Company*</a>	10-Q	10/30/2014	10.1
10.42	<a href="#">Amendment to the Xbox 360 Publisher License Agreement, signed on December 21, 2017, between Microsoft Corporation and the Company*</a>	10-Q	2/8/2018	10.2
10.43	<a href="#">Xbox One Publisher License Agreement dated October 31, 2013, between Microsoft Licensing, GP and the Company*</a>	10-Q	2/4/2014	10.1
10.44	<a href="#">Amendment to the Xbox One Publisher License Agreement, dated May 7, 2014, between Microsoft Licensing, GP and the Company*</a>	10-Q	8/6/2014	10.1
10.45	<a href="#">Amendment to the Xbox One Publisher License Agreement, dated January 30, 2015, between Microsoft Corporation and the Company*</a>	10-K	5/19/2016	10.48
10.46	<a href="#">Amendment No. 3 to the Xbox One Publisher License Agreement, dated August 13, 2015, between Microsoft Corporation and the Company*</a>	10-K	5/19/2016	10.49
10.47	<a href="#">Amendment No. 4 to the Xbox One Publisher License Agreement, dated December 15, 2016, between Microsoft Corporation and the Company*</a>	10-Q/A	5/23/2017	10.2
10.48	<a href="#">Amendment No. 5 to the Xbox One Publisher License Agreement, signed on January 10, 2018, between Microsoft Corporation and the Company*</a>	10-K	5/17/2018	10.55

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	Filing Date	Exhibit	
10.49	<a href="#">PlayStation Global Developer and Publisher Agreement, dated as of March 23, 2017, between the Company and certain of its affiliates and Sony Interactive Entertainment, Inc., Sony Interactive Entertainment America LLC, and Sony Interactive Entertainment Europe Ltd.**</a>	10-K	5/24/2017	10.48	
10.50	<a href="#">Lease Agreement between the Company and Moklam Enterprises, Inc. dated July 1, 2002</a>	10-Q	9/16/2002	10.2	
10.51	<a href="#">Sixth Lease Modification Agreement, dated January 18, 2012, between the Company and Moklam Enterprises, Inc.</a>	10-K	5/23/2012	10.45	
10.52	<a href="#">Seventh Lease Modification Agreement, dated April 8, 2014, between the Company and Moklam Enterprises, Inc.</a>	10-K	5/14/2014	10.39	
10.53	<a href="#">Eighth Lease Modification Agreement, dated as of January 6, 2015, by and between Take-Two Interactive Software, Inc. and Moklam Enterprises, Inc.</a>	10-K	5/19/2016	10.47	
10.54	<a href="#">Ninth Lease Modification Agreement, dated as of December 15, 2015, by and between Take-Two Interactive Software, Inc. and Moklam Enterprises, Inc.</a>	10-Q	2/4/2016	10.1	
10.55	<a href="#">Lease Agreement, dated as of December 12, 2016, by and between Take-Two Interactive Software, Inc. and DOLP 1133 Properties II LLC for a premises with entrances at 1133 Avenue of the Americas and 110 West 44th Street, New York, New York 10036</a>	10-Q	2/8/2017	10.1	
10.56	<a href="#">First Amendment to Lease, dated as of July 25, 2018 by and between Take-Two Interactive Software, Inc. and DOLP 1133 Properties II LLC</a>	10-Q	11/8/2018	10.1	
10.57	<a href="#">Registration Rights Agreement, dated January 31, 2017, by and among Take-Two Interactive Software, Inc, Andres Bou Ortiz, Horacio Martos Borja, Marc Canaletta Caupena, Voladuras Hinojo, S.L., Nauta Tech Invest III, S.C.R., S.A., Bilbao Vizcaya Holding, S.A., La Banque Postale Innovation 11 FCPI, Capital Croissance 4, Objectif Innovation Patrimoine 4 FCPI, Strategie PME 2011 FCPI, Idinvest Patrimoine FCPI, Allianz Eco Innovation 3 FCPI, Objectif Innovation 5 FCPI, Idinvest Crossance FCPI, SG Innovation 2011 FCPI, Allianz Eco Innovation 2 FCPI, Objectif Innovation 4 FCPI, Idinvest Flexible 2016 FCPI, Capital Croissance 5 FCPI, Objectif Innovation Patrimoine 5 FCPI, Idinvest Patrimoine 2 FCPI, Objectif Innovation Patrimoine 6 FCPI, Idinvest Patrimoine 3 FCPI, Greylock Israel Investment Vehicle in Social Point, LTD, and HCPESP, S.a.r.l.</a>	8-K	2/3/2017	10.1	

Exhibit Number	Exhibit Description	Importance by Reference			Filed Herewith
		Form	Filing Date	Exhibit	
21.1	<a href="#">Subsidiaries of the Company</a>				X
23.1	<a href="#">Consent of Ernst &amp; Young LLP</a>				X
31.1	<a href="#">Chief Executive Officer Certification Pursuant to Rules 13a-15(e) and 15d-15(e) under the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>				X
31.2	<a href="#">Chief Financial Officer Certification Pursuant to Rules 13a-15(e) and 15d-15(e) under the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>				X
32.1	<a href="#">Chief Executive Officer Certification pursuant to 18 U.S.C. Section 1350, as adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>				X
32.2	<a href="#">Chief Financial Officer Certification pursuant to 18 U.S.C. Section 1350, as adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>				X
101.INS	XBRL Instance Document.				X
101.SCH	XBRL Taxonomy Extension Schema Document.				X
101.CAL	XBRL Taxonomy Calculation Linkbase Document.				X
101.LAB	XBRL Taxonomy Label Linkbase Document.				X
101.PRE	XBRL Taxonomy Presentation Linkbase Document.				X
101.DEF	XBRL Taxonomy Extension Definition Document.				X

† Schedules omitted pursuant to item 601(b)(2) of Regulation S-K. The Company agrees to furnish supplementally a copy of any omitted schedule to the SEC upon its request.

+ Represents a management contract or compensatory plan or arrangement.

\* Portions thereof were omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment that was granted in accordance with Exchange Act Rule 24b-2.

\*\* Portions hereof have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment in accordance with Exchange Act Rule 24b-2.

Attached as Exhibit 101 to this report are the following formatted in XBRL (Extensible Business Reporting Language): (i) Consolidated Balance Sheets at March 31, 2019 and 2018, (ii) Consolidated Statements of Operations for the fiscal years ended March 31, 2019, 2018 and 2017, (iii) Consolidated Statements of Comprehensive Income for the fiscal years ended March 31, 2019, 2018 and 2017, (iv) Consolidated Statements of Cash Flows for the fiscal years ended March 31, 2019, 2018 and 2017, (v) Consolidated Statements of Stockholders' Equity for the fiscal years ended March 31, 2019, 2018 and 2017; and (vi) Notes to the Consolidated Financial Statements.

**Item 16. Form 10-K Summary**

Not applicable.

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**  
**FISCAL YEAR ENDED MARCH 31, 2019**  
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(All other items in this report are inapplicable)



## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and the Board of Directors of Take-Two Interactive Software, Inc.

### Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Take-Two Interactive Software, Inc. (the Company) as of March 31, 2019 and 2018, the related consolidated statements of operations, comprehensive income, cash flows and stockholders' equity for each of the three years in the period ended March 31, 2019, and the related notes (collectively referred to as the "consolidated financial statements"). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at March 31, 2019 and 2018, and the results of its operations and its cash flows for each of the three years in the period ended March 31, 2019, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of March 31, 2019, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated May 13, 2019 expressed an unqualified opinion thereon.

### Adoption of ASU No. 2014-09

As discussed in Note 1 to the consolidated financial statements, the Company changed its method of accounting for revenue recognition effective April 1, 2018 due to the adoption of Accounting Standards Update (ASU) No. 2014-09, *Revenue from Contracts with Customers* (Topic 606), and the related amendments.

### Adoption of ASU No. 2016-09

As discussed in Note 1 to the consolidated financial statements, the Company changed its method of accounting for stock-based compensation effective April 1, 2017 due to the adoption of ASU No. 2016-09, *Improvements to Employee Share-Based Payment Accounting*.

### Basis for Opinion

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

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2006.

New York, New York  
May 13, 2019

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and the Board of Directors of Take-Two Interactive Software, Inc.

### Opinion on Internal Control over Financial Reporting

We have audited Take-Two Interactive Software, Inc.'s (the Company) internal control over financial reporting as of March 31, 2019, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of March 31, 2019, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of March 31, 2019 and 2018, the related consolidated statements of operations, comprehensive income, cash flows and stockholders' equity for each of the three years in the period ended March 31, 2019, and the related notes and our report dated May 13, 2019 expressed an unqualified opinion thereon.

### Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

### Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Ernst & Young LLP

New York, New York  
May 13, 2019

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(in thousands, except per share amounts)

	March 31,	
	2019	2018
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 826,525	\$ 808,973
Short-term investments	744,485	615,406
Restricted cash	565,461	437,398
Accounts receivable, net of allowances of \$995 and \$54,290 at March 31, 2019 and 2018, respectively	395,729	247,649
Inventory	28,200	15,162
Software development costs and licenses	28,880	33,284
Deferred cost of goods sold	51,867	117,851
Prepaid expenses and other	186,688	133,454
Total current assets	2,827,835	2,409,177
Fixed assets, net	127,882	102,478
Software development costs and licenses, net of current portion	603,436	639,369
Deferred cost of goods sold, net of current portion	1,028	26,719
Goodwill	381,717	399,530
Other intangibles, net	73,115	103,681
Deferred tax assets	134,732	4,930
Other assets	93,320	51,957
Total assets	\$ 4,243,065	\$ 3,737,841
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 72,797	\$ 35,029
Accrued expenses and other current liabilities	1,035,695	914,748
Deferred revenue	843,302	777,152
Total current liabilities	1,951,794	1,726,929
Long-term debt	—	8,068
Non-current deferred revenue	21,058	355,589
Other long-term liabilities	229,633	158,285
Total liabilities	2,202,485	2,248,871
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$.01 par value, 5,000 shares authorized: no shares issued and outstanding at March 31, 2019 and 2018	—	—
Common stock, \$.01 par value, 200,000 shares authorized; 134,602 and 132,743 shares issued and 112,181 and 114,038 outstanding at March 31, 2019 and 2018, respectively	1,346	1,327
Additional paid-in capital	2,019,369	1,888,039
Treasury stock, at cost; 22,421 and 18,705 common shares at March 31, 2019 and 2018, respectively	(820,572)	(458,180)
Retained earnings	877,626	73,516
Accumulated other comprehensive loss	(37,189)	(15,732)
Total stockholders' equity	2,040,580	1,488,970
Total liabilities and stockholders' equity	\$ 4,243,065	\$ 3,737,841

See accompanying Notes.

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(in thousands, except per share amounts)

	Fiscal Year Ended March 31,		
	2019	2018	2017
Net revenue	\$ 2,668,394	\$ 1,792,892	\$ 1,779,748
Cost of goods sold	1,523,644	898,311	1,022,959
Gross profit	1,144,750	894,581	756,789
Selling and marketing	391,400	256,092	285,453
General and administrative	281,234	247,828	211,409
Research and development	230,170	196,373	137,915
Depreciation and amortization	40,232	43,969	30,707
Business reorganization	(4,958)	14,742	—
Total operating expenses	938,078	759,004	665,484
Income from operations	206,672	135,577	91,305
Interest and other, net	26,113	1,048	(15,690)
Gain on long-term investments, net	—	—	1,350
Income before income taxes	232,785	136,625	76,965
(Benefit from) provision for income taxes	(101,052)	(36,908)	9,662
Net income	\$ 333,837	\$ 173,533	\$ 67,303
Earnings per share:			
Basic earnings per share	\$ 2.95	\$ 1.57	\$ 0.73
Diluted earnings per share	\$ 2.90	\$ 1.54	\$ 0.72

*See accompanying Notes.*

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
(in thousands)

	March 31,		
	2019	2018	2017
Net income	\$ 333,837	\$ 173,533	\$ 67,303
Other comprehensive income (loss):			
Foreign currency translation adjustment	(28,803)	43,379	(9,086)
Cash flow hedges:			
Change in unrealized gains	763	(8,153)	—
Reclassification to earnings	3,726	—	—
Tax effect on effective cash flow hedges	417	(2,038)	—
Change in fair value of cash flow hedges	4,906	(10,191)	—
Available-for-sale securities:			
Net unrealized gain (loss), net of taxes	2,440	(1,778)	(169)
Reclassification to earnings for realized net loss, net of taxes	—	—	9
Change in fair value of available-for-sale securities	2,440	(1,778)	(160)
Other comprehensive income (loss)	(21,457)	31,410	(9,246)
Comprehensive income	\$ 312,380	\$ 204,943	\$ 58,057

*See accompanying Notes.*

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(in thousands)

	Fiscal Year Ended March 31,		
	2019	2018 (as Adjusted) (1)	2017 (as Adjusted) (1)
<b>Operating activities:</b>			
Net income	\$ 333,837	\$ 173,533	\$ 67,303
Adjustments to reconcile net income to net cash provided by operating activities:			
Amortization and impairment of software development costs and licenses	201,221	77,887	221,911
Stock-based compensation	247,700	116,349	81,879
Amortization of intellectual property	23,879	34,830	6,738
Depreciation	39,726	32,202	30,707
Amortization of discount on Convertible Notes	91	15,662	21,222
Impairment of in-process research and development	—	11,257	—
Amortization of debt issuance costs	809	578	1,227
Deferred income taxes	110,603	(32,523)	3,020
Gain on long-term investments, net	—	—	(1,350)
Gain on redemption of Convertible Notes	—	(4,900)	—
Other, net	(225)	6,375	(3,410)
Changes in assets and liabilities:			
Accounts receivable	(98,075)	(26,998)	(41,956)
Inventory	(14,403)	3,917	(4,942)
Software development costs and licenses	(206,831)	(225,269)	(252,951)
Prepaid expenses, other current and other non-current assets	(275,800)	(74,544)	(22,155)
Deferred revenue	304,713	198,397	126,285
Deferred cost of goods sold	(24,882)	(11,959)	(14,969)
Accounts payable, accrued expenses and other liabilities	201,152	198,733	189,344
Net cash provided by operating activities	<u>843,515</u>	<u>493,527</u>	<u>407,903</u>
<b>Investing activities:</b>			
Change in bank time deposits	(171,057)	(40,918)	89,076
Proceeds from available-for-sale securities	325,133	241,012	155,936
Purchases of available-for-sale securities	(282,534)	(369,998)	(221,671)
Purchases of fixed assets	(66,969)	(61,557)	(21,167)
Proceeds from sale of long-term investment	—	—	1,350
Purchase of long-term investments	—	(5,000)	(1,885)
Business acquisitions, net of cash acquired	(28,149)	(9,401)	(130,669)
Asset acquisition	—	(25,965)	—
Net cash used in investing activities	<u>(223,576)</u>	<u>(271,827)</u>	<u>(129,030)</u>
<b>Financing activities:</b>			
Tax payment related to net share settlements on restricted stock awards	(101,293)	(112,884)	(51,762)
Repurchase of common stock	(362,392)	(154,792)	—
Excess tax benefit from stock-based compensation	—	—	1,990
Other	—	(13,791)	—
Net cash used in financing activities	<u>(463,685)</u>	<u>(281,467)</u>	<u>(49,772)</u>
Effects of foreign currency exchange rates on cash, cash equivalents, and restricted cash	(10,639)	24,924	(7,798)
Net change in cash, cash equivalents, and restricted cash	145,615	(34,843)	221,303
Cash, cash equivalents, and restricted cash, beginning of year	1,246,371	1,281,214	1,059,911
Cash, cash equivalents, and restricted cash, end of year	<u>\$ 1,391,986</u>	<u>\$ 1,246,371</u>	<u>\$ 1,281,214</u>
<b>Supplemental data:</b>			
Interest paid	\$ 5,265	\$ 4,121	\$ 7,628
Income taxes paid (refunded)	\$ 19,280	\$ 8,790	\$ 6,648

(1) Prior period amounts have been adjusted retrospectively to reflect the adoption of ASU 2016-18, *Statement of Cash Flows (Topic 230): Restricted Cash*. Refer to Note 1 for further discussion.

See accompanying Notes.

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(in thousands)

	Common Stock		Additional Paid-in Capital	Treasury Stock		Retained Earnings/(Accumulated Deficit)	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares	Amount		Shares	Amount			
Balance, March 31, 2016	103,765	\$ 1,038	\$ 1,088,628	(17,192)	\$ (303,388)	\$ (166,997)	\$ (37,896)	\$ 581,385
Net income	—	—	—	—	—	67,303	—	67,303
Change in cumulative foreign currency translation adjustment	—	—	—	—	—	—	(9,086)	(9,086)
Net unrealized gain on available-for-sale securities, net of taxes	—	—	—	—	—	—	(160)	(160)
Stock-based compensation	—	—	88,378	—	—	—	—	88,378
Tax benefit associated with stock awards	—	—	1,990	—	—	—	—	1,990
Issuance of restricted stock, net of forfeitures and cancellations	1,738	17	(17)	—	—	—	—	—
Settlement of 1.75% Convertible Notes Due 2016	13,094	131	249,866	—	—	—	—	249,997
Conversion of 1.00% Convertible Notes Due 2018	899	9	18,332	—	—	—	—	18,341
Issuance of shares related to Social Point acquisition	1,480	15	57,327	—	—	—	—	57,342
Net share settlement of restricted stock awards	(1,163)	(12)	(51,750)	—	—	—	—	(51,762)
Balance, March 31, 2017	119,813	1,198	1,452,754	(17,192)	(303,388)	(99,694)	(47,142)	1,003,728
Net income	—	—	—	—	—	173,533	—	173,533
Change in cumulative foreign currency translation adjustment	—	—	—	—	—	—	43,379	43,379
Net unrealized gain on available-for-sale securities, net of taxes	—	—	—	—	—	—	(1,778)	(1,778)
Change in unrealized gains on cash flow hedge, net	—	—	—	—	—	—	(10,191)	(10,191)
Stock-based compensation	—	—	293,214	—	—	—	—	293,214
Repurchased common stock	—	—	—	(1,513)	(154,792)	—	—	(154,792)
Issuance of restricted stock, net of forfeitures and cancellations	2,151	21	(21)	—	—	—	—	—
Conversion of 1.00% Convertible Notes Due 2018	12,082	121	254,963	—	—	—	—	255,084
Net share settlement of restricted stock awards	(1,303)	(13)	(112,871)	—	—	—	—	(112,884)
Adoption of ASU 2016-09	—	—	—	—	—	(323)	—	(323)
Balance, March 31, 2018	132,743	1,327	1,888,039	(18,705)	(458,180)	73,516	(15,732)	1,488,970
Net income	—	—	—	—	—	333,837	—	333,837
Change in cumulative foreign currency translation adjustment	—	—	—	—	—	—	(33,456)	(33,456)
Net unrealized gain on available-for-sale securities, net of taxes	—	—	—	—	—	—	2,440	2,440
Change in unrealized gains on cash flow hedge, net	—	—	—	—	—	—	4,906	4,906
Stock-based compensation	—	—	219,460	—	—	—	—	219,460
Issuance of restricted stock, net of forfeitures and cancellations	2,345	23	(23)	—	—	—	—	—
Repurchased common stock	—	—	—	(3,716)	(362,392)	—	—	(362,392)
Conversion of 1.00% Convertible Notes Due 2018	377	4	8,108	—	—	—	—	8,112
Net share settlement of restricted stock awards	(920)	(9)	(101,284)	—	—	—	—	(101,293)
Impact from adoption of New Revenue Accounting Standard (Note 2)	—	—	—	—	—	470,273	4,653	474,926
Employee share purchase plan settlement	57	1	5,069	—	—	—	—	5,070
<b>Balance, March 31, 2019</b>	<b>134,602</b>	<b>\$ 1,346</b>	<b>\$ 2,019,369</b>	<b>(22,421)</b>	<b>\$ (820,572)</b>	<b>\$ 877,626</b>	<b>\$ (37,189)</b>	<b>\$ 2,040,580</b>

See accompanying Notes.

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**  
**NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS**  
**(In thousands, except per share amounts)**

**1. BASIS OF PRESENTATION AND SIGNIFICANT ACCOUNTING POLICIES**

Take-Two Interactive Software, Inc. (the "Company," "we," "us," or similar pronouns) was incorporated in the state of Delaware in 1993. We are a leading developer, publisher, and marketer of interactive entertainment for consumers around the globe. We develop and publish products principally through our two wholly-owned labels Rockstar Games and 2K, as well as our Private Division label and Social Point, a leading developer of mobile games. Our products are designed for console systems and personal computers, including smart phones and tablets, and are delivered through physical retail, digital download, online platforms and cloud streaming services.

**Principles of Consolidation**

The Consolidated Financial Statements include the financial statements of the Company and its wholly-owned subsidiaries. All inter-company balances and transactions have been eliminated in consolidation.

**Reclassifications**

Certain immaterial amounts in the financial statements of the prior years have been reclassified to conform to the current year presentation for comparative purposes.

**Use of Estimates**

The preparation of financial statements in conformity with U.S. generally accepted accounting principles ("U.S. GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the dates of the financial statements and the reported amounts of net revenue and expenses during the reporting periods. Our most significant estimates and assumptions relate to revenue recognition (see Note 2 - Revenue from Contracts with Customers), the recoverability and amortization of software development costs and prepaid royalties, licenses, and intangible assets, the realization of deferred income taxes, the valuation of stock-based compensation, and assumptions used in our goodwill impairment tests. These estimates generally involve complex issues and require us to make judgments, involve analysis of historical and the prediction of future trends, and are subject to change from period to period. Actual amounts could differ significantly from these estimates. We consider transactions or events that occur after the balance sheet date, but before the financial statements are issued, to provide additional evidence relative to certain estimates or to identify matters that require additional disclosures.

**Segments**

We have one operating and reportable segment. Our operations involve similar products and customers worldwide. Revenue earned is primarily derived from the sale of software titles, which are internally developed and developed by third parties. Our Chief Executive Officer, who is our Chief Operating Decision Maker ("CODM"), manages our operations on a consolidated basis--supplemented by sales information by product category, major product title, and platform--for the purpose of evaluating performance and allocating resources. Financial information about our one segment and geographic areas is included in Note 2 - Revenue from Contracts with Customers and Note 9 - Fixed Assets, Net.

**Concentration of Credit Risk and Accounts Receivable**

We maintain cash balances at several major financial institutions. While we attempt to limit credit exposure with any single institution, balances often exceed insurable amounts.

If the financial condition and operations of our customers deteriorate, our risk of collection could increase substantially. A majority of our trade receivables are derived from sales to major retailers and distributors. Our five largest customers accounted for 70.1% 70.7% and 65.5% of net revenue during the fiscal years ended March 31, 2019, 2018 and 2017, respectively. One customer accounted for 31.3%, 30.2% and 26.3% of net revenue during the fiscal years ended March 31, 2019, 2018, and 2017, respectively. A second customer accounted for 18.1%, 17.6%, and 14.2% of net revenue during the fiscal years ended March 31, 2019, 2018, and 2017 respectively. A third customer accounted for 10.5% of net revenue during the fiscal year ended March 31, 2019. As of March 31, 2019 and 2018, five customers accounted for 66.6% and 65.4% of our gross accounts receivable, respectively. Customers that individually accounted for more than 10% of our gross accounts receivable balance comprised 55.8% and 53.2% of such balances at March 31, 2019 and 2018, respectively. We had two customers who accounted for 40.1% and 15.7% of our gross accounts receivable as of March 31, 2019 and two customers who accounted for 37.7% and 15.5% of our gross accounts receivable as of March 31, 2018. We did not have any additional customers that exceeded 10% of our gross accounts receivable



as of March 31, 2019 and 2018. Based upon performing ongoing credit evaluations, maintaining trade credit insurance on a majority of our customers and our past collection experience, we believe that the receivable balances from these largest customers do not represent a significant credit risk.

### **Cash and Cash Equivalents**

We consider all highly liquid instruments purchased with original maturities of three months or less to be cash equivalents. Our restricted cash balance is primarily related to a dedicated account limited to the payment of certain internal royalty obligations.

### **Short-term Investments**

Short-term investments designated as available-for-sale securities are carried at fair value, which is based on quoted market prices for such securities, if available, or is estimated on the basis of quoted market prices of financial instruments with similar characteristics. Investments with original maturities greater than 90 days and remaining maturities of less than one year are normally classified within Short-term investments on our Consolidated Balance Sheets. In addition, investments with maturities beyond one year at the time of purchase that are highly liquid in nature and represent the investment of cash that is available for current operations are classified as short-term investments.

Unrealized gains and losses of available-for-sale securities are excluded from earnings and are reported as a component of Other comprehensive income (loss), net of tax, until the security is sold, the security has matured, or we determine that the fair value of the security has declined below its adjusted cost basis and the decline is other-than-temporary. Realized gains and losses on short-term investments are calculated based on the specific identification method and would be reclassified from accumulated other comprehensive loss to interest and other, net.

Short-term investments are evaluated for impairment quarterly. We consider various factors in determining whether we should recognize an impairment charge, including the credit quality of the issuer, the duration that the fair value has been less than the adjusted cost basis, the severity of the impairment, the reason for the decline in value, and our intent to sell and ability to hold the investment for a period of time sufficient to allow for any anticipated recovery in market value. If we conclude that an investment is other-than-temporarily impaired, it recognizes an impairment charge at that time in the Consolidated Statements of Operations. In determining whether the decline in fair value is other-than-temporary requires management judgment based on the specific facts and circumstances of each security. The ultimate value realized on these securities is subject to market price volatility until they are sold.

### **Inventory**

Inventory consists of materials, including manufacturing royalties paid to console manufacturers, and is stated at the lower of weighted average cost or net realizable value. Estimated product returns are included in the inventory balance at their cost. We regularly review inventory quantities on-hand and in the retail channels and record an inventory provision for excess or obsolete inventory based on the future expected demand for our products. Significant changes in demand for our products would affect management's estimates in establishing our inventory provision. We write down inventory based on excess or obsolete inventories determined primarily by future anticipated demand for our products. Inventory write-downs are measured as the difference between the cost of the inventory and market value, based upon assumptions about future demand that are inherently difficult to assess.

### **Software Development Costs and Licenses**

Capitalized software development costs include direct costs incurred for internally developed titles and payments made to third-party software developers under development agreements.

We capitalize internal software development costs (including specifically identifiable employee stock-based compensation, payroll expense, and incentive compensation costs related to the completion and release of titles, as well as third-party production and other content costs), subsequent to establishing technological feasibility of a software title. Technological feasibility of a product includes the completion of both technical design documentation and game design documentation. Significant management judgments are made in the assessment of when technological feasibility is established. For products where proven technology exists, this may occur early in the development cycle. Technological feasibility is evaluated on a product-by-product basis.

We enter into agreements with third-party developers that require us to make payments for game development and production services. In exchange for our payments, we receive the exclusive publishing and distribution rights to the finished game title as well as, in some cases, the underlying intellectual property rights. Such agreements typically allow us to fully recover these payments to the developers at an agreed upon royalty rate earned on the subsequent sales of such software, net of any agreed upon costs. Prior to establishing technological feasibility of a product, we record any costs incurred by third-party developers as research and development expenses. Subsequent to establishing technological feasibility of a product, we capitalize all development

and production service payments to third-party developers as software development costs and licenses. We typically enter into agreements with third-party developers after completing the technical design documentation for our products and therefore record the design costs leading up to a signed development contract as research and development expense. When we contract with third-party developers, we generally select those that have proven technology and experience in the genre of the software being developed, which often allows for the establishment of technological feasibility early in the development cycle. In instances where the documentation of the design and technology are not in place prior to an executed contract, we monitor the software development process and require our third-party developers to adhere to the same technological feasibility standards that apply to our internally developed products.

Licenses consist of payments and guarantees made to holders of intellectual property rights for use of their trademarks, copyrights or other intellectual property rights in the development of our products. Agreements with license holders generally provide for guaranteed minimum payments for use of their intellectual property. Certain licenses, especially those related to our sports products, extend over multi-year periods and encompass multiple game titles. In addition to guaranteed minimum payments, these licenses frequently contain provisions that could require us to pay royalties to the license holder based on pre-agreed unit sales thresholds.

Amortization of capitalized software development costs and licenses commences when a product is available for general release and is recorded on a title-by-title basis in cost of goods sold. For capitalized software development costs, annual amortization is calculated using (1) the proportion of current year revenue to the total revenue expected to be recorded over the life of the title or (2) the straight-line method over the remaining estimated life of the title, whichever is greater. For capitalized licenses, amortization is calculated as a ratio of (1) current period revenue to the total revenue expected to be recorded over the remaining estimated life of the title or (2) the contractual royalty rate based on actual net product sales as defined in the licensing agreement, whichever is greater. Amortization periods for our software products generally range from 12 to 36 months.

We evaluate the future recoverability of capitalized software development costs and licenses on a quarterly basis. Recoverability is primarily assessed based on the title's actual performance. For products that are scheduled to be released in the future, recoverability is evaluated based on the expected performance of the specific products to which the cost or license relates. We use a number of criteria in evaluating expected product performance, including historical performance of comparable products developed with comparable technology, market performance of comparable titles, orders for the product prior to its release, general market conditions, and past performance of the franchise. When we determine that capitalized cost of the title is unlikely to be recovered by product sales, an impairment of software development and license capitalized costs is charged to cost of goods sold in the period in which such determination is made.

We have profit and unit sales based internal royalty programs that allow selected employees to participate in the success of software titles that they assist in developing. Royalties earned under this program are recorded as a component of Cost of goods sold in the period earned. Amounts earned and not yet paid are reflected within the software development royalties component of Accrued expenses and other current liabilities on our Consolidated Balance Sheets.

#### **Fixed Assets, net**

Office equipment, furniture and fixtures are depreciated using the straight-line method over their estimated useful life of five years. Computer equipment and software are generally depreciated using the straight-line method over three to five years. Leasehold improvements are amortized over the lesser of the term of the related lease or the useful life of the underlying asset, typically seven years. The cost of additions and betterments are capitalized, and repairs and maintenance costs are charged to operations, in the periods incurred. When depreciable assets are retired or sold, the cost and related allowances for depreciation are removed from the accounts and the gain or loss, if any, is recognized. The carrying amounts of these assets are recorded at historical cost.

#### **Goodwill and Intangible Assets**

Goodwill is the excess of purchase price paid over identified intangible and tangible net assets of acquired companies. Intangible assets consist of intellectual property, developed game technology, analytics technology, user base, trade names, and in-process research and development. Certain intangible assets acquired in a business combination are recognized as assets apart from goodwill.

We use either the income, cost or market approach to aid in our conclusions of such fair values and asset lives. The income approach presumes that the value of an asset can be estimated by the net economic benefit to be received over the life of the asset, discounted to present value. The cost approach presumes that an investor would pay no more for an asset than its replacement or reproduction cost. The market approach estimates value based on what other participants in the market have paid for reasonably similar assets. Although each valuation approach is considered in valuing the assets acquired, the approach, or combination of approaches, ultimately selected is based on the characteristics of the asset and the availability of information.

We test our goodwill for impairment annually, or more frequently if events and circumstances indicate the fair value of a reporting unit may be below its carrying amount. A reporting unit is defined as an operating segment or one level below an operating segment. We have determined that we operate in two reporting units, which are components of our operating segment. In the evaluation of goodwill for impairment, we have the option to first perform a qualitative assessment to determine if the fair value of a reporting unit is more likely than not (i.e., a likelihood of more than 50%) less than the carrying value before performing a quantitative impairment test.

When a qualitative assessment is not used, or if the qualitative assessment is not conclusive, a quantitative impairment analysis for goodwill is performed at the reporting unit level. The quantitative goodwill impairment test is used to identify potential impairment by comparing the fair value of a reporting unit with its carrying amount, including goodwill. If the carrying value exceeds the fair value, an impairment charge is recognized equal to the difference between the carrying value of the reporting unit and its fair value, considering the related income tax effect of any goodwill deductible for tax purposes.

In performing the quantitative assessment, we measure the fair value of the reporting unit using a combination of the income and market approaches. The assessment requires us to make judgments and involves the use of significant estimates and assumptions. These estimates and assumptions include long-term growth rates and operating margins used to calculate projected future cash flows, risk-adjusted discount rates based on our weighted average cost of capital, future economic and market conditions and the determination of appropriate, comparable market data. Our estimates for market growth are based on historical data, various internal estimates and observable external sources when available, and are based on assumptions that are consistent with the plans and estimates we use to manage the underlying business.

Consistent with prior years, we performed our annual impairment assessment process for goodwill in August 2018 and did not record any goodwill impairments. During the fiscal quarter ended March 31, 2019, we changed the measurement date for performing our annual goodwill impairment test from the beginning of August to the beginning of March. As a result, we performed an additional impairment test for our goodwill as of March 1, 2019 which did not result in any impairment of our goodwill. This voluntary change in accounting principle, applied prospectively, is preferable as it aligns the annual goodwill impairment test date more closely with our internal budgeting process and did not delay, accelerate, or avoid an impairment of our goodwill. Retrospective application to prior periods is impracticable as we are unable to objectively determine, without the use of hindsight, the assumptions that would be used in those earlier periods.

Based on our annual impairment assessment process for goodwill, no impairments were recorded during the fiscal years ended March 31, 2019, 2018, or 2017.

#### **Long-lived Assets**

We review all long-lived assets for impairment whenever events or changes in circumstances indicate that the related carrying amount of an asset or asset group may not be recoverable. We compare the carrying amount of the asset to the estimated undiscounted future cash flows expected to result from the use of the asset. If the carrying amount of the asset exceeds estimated expected undiscounted future cash flows, we record an impairment charge for the difference between the carrying amount of the asset and its fair value. The estimated fair value is generally measured by discounting expected future cash flows using our incremental borrowing rate or fair value, if available. As of March 31, 2019, no indicators of impairment existed.

#### **Derivatives and Hedging**

We transact business in various foreign currencies and have significant sales and purchase transactions denominated in foreign currencies, subjecting us to foreign currency exchange rate risk. From time to time, we carry out transactions involving foreign currency exchange derivative financial instruments. The transactions are designed to hedge our exposure in currency exchange rate movements. We recognize derivative instruments as either assets or liabilities on our Consolidated Balance Sheets and we measure those instruments at fair value. The changes in fair value of derivatives that are not designated as hedges are recognized currently in earnings as interest and other, net in our Consolidated Statements of Operations. If a derivative meets the definition of a cash flow hedge and is so designated, the effective portion of changes in the fair value of the derivative are recognized, as a component of other comprehensive income (loss) while the ineffective portion of the changes in fair value is recorded currently in earnings as interest and other, net in our Consolidated Statements of Operations. Amounts included in Accumulated other comprehensive income (loss) for cash flow hedges are reclassified into earnings in the same period that the hedged item is recognized in Cost of goods sold, Research and development expenses, or Interest and other, net, as appropriate.

#### **Income Taxes**

We record a tax provision for the anticipated tax consequences of the reported results of operations. Our provision for income taxes is computed using the asset and liability method, under which deferred income taxes are recognized for differences between the financial statement and tax bases of assets and liabilities at currently enacted statutory tax rates for the years in which

the differences are expected to reverse. The effect on deferred taxes of a change in tax rates is recognized in income in the period that includes the enactment.

Valuation allowances are established when we determine that it is more likely than not that such deferred tax assets will not be realized. We do not record income tax expense related to foreign withholding taxes or United States income taxes that may become payable upon the repatriation of undistributed earnings of foreign subsidiaries, as such earnings are expected to be reinvested indefinitely outside of the United States.

We use estimates and assumptions to compute the provision for income taxes including allocations of certain transactions to different tax jurisdictions, amounts of permanent and temporary differences, the likelihood of deferred tax assets being recovered and the outcome of contingent tax risks. These estimates and assumptions are revised as new events occur, more experience is acquired and additional information is obtained. The effect of these revisions is recorded in income tax expense or benefit in the period in which they become known.

The Act subjects a U.S. shareholder to current tax on GILTI earned by foreign subsidiaries. The FASB Staff Q&A Topic No. 5, Accounting for Global Intangible Low-Taxed Income, states that an entity can make an accounting policy election either to recognize deferred taxes for temporary differences that are expected to reverse as GILTI in future years or provide for the tax expense related to GILTI resulting from those items in the year the tax is incurred. We have elected to recognize the resulting tax on GILTI as an expense in the period incurred.

## Revenue Recognition

In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers (Topic 606)*. Under the new standard, revenue is recognized when a customer obtains control of promised goods or services and is recognized in an amount that reflects the consideration that the entity expects to receive in exchange for those goods or services. On April 1, 2018, we adopted the new accounting standard and related amendments (the "New Revenue Accounting Standard") using the modified retrospective method. Refer to the Recently Adopted Accounting Pronouncements section below for the impact of adoption on our Consolidated Financial Statements. Refer to Note 1 to our Consolidated Financial Statements in our Annual Report on Form 10-K for the fiscal year ended March 31, 2018 for our revenue recognition accounting policy as it relates to revenue transactions prior to April 1, 2018.

We derive revenue primarily from the sale of our interactive entertainment content, principally for console gaming systems such as the Sony Computer Entertainment, Inc. ("Sony") PlayStation®4 ("PS4") and Microsoft Corporation ("Microsoft") Xbox One® ("Xbox One"), and personal computers ("PC"), including smartphones and tablets. Our interactive entertainment content consists of full game software products that may contain offline gameplay, online gameplay, or a combination of offline and online gameplay. We may also sell separate downloadable add-on content to supplement our full game software products. Certain of our software products provide customers with the option to acquire virtual currency or make in-game purchases.

We determine revenue recognition by:

- identifying the contract, or contracts, with the customer;
- identifying the performance obligations in the contract;
- determining the transaction price;
- allocating the transaction price to performance obligations in the contract; and
- recognizing revenue when, or as, we satisfy performance obligations by transferring the promised goods or services.

We recognize revenue in the amount that reflects the consideration we expect to receive in exchange for the sales of software products and game related services when control of the promised products and services is transferred to our customers and our performance obligations under the contract have been satisfied. Revenue is recorded net of transaction taxes assessed by governmental authorities such as sales, value-added and other similar taxes.

Our software products are sold as full games, which typically provide access to the main game content, primarily for console and PC. Generally, our full game software products deliver a license of our intellectual property that provides a functional offline gaming experience (i.e., one that does not require an Internet connection to access the main game content or other significant game related services). We recognize revenue related to the license of our intellectual property that provides offline functionality at the time control of the products have been transferred to our customers.

In addition, some of our full game software products that provide a functional offline gaming experience may also include significant game related services delivered over time, such as online functionality that is dependent upon online support services and/or additional free content updates. For full game sales that offer offline functionality and significant game related services we evaluate whether the license of our intellectual property and the game related services are distinct and separable. This evaluation is performed for each software product sold. If we determine that our software products contain a license of intellectual property

separate from the game related services (i.e. multiple performance obligations), we estimate a standalone selling price for each identified performance obligation. We allocate the transaction price to each performance obligation using a relative standalone selling price method (the transaction price is allocated to a performance obligation based on the proportion of the standalone selling price of each performance obligation to the sum of the standalone selling prices for all performance obligations in the contract). For the portion of the transaction price allocable to the license, revenue is recognized when the customer takes control of the product. For the portion of the transaction price allocated to game related services, revenue is recognized ratably over an estimated service period for the related software product. We also defer related product costs and recognize the costs as the revenues are recognized.

Certain of our full game software products are delivered primarily as an online gaming experience with substantially all gameplay requiring online access to our game related services. We recognize revenue for full game software products that are dependent on our game related services over an estimated service period. For our full game online software products, we also defer related product costs and recognize the costs as the revenue is recognized.

In addition to sales of our full game software products, certain of our software products provide customers with the option to acquire virtual currency or make in-game purchases. Revenue from the sale of virtual currency and in-game purchases is deferred and recognized ratably over an estimated service period.

We also sell separate downloadable add-on content to supplement our full game software products. Revenue from the sale of separate downloadable add-on content is evaluated for revenue recognition on the same basis as our full game software products.

Certain software products are sold to customers with a "street date" (the earliest date these products may be sold by these retailers). For the transaction price related to the license for these products that also provide a functional offline gaming experience, we recognize revenue on the later of the street date or the sale date as this is generally when we have transferred control of this performance obligation. For the sale of physical software products, recognition of revenue allocated to game related services does not begin until the product is sold-through by our customer to the end user. We currently estimate sell-through to the end user for all our titles to be approximately two months after we have sold-in the software products to retailers. Determining the estimated sell-through period is subjective and requires significant management judgment and estimates.

In addition, some of our software products are sold as digital downloads. Revenue from digital downloads generally commences when the download is made available to the end user by a third-party digital storefront.

Our payment terms and conditions vary by customer and typically provide net 30 to 60 day terms. In instances where the timing of revenue recognition differs from the timing of invoicing, we do not adjust the promised amount of consideration for the effects of a significant financing component when we expect, at contract inception, that the period between our transfer of a promised product or service to our customer and payment for that product or service will be one year or less.

In certain countries, we use third-party licensees to distribute and host our games in accordance with license agreements, for which the licensees typically pay us a fixed minimum guarantee and sales-based royalties. These arrangements typically include multiple performance obligations, such as an upfront license of intellectual property and rights to future updates. Based on the allocated transaction price, we recognize revenue associated with the minimum guarantee when we transfer control of the upfront license of intellectual property (generally upon commercial launch) and the remaining portion ratably over the contractual term in which we provide the licensee with future update rights. Royalty payments in excess of the minimum guarantee are generally recognized when the licensed product is sold by the licensee.

#### *Contract Balances*

We generally record a receivable related to revenue when we have an unconditional right to invoice and receive payment, and we record deferred revenue when cash payments are received or due in advance of satisfying our performance obligations, even if amounts are refundable. Contract assets generally consist of arrangements for which we have recognized revenue to the extent it is probable that significant reversal will not occur but do not have a right to invoice as of the reporting date. Contract assets are recorded within Prepaid expenses and other on our Consolidated Balance Sheet.

Our allowance for doubtful accounts are typically immaterial and, if required, are based on our best estimate of probable losses inherent in our accounts receivable balance.

Deferred revenue is comprised primarily of unsatisfied revenue related to the portion of the transaction price allocable to game related services of our full game software products. These sales are typically invoiced at the beginning of the contract period, and revenue is recognized ratably over the estimated service period. Deferred revenue may also include amounts related to software products with future street dates.

Refer to Note 2 - Revenue from Contracts with Customers for further information, including changes in deferred revenue during the period.

#### *Principal Agent Considerations*

We offer certain software products via third party digital storefronts, such as Microsoft's Xbox Live, Sony's PlayStation Network, Valve's Steam, Apple's App Store, and the Google Play Store. For sales of our software products via third party digital storefronts, we determine whether or not we are acting as the principal in the sale to the end user, which we consider in determining if revenue should be reported based on the gross transaction price to the end user or based on the transaction price net of fees retained by the third-party digital storefront. An entity is the principal if it controls a good or service before it is transferred to the customer. Key indicators that we use in evaluating these sales transactions include, but are not limited to, the following:

- the underlying contract terms and conditions between the various parties to the transaction;
- which party is primarily responsible for fulfilling the promise to provide the specified good or service; and
- which party has discretion in establishing the price for the specified good or service.

Based on our evaluation of the above indicators, for sales arrangements via Microsoft's Xbox Live, Sony's PlayStation Network, and Valve's Steam, we have determined we are not the principal in the sales transaction to the end user and therefore we report revenue based on the consideration received from the digital storefront. For sales arrangements via Apple's App Store and the Google Play Store, we have determined that we are the principal to the end user and thus report revenue on a gross basis and mobile platform fees charged by these digital storefronts are expensed as incurred and reported within Cost of goods sold.

#### *Shipping and Handling*

Shipping and handling costs are incurred to move physical software products to customers. We recognize all shipping and handling costs as an expense in Cost of goods sold because we are responsible for delivery of the product to our customers prior to transfer of control to the customer.

#### *Estimated Service Period*

For performance obligations satisfied over time, we have determined that the estimated service period is the time period in which an average user plays our software products ("user life") which most faithfully depicts the timing of satisfying our performance obligation. We consider a variety of data points when determining and subsequently reassessing the estimated service period for players of our software products. Primarily, we review the weighted average number of days between players' first and last days played online. We also consider known online trends, the service periods of our previously released software products, and, to the extent publicly available, the service periods of our competitors' software products that are similar in nature to ours. We believe this provides a reasonable depiction of the transfer of our game related services to our customers, as it is the best representation of the period during which our customers play our software products. Determining the estimated service period is subjective and requires significant management judgment and estimates. Future usage patterns may differ from historical usage patterns, and therefore the estimated service period may change in the future. The estimated service periods for players of our current software products are generally between 9 and 15 months depending on the software product.

#### *Revenue Arrangements with Multiple Performance Obligations*

Our contracts with customers often include promises to transfer multiple products and services. Determining whether products and services are considered distinct performance obligations that should be accounted for separately versus together requires significant judgment. For software products in which the software license has offline functionality and benefits from meaningful game related services, which may include online functionality that is dependent on our online support services and/or additional free content updates, we believe we have separate performance obligations for the license of the intellectual property and the game related services. Additionally, because each of our product offerings has unique features and because we do not sell our game related services separately, we typically do not have observable standalone selling prices for each performance obligation. Significant judgment and estimates are also required to determine the standalone selling price for each distinct performance obligation and whether a discount needs to be allocated based on the relative standalone selling price of our products and services.

To estimate the standalone selling price for each performance obligation, we consider, to the extent available, a variety of data points such as past selling prices of the product or other similar products, competitor pricing, and market data. If observable pricing is not available, we use an expected cost-plus margin approach taking into account relevant costs including product development, post-release support, marketing and licensing costs. This evaluation is performed on a product by product basis.

### *Price Protection and Allowances for Returns*

We grant price protection and accept returns in connection with our distribution arrangements. Following reductions in the price of our physical software products, we grant price protection to permit customers to take credits against amounts they owe us with respect to merchandise unsold by them. Our customers must satisfy certain conditions to entitle them to receive price protection or return products, including compliance with applicable payment terms and confirmation of field inventory levels.

At contract inception and at each subsequent reporting period, we make estimates of future price protection and product returns related to current period software product revenue. We estimate the amount of future price protection and returns for software products based upon, among other factors, historical experience and performance of the titles in similar genres, historical performance of the hardware platform, customer inventory levels, analysis of sell-through rates, sales force and retail customer feedback, industry pricing, market conditions, and changes in demand and acceptance of our products by consumers.

Revenue is recognized after deducting the estimated price protection and allowances for returns, which are accounted for as variable consideration. Price protection and allowances for returns are considered refund liabilities and are reported within Accrued expenses and other current liabilities on our Consolidated Balance Sheet.

### *Sales Incentives*

We enter into various sales incentive arrangements with our customers, such as rebates, discounts, and cooperative marketing. These incentives are considered adjustments to the transaction price of our software products and are reflected as reductions to revenue. Sales incentives incurred by us for distinct goods or services received, such as the appearance of our products in a customer's national circular ad, are included in Selling and marketing expense if there is a separate identifiable benefit and the benefit's fair value can be established. Otherwise, such sales incentives are reflected as a reduction to revenue and are considered refund liabilities, which are reported within Accrued expenses and other current liabilities in our Consolidated Balance Sheet.

### *Significant Estimates*

Significant management judgment and estimates must be used in connection with many of the determinations described above, such as estimating the fair value allocation to distinct and separable performance obligations, the service period over which to defer recognition of revenue, the time it takes our physical products to sell-through to end users, and the amounts of future price protection and allowance for returns. We believe we can make reliable estimates. However, actual results may differ from initial estimates due to changes in circumstances, market conditions, and assumptions. Adjustments to estimates are recorded in the period in which they become known.

### **Advertising**

We expense advertising costs as incurred. Advertising expense for the fiscal years ended March 31, 2019, 2018 and 2017 amounted to \$249,315, \$140,618 and \$173,947, respectively, and are included in "Selling and marketing expense" in our Consolidated Statements of Operations.

### **Stock-based Compensation**

We have stock-based compensation plans that are broad-based long-term retention programs intended to attract and retain talented employees and align stockholder and employee interests, which allows for awards of restricted stock, restricted stock units and other stock-based awards of our common stock to employees and non-employees. Our plans include time-based, market-based, and performance-based awards of our common stock to employees and non-employees.

We account for stock-based awards under the fair value method of accounting. The fair value of all stock-based compensation is either capitalized and amortized in accordance with our software development cost accounting policy or recognized as expense on a straight-line basis over the full vesting period of the awards for time-based stock awards and on an accelerated attribution method for market-based and performance-based stock awards.

We estimate the fair value of time-based awards using our closing stock price on the date of grant. We estimate the fair value of market-based awards using a Monte Carlo Simulation method, which takes into account assumptions such as the expected volatility of our common stock, the risk-free interest rate based on the contractual term of the award, expected dividend yield, vesting schedule and the probability that the market conditions of the awards will be achieved. For performance-based shares, we do not record expense until the performance criteria are considered probable.

Stock-based compensation expense is recorded net of forfeitures as they occur.

## **Earnings (loss) per Share ("EPS")**

Basic EPS is computed by dividing the net income (loss) applicable to common stockholders for the period by the weighted average number of shares of common stock outstanding during the same period. Diluted EPS is computed by dividing the net income (loss) applicable to common stockholders for the period by the weighted average number of shares of common stock and common stock equivalents outstanding.

Certain of our unvested stock-based awards are considered participating securities since these securities have non-forfeitable rights to dividends or dividend equivalents during the contractual period of the award, and thus require the two-class method of computing EPS. The calculation of EPS for common stock under the two-class method excludes the income attributable to the participating securities from the numerator and excludes the dilutive effect of those awards from the denominator.

We define common stock equivalents as unvested stock-based awards and common stock underlying our Convertible Notes (see Note 12 - Debt) outstanding during the period. Common stock equivalents are measured using the treasury stock method, and common stock equivalents underlying the Convertible Notes are assessed for their effect on diluted EPS using the more dilutive of the treasury stock method or the if-converted method. Under the provisions of the if-converted method, the Convertible Notes are assumed to be converted and included in the denominator of the EPS calculation and the interest expense, net of tax, recorded in connection with the Convertible Notes is added back to the numerator. However, potential common shares are not included in the denominator of the diluted earnings (loss) per share calculation when inclusion of such shares would be anti-dilutive, such as in a period in which a net loss is recorded.

## **Foreign Currency**

The functional currency for our foreign operations is primarily the applicable local currency. Accounts of foreign operations are translated into U.S. dollars using exchange rates for assets and liabilities at the balance sheet date and average prevailing exchange rates for the period for revenue and expense accounts. Adjustments resulting from translation are included in accumulated other comprehensive income (loss). Realized and unrealized transaction gains and losses are included in our Consolidated Statements of Operations in the period in which they occur.

## **Comprehensive Income (Loss)**

Comprehensive income (loss) is defined to include all changes in equity except those resulting from investments by owners and distributions to owners. Accumulated other comprehensive income (loss) includes foreign currency translation adjustments, which relate to investments that are permanent in nature and therefore do not require tax adjustments, and the amounts for unrealized gains (losses), net on derivative instruments designated as cash flow hedges, as well as any associated tax impact, and available for sale securities.

## **Recently Adopted Accounting Pronouncements**

### ***Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement***

In August 2018, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2018-15: *Intangibles - Goodwill and Other - Internal-Use Software - (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract*. This ASU aligns the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software. The standard is effective for fiscal years beginning December 15, 2019 (April 1, 2020 for the Company), with early adoption permitted. ASU 2018-15 is required to be applied either retrospectively or prospectively to all implementation costs after the date of adoption. We early adopted this update effective July 1, 2018 as the standard aligns with how we are currently accounting for implementation costs incurred in a cloud computing arrangement. The adoption did not have an impact on our Consolidated Financial Statements.

### ***Accounting for Restricted Cash***

In November 2016, the FASB issued ASU 2016-18, *Statement of Cash Flows (Topic 230): Restricted Cash*. This ASU amends the presentation of restricted cash within the statement of cash flows by requiring that restricted cash and restricted cash equivalents be included within cash and cash equivalents when reconciling the beginning-of-period and end-of-period total amounts. This standard is effective for fiscal years beginning after December 15, 2017 (April 1, 2018 for the Company), including interim periods within those fiscal years.

We adopted the new standard during the first quarter of fiscal 2019 and applied the standard retrospectively for all periods presented. The application of this new standard resulted in a decrease of \$128,063, a decrease of \$99,580, and an increase of \$76,474 of net cash from operating activities on our Consolidated Statements of Cash Flows for the twelve months ended March 31, 2019, 2018, and 2017, respectively.



### ***Accounting for Stock Compensation***

In June 2018, the FASB issued ASU 2018-07, *Compensation - Stock Compensation (Topic 718): Improvements to Non-employee Share-Based Accounting*. This guidance aligns the accounting for share-based payment transactions with non-employees to accounting for share-based payment transactions with employees. Companies are required to record a cumulative-effect adjustment (net of tax) to retained earnings as of the beginning of the fiscal year of the adoption. Upon transition, non-employee awards are required to be measured at fair value as of the adoption date. This standard will be effective for fiscal years beginning December 15, 2018 (April 1, 2019 for the Company), including interim periods within those fiscal years. Early adoption is permitted.

We early adopted this update effective April 1, 2018 to simplify the accounting for non-employee stock-based awards so that it is better aligned with the current guidance for employee stock-based awards. The application of this new standard did not have a significant impact to our Consolidated Financial Statements for the fiscal year ended March 31, 2019, as our last re-measurement date for non-employee awards was March 31, 2018. The adoption of this ASU results in a change to our accounting policy for non-employee stock-based awards.

In March 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2016-09, *Compensation-Stock Compensation*. This new guidance identifies areas for simplification involving several aspects of accounting for share-based payment transactions, including income tax consequences, classification of awards as either equity or liabilities, an option to recognize gross stock compensation expense with actual forfeitures recognized as they occur, as well as certain classifications on the statement of cash flows.

We adopted this update effective April 1, 2017. Upon adoption, using the modified retrospective transition method, we recognized previously unrecognized excess tax benefits as a deferred tax asset, which was fully offset by a valuation allowance, resulting in no net impact to retained earnings. Without the valuation allowance, upon adoption, our deferred tax asset would have increased by \$24,594. We elected to apply the change in presentation of excess tax benefits as an operating activity in the Consolidated Statement of Cash Flows prospectively and thus no prior periods were adjusted. We also elected to account for forfeitures as they occur using the modified retrospective transition method, which resulted in a cumulative effect adjustment of \$323 to retained earnings (an increase in the accumulated deficit). During the fiscal year ended March 31, 2019 and 2018, we recognized \$13,340 and \$53,169, respectively, of excess tax benefits on stock-based compensation in our Consolidated Statement of Operations as a result of adopting this update. The other aspects of the new guidance did not have a material effect on our Consolidated Financial Statements.

### ***Accounting for Goodwill***

In January 2017, the FASB issued ASU 2017-04, *Intangibles - Goodwill and Other (Topic 350)*. This ASU eliminates Step 2 from the goodwill impairment test. Under the new guidance, an entity should perform its annual or interim goodwill impairment test by comparing the fair value of a reporting unit with its carrying amount and recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value. Additionally, this ASU eliminates the requirements for any reporting unit with a zero or negative carrying amount to perform a qualitative assessment and, if it fails that qualitative test, to perform Step 2 of the goodwill impairment test. The amendments in this ASU are effective for fiscal years beginning after December 15, 2019 (April 1, 2020 for the Company), including interim periods within those fiscal years, and are applied on a prospective basis. Early adoption is permitted for interim or annual goodwill impairment tests performed on testing dates after January 1, 2017. We early adopted this update effective April 1, 2018. The adoption did not have an impact on our Consolidated Financial Statements.

### ***Revenue from Contracts with Customers***

As noted in our Revenue Recognition accounting policy above, we adopted the New Revenue Accounting Standard effective April 1, 2018.

#### ***Impact of Adopting New Revenue Accounting Standard***

We elected to apply the New Revenue Accounting Standard only to contracts not completed as of the adoption date. For contracts that were modified before the date of adoption, we elected to reflect the aggregate effect of all modifications when (i) identifying the satisfied and unsatisfied performance obligations, (ii) determining the transaction price, and (iii) allocating the transaction price to the satisfied and unsatisfied performance obligations. We recognized the cumulative effect of initially applying the New Revenue Accounting Standard as an adjustment to the opening balance of retained earnings, net of tax. The comparative information has not been restated and continues to be reported under the accounting standards in effect for those periods. The cumulative effect adjustment recorded to our retained earnings was \$470,273, net of tax.

The most significant impacts of adopting the New Revenue Accounting Standard are:

- The elimination of the requirement for vendor-specific objective evidence (“VSOE”) of fair value for software products that offer offline gameplay functionality and benefit from meaningful game related services which may include online functionality that is dependent on our online support services and/or additional free content updates. Under the prior revenue accounting guidance, for software products with multiple deliverables for which we did not have VSOE for our game related service deliverables, we recognized revenue ratably over an estimated service period that was based on game life. Under the New Revenue Accounting Standard, we allocate the sales price and recognize revenue for the offline software upon delivery and the remainder over an estimated service period, which represents a player's typical user life (see below). Upon adoption, this difference in accounting primarily affected revenue recognition from *Grand Theft Auto V* and our *NBA 2K* franchise, where the majority of the sales price was allocated to the offline software and recognized upon transfer of control to our customers, and the remaining amounts allocated to the game related service performance obligation and recognized over the estimated service period.
- For performance obligations that are satisfied over time, we have determined that the estimated service period is the time period in which an average user plays our software products (“user life”) which faithfully depicts the timing of satisfying our performance obligation. Previously, our estimated service period was based on the economic game life.
- Under the New Revenue Accounting Standard, we are able to recognize revenue to the extent it is probable that a significant reversal will not occur even if we do not have a right to invoice as of the reporting date. Contract assets are classified within Prepaid expenses and other on the Consolidated Balance Sheet.
- The classification of allowances for estimated price protection, reserves for returns and other allowances as refund liabilities. Such allowances were previously recorded as contra-Accounts receivable and now are classified within Accrued expenses and other current liabilities on the Consolidated Balance Sheet.

As a result of adopting the New Revenue Accounting Standard the following adjustments were made to our Consolidated Balance Sheet at April 1, 2018, which also reflect the changes related to income tax accounts included in Prepaid expenses and other, Other assets, Accrued expenses and other current liabilities, and Other long-term liabilities:

	March 31, 2018	Adjustments	April 1, 2018
<b>ASSETS</b>			
Accounts receivable, net	\$ 247,649	\$ 53,940	\$ 301,589
Software development costs and licenses	33,284	(11,096)	22,188
Deferred cost of goods sold	117,851	(89,867)	27,984
Prepaid expenses and other	133,454	33,620	167,074
Deferred cost of goods sold, net of current portion	26,719	(25,687)	1,032
Deferred tax assets	4,930	51,430	56,360
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>			
Accrued expenses and other current liabilities	\$ 914,748	\$ 69,678	\$ 984,426
Deferred revenue	777,152	(230,144)	547,008
Non-current deferred revenue	355,589	(336,456)	19,133
Other long-term liabilities	158,285	34,336	192,621
Retained earnings	73,516	470,273	543,789
Accumulated other comprehensive loss	(15,732)	4,653	(11,079)

#### Recently Issued Accounting Pronouncements

##### *Accounting for Fair Value Measurement*

In August 2018, the FASB issued ASU 2018-13, *Fair Value Measurement (Topic 820): Disclosure Framework - Changes to the Disclosure Requirements for Fair Value Measurement*, which modifies the disclosure requirements on fair value measurements by removing, modifying, or adding certain disclosures. ASU 2018-13 is effective for fiscal years, and interim periods within those fiscal years, beginning December 15, 2019 (April 1, 2020 for the Company), with early adoption permitted. Certain

disclosures in ASU 2018-13 are required to be applied on a retrospective basis and others on a prospective basis. We are currently evaluating the potential impact of adopting this guidance on our Consolidated Financial Statements.

### Accounting for Leases

In February 2016, the FASB issued ASU 2016-02, *Leases*. This new guidance requires lessees to recognize a right-of-use asset and a lease liability for virtually all leases (other than leases that meet the definition of a short-term lease). The liability will be equal to the present value of committed lease payments. The asset will be based on the liability, subject to adjustment, such as for initial direct costs. For income statement purposes, the FASB retained a dual model, requiring leases to be classified as either operating or finance. Operating leases will result in straight-line expense (similar to current operating leases) while finance leases will result in a front-loaded expense pattern (similar to current capital leases). Classification will be based on criteria that are largely similar to those applied in current lease accounting. This update is effective for annual periods, and interim periods within those years, beginning after December 15, 2018 (April 1, 2019 for the Company). We will adopt the new guidance using a modified retrospective approach whereby lessees and lessors are required to recognize and measure leases at the beginning of the earliest period presented. While we are still evaluating the effect that ASU 2016-02 will have on our Consolidated Balance Sheet, we expect that assets and liabilities will increase materially when operating leases are recorded on our Consolidated Balance Sheets under the new standard. Our current operating lease portfolio primarily includes leases related to real estate. See Note 14 - Commitments and Contingencies for a summary of our undiscounted future minimum lease payments under non-cancellable operating leases as of March 31, 2019.

## 2. REVENUE FROM CONTRACTS WITH CUSTOMERS

### Impacts on financial statement line items

Our adoption of the New Revenue Accounting Standard had the following impact on our Consolidated Statement of Operations for the twelve months ended March 31, 2019:

	Amounts as reported	Amounts without adoption of New Revenue Accounting Standard	Increase (decrease) due to adoption of New Revenue Accounting Standard
Net revenue	\$ 2,668,394	\$ 1,927,148	\$ 741,246
Cost of goods sold	1,523,644	1,218,056	305,588
Gross profit	1,144,750	709,092	435,658
Selling and marketing	391,400	391,400	—
General and administrative	281,234	281,234	—
Research and development	230,170	230,170	—
Depreciation and amortization	40,232	40,232	—
Business reorganization	(4,958)	(4,958)	—
Total operating expenses	938,078	938,078	—
Income (loss) from operations	206,672	(228,986)	435,658
Interest and other, net	26,113	28,296	(2,183)
Income (loss) before income taxes	232,785	(200,690)	433,475
(Benefit from) provision for income taxes	(101,052)	(204,782)	103,730
Net income	\$ 333,837	\$ 4,092	\$ 329,745
Earnings per share:			
Basic earnings per share	\$ 2.95	\$ 0.04	\$ 2.91
Diluted earnings per share	\$ 2.90	\$ 0.04	\$ 2.86

Our adoption of the New Revenue Accounting Standard had the following impact on our Consolidated Balance Sheet as of March 31, 2019:

	Amounts as reported	Amounts without adoption of New Revenue Accounting Standard	Increase (decrease) due to adoption of New Revenue Accounting Standard
<b>ASSETS</b>			
Accounts receivable, net	\$ 395,729	\$ 330,448	\$ 65,281
Software development costs and licenses	28,880	39,191	(10,311)
Deferred cost of goods sold	51,867	176,802	(124,935)
Prepaid expenses and other	186,688	195,744	(9,056)
Software development costs and licenses, net of current portion	603,436	777,238	(173,802)
Deferred cost of goods sold, net of current portion	1,028	75,919	(74,891)
Deferred tax assets	134,732	157,741	(23,009)
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>			
Accrued expenses and other current liabilities	\$ 1,035,695	\$ 949,347	\$ 86,348
Deferred revenue	843,302	1,445,936	(602,634)
Non-current deferred revenue	21,058	677,148	(656,090)
Other long-term liabilities	229,633	202,721	26,912
Retained earnings	877,626	77,608	800,018
Accumulated other comprehensive loss	(37,189)	(31,912)	(5,277)

Our adoption of the New Revenue Accounting Standard accelerated the revenue recognition of prior period game sales into retained earnings, which resulted in increased cash taxes paid on our Consolidated Statement of Cash Flows for the fiscal year ending March 31, 2019.

#### **Disaggregation of revenue**

##### ***Product revenue***

Product revenue is primarily comprised of the portion of revenue from software products that is recognized when the customer takes control of the product (i.e. upon delivery of the software product).

##### ***Service and other revenue***

Service and other revenue is primarily comprised of revenue from our software products that include game related services, or separate virtual currency transactions, and in-game purchases, which are recognized over an estimated service period.

Net revenue by product revenue and service and other was as follows:

	<b>Twelve Months Ended March 31,</b>	
	<b>2019</b>	
<b>Net revenue recognized<sup>(1)</sup>:</b>		
Service and other	\$	1,319,033
Product		1,349,361
<b>Total net revenue</b>	<b>\$</b>	<b>2,668,394</b>

<sup>(1)</sup>Disaggregated revenue category added as a result of adoption of ASC 606. As we used the modified retrospective method in adopting ASC 606, no comparative periods are presented.

#### ***Full game and other revenue***

Full game and other revenue primarily includes the initial sale of full game software products, which may include offline and/or significant game related services.

#### ***Recurrent consumer spending revenue***

Recurrent consumer spending revenue is generated from ongoing consumer engagement and includes revenue from virtual currency, add-on content, and in-game purchases.

Net revenue by full game and other revenue and recurrent consumer spending was as follows:

	<b>Twelve Months Ended March 31,</b>	
	<b>2019</b>	
<b>Net revenue recognized<sup>(1)</sup>:</b>		
Full game and other	\$	1,597,478
Recurrent consumer spending		1,070,916
<b>Total net revenue</b>	<b>\$</b>	<b>2,668,394</b>

<sup>(1)</sup>Disaggregated revenue category added as a result of adoption of ASC 606. As we used the modified retrospective method in adopting ASC 606, no comparative periods are presented.

#### ***Geography***

We attribute net revenue to geographic regions based on software product destination. Net revenue by geographic region was as follows:

	<b>Twelve Months Ended March 31,</b>					
	<b>2019</b>		<b>2018<sup>(1)</sup></b>		<b>2017<sup>(1)</sup></b>	
<b>Net revenue recognized:</b>						
United States	\$	1,426,906	\$	1,052,313	\$	999,128
International		1,241,488		740,579		780,620
<b>Total net revenue</b>	<b>\$</b>	<b>2,668,394</b>	<b>\$</b>	<b>1,792,892</b>	<b>\$</b>	<b>1,779,748</b>

<sup>(1)</sup>This disaggregated revenue category had previously been disclosed as part of Note 17 - Segment and Geographic Information in our Annual Report on Form 10-K for the fiscal year ended March 31, 2018. Amounts have not been retrospectively adjusted to reflect the adoption of ASC Topic 606.

## Platform

Net revenue by platform was as follows:

	Twelve Months Ended March 31,		
	2019	2018 <sup>(1)</sup>	2017 <sup>(1)</sup>
<b>Net revenue recognized:</b>			
Console	\$ 2,233,861	\$ 1,463,306	\$ 1,440,724
PC and other	434,533	329,586	339,024
<b>Total net revenue</b>	<b>\$ 2,668,394</b>	<b>\$ 1,792,892</b>	<b>\$ 1,779,748</b>

<sup>(1)</sup>This disaggregated revenue category had previously been disclosed as part of Note 17 - Segment and Geographic Information in our Annual Report on Form 10-K for the fiscal year ended March 31, 2018. Amounts have not been retrospectively adjusted to reflect the adoption of ASC Topic 606.

## Distribution channel

Our products are delivered through digital online services (digital download, online platforms, and cloud streaming) and physical retail and other. Net revenue by distribution channel was as follows:

	Twelve Months Ended March 31,		
	2019	2018 <sup>(1)</sup>	2017 <sup>(1)</sup>
<b>Net revenue recognized:</b>			
Digital online	\$ 1,681,609	\$ 1,130,946	\$ 921,734
Physical retail and other	986,785	661,946	858,014
<b>Total net revenue</b>	<b>\$ 2,668,394</b>	<b>\$ 1,792,892</b>	<b>\$ 1,779,748</b>

<sup>(1)</sup>This disaggregated revenue category had previously been disclosed as part of Note 17 - Segment and Geographic Information in our Annual Report on Form 10-K for the fiscal year ended March 31, 2018. Amounts have not been retrospectively adjusted to reflect the adoption of ASC Topic 606.

## Deferred Revenue

We record deferred revenue when payments are due or received in advance of the fulfillment of our associated performance obligations. The opening balance and ending balance of deferred revenue, including current and non-current balances as of April 1, 2018 and March 31, 2019 were \$566,141 and \$864,360, respectively. For the twelve months ended March 31, 2019, the additions to our deferred revenue balance were primarily due to cash payments received or due in advance of satisfying our performance obligations, while the reductions to our deferred revenue balance were primarily due to the recognition of revenue upon fulfillment of our performance obligations, both of which were in the ordinary course of business.

During the twelve months ended March 31, 2019, \$548,531 of revenue was recognized that was included in the deferred revenue balance at the beginning of the period. As of March 31, 2019, the aggregate amount of contract revenue allocated to unsatisfied performance obligations is \$1,131,714, which includes our deferred revenue balances and amounts to be invoiced and recognized as revenue in future periods. We expect to recognize approximately \$1,047,309 of this balance as revenue over the next 12 months, and the remainder thereafter. This balance does not include an estimate for variable consideration arising from sales-based royalty license revenue in excess of the contractual minimum guarantee.

As of March 31, 2019 and April 1, 2018, our contract asset balances were \$57,643 and \$69,522, respectively.

## 3. MANAGEMENT AGREEMENT

In March 2014, we entered into an amended management services agreement, (the "2014 Management Agreement") with ZelnickMedia Corporation ("ZelnickMedia") pursuant to which ZelnickMedia provided us with certain management, consulting and executive level services. The 2014 Management Agreement became effective April 1, 2014. The 2014 Management Agreement provided for an annual management fee of \$2,970 over the term of the agreement and a maximum annual bonus opportunity of \$4,752 over the term of the agreement, based on the Company achieving certain performance thresholds. In November 2017, we entered into a new management agreement, (the "2017 Management Agreement"), with ZelnickMedia pursuant to which

ZelnickMedia continues to provide financial and management consulting services to the Company through March 31, 2024. The 2017 Management Agreement became effective January 1, 2018 and supersedes and replaces the 2014 Management Agreement, except as otherwise contemplated by the 2017 Management Agreement. As part of the 2017 Management Agreement, Strauss Zelnick, the President of ZelnickMedia, continues to serve as Executive Chairman and Chief Executive Officer of the Company and Karl Slatoff, a partner of ZelnickMedia, continues to serve as President of the Company. The 2017 Management Agreement provides for an annual management fee of \$3,100 over the term of the agreement and a maximum annual bonus opportunity of \$7,440 over the term of the agreement, based on the Company achieving certain performance thresholds.

In consideration for ZelnickMedia's services, we recorded consulting expense (a component of General and administrative expenses) of \$9,265, \$8,426 and \$7,722 for the fiscal years ended March 31, 2019, 2018 and 2017, respectively.

Pursuant to the 2017 Management Agreement and 2014 Management Agreement, we also issued stock-based awards to ZelnickMedia. During the fiscal years ended March 31, 2019, 2018 and 2017, we recorded \$21,257, \$32,801 and \$29,573, respectively, of stock-based compensation expense for non-employee awards, which is included in General and administrative expenses. See Note 16 - Stock-Based Compensation for a discussion of such awards.

#### 4. FAIR VALUE MEASUREMENTS

The carrying amounts of our financial instruments, including cash and cash equivalents, restricted cash, accounts receivable, accounts payable and accrued liabilities, approximate fair value because of their short maturities.

We follow a three-level fair value hierarchy that prioritizes the inputs used to measure fair value. This hierarchy requires entities to maximize the use of "observable inputs" and minimize the use of "unobservable inputs." The three levels of inputs used to measure fair value are as follows:

- Level 1—Quoted prices in active markets for identical assets or liabilities.
- Level 2—Observable inputs other than quoted prices included in Level 1, such as quoted prices for markets that are not active or other inputs that are observable or can be corroborated by observable market data.
- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities. This includes certain pricing models, discounted cash flow methodologies and similar techniques that use significant unobservable inputs.

The table below segregates all assets that are measured at fair value on a recurring basis (which is measured at least annually) into the most appropriate level within the fair value hierarchy based on the inputs used to determine the fair value at the measurement date.

	March 31, 2019	Quoted prices in active markets for identical assets (level 1)	Significant other observable inputs (level 2)	Significant unobservable inputs (level 3)	Balance Sheet Classification
Money market funds	\$ 389,936	\$ 389,936	\$ —	\$ —	Cash and cash equivalents
Commercial paper	39,246	—	39,246	—	Cash and cash equivalents
US Treasuries	25,449	25,449	—	—	Cash and cash equivalents
Money market funds	565,461	565,461	—	—	Restricted cash
Bank-time deposits	387,720	387,720	—	—	Short-term investments
Corporate bonds	296,141	—	296,141	—	Short-term investments
US Treasuries	55,634	55,634	—	—	Short-term investments
Commercial paper	4,990	—	4,990	—	Short-term investments
Cross-currency swap	791	—	791	—	Prepaid expenses and other
Private equity	1,823	—	—	1,823	Other assets
Foreign currency forward contracts	(423)	—	(423)	—	Accrued and other current liabilities
<b>Total recurring fair value measurements, net</b>	<b>\$ 1,766,768</b>	<b>\$ 1,424,200</b>	<b>\$ 340,745</b>	<b>\$ 1,823</b>	

	March 31, 2018	Quoted prices in active markets for identical assets (level 1)	Significant other observable inputs (level 2)	Significant unobservable inputs (level 3)	Balance Sheet Classification
Money market funds	\$ 516,626	\$ 516,626	\$ —	\$ —	Cash and cash equivalents
Bank-time deposits	21	21	—	—	Cash and cash equivalents
Commercial paper	10,796	—	10,796	—	Cash and cash equivalents
Corporate bonds	308,716	—	308,716	—	Short-term investments
US Treasuries	59,725	59,725	—	—	Short-term investments
Commercial paper	25,422	—	25,422	—	Short-term investments
Mutual funds	4,880	—	4,880	—	Short-term investments
Bank-time deposits	216,663	216,663	—	—	Short-term investments
Foreign currency forward contracts	12	—	12	—	Prepaid expenses and other
Foreign currency forward contracts	(43)	—	(43)	—	Accrued and other current liabilities
Cross-currency swap	(15,659)	—	(15,659)	—	Accrued and other current liabilities
Private equity	\$ 1,205	\$ —	\$ —	\$ 1,205	Other assets
Total recurring fair value measurements, net	\$ 1,128,364	\$ 793,035	\$ 334,124	\$ 1,205	

We did not have any transfers between Level 1 and Level 2 fair value measurements, nor did we have any transfers into or out of Level 3 during the fiscal year ended March 31, 2019.

## 5. SHORT-TERM INVESTMENTS

Our short-term investments consisted of the following as of March 31, 2019:

	March 31, 2019			
	Cost or Amortized Cost	Gross Unrealized		Fair Value
		Gains	Losses	
Short-term investments				
Bank time deposits	\$ 387,720	\$ —	\$ —	\$ 387,720
Available-for-sale securities:				
Corporate bonds	295,526	742	(127)	296,141
US Treasuries	55,656	27	(49)	55,634
Commercial paper	4,990			4,990
Total short-term investments	\$ 743,892	\$ 769	\$ (176)	\$ 744,485

	March 31, 2018			
	Cost or Amortized Cost	Gross Unrealized		Fair Value
		Gains	Losses	
Short-term investments				
Bank time deposits	\$ 216,663	\$ —	\$ —	\$ 216,663
Available-for-sale securities:				
Corporate bonds	310,387	16	(1,687)	308,716
US Treasuries	59,970	—	(245)	59,725
Commercial paper	25,422	—	—	25,422
Mutual funds	4,876	16	(12)	4,880
Total short-term investments	\$ 617,318	\$ 32	\$ (1,944)	\$ 615,406

Based on our evaluation of impairment for these investments, we did not consider any of these investments to be other-than-temporarily impaired as of March 31, 2019 or 2018. We do not intend to sell any of our investments with unrealized losses, nor is it more likely than not that we will be required to sell those investments.



The following table summarizes the contracted maturities of our short-term investments at March 31, 2019:

	March 31, 2019	
	Amortized Cost	Fair Value
Short-term investments		
Due in 1 year or less	\$ 629,474	\$ 629,496
Due in 1-2 years	114,418	114,989
Total short-term investments	\$ 743,892	\$ 744,485

## 6. DERIVATIVE INSTRUMENTS AND HEDGING ACTIVITIES

Our risk management strategy includes the use of derivative financial instruments to reduce the volatility of earnings and cash flows associated with changes in foreign currency exchange rates. We do not enter into derivative financial contracts for speculative or trading purposes. We classify cash flows from its derivative transactions as cash flows from operating activities in our Consolidated Statements of Cash Flows.

### *Foreign currency forward contracts*

The following table shows the gross notional amounts of foreign currency forward contracts:

	March 31,	
	2019	2018
Forward contracts to purchase foreign currencies	\$ 116,590	\$ 4,359
Forward contracts to sell foreign currencies	\$ 87,793	\$ 67,580

For the fiscal years ended March 31, 2019, 2018 and 2017, we recorded a gain of \$16,831, a loss of \$19,473, and a gain of \$7,197, respectively, related to foreign currency forward contracts in Interest and other, net on the Consolidated Statements of Operations. Our derivative contracts are foreign currency exchange forward contracts that are not designated as hedging instruments under hedge accounting and are used to reduce the impact of foreign currency on certain balance sheet exposures and certain revenue and expense. These instruments are generally short term in nature, with typical maturities of less than one year, and are subject to fluctuations in foreign exchange rates.

### *Cross-currency swaps*

We entered into a cross-currency swap agreement in August 2017 related to an intercompany loan that has been designated and accounted for as a cash flow hedge of foreign currency exchange risk. The intercompany loan is related to the acquisition of Social Point (See note 23). As of March 31, 2019, the notional amount of the cross-currency swap is \$115,641. This cross-currency swap mitigates the exposure to fluctuations in the U.S. dollar-euro exchange rate related to the intercompany loan. The critical terms of the cross-currency swap agreement correspond to the intercompany loan and both mature at the same time in 2027; as such, there was no ineffectiveness during the period.

Changes in the fair value of this cross-currency swap are recorded in Accumulated other comprehensive income (loss) and offset the change in value of interest and principal payment as a result of changes in foreign exchange rates. Resulting gains or losses from the cross-currency swap are reclassified from Accumulated other comprehensive income (loss) to earnings to offset foreign currency transaction gains and losses recognized on the intercompany loan. We recognize the difference between the U.S. dollar interest payments received from the swap counterparty and the U.S. dollar equivalent of the euro interest payments made to the swap counterparty in Interest and other, net on our Consolidated Statement of Operations. There are no credit-risk related contingent features associated with these swaps.

## 7. INVENTORY

Inventory balances by category are as follows:

	March 31,	
	2019	2018
Finished products	\$ 24,847	\$ 13,940
Parts and supplies	3,353	1,222
<b>Inventory</b>	<b>\$ 28,200</b>	<b>\$ 15,162</b>

Estimated product returns included in inventory at March 31, 2019 and 2018 were \$491 and \$373, respectively.

## 8. SOFTWARE DEVELOPMENT COSTS AND LICENSES

Details of our capitalized software development costs and licenses are as follows:

	March 31,			
	2019		2018	
	Current	Non-current	Current	Non-current
Software development costs, internally developed	\$ 14,809	\$ 434,712	\$ 19,338	\$ 515,761
Software development costs, externally developed	3,655	168,381	4,275	122,270
Licenses	10,416	343	9,671	1,338
<b>Software development costs and licenses</b>	<b>\$ 28,880</b>	<b>\$ 603,436</b>	<b>\$ 33,284</b>	<b>\$ 639,369</b>

Software development costs and licenses, net of current portion as of March 31, 2019 and 2018 included \$378,030 and \$638,055, respectively, related to titles that have not been released.

Amortization and impairment of software development costs and licenses are as follows:

	Fiscal Year Ended March 31,		
	2019	2018	2017
Amortization of software development costs and licenses	\$ 342,870	\$ 101,437	\$ 222,801
Impairment of software development costs and licenses	7,426	1,060	20,166
Less: Portion representing stock-based compensation	(149,075)	(24,610)	(21,056)
<b>Amortization and impairment, net of stock-based compensation</b>	<b>\$ 201,221</b>	<b>\$ 77,887</b>	<b>\$ 221,911</b>

During the twelve months ended March 31, 2019, we recorded \$7,426 of software development impairment charges (a component of Cost of goods sold). The impairment charges relate to a decision not to proceed with further development of certain interactive entertainment software.

## 9. FIXED ASSETS, NET

Fixed asset balances by category are as follows:

	March 31,	
	2019	2018
Computer equipment	\$ 118,841	\$ 87,926
Leasehold improvements	99,093	88,762
Computer software	52,641	47,702
Furniture and fixtures	16,179	13,933
Office equipment	10,758	8,139
	297,512	246,462
Less: accumulated depreciation	(169,630)	(143,984)
<b>Fixed assets, net</b>	<b>\$ 127,882</b>	<b>\$ 102,478</b>

Depreciation expense related to fixed assets for the fiscal years ended March 31, 2019, 2018 and 2017 was \$39,726, \$32,202 and \$30,629, respectively.

The following represents our fixed assets, net by location:

	March 31,	
	2019	2018
United States	\$ 78,197	\$ 65,476
International	49,685	37,002
Fixed assets, net	\$ 127,882	\$ 102,478

## 10. GOODWILL AND INTANGIBLE ASSETS, NET

### Goodwill

The change in our goodwill balance is as follows:

	Total
<b>Balance at March 31, 2017</b>	<b>\$ 359,115</b>
Additions from immaterial acquisition	6,236
Adjustments (see Note 23)	4,245
Currency translation adjustment	\$ 29,934
<b>Balance at March 31, 2018</b>	<b>\$ 399,530</b>
Additions from immaterial acquisition	3,149
Currency translation adjustment	\$ (20,962)
<b>Balance at March 31, 2019</b>	<b>\$ 381,717</b>

### Indefinite-lived intangibles

Other intangibles, net, as of March 31, 2018, included in-process research and development ("IPR&D") assets of \$5,226 acquired as part of the Social Point acquisition, which were indefinite-lived intangibles and therefore not subject to amortization until the related games were released or development was abandoned. During the fiscal year ended March 31, 2019, we released *Tasty Town* and reclassified the balance to definite-lived intangibles. As of March 31, 2019, there are no IPR&D assets included in Other intangibles, net. During the fiscal year ended March 31, 2018, as a result of our decision not to proceed with further development of a certain game related IPR&D, we recognized an impairment charge of \$11,257 in Depreciation and amortization expense in our Consolidated Statements of Operations.

### Definite-lived intangibles

The following table sets forth the intangible assets that are subject to amortization:

	March 31,						Weighted average useful life
	2019			2018			
	Gross Carrying Amount	Accumulated Amortization	Net Book Value	Gross Carrying Amount	Accumulated Amortization	Net Book Value	
Developed game technology	65,428	(32,975)	32,453	67,133	(23,189)	43,944	4 years
Intellectual property	\$ 26,109	\$ (6,524)	\$ 19,585	\$ 37,431	\$ (13,616)	\$ 23,815	6 years
Analytics technology	31,271	(13,551)	17,720	34,499	(8,050)	26,449	5 years
Branding and trade names	4,422	(1,065)	3,357	4,879	(632)	4,247	9 years
User base	—	—	—	10,454	(10,454)	—	1 year
Total definite-lived intangible assets	\$ 127,230	\$ (54,115)	\$ 73,115	\$ 154,396	\$ (55,941)	\$ 98,455	

During the fiscal year ended March 31, 2018, we acquired intellectual property related to *Kerbal Space Program*, which was treated as an asset acquisition, resulting in a \$21,500 increase in Intellectual property, and a \$4,465 increase in Developed game technology.

Amortization of intangible assets is included in our Consolidated Statements of Operations as follows:

	Fiscal Year Ended March 31,		
	2019	2018	2017
Cost of goods sold	\$ 16,937	\$ 19,719	\$ 4,252
Selling and marketing	—	8,107	1,497
Research and development	6,436	6,494	989
Depreciation and amortization	506	510	78
<b>Total amortization of intangible assets</b>	<b>\$ 23,879</b>	<b>\$ 34,830</b>	<b>\$ 6,816</b>

Estimated future amortization of intangible assets that will be recorded in cost of goods sold and operating expenses for the years ending March 31, are as follows:

Fiscal Year Ended March 31,	Amortization
2020	\$ 21,469
2021	20,669
2022	19,371
2023	7,084
2024	3,844

## 11. ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consisted of:

	March 31,	
	2019	2018
Software development royalties	\$ 713,201	\$ 600,512
Compensation and benefits	73,695	57,499
Refund Liability	65,853	—
Licenses	56,221	43,261
Marketing and promotions	42,390	19,731
Business reorganization (see Note 20)	—	72,074
Deferred acquisition payments	—	25,000
Other	84,335	96,671
<b>Accrued expenses and other current liabilities</b>	<b>\$ 1,035,695</b>	<b>\$ 914,748</b>

## 12. DEBT

### *New Credit Agreement*

On February 8, 2019, we entered into an unsecured Credit Agreement (the “New Credit Agreement”). The New Credit Agreement replaced our existing Credit Agreement (see below), which was terminated on the same day. The New Credit Agreement runs through February 8, 2024. The New Credit Agreement provides for an unsecured five-year revolving credit facility with commitments of \$200,000, including sublimits for (i) the issuance of letters of credit in an aggregate face amount of up to \$25,000 and (ii) borrowings and letters of credit denominated in Pounds Sterling, Euros and Canadian Dollars in an aggregate principal amount of up to \$25,000. In addition, the New Credit Agreement contains uncommitted incremental capacity permitting the incurrence of up to an additional \$250,000 in term loans or revolving credit facilities.

Loans under the New Credit Agreement will bear interest at a rate of (a) 0.250% to 0.750% above a certain base rate (5.50% at March 31, 2019) or (b) 1.125% to 1.750% above LIBOR (approximately 2.49% at March 31, 2019), which rates are determined by reference to our consolidated total net leverage ratio. We had no outstanding borrowings at March 31, 2019.

Information related to availability on our New Credit Agreement is as follows:

	<b>March 31,</b>	
	<b>2019</b>	
Available borrowings	\$	198,336
Outstanding letters of credit	\$	1,664

We recorded interest expense and fees related to the New Credit Agreement of \$372, for the fiscal year ended March 31, 2019. The New Credit Agreement also includes, among other terms and conditions, maximum leverage ratio, minimum cash reserves and, in certain circumstances, minimum interest coverage ratio financial covenants, as well as limitations on us and each of our subsidiaries' ability to: create, incur, assume or be liable for indebtedness; dispose of assets outside the ordinary course; acquire, merge or consolidate with or into another person or entity; create, incur or allow any lien on any of its property; make investments; or pay dividends or make distributions, in each case subject to certain exceptions. In addition, the New Credit Agreement provides for certain events of default such as nonpayment of principal and interest when due thereunder, breaches of representations and warranties, noncompliance with covenants, acts of insolvency and default on indebtedness held by third parties (subject to certain limitations and cure periods).

#### ***Credit Agreement***

In December 2017, we entered into a Seventh Amendment to our Second Amended and Restated Credit Agreement (as amended, the "Credit Agreement"). The Credit Agreement provided for borrowings of up to \$100,000 which could have been increased by up to \$100,000 pursuant to the terms of the Credit Agreement and which was secured by substantially all of our assets and the equity of our subsidiaries. The Credit Agreement was terminated in connection with our entering into the New Credit Agreement. We had no outstanding borrowings at March 31, 2018.

We recorded interest expense and fees related to the Credit Agreement of \$472, \$441 and \$441, for the fiscal years ended March 31, 2019, 2018, and 2017, respectively.

#### ***1.00% Convertible Notes Due 2018***

On June 18, 2013, we issued \$250,000 aggregate principal amount of 1.00% Convertible Notes due 2018. The Convertible Notes were issued at 98.5% of par value for proceeds of \$283,188, which included a \$37,500 overallotment option that was exercised. Interest on the Convertible Notes was payable semi-annually in arrears on July 1st and January 1st of each year, commencing on January 1, 2014. The Convertible Notes matured on July 1, 2018.

The following table provides the components of interest expense related to our Convertible Notes:

	<b>Fiscal Year Ended March 31,</b>		
	<b>2019</b>	<b>2018</b>	<b>2017</b>
Cash interest expense (coupon interest expense)	\$ 1	\$ 539	\$ 2,784
Non-cash amortization of discount on 1.00% Convertible Notes	91	15,662	14,221
Amortization of debt issuance costs	3	466	453
Total interest expense related to 1.00% Convertible Notes	<u>\$ 95</u>	<u>\$ 16,667</u>	<u>\$ 17,458</u>

### 13. EARNINGS PER SHARE ("EPS")

The following table sets forth the computation of basic and diluted EPS (in thousands except per share amounts):

	Fiscal Year Ended March 31,		
	2019	2018	2017
<b>Computation of Basic earnings per share:</b>			
Net income	\$ 333,837	\$ 173,533	\$ 67,303
Less: net income allocated to participating securities	—	(159)	(1,275)
Net income for basic earnings per share calculation	\$ 333,837	\$ 173,374	\$ 66,028
Total weighted average shares outstanding—basic	113,176	110,210	91,921
Less: weighted average participating shares outstanding	—	(101)	(1,741)
Weighted average common shares outstanding—basic	113,176	110,109	90,180
Basic earnings per share	\$ 2.95	\$ 1.57	\$ 0.73
<b>Computation of Diluted earnings per share:</b>			
Net income	\$ 333,837	\$ 173,533	\$ 67,303
Less: net income allocated to participating securities	—	(155)	(1,246)
Net income for diluted earnings per share calculation	\$ 333,837	\$ 173,378	\$ 66,057
Weighted average common shares outstanding—basic	113,176	110,109	91,921
Add: dilutive effect of common stock equivalents	2,022	2,755	2,152
Weighted average common shares outstanding—diluted	115,198	112,864	94,073
Less: weighted average participating shares outstanding	—	(101)	(1,741)
Weighted average common shares outstanding- diluted	115,198	112,763	92,332
Diluted earnings per share	\$ 2.90	\$ 1.54	\$ 0.72

Certain of our unvested stock-based awards (including restricted stock units and restricted stock awards) are considered participating securities since these securities have non-forfeitable rights to dividends or dividend equivalents during the contractual period of the award and thus requires the two-class method of computing EPS. As of March 31, 2019, we have no material participating securities.

The calculation of EPS for common stock under the two-class method shown above excludes income attributable to the participating securities from the numerator and excludes the dilutive effect of those awards from the denominator.

We define common stock equivalents as stock-based awards and common stock related to our Convertible Notes (see Note 12 - Debt) outstanding during the period. Common stock equivalents are measured using the treasury stock method, except for the Convertible Notes, which were assessed for their effect on diluted EPS using the more dilutive of the treasury stock method or the if-converted method. Under the provisions of the if-converted method, the Convertible Notes are assumed to be converted and included in the denominator of the EPS calculation and the interest expense, net of tax, recorded in connection with the Convertible Notes is added back to the numerator.

## 14. COMMITMENTS AND CONTINGENCIES

A summary of annual minimum contractual obligations and commitments as of March 31, 2019 is as follows:

Fiscal Year Ending March 31,	Software Development and Licensing	Marketing	Operating Leases	Purchase Obligations	Total
2020	\$ 183,309	\$ 52,953	\$ 28,365	\$ 23,707	\$ 288,334
2021	120,008	28,830	27,882	9,559	186,279
2022	114,734	28,661	26,272	5,063	174,730
2023	56,884	78,100	23,787	623	159,394
2024	51,792	24,600	16,474	484	93,350
Thereafter	55,792	49,200	82,570	—	187,562
<b>Total</b>	<b>\$ 582,519</b>	<b>\$ 262,344</b>	<b>\$ 205,350</b>	<b>\$ 39,436</b>	<b>\$ 1,089,649</b>

*Software Development and Licensing Agreements:* We make payments to third-party software developers that include contractual payments to developers under several software development agreements that expire at various times through March 2025. Our aggregate outstanding software development commitments assume satisfactory performance by third-party software developers. We also have licensing commitments that primarily consist of obligations to holders of intellectual property rights for use of their trademarks, copyrights, technology or other intellectual property rights in the development of our products.

*Marketing Agreements:* We have certain minimum marketing support commitments where we commit to spend specified amounts related to marketing our products. Marketing commitments expire at various times through September 2024 and primarily reflect our agreements with major sports leagues and players' associations.

*Operating Leases:* Our offices are occupied under non-cancelable operating leases expiring at various times through December 2032. We also lease certain furniture, equipment and automobiles under non-cancelable leases expiring through June 2023. Some of the leases have fixed rent increases and also include inducements to enter into the lease. The effect of such amounts are deferred and recognized on a straight-line basis over the related lease term. Rent expense amounted to \$29,204, \$25,301 and \$19,545 for the fiscal years ended March 31, 2019, 2018 and 2017, respectively.

*Purchase obligations:* These obligations are primarily related to agreements to purchase services that are enforceable and legally binding on us that specifies all significant terms, including fixed, minimum or variable pricing provisions; and the approximate timing of the transactions, expiring at various times through March 2024.

*Employee Savings Plans:* For our United States employees we maintain a 401(k) retirement savings plan and trust. Our 401(k) plan is offered to all eligible employees and participants may make voluntary contributions. We also have various pension plans for our non-U.S. employees, some of which are required by local laws, and allow or require Company contributions. Employer contributions under all defined contribution and pension plans during the fiscal years ended March 31, 2019, 2018 and 2017 were \$10,881, \$9,592 and \$8,018, respectively.

*Legal and Other Proceedings:* We are, or may become, subject to demands and claims (including intellectual property claims) and are involved in routine litigation in the ordinary course of business which we do not believe to be material to our business or financial condition or results of operations. We have appropriately accrued amounts related to certain of these claims and legal and other proceedings. While it is reasonably possible that a loss may be incurred in excess of the amounts accrued in our financial statements, we believe that such losses, unless otherwise disclosed, would not be material.

On February 7, 2019, all of the previously disclosed lawsuits, claims, and counterclaims that had been pending since April 2016 with Mr. Leslie Benzies, the former president of one of our subsidiaries, were resolved. See Note 20 - Business Reorganization.

## 15. INCOME TAXES

On December 22, 2017, the U.S. enacted comprehensive tax legislation commonly referred to as the Tax Cuts and Jobs Act (herein referred to as the "Act"). The Act made broad and complex changes to the U.S. tax code. The Act reduced the U.S. federal corporate income tax rate from 35% to 21%, effective January 1, 2018 and required companies to pay a one-time transition tax on the previously untaxed earnings of certain foreign subsidiaries. In addition, the Act made other changes, including, but not limited to, (1) a Base Erosion Anti-abuse Tax ("BEAT"), which is a new minimum tax, (2) generally eliminating U.S. federal income taxes on dividends from foreign subsidiaries, (3) a new provision that taxes global intangible low-taxed income ("GILTI"), (4) the repeal of the domestic production activity deduction, and (5) other base broadening provisions. As of March 31, 2018, we

recognized a tax benefit of \$6,202 due to the re-measurement of the deferred tax liability relating to indefinite lived intangibles as a result of the reduced U.S. federal corporate income tax rate.

The SEC issued Staff Accounting Bulletin No. 118, Income Tax Accounting Implications of the Tax Cuts and Jobs Act ("SAB 118"), which provides guidance on accounting for the Act's impact. SAB 118 provides a measurement period, which should not extend beyond one year from the Act enactment date, during which a company acting in good faith may complete the accounting for the impact of the Act under ASC 740. In accordance with SAB 118, the income tax effects of the Act must be reflected in the reporting period in which the accounting under ASC Topic 740 is complete. As of March 31, 2018, we recorded an estimated increase to income tax expense of \$18,078 related to the one-time transition tax on the previously untaxed earnings of certain foreign subsidiaries as a result of the Act. The estimated increase was a result of transition tax of \$26,649, offset by an increased benefit from domestic production deductions and other tax credits. As of March 31, 2019, we completed the accounting and recorded a decrease to income tax expense of \$4,553 to adjust the provisional estimate related to the one-time transition tax on the previously untaxed earnings of certain foreign subsidiaries as a result of the Act. The impact of the Act differs from these estimates due to changes in interpretations and assumptions we have made, guidance that was issued, and actions taken as a result of the Act.

Components of income before income taxes are as follows:

	Fiscal Year Ended March 31,		
	2019	2018	2017
Domestic	\$ 134,265	\$ 136,239	\$ 86,050
Foreign	98,520	386	(9,085)
Income before income taxes	\$ 232,785	\$ 136,625	\$ 76,965

Provision for (benefit from) current and deferred income taxes consists of the following:

	Fiscal Year Ended March 31,		
	2019	2018	2017
Current:			
U.S. federal	\$ 8,240	\$ (7,327)	\$ 19,271
U.S. state and local	2,857	(1,266)	2,521
Foreign	22,274	4,208	(13,012)
Total current income taxes	33,371	(4,385)	8,780
Deferred:			
U.S. federal	(128,317)	(13,530)	969
U.S. state and local	(9,157)	195	2,395
Foreign	3,051	(19,188)	(2,482)
Total deferred income taxes	(134,423)	(32,523)	882
(Benefit from) Provision for income taxes	\$ (101,052)	\$ (36,908)	\$ 9,662



A reconciliation of our effective tax rate to the U.S. statutory federal income tax rate is as follows:

	Fiscal Year Ended March 31,		
	2019	2018	2017
U.S. federal statutory rate	21.0 %	31.6 %	35.0 %
State and local taxes, net of U.S. federal benefit	2.9 %	0.5 %	4.9 %
Foreign tax rate differential <sup>(1)</sup>	(9.0)%	(6.9)%	(1.4)%
Foreign earnings	5.1 %	1.2 %	5.5 %
Tax credits <sup>(2)</sup>	(15.0)%	(16.5)%	(45.8)%
Excess tax benefits from stock-based compensation <sup>(3)</sup>	(5.7)%	(38.9)%	—
One-time transition tax <sup>(4)</sup>	(2.0)%	19.5 %	—
Domestic production deduction	— %	(2.8)%	(2.5)%
Valuation allowance—domestic <sup>(5)</sup>	(46.0)%	(0.5)%	10.1 %
Valuation allowance—foreign	— %	(2.5)%	0.1 %
Change in reserves	1.3 %	(11.0)%	2.9 %
Other <sup>(6)</sup>	4.0 %	(0.7)%	3.7 %
<b>Effective tax rate</b>	<b>(43.4)%</b>	<b>(27.0)%</b>	<b>12.5 %</b>

<sup>(1)</sup> The foreign rate differential in relation to foreign earnings, for all periods presented, are primarily driven by changes in the mix of our foreign earnings and the difference in the foreign versus U.S. income tax rate.

<sup>(2)</sup> Tax benefits were recorded for fiscal years ended March 31, 2019, 2018, and 2017 attributable to certain tax credits related to software development activities.

<sup>(3)</sup> The accounting for stock based compensation will increase or decrease our effective tax rate based upon the difference between our share-based compensation expense and the deductions taken on our tax return, which depends upon the stock price at the time of employee award vesting.

<sup>(4)</sup> Represents the true-up related to the provisional estimate recorded in the fiscal year ended March 31, 2018 in accordance with SAB 118 for the one-time transition tax on previously untaxed earnings of certain foreign subsidiaries.

<sup>(5)</sup> The change in domestic valuation allowance includes a reduction in our valuation allowance on certain U.S. deferred tax assets as a result of a determination that it was more-likely-than-not that such deferred tax assets would be realized in the fiscal year ended March 31, 2019.

<sup>(6)</sup> Includes the effects from the Act, excluding the SAB 118 true-up relating to the one-time transition tax, which were not material

The effects of temporary differences that gave rise to our deferred tax assets and liabilities were as follows:

	March 31,	
	2019	2018
<b>Deferred tax assets:</b>		
Accrued compensation expense	\$ 113,517	\$ 94,919
Equity-based compensation	82,720	78,293
Tax credit carryforward	72,408	64,175
Net operating loss carryforward	27,498	35,378
Deferred rent	5,965	5,729
Business reorganization	158	16,369
Deferred Revenue	—	42,426
Sales returns and allowances (including bad debt)	—	575
Other	411	1,145
<b>Total deferred tax assets</b>	<b>302,677</b>	<b>339,009</b>
Less: Valuation allowance	(49,413)	(195,640)
<b>Net deferred tax assets</b>	<b>253,264</b>	<b>143,369</b>
<b>Deferred tax liabilities:</b>		
Capitalized software and depreciation	(101,168)	(118,119)
Intangible amortization	(22,486)	(24,651)
Deferred revenue	(17,100)	—
Convertible debt	—	(13)
Other	(4,690)	(4,534)
<b>Total deferred tax liabilities</b>	<b>(145,444)</b>	<b>(147,317)</b>
<b>Net deferred tax asset / (liability) <sup>(1)</sup></b>	<b>107,820</b>	<b>(3,948)</b>

(1) As of March 31, 2019, \$134,732 is included in Deferred tax assets and \$26,912 is included in Other long-term liabilities. As of March 31, 2018, \$3,948 is included in Other long-term liabilities.

We recognized a tax benefit of \$107,132 from a reduction in our valuation allowance on certain U.S. deferred tax assets as a result of a determination that it was more-likely-than-not that such deferred tax assets would be realized. Our determination took into account that successful launch of *Red Dead Redemption 2* during the fiscal 2019 along with our recent positive trend of earnings.

The valuation allowance is primarily attributable to deferred tax assets for which no benefit is provided due to uncertainty with respect to their realization. In the previous year, the net deferred tax liability is primarily the result of deferred tax liabilities related to indefinite lived intangibles, which cannot be used to offset deferred tax assets, as well as deferred tax liabilities related to intangibles as a result of the acquisition of Social Point.

At March 31, 2019, we had domestic net operating loss carryforwards totaling \$47,520 of which \$23,986 will expire in 2022 to 2027, \$15,308 will expire from 2029 to 2032, and \$8,226 will expire in 2038 to 2039. In addition, we had foreign net operating loss carryforwards of \$20,563, of which \$4,494 will expire from 2023 to 2028 and the remainder may be carried forward indefinitely.

At March 31, 2019, we had domestic credit carryforwards totaling \$202,450, of which \$115,008 expire in 2029 to 2039, and the remainder may be carried forward indefinitely.

The total amount of undistributed earnings of foreign subsidiaries was approximately \$410,095 at March 31, 2019 and \$314,800 at March 31, 2018. As of March 31, 2019, it is our intention to reinvest indefinitely undistributed earnings of our foreign subsidiaries. Accordingly, no provision has been made for foreign withholding taxes or U.S. income taxes which may become payable if undistributed earnings of foreign subsidiaries are repatriated. It is not practicable to estimate the tax liability that would arise if these earnings were remitted.

We are regularly audited by domestic and foreign taxing authorities. Audits may result in tax assessments in excess of amounts claimed and the payment of additional taxes. We believe that our tax return positions comply with applicable tax law and that we have adequately provided for reasonably foreseeable assessments of additional taxes. Additionally, we believe that any assessments in excess of the amounts provided for will not have a material adverse effect on the Consolidated Financial Statements.

It is possible that settlement of audits or the expiration of the statute of limitations may have an impact on our effective tax rate in future periods.

We recognize interest and penalties related to uncertain tax positions in the provision for income taxes in our Consolidated Statements of Operations. For the fiscal years ended March 31, 2019, 2018 and 2017, we recognized an increase in interest and penalties of \$232, \$2,363 and \$877, respectively. The gross amount of interest and penalties accrued as of March 31, 2019 and 2018 was \$6,686 and \$6,453, respectively.

As of March 31, 2019, we had gross unrecognized tax benefits, including interest and penalties, of \$139,006, of which \$23,937 would affect our effective tax rate if realized. For the fiscal year ended March 31, 2019, gross unrecognized tax benefits increased by \$10,496.

We are no longer subject to audit for U.S. federal income tax returns for periods prior to our fiscal year ended March 31, 2016 and state income tax returns for periods prior to the fiscal year ended March 31, 2014. With few exceptions, we are no longer subject to income tax examinations in non-U.S. jurisdictions for years prior to our fiscal year ended March 31, 2014. U.S. federal taxing authorities have completed examinations of our income tax returns through the fiscal year ended March 31, 2015.

The timing of the resolution of income tax examinations is highly uncertain, and the amounts ultimately paid, if any, upon resolution of the issues raised by the taxing authorities may differ materially from the amounts accrued for each year. Although potential resolution of uncertain tax positions involve multiple tax periods and jurisdictions, it is reasonably possible that a reduction of \$11,117 of unrecognized tax benefits may occur within the next 12 months, some of which, depending on the nature of the settlement or expiration of statutes of limitations, may affect our income tax provision and therefore benefit the resulting effective tax rate. The actual amount could vary significantly depending on the ultimate timing and nature of any settlements.

The aggregate changes to the liability for gross uncertain tax positions, excluding interest and penalties, were as follows:

	Fiscal Year Ended March 31,		
	2019	2018	2017
Balance, beginning of period	\$ 122,056	\$ 116,085	\$ 52,799
Additions:			
Current year tax positions	13,281	23,007	65,669
Prior year tax positions	288	7,406	5,086
Reduction of prior year tax positions	(1,700)	(436)	—
Lapse of statute of limitations	(1,605)	(24,006)	(7,469)
<b>Balance, end of period</b>	<b>\$ 132,320</b>	<b>\$ 122,056</b>	<b>\$ 116,085</b>

We believe that we have provided for any reasonably foreseeable outcomes related to our tax audits and that any settlement will not have a material adverse effect on our consolidated financial statements. However, there can be no assurances as to the possible outcomes.

## 16. STOCK-BASED COMPENSATION

### Stock Incentive Plan

In September 2017, our stockholders approved our 2017 Stock Incentive Plan (the "2017 Plan"). The aggregate number of shares issuable under the 2017 Plan is 7,596, subject to adjustment as set forth in the 2017 Plan, and, as of March 31, 2019, there were approximately 5,426 shares available for issuance. The 2017 Plan is administered by the Compensation Committee of the Board of Directors and allows for awards of restricted stock units and other stock-based awards of our common stock to employees and non-employees, including to ZelnickMedia in connection with their contract to provide executive management service to us. Subject to the provisions of the plans, the Board of Directors or any Committee appointed by the Board of Directors, has the authority to determine the individuals to whom the equity awards are to be granted, the number of shares to be covered by each equity award, the vesting period, restrictions, if any, on the equity award and the terms and conditions of the equity award. Upon the vesting of certain stock-based awards, employees have the option to have us withhold shares to satisfy the employee's federal and state tax withholding requirements.

## Stock-Based Compensation Expense

The following table summarizes stock-based compensation expense included in our Consolidated Statements of Operations:

	Fiscal Year Ended March 31,		
	2019	2018	2017
Cost of goods sold	\$ 149,075	\$ 24,610	\$ 21,056
Selling and marketing	23,685	13,258	9,963
General and administrative	51,903	58,037	42,908
Research and development	23,037	18,020	7,952
Business reorganization	—	2,424	—
Stock-based compensation expense before income taxes	\$ 247,700	\$ 116,349	\$ 81,879
Income tax benefit	\$ (48,383)	\$ (3,561)	\$ (1,552)
Stock-based compensation expense, net of income tax benefit	\$ 199,317	\$ 112,788	\$ 80,327
Capitalized stock-based compensation expense	\$ 75,725	\$ 90,914	\$ 74,717

During the fiscal year ended March 31, 2019, the forfeiture of awards resulted in the reversal of expense of \$5,784 and amounts capitalized as software development costs of \$17,504. During the fiscal year ended March 31, 2018, the forfeiture of awards resulted in the reversal of expense of \$17,069 and amounts capitalized as software development costs of \$53,779.

As of March 31, 2019, the total future unrecognized compensation cost related to outstanding unvested restricted stock was \$345,858 and will be either recognized as compensation expense over a weighted-average period of approximately 2.9 years or capitalized as software development costs.

For the fiscal years ended March 31, 2019, 2018 and 2017, the weighted average fair values of restricted stock units that vested were \$264,162, \$268,570 and \$137,130, respectively.

### Restricted Stock Units

#### Employee Awards

Time-based restricted stock units granted to employees under our stock-based compensation plans generally vest either annually or quarterly over 3 years from the date of grant. Certain restricted stock units granted to key officers, senior-level employees, or key employees vest based on market conditions, primarily related to the performance of the price of our common stock. Certain restricted stock units granted to key officers, senior-level employees, or key employees vest based on performance conditions, primarily related to performance metrics around certain of our titles.

#### ZelnickMedia Non-Employee Awards

In connection with the 2014 Management Agreement and the 2017 Management Agreement, we granted restricted stock units to ZelnickMedia (see Note 3 - Management Agreement) as follows:

	Fiscal Year Ended March 31,	
	2019	2018
Time-based	86	66
Market-based <sup>(1)</sup>	158	122
Performance-based <sup>(1)</sup>		
New IP	—	21
Major IP	—	20
IP	27	—
Recurrent Consumer Spending ("RCS")	26	—
Total-Performance-based	53	41
Total Restricted Stock Units	297	229

<sup>(1)</sup> Represents the maximum number of shares eligible to vest.

Time-based restricted stock units granted in fiscal 2019 will vest on April 13, 2020, provided that the 2017 Management Agreement has not been terminated prior to such vesting date, and those granted in fiscal 2018 vested on April 4, 2019.

Market-based restricted stock units granted in fiscal 2019 are eligible to vest on April 13, 2020, provided that the 2017 Management Agreement has not been terminated prior to such vesting date, and those granted in fiscal 2018 vested on April 4, 2019. Market-based restricted stock units are eligible to vest based on our Total Shareholder Return (as defined in the relevant grant agreement) relative to the Total Shareholder Return (as defined in the relevant grant agreement) of the companies that constitute the NASDAQ Composite Index as of the grant date measured over a two-year period. To earn the target number of market-based restricted stock units (which represents 50% of the number of the market-based restricted stock units set forth in the table above), the Company must perform at the 50th percentile, with the maximum number of market-based restricted stock units earned if the Company performs at least at the 75th percentile.

Performance-based restricted stock units granted in fiscal 2019 are eligible to vest on April 13, 2020, provided that the 2017 Management Agreement has not been terminated prior to such vesting date, and those granted in fiscal 2018 vested on April 4, 2019. The performance-based restricted stock units granted in fiscal 2018, of which 50% are tied to "New IP" and 50% to "Major IP" (as defined in the relevant grant agreement), were eligible to vest based on the Company's achievement of certain performance metrics (as defined in the relevant grant agreement) of individual product releases of "New IP" or "Major IP", respectively, measured over a two-year period. The performance-based restricted stock units granted in fiscal 2019, of which 50% are tied to "IP" and 50% to "RCS" (as defined in the relevant grant agreement), are eligible to vest based on the Company's achievement of certain performance metrics (as defined in the relevant grant agreement) of either (a) individual product releases of "IP" or (b) "RCS" measured over a two-year period. The target number of performance-based restricted stock units that may be earned pursuant to these grants is equal to 50% of the grant amounts set forth in the above table (the numbers in the table represent the maximum number of performance-based restricted stock units that may be earned). At the end of each reporting period, we assess the probability of each performance metric and upon determination that certain thresholds are probable, we record expense for the unvested portion of the shares of performance-based restricted stock units. Certain performance metrics have been achieved as of March 31, 2019 for the "Major IP," "IP," and "RCS" performance-based restricted stock units granted in fiscal 2018 and fiscal 2019.

The unvested portion of time-based, market-based and performance-based restricted stock units held by ZelnickMedia as of March 31, 2019 and 2018 were 526 and 602, respectively. During the fiscal year ended March 31, 2019, 340 restricted stock units previously granted to ZelnickMedia vested and 33 restricted stock units were forfeited by ZelnickMedia.

#### **Fair Value of Stock-Based Awards**

##### *Time-Based Awards*

The estimated value, based on the closing price of our stock on the grant date, of time-based restricted stock units granted to employees during the fiscal years ended March 31, 2019, 2018 and 2017 was \$103.79, \$106.28 and \$49.43 per share, respectively.

For the fiscal years ended March 31, 2019, 2018 and 2017, the estimated value, based on the closing price of our stock on the grant date, of time-based restricted stock awards granted to ZelnickMedia was \$97.19, \$78.53 and \$36.37 per share, respectively.

The following table summarizes the activity in non-vested restricted stock units to employees and ZelnickMedia under our stock-based compensation plans with time-based restricted stock awards presented at 100% of target number of shares that may potentially vest:

	Shares (in thousands)	Weighted Average Fair Value on Grant Date
Non-vested restricted stock units at March 31, 2016	4,444	\$ 22.74
Granted	800	\$ 42.78
Vested	(2,167)	\$ 21.71
Forfeited	(54)	\$ 29.87
Non-vested restricted stock units at March 31, 2017	3,023	\$ 28.65
Granted	3,480	\$ 102.37
Vested	(2,124)	\$ 25.94
Forfeited	(1,053)	\$ 109.73
Non-vested restricted stock units at March 31, 2018	3,326	\$ 81.85
Granted	995	\$ 103.22
Vested	(1,293)	\$ 65.99
Forfeited	(425)	\$ 101.38
Non-vested restricted stock units at March 31, 2019	2,603	\$ 95.35

#### Market-Based Awards

The following table summarizes the weighted-average assumptions used in the Monte Carlo Simulation to estimate the fair value of market-based awards:

	Fiscal Year Ended March 31,					
	2019		2018		2017	
	Employee Market-Based	Non-Employee Market-Based	Employee Market-Based	Non-Employee Market-Based	Employee Market-Based	Non-Employee Market-Based
Risk-free interest rate	2.6%	2.4%	1.4%	2.1%	0.9%	0.7%
Expected stock price volatility	34.9%	31.4%	28.4%	35.5%	31.2%	30.1%
Expected service period (years)	1.5	1.0	1.5	1.0	1.5	1.0
Dividends	None	None	None	None	None	None

The estimated value of market-based restricted stock awards granted to employees during the fiscal years ended March 31, 2019, 2018, and 2017 was \$150.91, \$141.78, and \$63.60 per share, respectively. For the fiscal years ended March 31, 2019, 2018, and 2017, the estimated value of the market-based restricted stock awards granted to ZelnickMedia was \$119.21, \$185.66, and \$51.92 per share, respectively.

The following table summarizes the activity in non-vested restricted stock units to employees and ZelnickMedia under our stock-based compensation plans with market-based restricted stock awards presented at 100% of target number of shares that may potentially vest:

	Shares (in thousands)	Weighted Average Fair Value on Grant Date
Non-vested restricted stock units at March 31, 2016	1,782	\$ 23.19
Granted	328	\$ 60.06
Vested	(970)	\$ 27.76
Forfeited	(5)	\$ 38.38
Non-vested restricted stock units at March 31, 2017	1,135	\$ 45.05
Granted	614	\$ 81.20
Vested	(1,100)	\$ 33.97
Forfeited	(3)	\$ 55.91
Non-vested restricted stock units at March 31, 2018	646	\$ 79.80
Granted	521	\$ 90.73
Vested	(695)	\$ 52.67
Forfeited	(6)	\$ 101.72
Non-vested restricted stock units at March 31, 2019	466	\$ 123.72

#### Performance-Based Awards

The estimated value of performance-based restricted stock awards granted to employees during the fiscal year ended March 31, 2019 and 2018 was \$100.29 and \$102.57, respectively. None were granted to employees during the fiscal year ended March 31, 2017. For the fiscal years ended March 31, 2019, 2018, and 2017, the estimated value of the performance-based restricted stock awards granted to ZelnickMedia was \$97.19, \$97.78, and \$59.27 per share, respectively.

The following table summarizes the activity in non-vested restricted stock units to employees and ZelnickMedia under our stock-based compensation plans with performance restricted stock awards presented at 100% of target number of shares that may potentially vest:

	Shares (in thousands)	Weighted Average Fair Value on Grant Date
Non-vested restricted stock units at March 31, 2016	179	\$ 14.45
Granted	33	\$ 36.37
Vested	(83)	\$ 21.92
Forfeited	(28)	\$ 22.35
Non-vested restricted stock units at March 31, 2017	101	\$ 24.64
Granted	3,945	\$ 101.30
Vested	(47)	\$ 27.65
Forfeited	(573)	\$ 104.37
Non-vested restricted stock units at March 31, 2018	3,426	\$ 100.15
Granted	101	\$ 62.99
Vested	(455)	\$ 103.95
Forfeited	(72)	\$ 61.88
Non-vested restricted stock units at March 31, 2019	3,000	\$ 99.37

#### Employee Stock Purchase Plans

In September 2017, our stockholders approved our 2017 Global Employee Stock Purchase Plan as amended and restated ("ESPP"). The maximum aggregate number of shares of common stock that may be issued under the plan is 9,000, and as of March 31, 2019, there were approximately 8,943 shares available for issuance. The ESPP is administered by the Compensation Committee of the Board of Directors and allows for eligible employees an option to purchase shares of our common stock, which the employee may or may not exercise during an offering period. Eligible employees may authorize payroll deductions of between 1% and 10%

of their compensation to purchase shares of common stock at 85% of the lower of the market price of our common stock on the date of commencement of the applicable offering period or on the last day of each six-month purchase period.

The fair value is determined using the Black-Scholes valuation model. Key assumptions of the Black-Scholes valuation model are the risk-free interest rate, expected volatility, expected term and expected dividends. The risk-free interest rate is based on U.S. Treasury yields in effect at the time of grant for the expected term of the option. Expected volatility is based on a combination of historical stock price volatility and implied volatility of publicly-traded options on our common stock. Expected term is determined based on historical exercise behavior, post-vesting termination patterns, options outstanding and future expected exercise behavior. The following table summarizes the assumptions used in the Black-Scholes valuation model to value our purchase rights for the fiscal year ended March 31, 2019:

	<b>Fiscal Year Ended March 31,</b>
	<b>2019</b>
Risk-free interest rate	<b>2.1% - 2.5%</b>
Expected stock price volatility	<b>39.1% - 40.0%</b>
Expected service period (years)	<b>0.5</b>
Dividends	<b>None</b>

For the fiscal year ended March 31, 2019, our employees purchased 57 shares for \$5,069 with a weighted-average fair value of \$88.66.

## 17. SHARE REPURCHASE PROGRAM

Our Board of Directors has authorized the repurchase of up to 14,218 shares of our common stock. Under this program, we may purchase shares from time to time through a variety of methods, including in the open market or through privately negotiated transactions, in accordance with applicable securities laws. Repurchases are subject to the availability of stock, prevailing market conditions, the trading price of the stock, our financial performance and other conditions. The program does not require us to repurchase shares and may be suspended or discontinued at any time for any reason.

During the fiscal years ended March 31, 2019, 2018, and 2017 we repurchased 3,716, 1,513, and 0 shares of our common stock in the open market, respectively, for \$362,429, \$154,808, and \$0, respectively, including commissions of \$37, \$16 and \$0, respectively as part of the program. As of March 31, 2019, we had repurchased a total of 10,400 shares of our common stock under the program, and 3,818 shares of our common stock remained available for repurchase under the share repurchase program.

All of the repurchased shares are classified as Treasury stock in our Consolidated Balance Sheets.

## 18. INTEREST AND OTHER, NET

	<b>Fiscal Year Ended March 31,</b>		
	<b>2019</b>	<b>2018</b>	<b>2017</b>
Interest income	\$ 38,019	\$ 21,264	\$ 7,869
Interest expense	(8,032)	(22,269)	(29,569)
Foreign currency exchange (loss) gain	(505)	(3,038)	4,990
Other	(3,369)	5,091	1,020
Interest and other, net	<b>\$ 26,113</b>	<b>\$ 1,048</b>	<b>\$ (15,690)</b>



## 19. ACCUMULATED OTHER COMPREHENSIVE INCOME (LOSS)

The following table provides the components of accumulated other comprehensive income (loss):

	Foreign currency translation adjustments	Unrealized gain (loss) on derivative instruments	Unrealized gain (loss) on cross-currency swap	Unrealized gain (loss) on available- for-sales securities	Total
Balance at March 31, 2017	\$ (47,666)	\$ 600	\$ —	\$ (76)	\$ (47,142)
Other comprehensive income (loss) before reclassifications	43,379	—	(15,659)	(1,778)	25,942
Amounts reclassified from accumulated other comprehensive income (loss)	—	—	7,506	—	7,506
Tax effect on cross-currency swap	—	—	(2,038)	—	(2,038)
Balance at March 31, 2018	\$ (4,287)	\$ 600	\$ (10,191)	\$ (1,854)	\$ (15,732)
Other comprehensive income (loss) before reclassifications	(28,803)	—	763	2,440	(25,600)
Amounts reclassified from accumulated other comprehensive income (loss)	—	—	3,726	—	3,726
Tax effect on cross-currency swap	—	—	417	—	417
Balance at March 31, 2019	\$ (33,090)	\$ 600	\$ (5,285)	\$ 586	\$ (37,189)

## 20. BUSINESS REORGANIZATION

In the first quarter of fiscal 2018, we announced and initiated actions to implement a strategic reorganization at one of our labels (the "2018 Plan"). In the fourth quarter of fiscal 2018, we announced and initiated a second phase of the 2018 plan. In connection with both phases of this initiative, we incurred business reorganization expenses of \$972 and \$14,742 during the fiscal year ended March 31, 2019 and 2018, respectively, due primarily to employee separation costs. Through March 31, 2019, we had paid \$9,502 related to these reorganization activities. As of March 31, 2019, \$0 remained accrued for in Accrued expenses and other current liabilities and \$6,214 in Other non-current liabilities. Although we may record additional expense or benefit in future periods to true-up estimates, we do not expect to incur additional reorganization in connection with the 2018 Plan.

In fiscal 2016, we announced and initiated actions to implement a strategic reorganization at one of our labels (the "2016 Plan"), including reorganizing one development studio and closing two development studios. During fiscal 2016, we incurred business reorganization expenses of \$71,285 due primarily to employee separation costs in connection with this initiative and did not incur expenses in fiscal 2017 or 2018. During fiscal 2019, we recognized a benefit of \$5,930 as a result of updating our estimate of costs to complete the plan. Through March 31, 2019 and 2018, we had paid \$65,355 and \$5,350, respectively, related to these reorganization activities. As of March 31, 2019, the 2016 Plan was completed and no further amounts remain accrued or are expected to be incurred.

## 21. SUPPLEMENTARY FINANCIAL INFORMATION

The following table provides details of our valuation and qualifying accounts:

	Beginning Balance	Additions	Deductions	Other	Ending Balance
<i>Fiscal Year Ended March 31, 2019</i>					
Valuation allowance for deferred income taxes <sup>(1)</sup>	\$ 195,640	11,850	(107,133)	(50,944)	\$ 49,413
Allowance for doubtful accounts <sup>(2)</sup>	1,247	651	—	(903)	995
<i>Fiscal Year Ended March 31, 2018</i>					
Valuation allowance for deferred income taxes	\$ 184,085	11,555	—	—	\$ 195,640
Price protection, sales returns and other allowances	\$ 65,114	59,674	(74,936)	3,191	\$ 53,043
Allowance for doubtful accounts	1,369	—	(122)	—	1,247
Total accounts receivable allowances	\$ 66,483	\$ 59,674	\$ (75,058)	\$ 3,191	\$ 54,290
<i>Fiscal Year Ended March 31, 2017</i>					
Valuation allowance for deferred income taxes	\$ 170,574	13,511	—	—	\$ 184,085
Price protection, sales returns and other allowances	\$ 45,153	127,744	(100,934)	(6,849)	\$ 65,114
Allowance for doubtful accounts	399	974	(4)	—	1,369
Total accounts receivable allowances	\$ 45,552	\$ 128,718	\$ (100,938)	\$ (6,849)	\$ 66,483

(1) Amount categorized as Other represents a reduction to the valuation allowance included in the cumulative effect of initially applying the New Revenue Accounting Standard as an adjustment to the opening balance of retained earnings, due to revenues that were previously deferred being accelerated to retained earnings, for which a timing difference exists for accounting and tax purposes.

(2) Under the New Revenue Accounting Standard, Price protection, sales returns and other allowances are considered refund liabilities and are reported within Accrued expenses and other current liabilities on our Consolidated Balance Sheet and are no longer considered accounts receivable allowance as they were under ASC 605.

## 22. QUARTERLY FINANCIAL INFORMATION (UNAUDITED)

The following tables set forth quarterly supplementary data for each of the years in the two-year period ended March 31, 2019:

Fiscal Year Ended March 31, 2019	Quarter			
	First	Second	Third	Fourth
Net revenue	\$ 387,982	\$ 492,667	\$ 1,248,738	\$ 539,007
Gross profit	256,617	257,787	350,254	280,092
Income from operations	70,846	25,986	51,779	58,061
Net income	\$ 71,693	\$ 25,367	\$ 179,948	\$ 56,829
Earnings per share:				
Basic earnings per share	\$ 0.63	\$ 0.22	\$ 1.59	\$ 0.50
Diluted earnings per share	\$ 0.62	\$ 0.22	\$ 1.57	\$ 0.50

Fiscal Year Ended March 31, 2018	Quarter			
	First	Second	Third	Fourth
Net revenue	\$ 418,216	\$ 443,562	\$ 480,840	\$ 450,274
Gross profit	223,647	197,014	212,857	261,063
Income (loss) from operations	50,219	(11,319)	8,852	87,825
Net (loss) income	\$ 60,276	\$ (2,736)	\$ 25,140	\$ 90,853
Earnings (loss) per share:				
Basic earnings (loss) per share	\$ 0.57	\$ (0.03)	\$ 0.22	\$ 0.80
Diluted earnings (loss) per share	\$ 0.56	\$ (0.03)	\$ 0.21	\$ 0.77

Basic and diluted earnings (loss) per share are computed independently for each of the quarters presented. Therefore, the sum of quarterly basic and diluted earnings (loss) per share information may not equal annual basic and diluted earnings per share.

### **23. ACQUISITIONS**

On January 31, 2017, we completed the acquisition of privately-held Social Point, S.L. ("Social Point"), a Spanish free-to-play mobile game developer, for consideration of \$175,000 in cash and the issuance of 1,480 shares of our common stock, plus contingent earn-out consideration of up to an aggregate of \$25,900 in cash and shares of our common stock. During the fiscal year ended March 31, 2019, we paid the remaining \$25,000 deferred amounts related to this acquisition. The cash portion was funded from our cash on hand. Certain of the shares that were issued to continuing employees are subject to transferability restrictions and forfeiture provisions requiring their continued employment subject to certain exceptions over the three-year period following the closing and are therefore considered share-based compensation over the service period. We acquired Social Point to leverage its strong portfolio of technology, assembled workforce, and existing free-to-play mobile games in order to expand and enhance our game offerings, particularly on mobile platforms.

The acquisition-date fair value of the consideration transferred totaled \$238,736. Of this amount, \$143,566 was recorded as Goodwill, \$111,550 was recorded as Intangible assets, and \$(16,380) was recorded as Tangible assets, net of liabilities assumed from Social Point. Goodwill, which is not deductible for U.S. income tax purposes, represents the excess of the purchase price over the fair value of the net tangible and intangible assets acquired, and is primarily attributable to the assembled workforce of the acquired business and expected synergies at the time of the acquisition.

During the fiscal year ended March 31, 2018, we recorded adjustments to finalize the purchase accounting of the Social Point acquisition, which resulted in a net increase in Goodwill of \$4,245 and a corresponding decrease in Tangible net liabilities assumed. The measurement period for the contingent consideration has expired, and we have not made any payments for contingent consideration.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

### TAKE-TWO INTERACTIVE SOFTWARE, INC.

By: /s/ STRAUSS ZELNICK

Strauss Zelnick  
Chairman and Chief Executive Officer

May 13, 2019

## POWER OF ATTORNEY

Each individual whose signature appears below constitutes and appoints Strauss Zelnick and Lainie Goldstein and each of them, his or her true and lawful attorneys-in-fact and agents with full power of substitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with all exhibits thereto and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his, her or their substitute or substitutes, may lawfully do or cause to be done or by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant in the capacities and on the date indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ STRAUSS ZELNICK</u> Strauss Zelnick	Chairman and Chief Executive Officer (Principal Executive Officer)	May 13, 2019
<u>/s/ LAINIE GOLDSTEIN</u> Lainie Goldstein	Chief Financial Officer (Principal Financial and Accounting Officer)	May 13, 2019
<u>/s/ MICHAEL DORNEMANN</u> Michael Dornemann	Lead Independent Director	May 13, 2019
<u>/s/ J MOSES</u> J Moses	Director	May 13, 2019
<u>/s/ MICHAEL SHERESKY</u> Michael Sheresky	Director	May 13, 2019
<u>/s/ LAVERNE SRINIVASAN</u> LaVerne Srinivasan	Director	May 13, 2019
<u>/s/ SUSAN TOLSON</u> Susan Tolson	Director	May 13, 2019
<u>/s/ PAUL VIERA</u> Paul Viera	Director	May 13, 2019



TAKE-TWO INTERACTIVE SOFTWARE, INC.  
SECOND AMENDED AND RESTATED 2017 GLOBAL EMPLOYEE STOCK PURCHASE PLAN

Effective March 28, 2019

TAKE-TWO INTERACTIVE SOFTWARE, INC.  
SECOND AMENDED AND RESTATED 2017 GLOBAL EMPLOYEE STOCK PURCHASE PLAN

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**TAKE-TWO INTERACTIVE SOFTWARE, INC.**  
**SECOND AMENDED AND RESTATED 2017 GLOBAL EMPLOYEE STOCK PURCHASE PLAN**

**SECTION 1**  
**PURPOSE AND TERM**

- 1.1 **Purpose.** The purpose of the Take-Two Interactive Software, Inc. Second Amended and Restated 2017 Global Employee Stock Purchase Plan (the "Plan") is to afford Eligible Employees an opportunity to obtain a proprietary interest in the continued growth and prosperity of Take-Two Interactive Software, Inc. (the "Company") through ownership of its shares of Common Stock. The Company intends for the Plan to have two components: a component that is intended to qualify as an "employee stock purchase plan" under Code Section 423 (the "Code Section 423 Component"), and a component that is not intended to qualify as an "employee stock purchase plan" under Code Section 423 (the "Non-Code Section 423 Component"). The provisions of the Code Section 423 Component shall be construed so as to extend and limit participation in a uniform and non-discriminatory basis consistent with the requirements of Code Section 423. A Purchase Right to purchase shares of Common Stock under the Non-Code Section 423 Component shall be effectuated via separate Offerings under one or more sub-plans of the Non-Code Section 423 Component of the Plan for Employees of Participating Affiliates in countries outside of the United States in order to achieve tax, employment, securities law or other purposes and objectives, and to conform the terms of the sub-plans with the laws and requirements of such countries. Except as otherwise provided herein or in the applicable sub-plan, the Non-Code Section 423 Component of the Plan shall be operated and administered in the same manner as the Code Section 423 Component.
- 1.2 **Term of the Plan.** The Plan shall continue in effect until the date on which all of the shares of Common Stock authorized for issuance under the Plan have been issued.

**SECTION 2**  
**DEFINITIONS**

2.1 **Definitions.**

Any term not expressly defined in the Plan shall have the same definition as set forth in Code Section 423. Whenever the following words and phrases are used in the Plan, they shall have the respective meanings set forth below:

- (a) "**Act**" means the Securities Exchange Act of 1934, as amended from time to time.
- (b) "**Affiliate**" means each of the following: (i) any Subsidiary; (ii) any corporation, trade or business (including, without limitation, a partnership or limited liability company) that is directly or indirectly controlled fifty percent (50%) or more (whether by ownership of stock, assets or an equivalent ownership interest or voting interest) by the Company; (iii) any corporation, trade or business (including, without limitation, a partnership or limited liability company) that directly or indirectly controls fifty percent (50%) or more (whether by ownership of stock, assets or an equivalent ownership interest or voting interest) of the Company; and (iv) any other entity in which the Company or any of its Affiliates has a material equity interest and that is designated as an "Affiliate" by resolution of the Board.

- (c) "**Administrator**" means each individual designated by the Company to receive Enrollment Agreements, withdrawal notices and other communications from Eligible Employees. The Administrator shall also include any third-party vendor hired by the Company to assist with the day-to-day operation and administration of the Plan.
- (d) "**Board**" means the Board of Directors of the Company.
- (e) "**Change in Control**" means "Change in Control" as defined in the Take-Two Interactive Software, Inc. 2009 Stock Incentive Plan, as amended and restated, or any successor plan that the Company may establish.
- (f) "**Code**" means, the United States Internal Revenue Code of 1986, as amended, and any applicable regulations promulgated thereunder.
- (g) "**Code Section 423 Component**" means those Offerings under the Plan that are intended to meet the requirements of Code Section 423(b).
- (h) "**Committee**" means the Compensation Committee of the Board, or another committee of the Board duly appointed to administer the Plan and having such powers as shall be specified by the Board as described in Section 9. Unless the powers of the Committee have been specifically limited, the Committee shall have all of the powers of the Board granted herein, including, without limitation, the power to amend or terminate the Plan at any time, subject to the terms of the Plan and any applicable limitations imposed by law.
- (i) "**Common Stock**" means the common stock, \$0.01 par value per share, of the Company.
- (j) "**Company**" means Take-Two Interactive Software, Inc., a Delaware corporation, and any present or future parent corporation of the Company (as defined in Code Section 424(e)).
- (k) "**Compensation**" means, with respect to each payroll period in any Offering Period, the actual wages or salary paid to a Participant for services actually rendered at the Participant's base rate of pay prior to any salary reductions, along with overtime, holiday pay and paid time-off, but excluding any other amounts of pay, such as living or other allowances, and incentive compensation of any kind, including annual and long-term bonuses.
- (l) "**Effective Date**" means March 28, 2019.
- (m) "**Eligible Employee**" means an individual who, on the Offering Date, is an Employee of the Company, a Participating Company or a Participating Affiliate, excluding any individual:
  - (i) who, immediately after any rights under this Plan are granted, owns (directly or through attribution) shares of Common Stock possessing five percent (5%) or more of the total combined voting power or value of all classes of stock or other stock of the Company, a future parent corporation, or a Subsidiary (as determined under Code Section 423(b)(3)); and
  - (ii) who has not satisfied a service requirement of at least six (6) consecutive months, including service with the Company, its Subsidiaries, and its Affiliates, or such other period designated by the Committee pursuant to Code Section 423(b)(4)(A) (which service requirement may not exceed two (2) years); provided however, that the limitation contained in this Section

2.1(m)(ii) shall only apply to the extent the Committee expressly provides for such limitation, and then, such limitation shall only apply to such Offering Period.

For purposes of clause (i) above, the rules of Code Section 424(d) with regard to the attribution of stock ownership shall apply in determining the stock ownership of an individual, and stock, which an Employee may purchase or otherwise acquire under outstanding options or other forms of equity compensation awards granted by the Company, shall be treated as stock owned by the Employee. For purposes of the Plan, the employment relationship shall be treated as continuing intact while the individual is on sick leave or other leave of absence approved by the Company or a Designated Subsidiary and meeting the requirements of Treasury Regulation Section 1.421-7(h)(2).

- (n) "**Employee**" means a person treated as an employee of the Company or a Participating Company for purposes of the Code Section 423 Component of the Plan or, for Participating Affiliates offering participation in the Non-Code Section 423 Component of the Plan, persons treated as an employee as determined under local laws, rules and regulations and specified in the applicable sub-plan. For purposes of this Plan, a Participant shall cease to be an Employee either upon an actual termination of employment or upon the company employing the employee ceasing to be a Participating Company or a Participating Affiliate. For purposes of the Plan, an individual shall not cease to be an Employee while such individual is on any military leave, sick leave, statutory leave (as determined under local law) or other bona fide leave of absence approved by the Company. The Company shall determine in good faith and in the exercise of its discretion whether an individual has become or has ceased to be an Employee and the effective date of such individual's employment or termination of employment, as the case may be. For purposes of an individual's participation in or other rights, if any, under the Plan as of the time of the Company's determination, all such determinations by the Company shall be final, binding and conclusive, notwithstanding that the Company or any governmental agency subsequently makes a contrary determination.
- (o) "**Enrollment Agreement**" means an agreement in such written or electronic form as specified by the Company, stating an Employee's election to participate in the Plan and authorizing payroll deductions or such other form of contribution as may be permitted under the Plan (or any sub-plan established pursuant to Section 9.4) from the Employee's Compensation.
- (p) "**Enrollment Period**" means, unless otherwise specified by the Committee, the period commencing on the first day of the month preceding each Offering Period, and ending on the 15th of the month preceding each Offering Period.
- (q) "**Fair Market Value**" means, unless otherwise required by any applicable provision of the Code or any regulations issued thereunder, as of any date and except as provided below, (1) if the Common Stock is traded, listed or otherwise reported or quoted on a Stock Exchange, the last sales price reported for the Common Stock on the Purchase Date or other applicable date as reported on such Stock Exchange; or (2) if the Common Stock is not traded, listed or otherwise reported or quoted on a Stock Exchange, such amount as determined by the Committee in good faith in its sole discretion. For purposes of the grant of any Purchase Right, the applicable date shall be the Trading Day on which the Purchase Right is granted, or if such grant date is not a Trading Day, the Trading Day immediately prior to the date on which the Purchase Right is granted.
- (r) "**Non-Code Section 423 Component**" means those Offerings under the Plan that are not intended to meet the requirements of Code Section 423(b).

- (s) "**Offering**" means the Company's grant of a Purchase Right as described in Section 5.
- (t) "**Offering Date**" means the first Trading Day of each Offering Period.
- (u) "**Offering Period**" means the consecutive six (6) month period commencing each November 1 and May 1, or such other period as may be established by the Committee in its sole discretion.
- (v) "**Participant**" means an Eligible Employee who has elected to participate in the Plan by submitting an Enrollment Agreement as provided in Section 3.2.
- (w) "**Participating Affiliate**" means any Affiliate designated by the Committee, in its sole and absolute discretion, as a company that may offer participation in the Non-Code Section 423 Component of the Plan to its Eligible Employees pursuant to Section 9.4 of the Plan. The Committee shall have the sole and absolute discretion to determine from time to time when and if an Affiliate shall be classified as a Participating Affiliate.
- (x) "**Participating Company**" means any Subsidiary designated by the Committee, in its sole and absolute discretion, as a company that may offer participation in the Code Section 423 Component of the Plan to its Eligible Employees. The Committee shall have the sole and absolute discretion to determine from time to time when and if a Subsidiary shall be classified as a Participating Company.
- (y) "**Plan**" means the Take-Two Interactive Software, Inc. Second Amended and Restated 2017 Global Employee Stock Purchase Plan, which includes both the Code Section 423 Component and the Non-Code Section 423 Component, as amended from time to time.
- (z) "**Purchase Date**" means the last Trading Day of each Offering Period.
- (aa) "**Purchase Price**" means the price at which a share of Common Stock may be purchased under the Plan, as established from time to time by the Board. For the first Offering Period and all subsequent Offering Periods unless otherwise established by the Board, the "Purchase Price" shall mean the lower of (i) 85% of the Fair Market Value of a share of Common Stock on the Offering Date, or (ii) 85% of the Fair Market Value of a share of Common Stock on the Purchase Date, as adjusted from time to time in accordance with Section 8.1 and provided that the Purchase Price shall not be less than the par value of the shares of Common Stock.
- (bb) "**Purchase Right**" means an option granted to a Participant pursuant to the Plan to purchase shares of Common Stock as provided in Section 5, which the Participant may or may not exercise during the Offering Period.
- (cc) "**Stock Exchange**" means the principal national securities exchange in the United States on which the Common Stock is listed for trading, or, if the Common Stock is not listed for trading on a national securities exchange, such other recognized trading market or quotation system upon which the largest number of shares of Common Stock has been traded in the aggregate during the last 20 days before the first or last day of an Offering Period, as applicable.
- (dd) "**Subsidiary**" means a present or future subsidiary corporation of the Company within the meaning of Code Section 424(f).
- (ee) "**Trading Day**" means a day on which the Stock Exchange is open for trading.

2.2 **Construction.** Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of the Plan. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term "or" is not intended to be exclusive, unless the context clearly requires otherwise.

### SECTION 3 ELIGIBILITY AND PARTICIPATION

3.1 **Eligibility.** An Employee may elect to participate in the Plan as of the first Offering Date on which such person becomes an Eligible Employee by complying with the enrollment procedures set forth in Section 3.2.

3.2 **Participation.**

- (a) An Eligible Employee shall become a Participant in an Offering by submitting a properly completed Enrollment Agreement to the Administrator. The Company shall establish enrollment procedures for the submission of such Enrollment Agreements to the Administrator using written and/or electronic election forms and shall communicate such procedures to all Eligible Employees. An Eligible Employee who does not timely submit a properly completed Enrollment Agreement to the Administrator during the Enrollment Period for an Offering Period shall not participate in the Plan for that Offering Period but shall be eligible to elect to participate in the Plan for any subsequent Offering Period by timely submitting a properly completed Enrollment Agreement to the Administrator during the Enrollment Period for any future Offering Period.
- (b) A Participant may deliver to the Administrator a new Enrollment Agreement for each Offering Period in accordance with the procedures established in Section 4.
- (c) Subject to the limitation set forth in Section 5.3, a Participant who (i) has elected to participate in the Plan pursuant to Section 3.2(a) for an Offering Period, and (ii) takes no action to change or revoke such election (in accordance with such procedures as established by the Company) as of the first day of the next following Offering Period, shall be deemed to have made the same election to participate in the Plan, including the same payroll deduction authorization, for each subsequent Offering Period. A Participant who is automatically enrolled in the Plan for an Offering Period pursuant to the preceding sentence shall not be required to deliver an additional Enrollment Agreement to the Administrator for the subsequent Offering Period.

3.3 **Termination of Employment or Loss of Eligibility.**

- (a) In the event that the employment of a Participant is terminated, prior to a Purchase Date, for any reason, including retirement, disability or death, or in the event a Participant is no longer an Eligible Employee, the Participant's participation in the Plan shall terminate immediately and thereupon, automatically and without any further act on his or her part, such Participant's payroll deduction authorization shall terminate. Payroll deductions credited to the Participant's Plan account since the last Purchase Date shall, as soon as practicable, be returned to the Participant or, in the case of the Participant's death, to the Participant's legal representative. Interest shall not be paid on payroll deductions returned unless otherwise required under applicable law. Further, all of the Participant's rights under the Plan shall terminate.

- (b) A Participant whose participation in the Plan has been terminated may become eligible to participate in the Plan for any subsequent Offering Period by again satisfying the requirements of Sections 3.1 and 3.2.

3.4 **[Reserved].**

3.5 **Voluntary Withdrawal from the Plan.** A Participant may withdraw from the Plan at any time and receive a refund of all payroll deductions credited to his or her Plan account that have not been applied toward the purchase of shares of Common Stock by submitting a withdrawal election to the Administrator in accordance with such procedures as established by the Company, provided such withdrawal election is submitted to the Administrator no later than the fifteenth (15th) day of the month in which the applicable Purchase Date falls. The payroll deductions of a Participant who has withdrawn from the Plan shall be returned to the Participant as soon as practicable after the withdrawal and may not be applied to the purchase of shares of Common Stock in any other Offering under the Plan. A Participant who withdraws from the Plan shall be prohibited from resuming participation in the Plan for the same Offering Period, but may participate in any subsequent Offering Period by satisfying Sections 3.1 and 3.2. The Company may from time to time establish or change limitations on the frequency of withdrawals permitted under this Section 3.5, establish a minimum amount that must be retained in the Participant's Plan account, or terminate the withdrawal right provided by this Section 3.5.

#### SECTION 4 PAYROLL DEDUCTIONS AND PARTICIPANT ACCOUNTS

4.1 **Payroll Deductions.**

- (a) Shares of Common Stock acquired pursuant to the exercise of all or any portion of a Purchase Right may be paid for only by means of payroll deductions from a Participant's Compensation accumulated during the Offering Period for which such Purchase Right was granted.
- (b) An Eligible Employee who elects to enroll in the Plan as a Participant shall designate in the Enrollment Agreement a whole percentage from one percent (1%) to ten percent (10%) of his or her Compensation to be deducted each pay period during the Offering Period and paid into the Plan for his or her account. Notwithstanding the foregoing, the Committee may change the limits on payroll deductions effective as of any future Offering Date.
- (c) Payroll deductions shall commence on the first pay day following the Offering Date and shall continue to be deducted each pay day through the end of the Offering Period, unless as otherwise provided herein.
- (d) Interest shall not be paid on a Participant's payroll deductions and paid into the Plan.
- (e) A Participant may not increase, but may elect to decrease the rate of payroll deductions once during an Offering Period by submitting an amended Enrollment Agreement authorizing such change to the Administrator no later than the fifteenth (15th) day of the month in which the applicable Purchase Date falls in accordance with such procedures established by the Company, and such change shall become effective as soon as reasonably practicable. Notwithstanding the foregoing a Participant may elect to decrease the rate of payroll deductions a second time during an Offering Period if (and only if) the rate of payroll deductions is reduced to zero percent (0%). A Participant who elects to

decrease the rate of his or her payroll deductions to zero percent (0%) shall remain a Participant in the Plan for the Offering Period unless such Participant elects to withdraw from the Plan pursuant to Section 3.5.

- (f) The Company may, in its sole discretion, suspend a Participant's payroll deductions under the Plan as the Company deems advisable pursuant to the limitation described in Section 5.3. If the Company suspends a Participant's payroll deductions under this provision, the Participant may participate in future Offering Periods by satisfying the requirements of Sections 3.1 and 3.2.
- (g) The provisions of this Section 4.1 shall not apply to Participants in countries outside of the United States where payroll deductions are prohibited under local law. Such individuals shall be permitted to make payment under Section 6.1 through such other form(s) of contribution which may be permitted under local law and which are specified under the applicable sub-plan.

4.2 **Participant Accounts.** Individual bookkeeping accounts shall be maintained for each Participant. All payroll deductions or other amounts contributed to the Plan by or on behalf of a Participant shall be credited to such Participant's Plan account and shall be deposited with the general funds of the Company. All payroll deductions or other amounts contributed to the Plan by or on behalf of a Participant may be used by the Company for any corporate purpose.

## SECTION 5 GRANT OF PURCHASE RIGHT

5.1 **General.** On each Offering Date, the Company shall grant to each Participant a Purchase Right under the Plan to purchase shares of Common Stock. Each Purchase Right shall be treated as an option for purposes of Code Section 423.

5.2 **Term of Purchase Right.** Each Purchase Right shall have a term equal to the length of the Offering Period to which the Purchase Right relates.

5.3 **Number of Shares of Common Stock Subject to a Purchase Right.**

- (a) On the Offering Date of each Offering Period, each Participant shall be granted a Purchase Right to purchase on the Purchase Date for such Offering Period (at the applicable Purchase Price) up to a maximum number of shares of Common Stock determined by dividing such Participant's payroll deductions or contributions accumulated prior to such Purchase Date by the applicable Purchase Price; provided, however, that in no event will a Participant be permitted to purchase more than Twenty-Five Thousand U.S. Dollars (\$25,000) worth of shares of Common Stock, subject to adjustment pursuant to Section 8, for each calendar year during which such Purchase Right is outstanding. The purchase of shares of Common Stock pursuant to the Purchase Right shall occur as provided in Section 6, unless the Participant has withdrawn pursuant to Section 3. Each Purchase Right shall expire on the last day of the Offering Period.
- (b) In connection with each Offering Period made under the Plan, the Committee may specify a maximum aggregate number of shares of Common Stock that may be purchased by all Participants pursuant to such Offering Period. If the aggregate purchase of shares of Common Stock issuable upon exercise of Purchase Rights granted under the Offering Period would exceed any such maximum aggregate number, then, in the absence of any Committee action otherwise, a pro rata

(based on each Participant's accumulated payroll deductions for such Offering Period) allocation of the shares of Common Stock available will be made in as nearly a uniform manner as will be practicable and equitable.

- 5.4 **Limitation under Code Section 423(b)(8).** Notwithstanding any provision in this Plan to the contrary, no Participant shall be granted a Purchase Right under the Code Section 423 Component of the Plan to the extent that it permits his or her right to purchase shares of Common Stock under the Plan to accrue at a rate which, when aggregated with such Participant's rights to purchase shares under all other employee stock purchase plans of a Participating Company intended to meet the requirements of Code Section 423, exceeds Twenty-Five Thousand U.S. Dollars (\$25,000) in Fair Market Value of Common Stock (or such other limit, if any, as may be imposed by the Code) for each calendar year in which such Purchase Right is outstanding at any time. Any payroll deductions in excess of the amount specified in the foregoing sentence shall be returned to the Participant as soon as administratively practicable following the next Offering Date.
- 5.5 **No Assignment.** A Purchase Right granted under the Plan shall not be transferable otherwise than by will or the laws of descent and distribution and shall be exercisable during the lifetime of the Participant only by the Participant. The Company shall not recognize and shall be under no duty to recognize any assignment or purported assignment by a Participant of a Purchase Right or any rights granted under the Plan.
- 5.6 **Rights As Stockholder and Employee.** With respect to shares of Common Stock subject to an Offering, a Participant shall not be deemed to be a stockholder and shall not have any rights or privileges of a stockholder by virtue of the Participant's participation in the Plan until such Purchase Right has been exercised and the Company either has issued a stock certificate for such shares, transferred the shares electronically or made a book entry in favor of the Participant representing such shares. No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date such certificate is issued, except as provided in Section 8.1. Nothing herein shall confer upon a Participant any right to continue in the employ of a Participating Company or a Participating Affiliate, or interfere in any way with any right of a Participating Company or a Participating Affiliate to terminate the Participant's employment at any time, except as otherwise provided under applicable law.
- 5.7 **Notices.** All notices or other communications by a Participant to the Board, the Committee and/or Company under or in connection with the Plan shall be deemed to have been duly given when received by the Administrator.

## SECTION 6 EXERCISE OF PURCHASE RIGHT

- 6.1 **Exercise of Purchase Right.** The Purchase Right for each Participant automatically shall be exercised on each Purchase Date and such Participant automatically shall acquire the number of whole and fractional shares of Common Stock determined by dividing (i) the total amount of the Participant's payroll deductions accumulated in his or her Plan account during the Offering Period, by (ii) the Purchase Price, to the extent the issuance of Common Stock to such Participant upon such exercise is lawful. However, in no event shall the number of shares of Common Stock purchased by the Participant during an Offering Period exceed the number of shares of Common Stock subject to the Participant's Purchase Right, as determined under Section 5.3 above. Any cash balance remaining in a Participant's Plan account following any Purchase Date shall be refunded, without interest, to the Participant as soon as practicable after such Offering Period ends.



Notwithstanding the foregoing, the Committee may establish alternative means for treating amounts remaining in Participant Accounts following any Purchase Date to the extent consistent with applicable law.

- 6.2 **Oversubscription.** In the event, with respect to any Offering hereunder, that the number of whole and fractional shares of Common Stock that might be purchased by all Participants in the Plan on a Purchase Date exceeds the number of shares of Common Stock available in the Plan as provided in Section 7.1, the Company shall make a pro rata allocation of the remaining shares in as uniform a manner as shall be practicable and as the Company shall determine to be equitable.
- 6.3 **Delivery of Common Stock.** As soon as practicable after each Purchase Date, the Company shall arrange for the delivery of the shares of Common Stock acquired by the Participant on such Purchase Date via either (a) the issuance of stock certificates, (b) the transfer of such shares electronically to a broker that holds such shares in street name for the benefit of the Participant or the Company, or (c) the making of a book entry in favor of the Participant representing such shares. Shares of Common Stock to be delivered to a Participant under the Plan shall be registered and/or recorded in the name of the Participant.
- 6.4 **Tax Withholding.** At the time a Participant's Purchase Right is exercised, in whole or in part, or at the time a Participant disposes of some or all of the shares of Common Stock he or she acquires under the Plan, the Participant shall make adequate provision for the federal, state, local and non-U.S. tax withholding obligations of the Company, a Participating Company or a Participating Affiliate that arise upon exercise of the Purchase Right or upon such disposition of shares, if any, in accordance with such procedures and withholding methods as may be established by the Company. The Company, a Participating Company or a Participating Affiliate may, but shall not be obligated to, withhold from any compensation or other amounts payable to the Participant the amount necessary to meet such withholding obligations.
- 6.5 **Expiration of Purchase Right.** Any portion of a Participant's Purchase Right remaining unexercised at the end of the Offering Period to which the Purchase Right relates shall expire immediately upon the end of such Offering Period.
- 6.6 **Reports to Participants.** Each Participant who has exercised all or part of his or her Purchase Right shall receive, as soon as practicable after the Purchase Date, a report of such Participant's Plan account setting forth the total payroll deductions accumulated prior to such exercise, the number of shares of Common Stock purchased, the Purchase Price for such shares of Common Stock, the date of purchase and the cash balance, if any, remaining immediately after such purchase that is to be refunded to the Participant pursuant to Section 6.1. The report may be delivered in such form and by such means, including by electronic transmission, as the Company may determine.
- 6.7 **Notification of Sale of Shares of Common Stock.** Each Participant shall give the Company and/or the Administrator prompt notice of any disposition of Common Stock acquired pursuant to the Purchase Rights granted under the Plan in accordance with such procedures as may be established by the Company. The Company may require that until such time as a Participant disposes of shares of Common Stock acquired pursuant to Purchase Rights granted under the Plan, the Participant shall hold all such shares of Common Stock in the Participant's name and with a third-party broker/administrator designated by the Company until the lapse of any time period(s) established by the Company. The Company may direct that the certificates evidencing shares of Common Stock acquired by exercise of a Purchase Right refer to such requirement to give prompt notice of disposition.

- 6.8 **Clawback/Recoupment Policy.** Notwithstanding anything contained herein to the contrary, all shares of Common Stock acquired pursuant to the Plan shall be and remain subject to any incentive compensation clawback or recoupment policy currently in effect or as may be adopted by the Board and, in each case, as may be amended from time to time. No such policy adoption or amendment shall in any event require the prior consent of any Participant.

#### SECTION 7

#### COMMON STOCK SUBJECT TO THE PLAN

- 7.1 **Common Stock Subject to the Plan.** The maximum aggregate number of shares of Common Stock that may be issued under the Plan shall be 9,000,000, subject to adjustment in accordance with Section 8. For the sake of clarity, the aggregate share limitation set forth herein may be used to satisfy the purchase of shares of Common Stock under either the Code Section 423 Component of the Plan or the Non-Code Section 423 Component of the Plan. Shares of Common Stock issued under the Plan may consist of authorized but unissued shares, reacquired shares (treasury shares), or any combination thereof. If an outstanding Purchase Right for any reason expires or is terminated or canceled, the shares of Common Stock allocable to the unexercised portion of such Purchase Right shall again be available for issuance under the Plan.
- 7.2 **Legends.** The Company may at any time place legends or other identifying symbols referencing any applicable federal, state or foreign securities law restrictions or any provision convenient in the administration of the Plan on some or all of the certificates representing shares of Common Stock issued under the Plan. The Participant shall, at the request of the Company, promptly present to the Company any and all certificates representing shares acquired pursuant to a Purchase Right in the possession of the Participant in order to carry out the provisions of this Section 7.2.
- 7.3 **Securities Laws.** The Company shall not be obligated to issue any Common Stock pursuant to any offering under the Plan at any time when the offer, issuance, or sale of shares covered by such Offering (i) has not been registered under the Securities Act of 1933, as amended, or does not comply with such other federal, state or non-U.S. laws, rules or regulations, or the requirements of any stock exchange upon which the Common Stock may then be listed, as the Company or the Board deems applicable, and (ii) in the opinion of legal counsel for the Company, there is no exemption from the requirements of such laws, rules, regulations, or requirements available for the offer, issuance, and sale of such shares of Common Stock. Further, all stock acquired pursuant to the Plan shall be subject to the Company's policies concerning compliance with securities laws and regulations, as such policies may be amended from time to time. The issuance of shares of Common Stock under the Plan shall be subject to compliance with all applicable requirements of federal, state or non-U.S. law with respect to such securities. The inability of the Company to obtain from any regulatory body having jurisdiction the authority, if any, deemed by the Company's legal counsel to be necessary to the lawful issuance and sale of any shares of Common Stock under the Plan shall relieve the Company of any liability in respect of the failure to issue or sell such shares of Common Stock as to which such requisite authority shall not have been obtained. As a condition to the exercise of a Purchase Right, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation, and to make any representation or warranty with respect thereto as may be requested by the Company.

#### SECTION 8

#### RECAPITALIZATION, REORGANIZATION AND CHANGE IN CONTROL

- 8.1 **Adjustments for Changes in Common Stock.** In the event of any stock dividend, extraordinary cash dividend, stock split, reverse stock split, recapitalization, combination, reclassification, or similar change in the capital structure of the Company, or in the event of any merger (including a merger effected for the purpose of changing the Company's domicile), sale of assets, spin-off or other reorganization in which the Company is a party, appropriate adjustments shall be made in the number and class of shares of Common Stock subject to the Plan and each Purchase Right, and in the Purchase Price. If a majority of the shares of Common Stock which are of the same class as the shares of Common Stock that are subject to outstanding Purchase Rights are exchanged for, converted into, or otherwise become (whether or not pursuant to a Change in Control as described in Section 8.2) shares of another corporation, the Committee may unilaterally amend the outstanding Purchase Rights to provide that such Purchase Rights are exercisable for new shares of Common Stock. In the event of any such amendment, the number of shares of Common Stock subject to, and the Purchase Price of, the outstanding Purchase Rights shall be adjusted in a fair and equitable manner, as determined by the Committee, in its sole discretion. In no event may the Purchase Price be decreased to an amount less than the par value, if any, of the stock subject to the Purchase Right. The adjustments determined by the Committee pursuant to this Section 8.1 shall be final, binding and conclusive.
- 8.2 **Change in Control.** In the event of a Change in Control, the surviving, continuing, successor, or purchasing corporation or parent corporation thereof, as the case may be (the "Acquiring Company"), may assume the Company's rights and obligations under the Plan. If the Acquiring Company elects not to assume the Company's rights and obligations under outstanding Purchase Rights, the Purchase Date of the then current Offering Period shall be accelerated to a date before the date of the Change in Control specified by the Committee, but the number of shares of Common Stock subject to outstanding Purchase Rights shall not be adjusted. All Purchase Rights that are neither assumed by the Acquiring Company in connection with the Change in Control nor exercised as of the date of the Change in Control shall terminate and cease to be outstanding effective as of the date of the Change in Control.

## SECTION 9 PLAN ADMINISTRATION

- 9.1 **Administration by the Committee.** The Plan shall be administered by the Committee. All questions of interpretation of the Plan, any form of agreement or other document employed by the Company in the administration of the Plan, or of any Purchase Right shall be determined by the Committee and shall be final and binding upon all persons having an interest in the Plan or the Purchase Right. Subject to the provisions of the Plan, the Committee shall determine all of the relevant terms and conditions of Purchase Rights granted pursuant to the Plan; provided, however, that all Participants granted Purchase Rights pursuant to the Code Section 423 Component of the Plan shall have the same rights and privileges within the meaning of Code Section 423(b) (5). The Committee may assign any of its administrative tasks set forth herein to the Company, except that the Committee may not delegate the task of designating Participating Companies under the Code Section 423 Component of the Plan or Participating Affiliates under the Non-Code Section 423 Component of the Plan, or its authority to make adjustments pursuant to Section 8.1. All expenses incurred in connection with the administration of the Plan shall be paid by the Company.
- 9.2 **Authority of Officers.** Any two (2) officers of the Company at the level of Vice President or above within the Company's Human Resources Department or the Company's Legal Department (at least one (1) of whom is from with the Company's Human Resources Department) acting in concert shall have the authority to act on behalf of the Company with respect to any matter, right, obligation, determination or election that is the responsibility of or that is allocated to the Company herein.

- 9.3 **Policies and Procedures Established by the Company.** The Company may, from time to time, consistent with the Plan and the requirements of Code Section 423, establish, change or terminate such rules, guidelines, policies, procedures, limitations, or adjustments as deemed advisable by the Company, in its sole discretion, for the proper administration of the Code Section 423 Component of the Plan, including, without limitation, (i) a minimum payroll deduction amount required for participation in an Offering, (ii) a limitation on the frequency or number of changes permitted in the rate of payroll deduction during an Offering, (iii) an exchange ratio applicable to amounts withheld in a currency other than United States dollars, (iv) a supplemental payment or payroll deduction greater than or less than the amount designated by a Participant in order to adjust for the Company's delay or mistake in processing an Enrollment Agreement or in otherwise effecting a Participant's election under the Plan or as advisable to comply with the requirements of Code Section 423, and (v) a determination of the date and manner by which the Fair Market Value of a share of Common Stock is determined for purposes of administration of the Plan. Similarly, the Company may, from time to time, establish, change or terminate rules, guidelines, policies, procedures, limitations, or adjustments as deemed advisable by the Company, in its sole discretion, for the proper administration of the Non-Code Section 423 Component of the Plan.
- 9.4 **Non-Code Section 423 Component for Participation Outside of the United States.** The Committee may, in its sole discretion, establish sub-plans under the Non-Code Section 423 Component of the Plan which do not satisfy the requirements of Code Section 423 for purposes of effectuating the participation of Eligible Employees employed by a Participating Affiliate located in countries outside of the United States. For purposes of the foregoing, the Committee may establish one or more sub-plans to: (a) amend or vary the terms of the Non-Code Section 423 Component of the Plan in order to conform such terms with the laws, rules and regulations of each country outside of the United States where the Participating Affiliate is located; (b) amend or vary the terms of the Non-Code Section 423 Component of the Plan in each country where the Participating Affiliate is located as it considers necessary or desirable to take into account or to mitigate or reduce the burden of taxation and social insurance contributions for Participants or the Participating Affiliate, or (c) amend or vary the terms of the Non-Code Section 423 Component of the Plan in each country outside of the United States where the Participating Affiliate is located as it considers necessary or desirable to meet the goals and objectives of the Non-Code Section 423 Component of the Plan. Each sub-plan established pursuant to this Section 9.4 shall be reflected in a written appendix to the Non-Code Section 423 Component of the Plan for each Participating Affiliate in such country, and shall be treated as being separate and independent from Code Section 423 Component of the Plan; provided, the total number of shares of Common Stock authorized to be issued under the Plan shall include any shares of Common Stock issued under the Non-Code Section 423 Component of the Plan (including each sub-plan). To the extent permitted under applicable law, the Committee may delegate its authority and responsibilities under this Section 9.4 to an appropriate sub-committee consisting of one or more officers of the Company.

## SECTION 10 CODE SECTION 409A TAX QUALIFICATION

- 10.1 **Code Section 409A.** Purchase Rights granted under the Plan are exempt from the application of Code Section 409A. In furtherance of the foregoing and notwithstanding any provision in the Plan to the contrary, if the Committee determines that a Purchase Right granted under the Plan may be subject to Code Section 409A or that any provision in the Plan would cause a Purchase Right under the Plan to be subject to Code Section 409A, the Committee may amend the terms of the Plan and/or of an outstanding Purchase Right granted under the Plan, or take such other action the Committee determines is necessary or appropriate, in each case,

without the Participant's consent, to exempt any outstanding Purchase Rights that may be granted under the Plan from or to allow any such Purchase Rights to comply with Code Section 409A, but only to the extent any such amendments or action by the Committee would not violate Code Section 409A. Notwithstanding the foregoing, the Company will have no liability to a Participant or any other party if the Purchase Right under the Plan that is intended to be exempt from or compliant with Code Section 409A is not so exempt or compliant or for any action taken by the Committee with respect thereto. The Company makes no representation that the right to purchase shares of Common Stock under the Plan is compliant with Code Section 409A.

- 10.2 **Tax Qualification.** Although the Company may endeavor to (i) qualify a Purchase Right for favorable tax treatment under the laws of the United States or jurisdictions outside of the United States or (ii) avoid adverse tax treatment (e.g., under Code Section 409A), the Company makes no representation to that effect and expressly disavows any covenant to maintain favorable or avoid unfavorable tax treatment, notwithstanding anything to the contrary in this Plan. The Company shall be unconstrained in its corporate activities without regard to the potential negative tax impact on Participant's under the Plan.

## **SECTION 11 INDEMNIFICATION**

In addition to such other rights of indemnification as they may have as members of the Committee or officers or employees of a Participating Company or a Participating Affiliate, members of the Committee and any officers or employees of a Participating Company or a Participating Affiliate to whom authority to act for the Committee or the Company is delegated shall be indemnified by the Company against all reasonable expenses, including attorneys' fees, actually and necessarily incurred in connection with the defense of any action, suit or proceeding, or in connection with any appeal therein, to which they or any of them may be a party by reason of any action taken or failure to act under or in connection with the Plan, or any right granted hereunder, and against all amounts paid by them in settlement thereof (provided such settlement is approved by independent legal counsel selected by the Company) or paid by them in satisfaction of a judgment in any such action, suit or proceeding, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such person is liable for gross negligence, bad faith or intentional misconduct in duties; provided, however, that within sixty (60) days after the institution of such action, suit or proceeding, such person shall offer to the Company, in writing, the opportunity at its own expense to handle and defend the same.

## **SECTION 12 PLAN AMENDMENT OR TERMINATION; MISCELLANEOUS**

- 12.1 **Termination.** The Committee may at any time terminate the Plan, except that such termination shall not affect Purchase Rights previously granted under the Plan.
- 12.2 **Amendment.** The Committee may make such modification or amendment to the Plan as it shall deem advisable; provided, however, that no amendment may materially adversely affect a Purchase Right previously granted under the Plan (except to the extent permitted by the Plan or as may be necessary to qualify the Plan as an employee stock purchase plan pursuant to Code Section 423 or to obtain qualification or registration of the shares of Common Stock under applicable federal, state or non-U.S. securities laws).

An amendment must be approved by the stockholders of the Company within twelve (12) months of the adoption of such amendment if (i) such amendment would authorize the sale of more shares than are authorized for issuance under the Plan or (ii) would change the definition of the corporations or companies that may be

designated by the Committee as Participating Companies or Participating Affiliates. In the event that the Committee approves an amendment to increase the number of shares of Common Stock authorized for issuance under the Plan, the Committee, in its sole discretion, may specify that any such additional shares of Common Stock may only be issued pursuant to Purchase Rights granted after the date on which the stockholders of the Company approve such amendment, and such designation by the Committee shall not be deemed to have adversely affected any Purchase Right granted prior to the date on which the stockholders approve the amendment.

- 12.3 **Death.** Unless otherwise provided in an Enrollment Form or procedures established by the Administrator from time to time, in the event of the Participant's death, any accumulated payroll deductions and other contributions not used to purchase shares of Common Stock shall be paid to and any shares of Common Stock credited to the deceased Participant's brokerage or Plan account shall be transferred to Participant's heirs or estate as soon as reasonably practicable following the Participant's death in accordance with applicable law.
- 12.4 **Transferability.** Payroll deductions, contributions credited to a Participant's account and any rights with regard to the purchase of shares of Common Stock pursuant to a Purchase Right or to receive shares of Common Stock under the Plan may not be assigned, alienated, pledged, attached, sold or otherwise disposed of in any way (other than by will, the laws of descent and distribution or as otherwise provided in the Plan) by the Participant. Any such attempt at assignment, transfer, pledge or other disposition shall be without effect, except that the Company may treat such act as an election to withdraw from the Plan in accordance with Section 3.
- 12.5 **Use of Funds.** All payroll deductions or contributions received or held by the Company under the Plan may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such payroll deductions or contributions except as may be required by applicable local law, as determined by the Administrator, and if so required by the laws of a particular jurisdiction, shall apply to all Participants in the relevant Offering except to the extent otherwise permitted by U.S. Treasury Regulation Section 1.423-2(f). Until shares of Common Stock are issued, Participants shall only have the rights of an unsecured creditor, although Participants in specified Offerings may have additional rights where required under local law, as determined by the Administrator.
- 12.6 **Severability.** If any particular provision of this Plan is found to be invalid or otherwise unenforceable, such determination shall not affect the other provisions of the Plan, but the Plan shall be construed in all respects as if such invalid provision were omitted.
- 12.7 **Governing Law and Jurisdiction.** Except to the extent that provisions of this Plan are governed by applicable provisions of the Code or any other substantive provision of federal law, this Plan shall be construed in accordance with the laws of Delaware, without giving effect to the conflict of laws principles thereof. The jurisdiction and venue for any disputes arising under, or any action brought to enforce (or otherwise relating to) this Plan shall be exclusively in the courts in the State of New York, County of New York, including the U.S. federal courts located therein (should federal jurisdiction exist).
- 12.8 **Headings.** Headings are given to the Sections and subsections of the Plan solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of the Plan.

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**Exhibit A**  
**Participating Companies and Affiliates**

<b>Participating Company / Participating Affiliate</b>	<b>Country</b>	<b>Code Section 423 Component / Non-Code Section 423 Component</b>
2K Studios Montreal, Inc.	Canada	Non-Code Section 423 Component
Rockstar Games Toronto ULC	Canada	Non-Code Section 423 Component
Take-Two Interactive Canada, Inc.	Canada	Non-Code Section 423 Component
2K Games (Chengdu) Co. Ltd.	China	Non-Code Section 423 Component
2K Games (Shanghai) Co. Ltd.	China	Non-Code Section 423 Component
Visual Concepts China Co. Ltd.	China	Non-Code Section 423 Component
2K Czech, s.r.o.	Czech Republic	Non-Code Section 423 Component
Take-Two Interactive France SAS	France	Non-Code Section 423 Component
Take-Two Interactive GmbH	Germany	Non-Code Section 423 Component
Take-Two Asia Pte. Ltd.	Singapore	Non-Code Section 423 Component
Social Point S.L.	Spain	Non-Code Section 423 Component
Take-Two Interactive Espana S.L.	Spain	Non-Code Section 423 Component
Hangar 13 UK Limited	United Kingdom	Non-Code Section 423 Component
Rockstar International Ltd.	United Kingdom	Non-Code Section 423 Component
Rockstar North Limited	United Kingdom	Non-Code Section 423 Component
Take Two GB Limited	United Kingdom	Non-Code Section 423 Component
Take-Two Interactive Software Europe Ltd.	United Kingdom	Non-Code Section 423 Component
Take-Two Interactive Software UK Limited	United Kingdom	Non-Code Section 423 Component
2K Games, Inc.	USA	423 Component
2K Vegas, Inc.	USA	423 Component
Cat Daddy Games, L.L.C.	USA	423 Component
Firaxis Games, Inc.	USA	423 Component
Ghost Story Games, LLC	USA	423 Component
Rockstar Games, Inc.	USA	423 Component
Rockstar New England, Inc.	USA	423 Component
Rockstar San Diego, Inc.	USA	423 Component
Take-Two Vegas, LLC	USA	423 Component
Visual Concepts Entertainment	USA	423 Component





Published CUSIP Number: 87405EAA5  
Revolving Credit CUSIP Number: 87405EAB3

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\$200,000,000

**CREDIT AGREEMENT**

dated as of February 8, 2019,

by and among

**TAKE-TWO INTERACTIVE SOFTWARE, INC.,**  
as Borrower,

the Lenders referred to herein,  
as Lenders,

and

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
as Administrative Agent,

**WELLS FARGO SECURITIES, LLC**  
and

**JPMORGAN CHASE BANK, N.A.,**  
as Joint Lead Arrangers and Joint Bookrunners,

and

**JPMORGAN CHASE BANK, N.A.,**  
as Syndication Agent

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## EXHIBITS

- Exhibit A-1 - Form of Revolving Credit Note
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- Exhibit A-3 - Form of Incremental Term Loan Note
- Exhibit B - Form of Notice of Borrowing
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- Exhibit E - Form of Notice of Conversion/Continuation
- Exhibit F - Form of Compliance Certificate
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CREDIT AGREEMENT, dated as of February 8, 2019, by and among TAKE-TWO INTERACTIVE SOFTWARE, INC., a Delaware corporation, the lenders who are party to this Agreement and the lenders who may become a party to this Agreement pursuant to the terms hereof, as Lenders, and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Administrative Agent for the Lenders.

#### STATEMENT OF PURPOSE

The Borrower has requested, and subject to the terms and conditions set forth in this Agreement, the Administrative Agent and the Lenders have agreed to extend, a revolving credit facility to the Borrower.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, such parties hereby agree as follows:

#### ARTICLE I

#### DEFINITIONS

SECTION 1.1 Definitions. The following terms when used in this Agreement shall have the meanings assigned to them below:

“Acquired EBITDA” means, with respect to any Person or business acquired pursuant to a Permitted Acquisition for any period, the amount for such period of Consolidated EBITDA of any such Person or business so acquired (determined using such definitions as if references to the Borrower and its Subsidiaries therein were to such Person or business), as calculated by the Borrower in good faith and which shall be factually supported by historical financial statements; provided, that, notwithstanding the foregoing to the contrary, in determining Acquired EBITDA for any Person or business that does not have historical financial accounting periods which coincide with that of the financial accounting periods of the Borrower and its Subsidiaries (a) references to Measurement Period in any applicable definitions shall be deemed to mean the same relevant period as the applicable period of determination for the Borrower and its Subsidiaries and (b) to the extent the commencement of any such Measurement Period shall occur during a fiscal quarter of such acquired Person or business (such that only a portion of such fiscal quarter shall be included in such Measurement Period), Acquired EBITDA for the portion of such fiscal quarter so included in such Measurement Period shall be deemed to be an amount equal to (x) Acquired EBITDA otherwise attributable to the entire fiscal quarter (determined in a manner consistent with the terms set forth above) multiplied by (y) a fraction, the numerator of which shall be the number of months of such fiscal quarter included in the relevant Measurement Period and the denominator of which shall be actual months in such fiscal quarter.

“Acquisition” means any acquisition, or any series of related acquisitions, consummated on or after the date of this Agreement, by which any Credit Party or any of its Subsidiaries (a) acquires any business or all or substantially all of the assets of any Person, or business unit, line of business or division thereof, whether through purchase of assets, exchange, issuance of stock or other equity or debt securities, merger, reorganization, amalgamation or otherwise or (b) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the securities of a corporation which have ordinary voting power for the election of members of the board of directors or the equivalent governing body (other than securities having such power only by reason of the happening of a contingency) or a majority (by percentage or voting power) of the outstanding ownership interests of a partnership or limited liability company.



“Administrative Agent” means Wells Fargo, in its capacity as Administrative Agent hereunder, and any successor thereto appointed pursuant to Section 11.6.

“Administrative Agent’s Office” means, with respect to any currency, the office of the Administrative Agent specified in or determined in accordance with the provisions of Section 12.1(c), with respect to such currency.

“Administrative Questionnaire” means an administrative questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agent Parties” has the meaning assigned thereto in Section 12.1(e).

“Agreement” means this Credit Agreement.

“Alternative Currency” means (a) each of Euro, Sterling, and Canadian Dollars and (b) each other currency (other than Dollars) that is approved in accordance with Section 1.13, in each case to the extent such currencies are (i) readily available and freely transferable and convertible into Dollars, (ii) dealt with in the London interbank deposit market and (iii) for which no central bank or other governmental authorization in the country of issue of such currency is required to give authorization for the use of such currency by any Lender for making Loans unless such authorization has been obtained and remains in full force and effect.

“Alternative Currency Equivalent” means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency or Alternative L/C Currency as determined by the Administrative Agent or the Issuing Lender, as applicable, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency or Alternative L/C Currency with Dollars.

“Alternative Currency Sublimit” means the lesser of (a) the Revolving Credit Commitments and (b) \$50,000,000.

“Alternative L/C Currency” means (a) each of Euro, Sterling, and Canadian Dollars and (b) each other currency (other than Dollars) that is approved by the applicable Issuing Lender in accordance with Section 1.13, in each case to the extent such currencies are (i) readily available and freely transferable and convertible into Dollars, (ii) dealt with in the London interbank deposit market and (iii) for which no central bank or other governmental authorization in the country of issue of such currency is required to give authorization for the use of such currency by any Issuing Lender for issuing Letters of Credit unless such authorization has been obtained and remains in full force and effect.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction concerning or relating to bribery or corruption, including any applicable provision of the United States Foreign Corrupt Practices Act of 1977 and the rules and regulations thereunder and the U.K. Bribery Act 2010 and the rules and regulations thereunder.

“Anti-Money Laundering Laws” means any and all laws, statutes, regulations or obligatory government orders, decrees, ordinances or rules related to terrorism financing or money laundering, including

any applicable provision of the Patriot Act and The Currency and Foreign Transactions Reporting Act (also known as the Bank Secrecy Act, 31 U.S.C. §§ 5311-5330 and 12U.S.C. §§ 1818(s), 1820(b) and 1951-1959).

“Applicable Law” means all applicable provisions of constitutions, laws, statutes, ordinances, rules, treaties, regulations, permits, licenses, approvals, interpretations and orders of Governmental Authorities and all orders and decrees of all courts and arbitrators.

“Applicable Margin” means the corresponding percentages per annum as set forth below based on the Consolidated Net Leverage Ratio:

<b>Pricing Level</b>	<b>Consolidated Net Leverage Ratio</b>	<b>Commitment Fee</b>	<b>Eurocurrency Rate and CDOR Rate +</b>	<b>Base Rate and Canadian Base Rate +</b>
I	Less than or equal to 1.00 to 1.00	0.10%	1.125%	0.125%
II	Greater than 1.00 to 1.00, but less than or equal to 1.50 to 1.00	0.15%	1.250%	0.250%
III	Greater than 1.50 to 1.00, but less than or equal to 2.00 to 1.00	0.20%	1.375%	0.375%
IV	Greater than 2.00 to 1.00, but less than or equal to 2.50 to 1.00	0.25%	1.500%	0.500%
V	Greater than 2.50 to 1.00	0.30%	1.750%	0.750%

The Applicable Margin shall be determined and adjusted quarterly on the date five (5) Business Days after the day on which the Borrower provides a Compliance Certificate pursuant to Section 8.2(a) for the most recently ended fiscal quarter of the Borrower (each such date, a “Calculation Date”); provided that (a) the Applicable Margin shall be based on the pro forma Consolidated Net Leverage Ratio on the Closing Date set forth in the certificate delivered by the Borrower to the Administrative Agent pursuant to Section 6.1(d)(iii) until the first Calculation Date following the first fiscal quarter of the Borrower occurring after the Closing Date and, thereafter the Pricing Level shall be determined by reference to the Consolidated Net Leverage Ratio as of the last day of the most recently ended fiscal quarter of the Borrower preceding the applicable Calculation Date, and (b) if the Borrower fails to provide an Compliance Certificate when due as required by Section 8.2(a) for the most recently ended fiscal quarter of the Borrower preceding the applicable Calculation Date, the Applicable Margin from the date on which such Compliance Certificate was required to have been delivered shall be based on Pricing Level V until such time as such Compliance Certificate is delivered, at which time the Pricing Level shall be determined by reference to the Consolidated Net Leverage Ratio as of the last day of the most recently ended fiscal quarter of the Borrower preceding such Calculation Date. The applicable Pricing Level shall be effective from one Calculation Date until the next Calculation Date. Any adjustment in the Pricing Level shall be applicable to all Extensions of Credit then existing or subsequently made or issued.

Notwithstanding the foregoing, in the event that any financial statement or Compliance Certificate delivered pursuant to Section 8.1 or 8.2(a) is shown to be inaccurate (regardless of whether (i) this Agreement is in effect, (ii) any Commitments are in effect, or (iii) any Extension of Credit is outstanding when such inaccuracy is discovered or such financial statement or Compliance Certificate was delivered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an “Applicable Period”) than the Applicable Margin applied for such Applicable Period, then (A) the Borrower shall

immediately deliver to the Administrative Agent a corrected Compliance Certificate for such Applicable Period, (B) the Applicable Margin for such Applicable Period shall be determined as if the Consolidated Net Leverage Ratio in the corrected Compliance Certificate were applicable for such Applicable Period, and (C) the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent the accrued additional interest and fees owing as a result of such increased Applicable Margin for such Applicable Period, which payment shall be promptly applied by the Administrative Agent in accordance with Section 5.4. Nothing in this paragraph shall limit the rights of the Administrative Agent and Lenders with respect to Sections 5.1(b) and 10.2 nor any of their other rights under this Agreement or any other Loan Document. The Borrower's obligations under this paragraph shall survive the termination of the Commitments and the repayment of all other Obligations hereunder. The Applicable Margin with respect to any Incremental Term Loan shall be set forth in the applicable Incremental Amendment.

“Applicable Time” means, with respect to any borrowings or draws and payments in any Alternative Currency or Alternative L/C Currency, the local time in the place of settlement for such Alternative Currency or Alternative L/C Currency as may be determined by the Administrative Agent or the Issuing Lender, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arrangers” means Wells Fargo Securities, LLC and JPMorgan Chase Bank, N.A., each in their capacity as a joint lead arranger.

“Asset Disposition” means the sale, transfer, license, lease or other disposition of any Property (including any sale and leaseback transaction, division, merger or disposition of Equity Interests), whether in a single transaction or a series of related transactions, by any Credit Party or any Subsidiary thereof, and any issuance of Equity Interests by any Subsidiary of the Borrower to any Person that is not a Credit Party or any Subsidiary thereof.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 12.9), and accepted by the Administrative Agent, in substantially the form attached as *Exhibit G* or any other form approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date of determination, (a) in respect of any Capital Lease Obligation of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease, the capitalized amount or principal amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease Obligation.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Code” means 11 U.S.C. §§ 101 *et seq.*

“Base Rate” means, at any time, the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c) the Eurocurrency Rate for an Interest Period of one month plus 1%; each change in the Base Rate shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the Federal Funds Rate or the Eurocurrency Rate (provided that clause (c) shall not be applicable during any period in which the Eurocurrency Rate is unavailable or unascertainable). Notwithstanding the foregoing, in no event shall the Base Rate be less than 0% per annum.

“Base Rate Loan” means any Loan bearing interest at a rate based upon the Base Rate as provided in Section 5.1(a). All Base Rate Loans shall be denominated in Dollars.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 CFR § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“Borrower” means Take-Two Interactive Software, Inc. a Delaware corporation.

“Borrower Materials” has the meaning assigned thereto in Section 8.2.

“Business Day” means any day other than a Saturday, Sunday or legal holiday on which banks in Charlotte, North Carolina and New York, New York, are open for the conduct of their commercial banking business and

(a) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Dollars, any fundings, disbursements, settlements and payments in Dollars in respect of any such Eurocurrency Rate Loan, or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means any London Banking Day;

(b) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such Eurocurrency Rate Loan, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means any TARGET Day;

(c) with respect to all notices and determinations in connection with, and payments of principal and interest on, any Eurocurrency Rate Loan denominated in Canadian Dollars, any day that is a Business Day described in clause (a) and on which banks are open for business in London, England and Toronto, Canada; and

(d) if such day relates to any fundings, disbursements, settlements and payments in a currency other than Dollars, Euro or Canadian Dollars in respect of a Eurocurrency Rate Loan denominated in a currency other than Dollars, Euro or Canadian Dollars, or any other dealings in any currency other than Dollars, Euro or Canadian Dollars to be carried out pursuant to this Agreement in respect of any such

Eurocurrency Rate Loan (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

“Calculation Date” has the meaning assigned thereto in the definition of Applicable Margin.

“Canadian Base Rate” means at any time, the greater of (a) the Canadian Prime Rate and (b) except during any period of time during which a notice delivered to the Borrower under Section 5.8 shall remain in effect, the annual rate of interest equal to the sum of (i) the CDOR Rate for an Interest Period of one month at such time plus (ii) one percent (1%) per annum; each change in the Canadian Base Rate shall take effect simultaneously with the corresponding change or changes in the Canadian Prime Rate or the CDOR Rate, as applicable.

“Canadian Base Rate Loan” means any Revolving Credit Loan bearing interest at a rate based upon the Canadian Base Rate.

“Canadian Dollar” means the lawful currency of Canada.

“Canadian Prime Rate” means the rate of interest publicly announced from time to time by the Canadian Reference Bank as its prime rate in effect for determining interest rates on Canadian Dollar denominated commercial loans in Canada (which such rate is not necessarily the most favored rate of the Canadian Reference Bank and the Canadian Reference Bank may lend to its customers at rates that are at, above or below such rate) or, if the Canadian Reference Bank ceases to announce a rate so designated, any similar successor rate designated by the Administrative Agent.

“Canadian Reference Bank” means any one or more of The Bank of Nova Scotia, Bank of Montreal, Royal Bank of Canada, The Toronto-Dominion Bank, Canadian Imperial Bank of Commerce or National Bank of Canada, as the Administrative Agent may determine.

“Capital Expenditures” means, with respect to the Borrower and its Subsidiaries on a Consolidated basis, for any period, (a) the additions to property, plant and equipment and other capital expenditures that are (or would be) set forth in a Consolidated statement of cash flows of such Person for such period prepared in accordance with GAAP and (b) Capital Lease Obligations during such period, but excluding expenditures for the restoration, repair or replacement of any fixed or capital asset which was destroyed or damaged, in whole or in part, to the extent financed by the proceeds of an insurance policy maintained by such Person.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Cash Collateralize” means, to pledge and deposit with, or deliver to the Administrative Agent, or directly to the applicable Issuing Lender (with notice thereof to the Administrative Agent), for the benefit of one or more of the Issuing Lenders, the Swingline Lender or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect of L/C Obligations or Swingline Loans, cash or deposit account balances or, if the Administrative Agent and the applicable Issuing Lender and the Swingline Lender shall agree, in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent, such Issuing Lender and the Swingline Lender, as applicable. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” means, collectively, (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency thereof maturing within two (2) years from the date of acquisition thereof, (b) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing no more than two (2) years from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or its successor or Moody’s or its successor, (c) commercial paper maturing no more than two (2) years from the date of creation thereof and at the time of acquisition, having a rating of at least A-2 from S&P or at least P-2 from Moody’s, (d) bonds issued in the United States maturing no more than two (2) years from the date of acquisition and, at the time of acquisition, having a rating of at least BBB from S&P or at least Baa2 from Moody’s; provided, that any such investment in such bonds shall not exceed 10% of a specific bond issuance, (e) certificates of deposit, time deposits, or bankers’ acceptances maturing no more than two (2) years from the date of acquisition thereof issued by any bank organized under the Applicable Laws of (i) the United States or any state thereof or (ii) a jurisdiction other than the United States but with a presence in the United States, in each case, having at the date of acquisition thereof combined capital and surplus of not less than \$250,000,000, (f) deposit accounts maintained with (i) any bank that satisfies the criteria described in clause (e)(i) above, or (ii) any other bank organized under the laws of the United States or any state thereof so long as the amount maintained with any such other bank is less than or equal to \$250,000 and is insured by the Federal Deposit Insurance Corporation, (g) repurchase agreements maturing no more than two (2) years from the date of acquisition thereof fully collateralized by any investments in the types of assets described in clause (a) above, (h) shares of any money market mutual fund that has (i) substantially all of its assets invested in the types of investments referred to in clauses (a) through (g) above, (ii) net assets of not less than \$250,000,000 and (iii) a rating of at least A-2 from S&P or at least P-2 from Moody’s (or, if at any time either S&P or Moody’s are not rating such fund, an equivalent rating from another nationally recognized statistical rating agency) and (i) other investments permitted by the Borrower’s investment policy as previously disclosed to the Administrative Agent and in effect on the Closing Date (and as amended, restated, supplemented or otherwise modified from time to time with the consent (such consent not to be unreasonably withheld) of the Administrative Agent; provided that changes that do not affect the tenor or quality of the investments permitted thereby shall not require such consent). “Cash Equivalents” shall also include (x) Investments of the type and maturity described in clauses (a) through (g) above in foreign obligors, which Investments or obligors (or the parent companies thereof) have the ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (y) other short-term Investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in Investments analogous to the Investments described in clauses (a) through (g) above or in the foregoing clause (x).

“Cash Management Agreement” means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card (including non-card electronic payables and purchasing cards), electronic funds transfer, automated clearing house payments and other cash management arrangements.

“CDOR Rate” means the rate of interest per annum determined by the Administrative Agent on the basis of the rate applicable to Canadian Dollar bankers’ acceptances for the applicable Interest Period (or if such Interest Period is not equal to a number of months, for a term equivalent to the number of months closest to such Interest Period) appearing on the “CDOR Page”, or any successor page of Reuters Monitor Money Rates Service (or such other page or commercially available source displaying Canadian interbank bid rates for Canadian Dollar bankers’ acceptances as may be designated by the Administrative Agent from time to time), as of 10:00 a.m. (Toronto, Ontario time) on the first day of the applicable Interest Period (or if such day is not a Business Day, then on the immediately preceding Business Day). If, for any reason, such rate does not appear on the “CDOR Page” on such day as contemplated, then the “CDOR Rate” on such day

shall be calculated as the arithmetic average of the rates for a one month interest period applicable to Canadian dollar bankers' acceptances quoted by the banks listed in Schedule I of the *Bank Act* (Canada) which are also Revolving Credit Lenders (or, if there are no such Lenders, then the Canadian Reference Bank) as of 10:00 a.m. on such day (or if such day is not a Business Day, then on the immediately preceding Business Day). Each calculation by the Administrative Agent of the CDOR Rate shall be conclusive and binding for all purposes, absent manifest error. Notwithstanding the foregoing, if the CDOR Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“CFC” means (a) a Foreign Subsidiary that is a “controlled foreign corporation” under Section 957 of the Code, or (b) a Domestic Subsidiary substantially all the assets of which consist of Equity Interests in Foreign Subsidiaries that constitute CFCs.

“Change in Control” means an event or series of events by which:

(a) (i) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a “person” or “group” shall be deemed to have “beneficial ownership” of all Equity Interests that such “person” or “group” has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of 35% or more of the equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such securities that such “person” or “group” has the right to acquire pursuant to any option right) or (ii) a majority of the members of the board of directors (or other equivalent governing body) of the Borrower shall not constitute Continuing Directors; or

(b) there shall have occurred under any indenture or other instrument evidencing Indebtedness or Equity Interests in an amount exceeding the Threshold Amount any “change in control” or similar provision (as set forth in the indenture, agreement or other evidence of such Indebtedness) obligating the Borrower or any of its Subsidiaries to repurchase, redeem or repay all or any part of the Indebtedness or Equity Interests provided for therein.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted, implemented or issued.

“Class” means, when used in reference to any Loan, whether such Loan is a Revolving Credit Loan, Swingline Loan or Incremental Term Loan and, when used in reference to any Commitment, whether such Commitment is a Revolving Credit Commitment or an Incremental Term Loan Commitment.

“Closing Date” means the date of this Agreement.

“Code” means the Internal Revenue Code of 1986, and the rules and regulations promulgated thereunder.

“Commitment Fee” has the meaning assigned thereto in Section 5.3(a).

“Commitment Percentage” means, as to any Lender, such Lender’s Revolving Credit Commitment Percentage or Incremental Term Loan Percentage, as applicable.

“Commitments” means, collectively, as to all Lenders, the Revolving Credit Commitments and the Incremental Term Loan Commitments of such Lenders.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

“Competitor” means any Person that is a bona fide direct competitor of the Borrower or any of its Subsidiaries in the same industry or a substantially similar industry which offers a substantially similar product or service as the Borrower or any of its Subsidiaries.

“Compliance Certificate” means a certificate of the chief financial officer or the treasurer of the Borrower substantially in the form attached as *Exhibit F*.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated” means, when used with reference to financial statements or financial statement items of any Person, such statements or items on a consolidated basis in accordance with applicable principles of consolidation under GAAP.

“Consolidated EBITDA” means, for any Measurement Period, the sum of the following determined on a Consolidated basis for the Borrower and its Subsidiaries:

- (a) Consolidated Net Income for such period plus
- (b) the sum of the following, without duplication, to the extent deducted in determining Consolidated Net Income for such period:
  - (i) Consolidated Interest Expense;
  - (ii) expense for Taxes measured by net income, profits or capital (or any similar measures), paid or accrued, including federal and state and local income Taxes, foreign income Taxes and franchise Taxes;
  - (iii) depreciation, amortization and each other non-cash expense (including, without limitation, any non-cash expenses related to stock based compensation and any impairment charge or asset write-off or write-down related to intangible assets, long-lived assets and other assets), non-cash loss (including, extraordinary, unusual or non-recurring non-cash losses), excluding any non-cash expense that represents an accrual for a cash expense to be taken in a future period;
  - (iv) extraordinary losses (excluding extraordinary losses from discontinued operations);



(v) all transaction fees, charges and other amounts related to the Transactions and any amendment or other modification to the Loan Documents, in each case to the extent paid within six (6) months of the Closing Date or the effectiveness of such amendment or other modification;

(vi) expenses or charges directly incurred during such period in connection with any Permitted Acquisition, Investment, disposition, issuance of Equity Interests, or the incurrence, amendment or waiver of Indebtedness permitted hereunder (other than under the Loan Documents), in each case, whether or not consummated;

(vii) any costs or expenses (excluding non-cash charges) pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of the Borrower or net cash proceeds of an issuance of Equity Interests of the Borrower (other than Disqualified Equity Interests);

(viii) (A) other unusual and non-recurring cash expenses or charges (including one-time non-recurring severance charges and cash restructuring charges) and (B) the amount of any “run rate” synergies, operating expense reductions and other net cost savings and integration costs, in each case projected by the Borrower in connection with Permitted Acquisitions, Asset Dispositions (including the termination or discontinuance of activities constituting such business) and/or other operating improvement, restructuring, cost savings initiative or other similar initiative taken after the Closing Date that have been consummated during the applicable Measurement Period (calculated on a pro forma basis as though such synergies, expense reductions and cost savings had been realized on the first day of the period for which Consolidated EBITDA is being determined), net of the amount of actual benefits realized during such period from such actions; provided that (i) such synergies, expense reductions and cost savings are reasonably identifiable, factually supportable, expected to have a continuing impact on the operations of the Borrower and its Subsidiaries and have been determined by the Borrower in good faith to be reasonably anticipated to be realizable within 12 months following any such action as set forth in reasonable detail on a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent, (ii) no such amounts shall be added pursuant to this clause to the extent duplicative of any expenses or charges otherwise added to Consolidated EBITDA, whether through a pro forma adjustment or otherwise and (iii) the aggregate amount added pursuant to clause (b)(viii)(B) above for any period shall in no event exceed 10% of Consolidated EBITDA for such period (calculated prior to any such add-backs pursuant to clause (b)(viii)(B) above;

(ix) to the extent covered by insurance and actually reimbursed, or, so long as the Borrower has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (A) not denied by the applicable carrier in writing within 180 days of the date of such determination and (B) in fact reimbursed within 365 days of the date of such determination (with a deduction in the applicable future period for any amount so added back to the extent not so reimbursed within such 365 days), expenses, charges or losses with respect to liability or casualty events or business interruption;

(x) any net after-tax effect of loss for such period attributable to the early extinguishment of any Hedge Agreement;

(xi) any increase in deferred revenue during such Measurement Period;

(xii) any decrease in deferred cost of goods sold during such Measurement Period; minus

(c) the sum of the following, without duplication, to the extent included in determining Consolidated Net Income for such period:

(i) interest income;

(ii) Federal, state, local and foreign income tax credits of the Borrower and its Subsidiaries for such period (to the extent not netted from income Tax expense);

(iii) all non-cash items increasing Consolidated Net Income for such period;

(iv) extraordinary gains;

(v) any net after-tax effect of income for such period attributable to the early extinguishment of any Hedge Agreement;

(vi) any decrease in deferred revenue during such Measurement Period;

(vii) any increase in deferred cost of goods sold during such Measurement Period; and

(viii) any cash expense made during such period which represents the reversal of any non-cash expense that was added in a prior period pursuant to clause (b)(iii) above subsequent to the fiscal quarter in which the relevant non-cash expenses, charges or losses were incurred.

For purposes of this Agreement, Consolidated EBITDA shall be calculated on a Pro Forma Basis.

“Consolidated Funded Indebtedness” means, as of any date of determination, for the Borrower and its Subsidiaries on a Consolidated basis, the sum of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness, (c) all direct obligations arising under standby letters of credit, bankers’ acceptances, bank guaranties, surety bonds and similar instruments (in the case of surety bonds and similar instruments, to the extent included as a liability on the Consolidated balance sheet of the Borrower and its Subsidiaries in accordance with GAAP), (d) all obligations in respect of the deferred purchase price of property or services (including, without limitation, in the form of earn-outs, milestones and other contingent payment obligations to the extent included as a fixed liability on the Consolidated balance sheet of the Borrower and its Subsidiaries in accordance with GAAP and past due at such time), provided that royalties (and other contingent payment obligations in the nature of a royalty payment (including those calculated based on a percentage of sales)) shall only be included in “Consolidated Funded Indebtedness” to the extent such liability exceeds the corresponding intangible item included on the Consolidated balance sheet of the Borrower and its Subsidiaries, provided that any such corresponding intangible item shall be discernible and reasonably identifiable, provided further, that Consolidated Funded Indebtedness shall not include (i) trade accounts payable and (ii) earn-outs, milestones and royalties payable to developers, publishers, licensors, and other third party service providers, in each case of clauses (i) and (ii) of this proviso, in the ordinary course of business, (e) all Attributable Indebtedness in respect of Capital Lease Obligations and obligations under Synthetic Leases, (f) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above of Persons other than the Borrower or any Subsidiary, and (g) all Indebtedness of the types referred to in clauses (a) through (f) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Borrower or a Subsidiary is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to the Borrower or such Subsidiary.

“Consolidated Interest Expense” means, for any Measurement Period, interest expense (including interest expense attributable to Capital Lease Obligations and all net payment obligations pursuant to Hedge Agreements) for such Measurement Period, determined on a Consolidated basis, without duplication, for the Borrower and its Subsidiaries in accordance with GAAP.

“Consolidated Net Income” means, at any date of determination, the net income (or loss) of the Borrower and its Subsidiaries on a Consolidated basis for the most recently completed Measurement Period, determined in accordance with GAAP; provided, that in calculating Consolidated Net Income of the Borrower and its Subsidiaries for any Measurement Period, there shall be excluded (without duplication) (i) the net income (or loss) of any Person (other than a Subsidiary which shall be subject to clauses (iii) and (iv) below), in which the Borrower or any of its Subsidiaries has a joint interest with a third party, except to the extent such net income is actually paid in cash to the Borrower or any of its Subsidiaries by dividend or other distribution, (ii) the net income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of the Borrower or any of its Subsidiaries or is merged into or consolidated with the Borrower or any of its Subsidiaries or that Person’s assets are acquired by the Borrower or any of its Subsidiaries except to the extent included pursuant to the foregoing clause (i) or in case of a Specified Transaction where Consolidated EBITDA is to be calculated on a Pro Forma Basis, (iii) the net income (if positive), of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary to the Borrower or any of its Subsidiaries of such net income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Subsidiary, (iv) the net income (or loss) of any Subsidiary that is not a Wholly-Owned Subsidiary to the extent such net income (or loss) is attributable to the non-controlling interest in such Subsidiary and (v) any gain or loss from Asset Dispositions outside the ordinary course of business.

“Consolidated Net Leverage Ratio” means, as of any date of determination, the ratio of (a) (i) Consolidated Funded Indebtedness as of such date minus (ii) Unrestricted Cash and Cash Equivalents as of such date not to exceed \$400,000,000 to (b) Consolidated EBITDA for the most recently completed Measurement Period.

“Consolidated Total Assets” means, as of any date of determination with respect to the Borrower and its Subsidiaries on a Consolidated basis, without duplication, in accordance with GAAP, the total amount of assets (less applicable reserves and other properly deductible items) reflected on the most recent balance sheet of the Borrower and its Subsidiaries delivered pursuant to Section 8.1(a) or (b), as applicable, as of such date.

“Continuing Directors” means the directors (or equivalent governing body) of the Borrower on the Closing Date and each other director (or equivalent) of the Borrower, if, in each case, such other Person’s nomination for election to the board of directors (or equivalent governing body) of the Borrower is approved by at least 51% of the then Continuing Directors.

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

“Controlled Account” means each deposit account and securities account that is subject to an account control agreement in form and substance reasonably satisfactory to the Administrative Agent and each of the applicable Issuing Lenders that is entitled to Cash Collateral hereunder at the time such control agreement is executed.

“Credit Facility” means, collectively, the Revolving Credit Facility, the Swingline Facility, the L/C Facility and, if applicable, each Incremental Term Loan Facility.

“Credit Parties” means, collectively, the Borrower and the Guarantors.

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

“Default” means any of the events specified in Section 10.1 which with the passage of time, the giving of notice or any other condition, would constitute an Event of Default.

“Defaulting Lender” means, subject to Section 5.15(b), any Lender that (a) has failed to (i) fund all or any portion of the Revolving Credit Loans, participations in L/C Obligations, participations in Swingline Loans or, if applicable, any Incremental Term Loans required to be funded by it hereunder within two Business Days of the date such Loans or participations were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any Issuing Lender, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, any Issuing Lender or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the FDIC or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 5.15(b)) upon delivery of written notice of such determination to the Borrower, each Issuing Lender, the Swingline Lender and each Lender.

“Disposed EBITDA” shall mean, with respect to any Person or business Disposed of for any period, the amount for such period of Consolidated EBITDA of any such Person or business so Disposed (determined

using such definitions as if references to the Borrower and its Subsidiaries therein were to such Person or business), as calculated by the Borrower in good faith.

“Dispose” means to be subject to any Asset Disposition.

“Disqualified Equity Interests” means, with respect to any Person, any Equity Interests of such Person that, by their terms (or by the terms of any security or other Equity Interest into which they are convertible or for which they are exchangeable) or upon the happening of any event or condition, (a) mature or are mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full in cash of the Loans, Obligations (including, without limitation contingent reimbursement obligations) in respect of Letters of Credit) and all other Obligations (other than contingent indemnification obligations as to which no claim has been made) and the termination of the Commitments), (b) are redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests) (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full in cash of the Loans, Obligations (including, without limitation contingent reimbursement obligations) in respect of Letters of Credit and all other Obligations (other than contingent indemnification obligations as to which no claim has been made) and the termination of the Commitments), in whole or in part, (c) provide for the scheduled payment of dividends in cash or (d) are or become convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 91 days after the latest scheduled maturity date of the Loans and Commitments; provided that if such Equity Interests are issued pursuant to a plan for the benefit of the Borrower or its Subsidiaries or by any such plan to such officers or employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

“Disqualified Institution” means, on any date, (a) any Person designated by the Borrower as a “Disqualified Institution” by written notice delivered to the Administrative Agent on or prior to the Closing Date, (b) Persons that are clearly identifiable solely on the basis or their names as Affiliates of such Persons described in clause (a) above, (c) any other Person that is a Competitor of the Borrower or any of its Subsidiaries identified in writing by the Borrower to the Administrative Agent at any time; provided that “Disqualified Institutions” shall exclude any Person that the Borrower has designated as no longer being a “Disqualified Institution” by written notice delivered to the Administrative Agent from time to time and (d) any Affiliate of such Person described in clause (c) above that are clearly identifiable as Affiliates solely on the basis of their names; provided further that any bona fide debt fund or investment vehicle that is engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of business which is managed, sponsored or advised by any Person Controlling, Controlled by or under common Control with such Competitor or its Controlling owner and for which no personnel involved with the competitive activities of such Competitor or Controlling owner (i) makes any investment decisions for such debt fund or (ii) has access to any confidential information (other than publicly available information) relating to the Borrower and its Subsidiaries shall be deemed not to be a Competitor of the Borrower or any of its Subsidiaries.

“Dollar Equivalent” means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency or Alternative L/C Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent or an Issuing Lender, as applicable, at such time on the basis of the Spot Rate (determined in respect of the most

recent Revaluation Date) for the purchase of Dollars with such Alternative Currency or Alternative L/C Currency.

“Dollars” or “\$” means, unless otherwise qualified, dollars in lawful currency of the United States.

“Domestic Subsidiary” means any Subsidiary organized under the laws of any political subdivision of the United States.

“DQ List” has the meaning assigned thereto in Section 12.9(g)(iv).

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any credit institution or investment firm established in any EEA Member Country.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 12.9(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 12.9(b)(iii)). For the avoidance of doubt, any Disqualified Institution is subject to Section 12.9(g).

“Employee Benefit Plan” means (a) any employee benefit plan within the meaning of Section 3(3) of ERISA that is maintained for employees of any Credit Party or any ERISA Affiliate or (b) any Pension Plan or Multiemployer Plan that has at any time within the preceding seven (7) years been maintained, funded or administered for the employees of any Credit Party or any current or former ERISA Affiliate.

“EMU” means the economic and monetary union in accordance with the Treaty of Rome 1957, as amended by the Single European Act 1986, the Maastricht Treaty of 1992 and the Amsterdam Treaty of 1998.

“EMU Legislation” means the legislative measures of the EMU for the introduction of, changeover to or operation of a single or unified European currency.

“Engagement Letter” means the separate letter agreement dated as of November 7, 2018 among the Borrower, Wells Fargo Securities, LLC and Wells Fargo.

“Environmental Claims” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, accusations, allegations, notices of noncompliance or violation, investigations (other than internal reports prepared by any Person in the ordinary course of business and not in response to any third party action or request of any kind) or proceedings relating in any way to any actual or alleged violation of or liability under any Environmental Law or relating to any permit issued, or any approval given, under any such Environmental Law, including, without limitation, any and all claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages,

contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to public health or the environment.

“Environmental Laws” means any and all federal, foreign, state, provincial and local laws, statutes, ordinances, codes, rules, standards and regulations, permits, licenses, approvals, interpretations and orders of courts or Governmental Authorities, relating to the protection of public health or the environment, including, but not limited to, requirements pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, handling, reporting, licensing, permitting, investigation or remediation of Hazardous Materials.

“Equity Interests” means (a) in the case of a corporation, capital stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (c) in the case of a partnership, partnership interests (whether general or limited), (d) in the case of a limited liability company, membership interests, (e) 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 and (f) any and all warrants, rights or options to purchase any of the foregoing.

“ERISA” means the Employee Retirement Income Security Act of 1974, and the rules and regulations thereunder.

“ERISA Affiliate” means any Person who together with any Credit Party or any of its Subsidiaries is treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor thereto), as in effect from time to time.

“Euro” and “€” mean the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

“Eurocurrency Rate” means, subject to the implementation of the Replacement Rate in accordance with Section 5.8(c), with respect to any Extension of Credit:

(a) denominated in a LIBOR Currency, the rate of interest per annum determined on the basis of the rate for deposits in such LIBOR Currency for a period equal to the applicable Interest Period as published by the ICE Benchmark Administration Limited, a United Kingdom company, or a comparable or successor quoting service approved by the Administrative Agent (or, if applicable, the Replacement Rate in accordance with Section 5.8(c)), at approximately 11:00 a.m. (London time) two (2) London Banking Days prior to the first day of the applicable Interest Period (or if, for any reason, such rate is not so published, the rate determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in such LIBOR Currency would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) two (2) London Banking Days prior to the first day of the applicable Interest Period for a period equal to such Interest Period);

(b) denominated in Canadian Dollars, the rate per annum equal to the CDOR Rate; and

(c) denominated in any other Non-LIBOR Currency, the rate per annum as designated with respect to such Alternative Currency at the time such Alternative Currency is approved by the Administrative Agent and the Lenders pursuant to Section 1.13(a); and

(d) for any rate calculation with respect to a Base Rate Loan on any date, the rate of interest per annum determined on the basis of the rate for deposits in Dollars for an Interest Period equal to one month (commencing on the date of determination of such interest rate) as published by the ICE Benchmark Administration Limited, a United Kingdom company, or a comparable or successor quoting service approved by the Administrative Agent (or, if applicable, the Replacement Rate in accordance with Section 5.8(c)), at approximately 11:00 a.m. (London time) on such date of determination, or, if such date is not a Business Day, then the immediately preceding Business Day (or if, for any reason, such rate is not so published, the rate determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in Dollars would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) on such date of determination for a period equal to one month commencing on such date of determination);

Each calculation by the Administrative Agent of the Eurocurrency Rate shall be conclusive and binding for all purposes, absent manifest error. Notwithstanding the foregoing, if the Eurocurrency Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Eurocurrency Rate Loan” means any Loan bearing interest at a rate based upon the Eurocurrency Rate as provided in Section 5.1(a). Eurocurrency Rate Loans may be denominated in Dollars or in an Alternative Currency.

“Event of Default” means any of the events specified in Section 10.1; provided that any requirement for passage of time, giving of notice, or any other condition, has been satisfied.

“Exchange Act” means the Securities Exchange Act of 1934 (15 U.S.C. § 77 *et seq.*).

“Excluded Subsidiary” means (a) any Immaterial Subsidiary, (b) any CFC and (c) any direct or indirect Domestic Subsidiary of a Foreign Subsidiary that is a CFC.

“Excluded Swap Obligation” means, with respect to any Credit Party, any Swap Obligation if, and to the extent that, all or a portion of the liability of such Credit Party for or the guarantee of such Credit Party of, or the grant by such Credit Party of a security interest to secure, such Swap Obligation (or any liability or guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Credit Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the liability for or the guarantee of such Credit Party or the grant of such security interest becomes effective with respect to such Swap Obligation (such determination being made after giving effect to any applicable keepwell, support or other agreement for the benefit of the applicable Credit Party, including under the keepwell provisions in the Guaranty Agreement). If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal for the reasons identified in the immediately preceding sentence of this definition.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, United States federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an



applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 5.12(b)) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 5.11, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 5.11(g) and (d) any United States federal withholding Taxes imposed under FATCA.

“Existing Credit Agreement” means the Second Amended and Restated Credit Agreement dated as of November 16, 2007, as amended and restated as of October 17, 2011 by and among the Borrower, Take-Two GB Limited, certain of the Borrower's Subsidiaries party thereto, the lenders party thereto and Wells Fargo Capital Finance, Inc. (f/k/a Wells Fargo Foothill, Inc.), as administrative agent.

“Existing Letter of Credit” means the letter of credit existing on the Closing Date and identified on Schedule 1.1(a).

“Extensions of Credit” means, as to any Lender at any time, (a) an amount equal to the sum of (i) the aggregate principal amount of all Revolving Credit Loans made by such Lender then outstanding, (ii) such Lender's Revolving Credit Commitment Percentage of the L/C Obligations then outstanding, (iii) such Lender's Revolving Credit Commitment Percentage of the Swingline Loans then outstanding and (iv) the aggregate principal amount of the Incremental Term Loans made by such Lender then outstanding, if any, or (b) the making of any Loan or participation in any Letter of Credit by such Lender, as the context requires.

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, and any agreements entered into pursuant to Section 1471(b)(1) of the Code, any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to such intergovernmental agreement.

“FDIC” means the Federal Deposit Insurance Corporation.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that if such rate is not so published for any day which is a Business Day, the Federal Funds Rate for such day shall be the average of the quotation for such day on such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by the Administrative Agent. Notwithstanding the foregoing, if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Fiscal Year” means the fiscal year of the Borrower and its Subsidiaries ending on March 31.

“Foreign Lender” means a Lender that is not a U.S. Person.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to any Issuing Lender, such Defaulting Lender’s Revolving Credit Commitment Percentage of the outstanding L/C Obligations with respect to Letters of Credit issued by such Issuing Lender, other than such L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof and (b) with respect to the Swingline Lender, such Defaulting Lender’s Revolving Credit Commitment Percentage of outstanding Swingline Loans other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“Fund” means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“Governmental Approvals” means all authorizations, consents, approvals, permits, licenses and exemptions of, and all registrations and filings with or issued by, any Governmental Authorities.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any monetary obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other monetary obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation, (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or monetary obligation or (e) for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (whether in whole or in part).

“Guaranteed Parties” means, collectively, the Administrative Agent, the Lenders, the Issuing Lenders, the holders of any Specified Hedge Obligations, the holders of any Specified Cash Management Obligations, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 11.5, any other holder from time to time of any of any Obligations and, in each case, their respective successors and permitted assigns.

“Guarantors” means, collectively, the Domestic Subsidiaries of the Borrower listed on Schedule 7.1 that are identified as a “Guarantor” and each other Domestic Subsidiary of the Borrower that shall be required to execute and deliver a guaranty or guaranty supplement pursuant to Section 8.12.

“Guaranty Agreement” means, collectively, (a) the Guaranty Agreement of even date herewith made by the Guarantors and the Borrower in favor of the Administrative Agent for the benefit of the Lender and (b) each other guaranty and guaranty supplement delivered pursuant to Section 8.12.

“Hazardous Materials” means any substances or materials (a) which are or become defined as hazardous wastes, hazardous substances, pollutants, contaminants, chemical substances or mixtures or toxic substances under any Environmental Law, (b) which are toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise harmful to public health or the environment and are or become regulated by any Governmental Authority, (c) the presence of which require investigation or remediation under any Environmental Law or common law, (d) the discharge or emission or release of which requires a permit or license under any Environmental Law or other Governmental Approval, (e) which are deemed by a Governmental Authority to constitute a nuisance or a trespass which pose a health or safety hazard to Persons or neighboring properties, or (f) which contain, without limitation, asbestos, polychlorinated biphenyls, urea formaldehyde foam insulation, petroleum hydrocarbons, petroleum derived substances or waste, crude oil, nuclear fuel, natural gas or synthetic gas.

“Hedge Agreement” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement.

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

“Immaterial Subsidiaries” means one or more direct or indirect Subsidiaries of Credit Parties, for which (a) (I) the total assets of any such Immaterial Subsidiary constitute no more than 1.0% of Consolidated Total Assets and (II) the total assets of all Immaterial Subsidiaries constitute, in the aggregate, no more than 5.0% of Consolidated Total Assets, and (b) (I) the percentage of gross revenues attributable to any such Immaterial Subsidiary does not exceed 1.0% of the Consolidated gross revenues of the Borrower and its Subsidiaries and (II) the percentage of gross revenues attributable to all Immaterial Subsidiaries, in the aggregate, does not exceed 5.0% of the Consolidated gross revenues of the Borrower and its Subsidiaries, in each case of clauses (a) and (b), as reflected in the most recent financial statements delivered pursuant to

Section 8.1 prior to such date. All Immaterial Subsidiaries (other than Immaterial Subsidiaries that constitute Excluded Subsidiaries by virtue of clause (b) or (c) of the definition of “Excluded Subsidiary”) as of the Closing Date are listed on Schedule 7.1 and identified as “Immaterial Subsidiaries”. Notwithstanding the foregoing, in no event shall any Domestic Subsidiary be designated as an Immaterial Subsidiary if it (x) is an obligor or guarantor of any Indebtedness in an aggregate principal amount in excess of the Threshold Amount or (y) owns the Equity Interest of any Subsidiary that is not an Excluded Subsidiary.

“Increase Effective Date” has the meaning assigned thereto in Section 5.13(c).

“Incremental Amendment” has the meaning assigned thereto in Section 5.13(e).

“Incremental Increase” has the meaning assigned thereto in Section 5.13(a).

“Incremental Lender” has the meaning assigned thereto in Section 5.13(b).

“Incremental Term Lender” means a Lender with an Incremental Term Loan Commitment or an outstanding Incremental Term Loan, in its capacity as such.

“Incremental Term Loan” has the meaning assigned thereto in Section 5.13(a)(i).

“Incremental Term Loan Commitment” means, as to any Incremental Term Lender, the obligation of such Incremental Term Lender to make a portion of the Incremental Term Loans to the account of the Borrower on the applicable borrowing date per any Incremental Amendment.

“Incremental Term Loan Facility” means any new term loan facility established pursuant to Section 5.13 and all such term loan facilities collectively as the context require.

“Incremental Term Loan Note” means a promissory note made by the Borrower in favor of an Incremental Term Lender evidencing the Incremental Term Loans made by such Incremental Term Lender, substantially in the form attached as *Exhibit A-3*, and any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

“Incremental Term Loan Percentage” means, with respect to any Incremental Term Lender at any time, the percentage of the total outstanding principal balance of the Incremental Term Loans represented by the outstanding principal balance of such Incremental Term Lender’s Incremental Term Loans.

“Indebtedness” means, with respect to any Person at any date and without duplication, the sum of the following:

(a) all liabilities, obligations and indebtedness of such Person for borrowed money including obligations of such Person evidenced by bonds, debentures, notes or other similar instruments of such Person;

(b) all obligations of such Person to pay the deferred purchase price of property or services of such Person (including all payment obligations under non-competition, earn-out or similar agreements), except (i) trade payables arising in the ordinary course of business, (ii) earn-outs, milestones and royalties payable to developers, publishers, licensors, and other third party service providers in the ordinary course of business, and (iii) any payment obligation under non-competition, earn-out or similar agreements before such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP and is past due at such time;

(c) the Attributable Indebtedness of such Person with respect to such Person's Capital Lease Obligations and Synthetic Leases (regardless of whether accounted for as indebtedness under GAAP);

(d) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person to the extent of the value of such property (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business);

(e) all Indebtedness of any other Person secured by a Lien on any asset owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements except trade payables arising in the ordinary course of business), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse (but if not assumed, limited to the lesser of such Indebtedness or the value of the assets subject to such Lien);

(f) all obligations, direct or contingent, of such Person relative to the face amount of letters of credit, whether or not drawn, including any Reimbursement Obligation, and banker's acceptances issued for the account of any such Person;

(g) all obligations of such Person in respect of Disqualified Equity Interests;

(h) all net obligations of such Person under any Hedge Agreements; and

(i) all Guarantees of any such Person with respect to any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. In respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the amount of such Indebtedness as of any date of determination will be the lesser of (x) the fair value of such assets as of such date (as determined in good faith by the Borrower) and (y) the amount of such Indebtedness as of such date.

The amount of obligations in respect of any Disqualified Equity Interests shall be valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends that are past due. The amount of any net obligation under any Hedge Agreement on any date shall be deemed to be the Hedge Termination Value thereof as of such date.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Credit Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Indemnitee” has the meaning assigned thereto in Section 12.3(b).

“Information” has the meaning assigned thereto in Section 12.10.

“Initial Issuing Lender” means (a) Wells Fargo and (b) JPMorgan Chase Bank, N.A.

“Interest Coverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated EBITDA for the most recently completed Measurement Period to (b) Consolidated Interest Expense paid or payable in cash for the most recently completed Measurement Period.

“Interest Period” means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one (1), two (2), three (3), or six (6) months thereafter, in each case as selected by the Borrower in its Notice of Borrowing or Notice of Conversion/Continuation and subject to availability; provided that:

(a) the Interest Period shall commence on the date of advance of or conversion to any Eurocurrency Rate Loan and, in the case of immediately successive Interest Periods, each successive Interest Period shall commence on the date on which the immediately preceding Interest Period expires;

(b) if any Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided that if any Interest Period with respect to a Eurocurrency Rate Loan would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the immediately preceding Business Day;

(c) any Interest Period with respect to a Eurocurrency Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the relevant calendar month at the end of such Interest Period;

(d) no Interest Period shall extend beyond the Revolving Credit Maturity Date or the maturity date with respect to the any Incremental Term Loan, as applicable; and

(e) there shall be no more than six (6) Interest Periods in effect at any time.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or debt or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of Indebtedness of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, or (c) any Acquisition.

“Investment Company Act” means the Investment Company Act of 1940 (15 U.S.C. § 80(a)(1), *et seq.*).

“IRS” means the United States Internal Revenue Service.

“ISP98” means the International Standby Practices (1998 Revision, effective January 1, 1999), International Chamber of Commerce Publication No. 590.

“Issuing Lender” means (a) solely with respect to the Existing Letter of Credit, the issuer thereof as set forth on Schedule 1.1(a), (b) the Initial Issuing Lenders and (c) any other Lender to the extent it has agreed in its sole discretion to act as an “Issuing Lender” hereunder and that has been approved in writing by the Borrower and the Administrative Agent (such approval by the Administrative Agent not to be unreasonably delayed or withheld) as an “Issuing Lender” hereunder, in each case in its capacity as issuer of any Letter of Credit. No Issuing Lender set forth in clause (a) above shall have any obligation or commitment to reissue, renew, extend or amend the Existing Letter of Credit issued thereby. Any Issuing Lender may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Lender, in which case the term “Issuing Lender” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“L/C Commitment” means, as to any Issuing Lender, the obligation of such Issuing Lender to issue Letters of Credit for the account of the Borrower or one or more of its Subsidiaries from time to time in an aggregate amount equal to (a) for each of the Initial Issuing Lenders, the amount set forth opposite the name of each such Initial Issuing Lender on Schedule 1.1(b) and (b) for any other Issuing Lender becoming an Issuing Lender after the Closing Date, such amount as separately agreed to in a written agreement between the Borrower and such Issuing Lender (which such agreement shall be promptly delivered to the Administrative Agent upon execution), in each case of clauses (a) and (b) above, any such amount may be changed after the Closing Date in a written agreement between the Borrower and such Issuing Lender (which such agreement shall be promptly delivered to the Administrative Agent upon execution); provided that the L/C Commitment with respect to any Person that ceases to be an Issuing Lender for any reason pursuant to the terms hereof shall be \$0 (subject to the Letters of Credit of such Person remaining outstanding in accordance with the provisions hereof).

“L/C Facility” means the letter of credit facility established pursuant to Article III.

“L/C Obligations” means at any time, an amount equal to the sum of (a) the aggregate undrawn and unexpired amount of the then outstanding Letters of Credit and (b) the aggregate amount of drawings under Letters of Credit which have not then been reimbursed pursuant to Section 3.5.

“L/C Participants” means, with respect to any Letter of Credit, the collective reference to all the Revolving Credit Lenders other than the applicable Issuing Lender.

“L/C Sublimit” means the lesser of (a) \$25,000,000 and (b) the Revolving Credit Commitment.

“LCA Test Date” has the meaning assigned thereto in Section 1.14.

“Lender” means each Person executing this Agreement as a Lender on the Closing Date and any other Person that shall have become a party to this Agreement as a Lender pursuant to an Assignment and Assumption or pursuant to Section 5.13, other than any Person that ceases to be a party hereto as a Lender pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender.

“Lending Office” means, with respect to any Lender, the office of such Lender maintaining such Lender’s Extensions of Credit, which office may, to the extent the applicable Lender notifies the Administrative Agent in writing, include an office or any Affiliate of such Lender or any domestic or foreign branch of such Lender or Affiliate.

“Letter of Credit Application” means an application requesting such Issuing Lender to issue a Letter of Credit and a reimbursement agreement, in each case in the form specified by the applicable Issuing Lender from time to time.

“Letters of Credit” means the collective reference to letters of credit issued pursuant to Section 3.1 and the Existing Letter of Credit. Letters of Credit may be issued in Dollars or an Alternative L/C Currency.

“Leverage Ratio Increase” has the meaning assigned thereto in Section 9.12(a).

“LIBOR Currency” means each of Dollars, Euro, Sterling, Japanese yen and Swiss franc, in each case as long as there is a published rate with respect thereto in the London interbank market.

“Lien” means, with respect to any asset, any mortgage, leasehold mortgage, lien, pledge, charge, security interest, hypothecation or encumbrance of any kind in respect of such asset. For the purposes of this Agreement, a Person shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, Capital Lease Obligation or other title retention agreement relating to such asset.

“Limited Condition Acquisition” means any Permitted Acquisition that is not conditioned on the availability of, or on obtaining, third-party financing.

“Loan Documents” means, collectively, this Agreement, each Note, the Guaranty Agreement, the Letter of Credit Applications, the Engagement Letter, each Incremental Amendment and each other document, instrument, certificate and agreement executed and delivered by the Credit Parties or any of their respective Subsidiaries in favor of or provided to the Administrative Agent or any Guaranteed Party in connection with this Agreement or otherwise referred to herein or contemplated hereby (excluding any Specified Hedge Agreement and any Specified Cash Management Agreement).

“Loans” means the collective reference to the Revolving Credit Loans, the Swingline Loans and, if applicable, any Incremental Term Loans, and “Loan” means any of such Loans.

“London Banking Day” means any day on which dealings in Dollar or Alternative Currency, as applicable, deposits are conducted by and between banks in the London interbank Eurodollar market.

“Material Adverse Effect” means a material adverse change in, or a material adverse effect on, (a) the operations, business, assets, properties or financial condition of the Borrower and its Subsidiaries, taken as a whole, (b) the ability of the Credit Parties, taken as a whole, to perform the obligations under any Loan Document, (c) the rights and remedies of the Administrative Agent or any Lender under any Loan Document or (d) the legality, validity, binding effect or enforceability against the Credit Parties, taken as a whole, of any Loan Document.

“Measurement Period” means, at any date of determination, the most recently completed four fiscal quarters of the Borrower for which financial statements have been provided pursuant to Section 8.1(a) or (b), as applicable.

“Minimum Collateral Amount” means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during the existence of a Defaulting Lender, an amount equal to 105% of the Fronting Exposure of the Issuing Lenders with respect to Letters of Credit issued and outstanding at such time, (b) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of Section 10.2(b), an amount equal to 105% of the aggregate outstanding amount of all L/C Obligations and (c) otherwise, an amount determined by the Administrative Agent and each of the applicable Issuing Lenders that is entitled to Cash Collateral hereunder at such time in their sole discretion.

“Moody’s” means Moody’s Investors Service, Inc.

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA to which any Credit Party or any ERISA Affiliate is making, or is accruing an obligation to make, or has accrued an obligation to make contributions within the preceding seven (7) years.



“Non-Consenting Lender” means any Lender that does not approve any consent, waiver, amendment, modification or termination that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 12.2 and (b) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Non-Guarantor Subsidiary” means any Subsidiary of the Borrower that is not a Guarantor.

“Non-LIBOR Currency” means any Alternative Currency other than a LIBOR Currency.

“Non-Wholly-Owned Subsidiary” means any Subsidiary of the Borrower that is not Wholly-Owned.

“Notes” means the collective reference to the Revolving Credit Notes, the Swingline Note and, if applicable, any Incremental Term Loan Note.

“Notice of Account Designation” has the meaning assigned thereto in Section 2.3(b).

“Notice of Borrowing” has the meaning assigned thereto in Section 2.3(a).

“Notice of Conversion/Continuation” has the meaning assigned thereto in Section 5.2.

“Notice of Prepayment” has the meaning assigned thereto in Section 2.4(c).

“Obligations” means, in each case, whether now in existence or hereafter arising: (a) the principal of and interest on (including interest accruing after the filing of any bankruptcy or similar petition) the Loans, (b) the L/C Obligations, (c) any Specified Hedge Obligations, (d) any Specified Cash Management Obligations and (e) all other fees and commissions (including attorneys’ fees), charges, indebtedness, loans, liabilities, financial accommodations, obligations, covenants and duties owing by the Credit Parties to the Lenders, the Issuing Lender or the Administrative Agent, in each case under any Loan Document, with respect to any Loan or Letter of Credit of every kind, nature and description, direct or indirect, absolute or contingent, due or to become due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any note and including interest and fees that accrue after the commencement by or against any Credit Party of any proceeding under any Debtor Relief Laws, naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“OFAC” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

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

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its

obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 5.12).

“Overnight Rate” means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent, the Issuing Lender, or the Swingline Lender, as the case may be, in accordance with banking industry rules on interbank compensation, and (b) with respect to any amount denominated in an Alternative Currency, the rate of interest per annum at which overnight deposits in the applicable Alternative Currency, in an amount approximately equal to the amount with respect to which such rate is being determined, would be offered for such day by a branch or Affiliate of the Administrative Agent in the applicable offshore interbank market for such currency to major banks in such interbank market.

“Participant” has the meaning assigned thereto in Section 12.9(d).

“Participant Register” has the meaning assigned thereto in Section 12.9(d).

“Participating Member State” means each member state of the European Union that has the Euro as its lawful currency so described in any EMU Legislation.

“PATRIOT Act” means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

“PBGC” means the Pension Benefit Guaranty Corporation or any successor agency.

“Pension Plan” means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to the provisions of Title IV of ERISA or Section 412 of the Code and which (a) is maintained, funded or administered for the employees of any Credit Party or any ERISA Affiliate or (b) has at any time within the preceding seven (7) years been maintained, funded or administered for the employees of any Credit Party or any current or former ERISA Affiliates.

“Permitted Acquisition” means any Acquisition consummated pursuant to Section 9.3(o).

“Permitted Liens” means the Liens permitted pursuant to Section 9.2.

“Permitted Refinancing Indebtedness” means any Indebtedness (the “Refinancing Indebtedness”), used to modify, refinance, refund, renew, extend or replace outstanding Indebtedness (such outstanding Indebtedness, the “Refinanced Indebtedness”); provided that (a) the principal amount (or accreted value, if applicable) of such Refinancing Indebtedness is not greater than the principal amount (or accreted value, if applicable) of the Refinanced Indebtedness at the time of such modification, refinancing, refunding, renewal, extension or replacement, except by an amount equal to unpaid accrued interest and premium thereon plus other reasonable amounts paid, and fees and expenses reasonably incurred, in connection with such modification, refinancing, refunding, renewal, extension or replacement, and by an amount equal to any existing commitments thereunder that have not been utilized at the time of such modification, refinancing,

refunding, renewal, extension or replacement, (b) the final maturity and weighted average life to maturity of such Refinancing Indebtedness shall not be prior to or shorter than that applicable to the Refinanced Indebtedness, (c) the primary obligor and guarantors of such Refinancing Indebtedness shall be (i) the Borrower or any Subsidiary who is the obligor or guarantor of the Refinanced Indebtedness, (ii) any Credit Party if the obligor or guarantor of the Refinanced Indebtedness is a Credit Party or (iii) any Non-Guarantor Subsidiary if the obligor or guarantor of the Refinanced Indebtedness is a Non-Guarantor Subsidiary, (d) such Refinancing Indebtedness shall not be secured by (i) Liens on assets other than assets securing the Refinanced Indebtedness at the time of such modification, refinancing, refunding, renewal, extension or replacement or (ii) Liens having a higher priority than the Liens, if any, securing the Refinanced Indebtedness, except, in each case, unless such Liens are Permitted Liens, (e) to the extent such Refinanced Indebtedness is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal, extension or replacement is subordinated in right of payment to the Obligations on subordination terms at least as favorable to the Lenders as those contained in the documentation governing such Refinanced Indebtedness or otherwise reasonably acceptable to the Administrative Agent, (f) the terms (excluding subordination, pricing, premiums and optional prepayment or redemption terms) of such Refinancing Indebtedness, taken as a whole, are not (as determined in good faith by the Borrower) materially more restrictive on the Borrower and its Subsidiaries than the terms of the Refinanced Indebtedness, taken as a whole, and (g) no Event of Default shall have occurred and be continuing at the time of such modification, refinancing, refunding, renewal, extension or replacement.

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

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Borrower or any ERISA Affiliate or any such Plan to which the Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Platform” means Debt Domain, Intralinks, SyndTrak or a substantially similar electronic transmission system.

“Prime Rate” means, at any time, the rate of interest per annum publicly announced from time to time by the Administrative Agent as its prime rate. Each change in the Prime Rate shall be effective as of the opening of business on the day such change in such prime rate occurs. The parties hereto acknowledge that the rate announced publicly by the Administrative Agent as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks.

“Pro Forma Basis” means:

(a) for purposes of calculating Consolidated EBITDA for any period during which one or more Specified Transactions occurs, that such Specified Transaction (and all other Specified Transactions that have been consummated during the applicable period) shall be deemed to have occurred as of the first day of the applicable period of measurement and (i) there shall be included in determining Consolidated EBITDA for such period, without duplication, the Acquired EBITDA of any Person or business, or attributable to any property or asset, acquired by the Borrower or any Subsidiary during such period (but not the Acquired EBITDA of any related Person or business or any Acquired EBITDA attributable to any assets or property, in each case to the extent not so acquired) in connection with a Permitted Acquisition to the extent not subsequently sold, transferred, abandoned or otherwise disposed by the Borrower or such Subsidiary, based on the actual Acquired EBITDA of such acquired entity or business for such period (including the portion thereof occurring prior to such acquisition or conversion) and (y) there shall be excluded in determining

Consolidated EBITDA for such period, without duplication, the Disposed EBITDA of any Person or business, or attributable to any property or asset, Disposed of by the Borrower or any Subsidiary during such period in connection with a Specified Disposition or discontinuation of operations, based on the Disposed EBITDA of such Disposed entity or business or discontinued operations for such period (including the portion thereof occurring prior to such Disposition or discontinuation); provided that the foregoing amounts shall be without duplication of any adjustments that are already included in the calculation of Consolidated EBITDA, and

(b) in the event that the Borrower or any Subsidiary incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement, discharge, defeasance or extinguishment) any Indebtedness included in the calculations of any financial ratio or test (in each case, other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes), (i) during the applicable measurement period or (ii) subsequent to the end of the applicable measurement period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving pro forma effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the last day of the applicable measurement period and any such Indebtedness that is incurred (including by assumption or guarantee) that has a floating or formula rate of interest shall have an implied rate of interest for the applicable period determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as of the relevant date of determination.

“Projections” has the meaning assigned thereto in Section 6.1(d)(ii).

“Property” means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Equity Interests.

“PTE” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“Public Lenders” has the meaning assigned thereto in Section 8.2.

“Qualified Equity Interests” means any Equity Interests that are not Disqualified Equity Interests.

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

“Register” has the meaning assigned thereto in Section 12.9(c).

“Reimbursement Obligation” means the obligation of the Borrower to reimburse any Issuing Lender pursuant to Section 3.5 for amounts drawn under Letters of Credit issued by such Issuing Lender.

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

“Removal Effective Date” has the meaning assigned thereto in Section 11.6(b).

“Replacement Rate” has the meaning assigned thereto in Section 5.8(c).

“Required Lenders” means, at any time, Lenders having Total Credit Exposure representing more than fifty percent (50%) of the Total Credit Exposure of all Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Required Revolving Credit Lenders” means, at any time, Revolving Credit Lenders having unused Revolving Credit Commitments and Revolving Credit Exposure representing more than 50% of the aggregate unused Revolving Credit Commitments and Revolving Credit Exposure of all Revolving Credit Lenders. The unused Revolving Credit Commitment of, and Revolving Credit Exposure held or deemed held by, any Defaulting Lender shall be disregarded in determining Required Revolving Credit Lenders at any time.

“Resignation Effective Date” has the meaning assigned thereto in Section 11.6(a).

“Responsible Officer” means, as to any Person, the chief executive officer, president, chief financial officer, controller, treasurer, assistant treasurer, corporate secretary or general counsel of such Person or any other officer of such Person designated in writing by the Borrower and reasonably acceptable to the Administrative Agent; provided that, to the extent requested thereby, the Administrative Agent shall have received a certificate of such Person certifying as to the incumbency and genuineness of the signature of each such officer. Any document delivered hereunder or under any other Loan Document that is signed by a Responsible Officer of a Person shall be conclusively presumed to have been authorized by all necessary corporate, limited liability company, partnership and/or other action on the part of such Person and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Person.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of the Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to the Borrower’s stockholders, partners or members (or the equivalent Person thereof).

“Revaluation Date” means:

(a) with respect to any Loan, each date of a borrowing or continuation of a Eurocurrency Rate Loan denominated in an Alternative Currency and, at any time when either (i) an Event of Default has occurred and is continuing or (ii) the Revolving Credit Outstandings exceed 75% of the Revolving Credit Commitment, such additional dates as the Administrative Agent shall determine or the Required Lenders shall require; and

(b) with respect to any Letter of Credit, (i) each date of issuance of a Letter of Credit denominated in an Alternative L/C Currency (or an amendment of any such Letter of Credit having the effect of increasing the amount thereof), (ii) each date of any payment by an Issuing Lender under any Letter of Credit denominated in an Alternative L/C Currency and (iii) at any time when (A) an Event of Default has occurred and is continuing or (B) the Revolving Credit Outstandings exceed 75% of the Revolving Credit Commitment, such additional dates as the Administrative Agent or an Issuing Lender shall determine or the Required Lenders shall require.

“Revolving Credit Commitment” means (a) as to any Revolving Credit Lender, the obligation of such Revolving Credit Lender to make Revolving Credit Loans to, and to purchase participations in L/C Obligations and Swingline Loans for the account of, the Borrower hereunder in an aggregate principal Dollar amount at any time outstanding not to exceed the amount set forth opposite such Revolving Credit Lender’s name on the Register, as such Dollar amount may be modified at any time or from time to time pursuant to

the terms hereof (including, without limitation, Section 5.13) and (b) as to all Revolving Credit Lenders, the aggregate commitment of all Revolving Credit Lenders to make Revolving Credit Loans, as such Dollar amount may be modified at any time or from time to time pursuant to the terms hereof (including, without limitation, Section 5.13). The aggregate Revolving Credit Commitment of all the Revolving Credit Lenders on the Closing Date shall be \$200,000,000. The Revolving Credit Commitment of each Revolving Credit Lender is set forth opposite the name of such Lender on Schedule 1.1(b).

“Revolving Credit Commitment Percentage” means, with respect to any Revolving Credit Lender at any time, the percentage of the total Revolving Credit Commitments of all the Revolving Credit Lenders represented by such Revolving Credit Lender’s Revolving Credit Commitment. If the Revolving Credit Commitments have terminated or expired, the Revolving Credit Commitment Percentages shall be determined based upon the Revolving Credit Commitments most recently in effect, giving effect to any assignments. The initial Revolving Credit Commitment Percentage of each Revolving Credit Lender is set forth opposite the name of such Lender on Schedule 1.1(b).

“Revolving Credit Exposure” means, as to any Revolving Credit Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Credit Loans and such Revolving Credit Lender’s participation in L/C Obligations and Swingline Loans at such time.

“Revolving Credit Facility” means the revolving credit facility established pursuant to Article II (including any increase in such revolving credit facility established pursuant to Section 5.13).

“Revolving Credit Facility Increase” has the meaning assigned thereto in Section 5.13(a)(ii).

“Revolving Credit Lenders” means, collectively, all of the Lenders with a Revolving Credit Commitment.

“Revolving Credit Loan” means any revolving loan made to the Borrower pursuant to Section 2.1, and all such revolving loans collectively as the context requires.

“Revolving Credit Maturity Date” means the earliest to occur of (a) February 8, 2024, (b) the date of termination of the entire Revolving Credit Commitment by the Borrower pursuant to Section 2.5, and (c) the date of termination of the Revolving Credit Commitment pursuant to Section 10.2(a).

“Revolving Credit Note” means a promissory note made by the Borrower in favor of a Revolving Credit Lender evidencing the Revolving Credit Loans made by such Revolving Credit Lender, substantially in the form attached as *Exhibit A-1*, and any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

“Revolving Credit Outstandings” means the sum of (a) with respect to Revolving Credit Loans and Swingline Loans on any date, the Dollar Equivalent amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Credit Loans and Swingline Loans, as the case may be, occurring on such date; plus (b) with respect to any L/C Obligations on any date, the Dollar Equivalent amount of the aggregate outstanding amount thereof on such date after giving effect to any Extensions of Credit occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

“S&P” means Standard & Poor’s Rating Service, a division of S&P Global Inc. and any successor thereto.

“Same Day Funds” means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in an Alternative Currency or an Alternative L/C Currency, same day or other funds as may be determined by the Administrative Agent or an Issuing Lender, as applicable, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency or Alternative L/C Currency.

“Sanctioned Country” means at any time, a country, region or territory which is itself or whose government, in either case, is the subject or target of any Sanctions (including, as of the Closing Date, Cuba, Iran, North Korea, Syria and Crimea).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including OFAC’s Specially Designated Nationals and Blocked Persons List and OFAC’s Consolidated Non-SDN List), the U.S. Department of State, the United Nations Security Council, the European Union, any European member state, Her Majesty’s Treasury, or other relevant sanctions authority applicable to any party to this Agreement, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned 50% or more, individually or in the aggregate, directly or indirectly, or Controlled by any such Person or Persons described in clauses (a) and (b), including a Person that is deemed by OFAC to be a Sanctions target based on the ownership of such legal entity by Sanctioned Person(s) or (d) any Person otherwise a target of Sanctions.

“Sanctions” means any and all economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and anti-terrorism laws, including but not limited to those imposed, administered or enforced from time to time by the U.S. government (including those administered by OFAC or the U.S. Department of State), the United Nations Security Council, the European Union, Her Majesty’s Treasury, or other relevant sanctions authority in any jurisdiction.

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

“Securities Act” means the Securities Act of 1933 (15 U.S.C. § 77 *et seq.*).

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the Property of such Person and its Subsidiaries, on a Consolidated basis, is greater than the total amount of liabilities, including contingent liabilities, of such Person and its Subsidiaries, on a Consolidated basis, (b) the present fair salable value of the Property of such Person and its Subsidiaries, on a Consolidated basis, is not less than the amount that will be required to pay the probable liability of such Person and its Subsidiaries, on a Consolidated basis, on their debts as they become absolute and matured, (c) such Person and its Subsidiaries, on a Consolidated basis, do not intend to, and do not believe that they will, incur debts or liabilities beyond their ability to pay such debts and liabilities as they mature in the ordinary course of business, and (d) the capital of such Person and its Subsidiaries, on a Consolidated basis, is not unreasonably small in relation to the business of such Person and its Subsidiaries, on a Consolidated basis, as of such date. For purposes of this definition, the amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Special Notice Currency” means at any time an Alternative Currency or Alternative L/C Currency, other than the currency of a country that is a member of the Organization for Economic Cooperation and Development at such time located in North America or Europe.

“Specified Agreements” means the collective reference to agreements set forth in Item (5) and Item (9) of Schedule 9.13, as such agreements may be amended, restated, supplemented or otherwise modified, subject to the limitations set forth in Section 9.13.

“Specified Cash Management Agreement” means (a) any Cash Management Agreement between or among the Borrower or any of its Subsidiaries and a counterparty that is the Administrative Agent or any of its Affiliates, (b) any Cash Management Agreement in effect on the Closing Date between or among the Borrower or any of its Subsidiaries and a counterparty that is a Lender or an Affiliate of a Lender as of the Closing Date or (c) any Cash Management Agreement entered into after the Closing Date between or among the Borrower or any of its Subsidiaries and a counterparty that is a Lender, an Agent or an Affiliate of a Lender or an Agent at the time such Cash Management Agreement is entered into.

“Specified Cash Management Obligations” means all existing or future payment and other obligations owing by the Borrower or any of its Subsidiaries under any Specified Cash Management Agreement.

“Specified Documents” means those agreements set forth on Schedule 9.13, as such agreements may be amended, restated, supplemented or otherwise modified, subject to the limitations set forth in Section 9.13.

“Specified Disposition” means any Asset Disposition (other than an Asset Disposition permitted under Sections 9.5(a) through (m)) having gross sales proceeds in excess of \$20,000,000.

“Specified Hedge Agreement” means (a) any Hedge Agreement between or among the Borrower or any of its Subsidiaries and a counterparty that is the Administrative Agent or any of its Affiliates, (b) any Hedge Agreement in effect on the Closing Date between or among the Borrower or any of its Subsidiaries and a counterparty that is a Lender or an Affiliate of a Lender as of the Closing Date or (c) any Hedge Agreement entered into after the Closing Date between or among the Borrower or any of its Subsidiaries and a counterparty that is a Lender, an Agent or an Affiliate of a Lender or an Agent at the time such Hedge Agreement is entered into.

“Specified Hedge Obligations” means all existing or future payment and other obligations owing by the Borrower or any of its Subsidiaries under any Specified Hedge Agreement; provided that the “Specified Hedge Obligations” of a Credit Party shall exclude any Excluded Swap Obligations with respect to such Credit Party.

“Specified Transactions” means (a) any Specified Disposition and (b) any Permitted Acquisition.

“Spot Rate” for a currency means the rate determined by the Administrative Agent or an Issuing Lender, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two (2) Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent or an Issuing Lender, as the case may be, may obtain such spot rate from another financial institution designated by the Administrative Agent or such Issuing Lender if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; provided further that an Issuing Lender may use such spot rate



quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative L/C Currency.

“Sterling” or “£” means the lawful currency of the United Kingdom.

“Subordinated Indebtedness” means the collective reference to any Indebtedness incurred by the Borrower or any of its Subsidiaries that is subordinated in right and time of payment to the Obligations on terms and conditions satisfactory to the Administrative Agent.

“Subsidiary” means as to any Person, any corporation, partnership, limited liability company or other entity of which more than fifty percent (50%) of the outstanding Equity Interests having ordinary voting power to elect a majority of the board of directors (or equivalent governing body) or other managers of such corporation, partnership, limited liability company or other entity is at the time owned by (directly or indirectly) or the management is otherwise controlled by (directly or indirectly) such Person (irrespective of whether, at the time, Equity Interests of any other class or classes of such corporation, partnership, limited liability company or other entity shall have or might have voting power by reason of the happening of any contingency). Unless otherwise qualified, references to “Subsidiary” or “Subsidiaries” herein shall refer to those of the Borrower.

“Swap Obligation” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Swingline Commitment” means the lesser of (a) \$20,000,000 and (b) the Revolving Credit Commitment.

“Swingline Facility” means the swingline facility established pursuant to Section 2.2.

“Swingline Lender” means Wells Fargo in its capacity as swingline lender hereunder or any successor thereto.

“Swingline Loan” means any swingline loan made by the Swingline Lender to the Borrower pursuant to Section 2.2, and all such swingline loans collectively as the context requires.

“Swingline Note” means a promissory note made by the Borrower in favor of the Swingline Lender evidencing the Swingline Loans made by the Swingline Lender, substantially in the form attached as *Exhibit A-2*, and any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

“Swingline Participation Amount” has the meaning assigned thereto in Section 2.2(b)(iii).

“Synthetic Lease” means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an operating lease in accordance with GAAP.

“TARGET Day” means any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET) payment system (or, if such payment system ceases to be operative, such other payment system (if any) determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

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

“Termination Event” means the occurrence of any of the following which, individually or in the aggregate, has resulted or could reasonably be expected to result in liability of the Borrower in an aggregate amount in excess of the Threshold Amount: (a) a “Reportable Event” described in Section 4043 of ERISA for which the thirty (30) day notice requirement has not been waived by the PBGC, or (b) the withdrawal of any Credit Party or any ERISA Affiliate from a Pension Plan during a plan year in which it was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA, or (c) the termination of a Pension Plan, the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination, under Section 4041 of ERISA, if the plan assets are not sufficient to pay all plan liabilities, or (d) the institution of proceedings to terminate, or the appointment of a trustee with respect to, any Pension Plan by the PBGC, or (e) any other event or condition which would constitute grounds under Section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, or (f) the imposition of a Lien pursuant to Section 430(k) of the Code or Section 303 of ERISA, or (g) the determination that any Pension Plan or Multiemployer Plan is considered an at-risk plan or plan in endangered or critical status with the meaning of Sections 430, 431 or 432 of the Code or Sections 303, 304 or 305 of ERISA or (h) the partial or complete withdrawal of any Credit Party or any ERISA Affiliate from a Multiemployer Plan if withdrawal liability is asserted by such plan, or (i) any event or condition which results in the reorganization or insolvency of a Multiemployer Plan under Sections 4241 or 4245 of ERISA, or (j) any event or condition which results in the termination of a Multiemployer Plan under Section 4041A of ERISA or the institution by PBGC of proceedings to terminate a Multiemployer Plan under Section 4042 of ERISA, or (k) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Credit Party or any ERISA Affiliate.

“Threshold Amount” means \$50,000,000.

“Total Credit Exposure” means, as to any Lender at any time, the unused Commitments, Revolving Credit Exposure and outstanding Incremental Term Loans of such Lender at such time.

“Trade Date” has the meaning assigned thereto in Section 12.9(g)(i).

“Transactions” means, collectively, (a) the repayment in full of all Indebtedness outstanding under the Existing Credit Agreement and (b) the entering into this Agreement and the initial Extensions of Credit hereunder.

“UCC” means the Uniform Commercial Code as in effect in the State of New York.

“United States” means the United States of America.

“Unrestricted Cash and Cash Equivalents” means, as of any date of determination, the sum of (a) 100% of all cash and Cash Equivalents of the Borrower and its Domestic Subsidiaries and (b) 50% of all cash and Cash Equivalents of the Foreign Subsidiaries of the Borrower, in each case that are unrestricted and not subject to any Liens (other than Liens permitted under Section 9.2(a) and (l)).

“U.S. Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning assigned thereto in Section 5.11(g).

“Wells Fargo” means Wells Fargo Bank, National Association, a national banking association.

“Wholly-Owned” means, with respect to a Subsidiary, that all of the Equity Interests of such Subsidiary are, directly or indirectly, owned or controlled by the Borrower and/or one or more of its Wholly-Owned Subsidiaries (except for directors’ qualifying shares or other shares required by Applicable Law to be owned by a Person other than the Borrower and/or one or more of its Wholly-Owned Subsidiaries).

“Withholding Agent” means the Borrower and the Administrative Agent.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

**SECTION 1.2 Other Definitions and Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document: (a) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined, (b) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms, (c) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”, (d) the word “will” shall be construed to have the same meaning and effect as the word “shall”, (e) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (f) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (g) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (h) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, (i) the term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form and (j) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including”.

**SECTION 1.3 Accounting Terms.**

(a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP, applied on a consistent basis, as in effect from time to time and in a manner consistent with that used in preparing the audited financial statements required by Section 8.1(a), except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such

ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP; provided, further that (A) all liabilities related to operating leases, as defined by FASB ASC 842 as of the Closing Date, shall be excluded from the definitions of “Indebtedness” and “Consolidated Funded Indebtedness” and (B) payments related to operating leases, as defined by FASB ASC 842 as of the Closing Date, shall not be included in Consolidated Interest Expense in part or in whole.

(c) Any provision of this Agreement that requires compliance on a Pro Forma Basis with the Consolidated Net Leverage Ratio set forth in Section 9.12 shall be deemed to include any Leverage Ratio Increase then in effect pursuant to Section 9.12(a).

SECTION 1.4 UCC Terms. Terms defined in the UCC in effect on the Closing Date and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term “UCC” refers, as of any date of determination, to the UCC then in effect.

SECTION 1.5 Rounding. Any financial ratios required to be maintained pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio or percentage is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

SECTION 1.6 References to Agreement and Laws. Unless otherwise expressly provided herein, (a) any definition or reference to formation documents, governing documents, agreements (including the Loan Documents) and other contractual documents or instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and (b) any definition or reference to any Applicable Law, including, without limitation, Anti-Corruption Laws, Anti-Money Laundering Laws, the Bankruptcy Code, the Code, the Commodity Exchange Act, ERISA, the Exchange Act, the PATRIOT Act, the Securities Act, the UCC, the Investment Company Act, the Trading with the Enemy Act of the United States or any of the foreign assets control regulations of the United States Treasury Department, shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Applicable Law.

SECTION 1.7 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

SECTION 1.8 Letter of Credit Amounts. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to mean the maximum face amount of such Letter of Credit after giving effect to all increases thereof contemplated by such Letter of Credit or the Letter of Credit Application therefor (at the time specified therefor in such applicable Letter of Credit or Letter of Credit Application and as such amount may be reduced by (a) any permanent reduction of such Letter of Credit or (b) any amount which is drawn, reimbursed and no longer available under such Letter of Credit).

SECTION 1.9 Guarantees/Earn-Outs. Unless otherwise specified, (a) the amount of any Guarantee shall be the lesser of the amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument

embodying such Guarantee and (b) the amount of any earn-out or similar obligation shall be the amount of such obligation as reflected on the balance sheet of such Person in accordance with GAAP.

SECTION 1.10 Covenant Compliance Generally. For purposes of determining compliance under Sections 9.1, 9.2, 9.3, 9.5 and 9.6, any amount in a currency other than Dollars will be converted to Dollars in a manner consistent with that used in calculating Consolidated Net Income in the most recent annual financial statements of the Borrower and its Subsidiaries delivered pursuant to Section 8.1(a). Notwithstanding the foregoing, for purposes of determining compliance with Sections 9.1, 9.2 and 9.3, with respect to any amount of Indebtedness or Investment in a currency other than Dollars, no breach of any basket contained in such sections shall be deemed to have occurred solely as a result of changes in rates of exchange occurring after the time such Indebtedness or Investment is incurred; provided that for the avoidance of doubt, the foregoing provisions of this Section 1.10 shall otherwise apply to such Sections, including with respect to determining whether any Indebtedness or Investment may be incurred at any time under such Sections.

SECTION 1.11 Exchange Rates; Currency Equivalents.

(a) The Administrative Agent or the applicable Issuing Lender shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of Extensions of Credit and Revolving Credit Outstandings and Revolving Credit Exposure denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Credit Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein (including, without limitation, Section 1.10), the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the applicable Issuing Lender.

(b) Wherever in this Agreement in connection with a borrowing, conversion, continuation or prepayment of a Eurocurrency Rate Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum, a required maximum or multiple amount, is expressed in Dollars, but such Eurocurrency Rate Loan or Letter of Credit is denominated in an Alternative Currency or an Alternative L/C Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the applicable Issuing Lender, as applicable.

SECTION 1.12 Change of Currency.

(a) The obligation of the Borrower to make a payment denominated in the national currency unit of any member state of the European Union that adopts the Euro as its lawful currency after the date hereof shall be redenominated into Euro at the time of such adoption (in accordance with the EMU Legislation). If, in relation to the currency of any such member state, the basis of accrual of interest expressed in this Agreement in respect of that currency shall be inconsistent with any convention or practice in the London interbank market for the basis of accrual of interest in respect of the Euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such member state adopts the Euro as its lawful currency; provided that if any borrowing in the currency of such member state is outstanding immediately prior to such date, such replacement shall take effect, with respect to such borrowing, at the end of the then current Interest Period.

(b) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect the adoption of the

Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro.

(c) Each provision of this Agreement also shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect a change in currency of any other country and any relevant market conventions or practices relating to the change in currency.

SECTION 1.13 Additional Alternative Currencies.

(a) The Borrower may from time to time request that (i) Eurocurrency Rate Loans be made in a currency other than those specifically listed in the definition of "Alternative Currency" and/or (ii) Letters of Credit be issued in a currency other than those specifically listed in the definition of "Alternative L/C Currency"; provided that such requested currency is (A) a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars (B) dealt with in the London interbank deposit market and (C) for which no central bank or other governmental authorization in the country of issue of such currency is required to give authorization for the use of such currency by any Revolving Credit Lender for making Loans unless such authorization has been obtained and remains in full force and effect. In the case of any such request with respect to the making of Eurocurrency Rate Loans, such request shall be subject to the approval of the Administrative Agent and the Revolving Credit Lenders; and in the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the Administrative Agent, the Revolving Credit Lenders and the applicable Issuing Lender or Issuing Lenders.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m., (i) with respect to a request for an additional Alternative Currency, 20 Business Days prior to the date of the desired Extension of Credit (or such other time or date as may be agreed by the Administrative Agent in its sole discretion) or (ii) with respect to a request for an additional Alternative L/C Currency, 5 Business Days prior to the date of the desired Letter of Credit (or such other time or date as may be agreed by the applicable Issuing Lender, in its sole discretion). In the case of any such request pertaining to Eurocurrency Rate Loans, the Administrative Agent shall promptly notify each Revolving Credit Lender thereof; and in the case of any such request pertaining to Letters of Credit, the Administrative Agent shall promptly notify the Issuing Lender thereof. Each Revolving Credit Lender (in the case of any such request pertaining to Eurocurrency Rate Loans) shall notify the Administrative Agent, not later than 11:00 a.m., ten Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Eurocurrency Rate Loans in such requested currency. The applicable Issuing Lender (in the case of a request pertaining to Letters of Credit) shall notify the Administrative Agent, not later than 11:00 a.m., three Business Days after receipt of such request whether it consents, in its sole discretion, to the issuance of Letters of Credit in such requested currency.

Any failure by a Revolving Credit Lender or the applicable Issuing Lender, as the case may be, to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Lender or the applicable Issuing Lender, as the case may be, to permit Eurocurrency Rate Loans to be made or Letters of Credit to be issued in such requested currency. If the Administrative Agent and all the Revolving Credit Lenders consent to making Eurocurrency Rate Loans in such requested currency, the Administrative Agent shall so notify the Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any borrowings of Eurocurrency Rate Loans; and if the Administrative Agent, all the Revolving Credit Lenders and the applicable Issuing Lender consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative L/C

Currency hereunder for purposes of any Letter of Credit issuances by such Issuing Lender. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.13, the Administrative Agent shall promptly so notify the Borrower.

SECTION 1.14 Limited Condition Acquisitions. Notwithstanding anything in this Agreement to the contrary, if the Borrower notifies the Administrative Agent in writing prior to or concurrently with the execution of the definitive purchase agreement, merger agreement or other acquisition agreement governing a Limited Condition Acquisition (the time of such execution, the "LCA Test Date") that in connection with such Limited Condition Acquisition the Borrower wishes to test the conditions to such Limited Condition Acquisition and the availability of any Indebtedness being incurred substantially concurrently with such Limited Condition Acquisition that is to be used solely to finance all or part of such Limited Condition Acquisition in accordance with this Section 1.14, then the following provisions shall apply:

(a) any condition to such Limited Condition Acquisition or such Indebtedness that requires that no Default or Event of Default shall have occurred and be continuing at the time of such Limited Condition Acquisition or the incurrence of such Indebtedness, shall be satisfied if (i) no Default or Event of Default shall have occurred and be continuing at the time of the LCA Test Date and (ii) no Event of Default under any of Section 10.1(a), 10.1(b), 10.1(h) or 10.1(i) would occur and be continuing both immediately before and immediately after giving effect to such Limited Condition Acquisition and any Indebtedness incurred in connection therewith (including any such additional Indebtedness);

(b) any condition to such Limited Condition Acquisition or such Incremental Term Loans that the representations and warranties in this Agreement and the other Loan Documents shall be true and correct at the time of consummation of such Limited Condition Acquisition or the incurrence of such Incremental Term Loans shall be deemed satisfied if (i) as of the date of consummation of such Limited Condition Acquisition, (A) the representations and warranties under the relevant definitive agreement governing such Limited Condition Acquisition as are material to the Incremental Lenders providing such Incremental Term Loans shall be true and correct, but only to the extent that the Borrower or its applicable Subsidiary has the right to terminate its obligations under such agreement prior to consummation of such Limited Condition Acquisition as a result of a breach of such representations and warranties or the failure of those representations and warranties to be true and correct and (B) all representations and warranties under Sections 7.1(a), 7.3, 7.4(b), 7.4(c), 7.10, 7.11, 7.14, and 7.16 shall be true and correct in all material respects (except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects) and (ii) all representations and warranties in this Agreement and the other Loan Documents are true and correct in all material respects (except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects) as of the LCA Test Date, or if such representation speaks as of an earlier date, as of such earlier date.

(c) any financial ratio test or condition to be tested in connection with such Limited Condition Acquisition and the availability of such Indebtedness will be tested as of the LCA Test Date, in each case, after giving effect to the relevant Limited Condition Acquisition and related incurrence of Indebtedness, on a Pro Forma Basis where applicable; and

(d) in connection with any subsequent calculation of any ratio or basket on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated and the date that the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be calculated on a Pro Forma Basis assuming such Limited Condition Acquisition and other transactions in

connection therewith (including any incurrence or assumption of Indebtedness and use of proceeds thereof) have been consummated; provided that (x) (other than solely with respect to the incurrence tests under which such Limited Condition Acquisition is being made, which are being tested as of the LCA Test Date) Consolidated EBITDA, Indebtedness and Consolidated Net Income attributable to any target of such Limited Condition Acquisition can only be used in determination of the relevant ratio and baskets if and when such Limited Condition Acquisition is consummated and (y) (1) if any of such ratios or baskets are exceeded as a result of fluctuations in such ratio (including due to fluctuations in Consolidated EBITDA of the Borrower) at or prior to the consummation of such Limited Condition Acquisition, such ratios and baskets will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether such Limited Condition Acquisition is permitted hereunder and (2) such ratios and baskets shall not be tested at the time of consummation of such Limited Condition Acquisition. Notwithstanding the foregoing, any calculation of a ratio in connection with determining the Applicable Margin and determining whether or not the Borrower is in compliance with the financial covenants set forth in Section 9.12 shall, in each case be calculated assuming such Limited Condition Acquisition and other transactions in connection therewith (including the incurrence or assumption of Indebtedness) have not been consummated.

The foregoing provisions shall apply with similar effect during the pendency of multiple Limited Condition Acquisitions such that each of the possible scenarios is tested separately. Notwithstanding anything to the contrary herein, in no event shall there be more than two Limited Condition Acquisitions at any time outstanding.

SECTION 1.15 Rates. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to the rates in the definition of “Eurocurrency Rate”.

## ARTICLE II

### REVOLVING CREDIT FACILITY

SECTION 2.1 Revolving Credit Loans. Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties set forth in this Agreement and the other Loan Documents, each Revolving Credit Lender severally agrees to make Revolving Credit Loans to the Borrower in Dollars or one or more Alternative Currencies from time to time from the Closing Date to, but not including, the Revolving Credit Maturity Date as requested by the Borrower in accordance with the terms of Section 2.3; provided, that (a) the Revolving Credit Outstandings shall not exceed the Revolving Credit Commitment, (b) the Revolving Credit Exposure of any Revolving Credit Lender shall not at any time exceed such Revolving Credit Lender’s Revolving Credit Commitment and (c) the aggregate principal amount of all outstanding Revolving Credit Loans denominated in Alternative Currencies and Letters of Credit denominated in Alternative L/C Currencies shall not exceed the Alternative Currency Sublimit. Each Revolving Credit Loan by a Revolving Credit Lender shall be in a principal amount equal to such Revolving Credit Lender’s Revolving Credit Commitment Percentage of the aggregate principal amount of Revolving Credit Loans requested on such occasion. Subject to the terms and conditions hereof, the Borrower may borrow, repay and reborrow Revolving Credit Loans hereunder until the Revolving Credit Maturity Date.



## SECTION 2.2 Swingline Loans.

(a) Availability. Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties set forth in this Agreement and the other Loan Documents, the Swingline Lender may, in its sole discretion, make Swingline Loans in Dollars to the Borrower from time to time from the Closing Date to, but not including, the Revolving Credit Maturity Date; provided, that (i) after giving effect to any amount requested, the Revolving Credit Outstandings shall not exceed the Revolving Credit Commitment and (ii) the aggregate principal amount of all outstanding Swingline Loans (after giving effect to any amount requested) shall not exceed the Swingline Commitment.

(b) Refunding.

(i) The Swingline Lender, at any time and from time to time in its sole and absolute discretion may, on behalf of the Borrower (which hereby irrevocably directs the Swingline Lender to act on its behalf), by written notice given no later than 12:00 p.m. on any Business Day request each Revolving Credit Lender to make, and each Revolving Credit Lender hereby agrees to make, a Revolving Credit Loan as a Base Rate Loan in an amount equal to such Revolving Credit Lender's Revolving Credit Commitment Percentage of the aggregate amount of the Swingline Loans outstanding on the date of such notice, to repay the Swingline Lender. Each Revolving Credit Lender shall make the amount of such Revolving Credit Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such notice. The proceeds of such Revolving Credit Loans shall be immediately made available by the Administrative Agent to the Swingline Lender for application by the Swingline Lender to the repayment of the Swingline Loans. No Revolving Credit Lender's obligation to fund its respective Revolving Credit Commitment Percentage of a Swingline Loan shall be affected by any other Revolving Credit Lender's failure to fund its Revolving Credit Commitment Percentage of a Swingline Loan, nor shall any Revolving Credit Lender's Revolving Credit Commitment Percentage be increased as a result of any such failure of any other Revolving Credit Lender to fund its Revolving Credit Commitment Percentage of a Swingline Loan.

(ii) The Borrower shall pay to the Swingline Lender on demand, and in any event on the Revolving Credit Maturity Date, in immediately available funds the amount of such Swingline Loans to the extent amounts received from the Revolving Credit Lenders are not sufficient to repay in full the outstanding Swingline Loans requested or required to be refunded. In addition, the Borrower irrevocably authorizes the Administrative Agent to charge any account maintained by the Borrower with the Swingline Lender (up to the amount available therein) in order to immediately pay the Swingline Lender the amount of such Swingline Loans to the extent amounts received from the Revolving Credit Lenders are not sufficient to repay in full the outstanding Swingline Loans requested or required to be refunded. If any portion of any such amount paid to the Swingline Lender shall be recovered by or on behalf of the Borrower from the Swingline Lender in bankruptcy or otherwise, the loss of the amount so recovered shall be ratably shared among all the Revolving Credit Lenders in accordance with their respective Revolving Credit Commitment Percentages.

(iii) If for any reason any Swingline Loan cannot be refinanced with a Revolving Credit Loan pursuant to Section 2.2(b)(i), each Revolving Credit Lender shall, on the date such Revolving Credit Loan was to have been made pursuant to the notice referred to in Section 2.2(b)(i), purchase for cash an undivided participating interest in the then outstanding Swingline Loans by paying to the Swingline Lender an amount (the "Swingline Participation Amount") equal to such Revolving Lender's Revolving Credit Commitment Percentage of the aggregate principal amount of Swingline

Loans then outstanding. Each Revolving Credit Lender will immediately transfer to the Swingline Lender, in immediately available funds, the amount of its Swingline Participation Amount. Whenever, at any time after the Swingline Lender has received from any Revolving Credit Lender such Revolving Credit Lender's Swingline Participation Amount, the Swingline Lender receives any payment on account of the Swingline Loans, the Swingline Lender will distribute to such Revolving Credit Lender its Swingline Participation Amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Revolving Credit Lender's pro rata portion of such payment if such payment is not sufficient to pay the principal of and interest on all Swingline Loans then due); provided that in the event that such payment received by the Swingline Lender is required to be returned, such Revolving Credit Lender will return to the Swingline Lender any portion thereof previously distributed to it by the Swingline Lender.

(iv) Each Revolving Credit Lender's obligation to make the Revolving Credit Loans referred to in Section 2.2(b)(i) and to purchase participating interests pursuant to Section 2.2(b)(iii) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right that such Revolving Credit Lender or the Borrower may have against the Swingline Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Article VI, (C) any adverse change in the condition (financial or otherwise) of the Borrower, (D) any breach of this Agreement or any other Loan Document by the Borrower, any other Credit Party or any other Revolving Credit Lender or (E) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(v) If any Revolving Credit Lender fails to make available to the Administrative Agent, for the account of the Swingline Lender, any amount required to be paid by such Revolving Credit Lender pursuant to the foregoing provisions of this Section 2.2(b) by the time specified in Section 2.2(b)(i) or 2.2(b)(iii), as applicable, the Swingline Lender shall be entitled to recover from such Revolving Credit Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swingline Lender at a rate per annum equal to the applicable Federal Funds Rate, plus any administrative, processing or similar fees customarily charged by the Swingline Lender in connection with the foregoing. If such Revolving Credit Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Revolving Credit Lender's Revolving Credit Loan or Swingline Participation Amount, as the case may be. A certificate of the Swingline Lender submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(c) Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, this Section 2.2 shall be subject to the terms and conditions of Section 5.14 and Section 5.15.

### SECTION 2.3 Procedure for Advances of Revolving Credit Loans and Swingline Loans.

(a) Requests for Borrowing. The Borrower shall give the Administrative Agent irrevocable prior written notice substantially in the form of Exhibit B (a "Notice of Borrowing") not later than 11:00 a.m. (i) on the same Business Day as each Base Rate Loan denominated in Dollars and each Swingline Loan,

(ii) at least one (1) Business Day before each Canadian Base Rate Loan and (iii) at least four (4) Business Days (or five (5) Business Days in the case of a Special Notice Currency) before each Eurocurrency Rate Loan made in an Alternative Currency, of its intention to borrow, specifying (A) the date of such borrowing, which shall be a Business Day, (B) the amount of such borrowing, which shall be, (x) with respect to Base Rate Loans and Canadian Base Rate Loans (other than Swingline Loans) in an aggregate principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof, (y) with respect to Eurocurrency Rate Loans in an aggregate principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof and (z) with respect to Swingline Loans in an aggregate principal amount of \$100,000 or a whole multiple of \$100,000 in excess thereof, (C) whether such Loan denominated in Dollars is to be a Revolving Credit Loan or Swingline Loan, (D) in the case of a Revolving Credit Loan whether such Revolving Credit Loan is to be a Eurocurrency Rate Loan, Base Rate Loan or Canadian Base Rate Loan, (E) in the case of a Eurocurrency Rate Loan, the duration of the Interest Period applicable thereto and (F) in the case of a Eurocurrency Rate Loan, the applicable currency in which such Revolving Credit Loan is to be denominated. If the Borrower fails to specify a type of Revolving Credit Loan in a Notice of Borrowing, then the applicable Revolving Credit Loans shall be made as Base Rate Loans. If the Borrower requests a borrowing of Eurocurrency Rate Loans in any such Notice of Borrowing, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. If the Borrower fails to specify a currency in a Notice of Borrowing requesting a Eurocurrency Rate Loan, then the Eurocurrency Rate Loan so requested shall be made in Dollars. A Notice of Borrowing received after 11:00 a.m. shall be deemed received on the next Business Day. The Administrative Agent shall promptly notify the Revolving Credit Lenders of each Notice of Borrowing.

(b) Disbursement of Revolving Credit and Swingline Loans. Not later than 1:00 p.m., in the case of any Loan denominated in Dollars, and not later than the Applicable Time specified by the Administrative Agent in the case of any Loan denominated in an Alternative Currency, in each case on the proposed borrowing date, (i) each Revolving Credit Lender will make available to the Administrative Agent, for the account of the Borrower, in Same Day Funds at the Administrative Agent's Office for the applicable currency, such Revolving Credit Lender's Revolving Credit Commitment Percentage of the Revolving Credit Loans to be made on such borrowing date and (ii) the Swingline Lender will make available to the Administrative Agent, for the account of the Borrower, in Same Day Funds at the Administrative Agent's Office, the Swingline Loans to be made on such borrowing date. The Borrower hereby irrevocably authorizes the Administrative Agent to disburse the proceeds of each borrowing requested pursuant to this Section in Same Day Funds by crediting or wiring such proceeds to the deposit account of the Borrower identified in the most recent notice substantially in the form attached as **Exhibit C** (a "Notice of Account Designation") delivered by the Borrower to the Administrative Agent or as may be otherwise agreed upon by the Borrower and the Administrative Agent from time to time. Subject to Section 5.7 hereof, the Administrative Agent shall not be obligated to disburse the portion of the proceeds of any Revolving Credit Loan requested pursuant to this Section to the extent that any Revolving Credit Lender has not made available to the Administrative Agent its Revolving Credit Commitment Percentage of such Loan. Revolving Credit Loans to be made for the purpose of refunding Swingline Loans shall be made by the Revolving Credit Lenders as provided in Section 2.2(b).

#### SECTION 2.4 Repayment and Prepayment of Revolving Credit and Swingline Loans.

(a) Repayment on Termination Date. The Borrower hereby agrees to repay the outstanding principal amount of (i) all Revolving Credit Loans in full on the Revolving Credit Maturity Date, and (ii) all Swingline Loans in accordance with Section 2.2(b) (but, in any event, no later than the Revolving Credit Maturity Date), together, in each case, with all accrued but unpaid interest thereon.

(b) Mandatory Prepayments.

(i) If at any time the Revolving Credit Outstandings exceed the Revolving Credit Commitment, the Borrower agrees to repay immediately upon notice from the Administrative Agent, by payment to the Administrative Agent for the account of the Revolving Credit Lenders, Extensions of Credit in an amount equal to such excess with each such repayment applied first, to the principal amount of outstanding Swingline Loans, second to the principal amount of outstanding Revolving Credit Loans and third, with respect to any Letters of Credit then outstanding, a payment of Cash Collateral into a Cash Collateral account opened by the Administrative Agent, for the benefit of the Revolving Credit Lenders, in an amount equal to such excess (such Cash Collateral to be applied in accordance with Section 10.2(b)).

(ii) If at any time the Administrative Agent notifies the Borrower that aggregate principal amount of Revolving Credit Outstandings denominated in Alternative Currencies exceeds an amount equal to the Minimum Collateral Amount of the Alternative Currency Sublimit then in effect, the Borrower agrees to repay within two (2) Business Days after receipt of such notice, by payment to the Administrative Agent for the account of the Lenders, Revolving Credit Loans denominated in Alternative Currencies in an aggregate amount thereof sufficient to reduce such outstanding amount as of such date of payment to an amount not to exceed 100% of the Alternative Currency Sublimit then in effect.

(c) Optional Prepayments. The Borrower may at any time and from time to time prepay Revolving Credit Loans and Swingline Loans, in whole or in part, without premium or penalty, with irrevocable prior written notice from the Borrower to the Administrative Agent substantially in the form attached as **Exhibit D** (a "Notice of Prepayment") given not later than 12:00 p.m. (i) on the same Business Day as each Base Rate Loan and each Swingline Loan, (ii) at least three (3) Business Days before each Eurocurrency Rate Loan denominated in Dollars and (iii) at least four (4) Business Days (or five (5) Business Days, in the case of prepayment of Revolving Credit Loans denominated in Special Notice Currencies) before each Eurocurrency Rate Loan denominated in an Alternative Currency, specifying the date and amount of prepayment and whether the prepayment is of Eurocurrency Rate Loans, Base Rate Loans, Swingline Loans or a combination thereof, and, if of a combination thereof, the amount allocable to each. Upon receipt of such notice, the Administrative Agent shall promptly notify each Revolving Credit Lender. If any such notice is given, the amount specified in such notice shall be due and payable on the date set forth in such notice. Partial prepayments shall be in an aggregate amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof with respect to Base Rate Loans (other than Swingline Loans), \$1,000,000 or a whole multiple of \$500,000 in excess thereof with respect to Eurocurrency Rate Loans denominated in Dollars, \$1,000,000 or a whole multiple of \$500,000 in excess thereof with respect to Eurocurrency Rate Loans denominated in Alternative Currencies and \$500,000 or a whole multiple of \$100,000 in excess thereof with respect to Swingline Loans. A Notice of Prepayment received after 12:00 p.m. shall be deemed received on the next Business Day. Each such repayment shall be accompanied by any amount required to be paid pursuant to Section 5.9 hereof. Notwithstanding the foregoing, any Notice of Prepayment delivered in connection with any refinancing of all of the Credit Facility with the proceeds of such refinancing or of any incurrence of Indebtedness or the occurrence of some other identifiable event or condition, may be, if expressly so stated to be, contingent upon the consummation of such refinancing or incurrence or occurrence of such other identifiable event or condition and may be revoked by the Borrower in the event such contingency is not met (provided that the failure of such contingency shall not relieve the Borrower from its obligations in respect thereof under Section 5.9).

(d) Limitation on Prepayment of Eurocurrency Rate Loans. The Borrower may not prepay any Eurocurrency Rate Loan on any day other than on the last day of the Interest Period applicable thereto unless such prepayment is accompanied by any amount required to be paid pursuant to Section 5.9 hereof.

(e) Hedge Agreements. No repayment or prepayment of the Loans pursuant to this Section shall affect any of the Borrower's obligations under any Hedge Agreement entered into with respect to the Loans.

SECTION 2.5 Permanent Reduction of the Revolving Credit Commitment.

(a) Voluntary Reduction. The Borrower shall have the right at any time and from time to time, upon at least five (5) Business Days prior irrevocable written notice from the Borrower to the Administrative Agent, to permanently reduce, without premium or penalty, (i) the entire Revolving Credit Commitment at any time or (ii) portions of the Revolving Credit Commitment, from time to time, in an aggregate principal amount not less than \$3,000,000 or any whole multiple of \$1,000,000 in excess thereof. Any reduction of the Revolving Credit Commitment shall be applied to the Revolving Credit Commitment of each Revolving Credit Lender according to its Revolving Credit Commitment Percentage. All Commitment Fees accrued until the effective date of any termination of the Revolving Credit Commitment shall be paid on the effective date of such termination. Notwithstanding the foregoing, any notice to reduce the Revolving Credit Commitment delivered in connection with any refinancing of all of the Credit Facility with the proceeds of such refinancing or of any incurrence of Indebtedness or the occurrence of some other identifiable event or condition, may be, if expressly so stated to be, contingent upon the consummation of such refinancing or incurrence or occurrence of such identifiable event or condition and may be revoked by the Borrower in the event such contingency is not met (provided that the failure of such contingency shall not relieve the Borrower from its obligations in respect thereof under Section 5.9).

(b) Corresponding Payment. Each permanent reduction permitted pursuant to this Section shall be accompanied by a payment of principal sufficient to reduce the aggregate outstanding Revolving Credit Loans, Swingline Loans and L/C Obligations, as applicable, after such reduction to the Revolving Credit Commitment as so reduced, and if the aggregate amount of all outstanding Letters of Credit exceeds the Revolving Credit Commitment as so reduced, the Borrower shall be required to deposit Cash Collateral in a Cash Collateral account opened by the Administrative Agent in an amount equal to such excess. Such Cash Collateral shall be applied in accordance with Section 10.2(b). Any reduction of the Revolving Credit Commitment to zero shall be accompanied by payment of all outstanding Revolving Credit Loans and Swingline Loans (and furnishing of Cash Collateral reasonably satisfactory to the Administrative Agent for all L/C Obligations or other arrangements satisfactory to the respective Issuing Lenders ) and shall result in the termination of the Revolving Credit Commitment, the Swingline Commitment, the Alternative Currency Sublimit and the Revolving Credit Facility. If the reduction of the Revolving Credit Commitment requires the repayment of any Eurocurrency Rate Loan, such repayment shall be accompanied by any amount required to be paid pursuant to Section 5.9 hereof.

SECTION 2.6 Termination of Revolving Credit Facility. The Revolving Credit Facility and the Revolving Credit Commitments shall terminate on the Revolving Credit Maturity Date.

ARTICLE III

LETTER OF CREDIT FACILITY

### SECTION 3.1 L/C Facility.

(a) Availability. Subject to the terms and conditions hereof, each Issuing Lender, in reliance on the agreements of the Revolving Credit Lenders set forth in Section 3.4(a), agrees to issue standby Letters of Credit in Dollars or one or more Alternative L/C Currencies in an aggregate amount not to exceed its L/C Commitment for the account of the Borrower or, subject to Section 3.10, any Subsidiary thereof, Letters of Credit may be issued on any Business Day from the Closing Date to, but not including the thirtieth (30<sup>th</sup>) Business Day prior to the Revolving Credit Maturity Date in such form as may be approved from time to time by the applicable Issuing Lender; provided, that no Issuing Lender shall issue any Letter of Credit if, after giving effect to such issuance, (a) the L/C Obligations would exceed the L/C Sublimit, (b) the Revolving Credit Outstandings would exceed the Revolving Credit Commitment or (c) the aggregate principal amount of all outstanding Revolving Credit Loans denominated in Alternative Currencies and Letters of Credit denominated in Alternative L/C Currencies would exceed the Alternative Currency Sublimit.

(b) Terms of Letters of Credit. Each Letter of Credit shall (i) be denominated in Dollars or in one or more Alternative Currencies, in a minimum amount of \$100,000, (or such lesser amount as agreed to by the applicable Issuing Lender and the Administrative Agent), (ii) expire on a date no more than twelve (12) months after the date of issuance or last renewal of such Letter of Credit (subject to automatic renewal for additional one (1) year periods (but not to a date later than the date set forth below) pursuant to the terms of the Letter of Credit Application or other documentation acceptable to the applicable Issuing Lender), which date shall be no later than the fifth (5<sup>th</sup>) Business Day prior to the Revolving Credit Maturity Date, and (iii) be subject ISP98, in the case of a standby Letter of Credit, in each case as set forth in the Letter of Credit Application or as determined by the applicable Issuing Lender and, to the extent not inconsistent therewith, the laws of the State of New York. No Issuing Lender shall at any time be obligated to issue any Letter of Credit hereunder if (A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Lender from issuing such Letter of Credit, or any Applicable Law applicable to such Issuing Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Lender shall prohibit, or request that such Issuing Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Lender with respect to letters of credit generally or such Letter of Credit in particular any restriction or reserve or capital requirement (for which such Issuing Lender is not otherwise compensated) not in effect on the Closing Date, or any unreimbursed loss, cost or expense that was not applicable, in effect as of the Closing Date or known to such Issuing Lender as of the Closing Date and that such Issuing Lender in good faith deems material to it, (B) the conditions set forth in Section 6.2 are not satisfied, (C) the issuance of such Letter of Credit would violate one or more policies of such Issuing Lender applicable to letters of credit generally or (D) the beneficiary of such Letter of Credit is a Sanctioned Person. References herein to "issue" and derivations thereof with respect to Letters of Credit shall also include extensions or modifications of any outstanding Letters of Credit, unless the context otherwise requires. As of the Closing Date, the Existing Letter of Credit shall constitute, for all purposes of this Agreement and the other Loan Documents, a Letter of Credit issued and outstanding hereunder.

(c) Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, Article III shall be subject to the terms and conditions of Section 5.14 and Section 5.15.

SECTION 3.2 Procedure for Issuance of Letters of Credit. The Borrower may from time to time request that any Issuing Lender issue, amend or renew a Letter of Credit by delivering to such Issuing Lender at its applicable office (with a copy to the Administrative Agent at the Administrative Agent's Office) a Letter of Credit Application therefor, completed to the satisfaction of such Issuing Lender, and such other certificates, documents and other papers and information as such Issuing Lender or the Administrative Agent

may request (which information shall include the applicable currency in which such Letter of Credit shall be denominated). Upon receipt of any Letter of Credit Application, the applicable Issuing Lender shall, process such Letter of Credit Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall, subject to Section 3.1 and Article VI, promptly issue, amend or renew the Letter of Credit requested thereby (but in no event shall such Issuing Lender be required to issue, amend or renew any Letter of Credit earlier than three (3) Business Days (or earlier than four (4) Business Days, or five (5) Business Days, in the case of any Letter of Credit denominated in a Special Notice Currency, in the case of any Letter of Credit denominated in an Alternative Currency) after its receipt of the Letter of Credit Application therefor and all such other certificates, documents and other papers and information relating thereto) by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed by such Issuing Lender and the Borrower. The applicable Issuing Lender shall promptly furnish to the Borrower and the Administrative Agent a copy of such Letter of Credit and the Administrative Agent shall promptly notify each Revolving Credit Lender of the issuance and upon request by any Revolving Credit Lender, furnish to such Revolving Credit Lender a copy of such Letter of Credit and the amount of such Revolving Credit Lender's participation therein.

### SECTION 3.3 Commissions and Other Charges.

(a) Letter of Credit Commissions. Subject to Section 5.15(a)(iii)(B), the Borrower shall pay to the Administrative Agent, for the account of the applicable Issuing Lender and the L/C Participants, a letter of credit commission with respect to each Letter of Credit in the amount equal to the daily amount available to be drawn under such standby Letters of Credit times the Applicable Margin with respect to Revolving Credit Loans that are Eurocurrency Rate Loans (determined, in each case, on a per annum basis). Such commission shall be payable quarterly in arrears on the last Business Day of each calendar quarter, on the Revolving Credit Maturity Date and thereafter on demand of the Administrative Agent. The Administrative Agent shall, promptly following its receipt thereof, distribute to the applicable Issuing Lender and the L/C Participants all commissions received pursuant to this Section 3.3 in accordance with their respective Revolving Credit Commitment Percentages.

(b) Issuance Fee. In addition to the foregoing commission, the Borrower shall pay directly to the applicable Issuing Lender, for its own account, an issuance fee with respect to each Letter of Credit issued by such Issuing Lender in such amount as agreed upon between such Issuing Lender and the Borrower. Such issuance fee shall be payable quarterly in arrears on the last Business Day of each calendar quarter commencing with the first such date to occur after the issuance of such Letter of Credit, on the Revolving Credit Maturity Date and thereafter on demand of the applicable Issuing Lender. For the avoidance of doubt, such issuance fee shall be applicable to and paid upon the Existing Letter of Credit.

(c) Other Fees, Costs, Charges and Expenses. In addition to the foregoing fees and commissions, the Borrower shall pay or reimburse each Issuing Lender in Dollars for such normal and customary fees, costs, charges and expenses as are incurred or charged by such Issuing Lender in issuing, effecting payment under, amending or otherwise administering any Letter of Credit issued by it.

(d) The commissions, fees, charges, costs and expenses payable pursuant to this Section 3.3 shall be payable in Dollars (based on the Dollar amount of such fees), notwithstanding the applicable currency in which the applicable Letter of Credit is denominated.

#### SECTION 3.4 L/C Participations.

(a) Each Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Participant, and, to induce each Issuing Lender to issue Letters of Credit hereunder, each L/C Participant irrevocably agrees to accept and purchase and hereby accepts and purchases from each Issuing Lender, on the terms and conditions hereinafter stated, for such L/C Participant's own account and risk an undivided interest equal to such L/C Participant's Revolving Credit Commitment Percentage in each Issuing Lender's obligations and rights under and in respect of each Letter of Credit issued by it hereunder and the amount of each draft paid by such Issuing Lender thereunder. Each L/C Participant unconditionally and irrevocably agrees with each Issuing Lender that, if a draft is paid under any Letter of Credit issued by such Issuing Lender for which such Issuing Lender is not reimbursed in full by the Borrower through a Revolving Credit Loan or otherwise in accordance with the terms of this Agreement, such L/C Participant shall pay to such Issuing Lender, in the applicable currency in which such Letter of Credit is denominated, upon demand at such Issuing Lender's address for notices specified herein an amount equal to such L/C Participant's Revolving Credit Commitment Percentage of the amount of such draft, or any part thereof, which is not so reimbursed.

(b) Upon becoming aware of any amount required to be paid by any L/C Participant to any Issuing Lender pursuant to Section 3.4(a) in respect of any unreimbursed portion of any payment made by such Issuing Lender under any Letter of Credit, issued by it, such Issuing Lender shall notify the Administrative Agent of such unreimbursed amount and the Administrative Agent shall notify each L/C Participant (with a copy to the applicable Issuing Lender) of the amount and due date of such required payment and such L/C Participant shall pay to the Administrative Agent, in the applicable currency in which such Letter of Credit is denominated, which, in turn shall pay such Issuing Lender, the amount specified on the applicable due date. If any such amount is paid to such Issuing Lender after the date such payment is due, such L/C Participant shall pay to the Administrative Agent, which, in turn shall pay such Issuing Lender, in the applicable currency in which such Letter of Credit is denominated, on demand, in addition to such amount, the product of (i) such amount, times (ii) the daily average Overnight Rate as determined by the Administrative Agent during the period from and including the date such payment is due to the date on which such payment is immediately available to such Issuing Lender, times (iii) a fraction the numerator of which is the number of days that elapse during such period and the denominator of which is 360, plus any administrative, processing or similar fees customarily charged by such Issuing Lender in connection with the foregoing. A certificate of such Issuing Lender with respect to any amounts owing under this Section shall be conclusive in the absence of manifest error. With respect to payment to such Issuing Lender of the unreimbursed amounts described in this Section, if the L/C Participants receive notice that any such payment is due (A) prior to 1:00 p.m. on any Business Day, such payment shall be due that Business Day, and (B) after 1:00 p.m. on any Business Day, such payment shall be due on the following Business Day.

(c) Whenever, at any time after any Issuing Lender has made payment under any Letter of Credit issued by it and has received from any L/C Participant its Revolving Credit Commitment Percentage of such payment in accordance with this Section, such Issuing Lender receives any payment related to such Letter of Credit (whether directly from the Administrative Agent or otherwise), or any payment of interest on account thereof, such Issuing Lender will distribute to such L/C Participant its pro rata share thereof; provided, that in the event that any such payment received by such Issuing Lender shall be required to be returned by such Issuing Lender, such L/C Participant shall return to the Administrative Agent, which, shall in turn pay such Issuing Lender the portion thereof previously distributed by such Issuing Lender to it.

(d) Each L/C Participant's obligation to make the Revolving Credit Loans referred to in Section 3.4(b) and to purchase participating interests pursuant to Section 3.4(a) shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense



or other right that such Revolving Credit Lender or the Borrower may have against the Issuing Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Article VI, (iii) any adverse change in the condition (financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower, any other Credit Party or any other Revolving Credit Lender or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

SECTION 3.5 Reimbursement Obligation of the Borrower.

(a) Reimbursement Obligation of the Borrower.

(i) In the event of any drawing under any Letter of Credit, the Borrower agrees to reimburse (either with the proceeds of a Revolving Credit Loan as provided for in this Section or with funds from other sources), in Same Day Funds, the applicable Issuing Lender on each date on which such Issuing Lender notifies the Borrower of the date and amount of a draft paid by it under any Letter of Credit for the amount of (A) such draft so paid and (B) any amounts referred to in Section 3.3(c) incurred by such Issuing Lender in connection with such payment.

(ii) In the case of a Letter of Credit denominated in an Alternative Currency, the Borrower shall reimburse such Issuing Lender in such Alternative Currency, unless (A) such Issuing Lender (at its option) shall have specified in such notice that it will require reimbursement in Dollars or (B) in the absence of any such requirement for reimbursement in Dollars, the Borrower shall have notified such Issuing Lender promptly following receipt of the notice of drawing that the Borrower will reimburse such Issuing Lender in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, such Issuing Lender shall notify the Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. Not later than 11:00 a.m. on the date of any payment by such Issuing Lender under a Letter of Credit to be reimbursed in Dollars, or the Applicable Time on the date of any payment by such Issuing Lender under a Letter of Credit to be reimbursed in an Alternative Currency, the Borrower shall reimburse such Issuing Lender through the Administrative Agent in an amount equal to the amount of such drawing and in the applicable currency.

(b) Reimbursement by the Lenders. Unless the Borrower shall immediately notify such Issuing Lender that the Borrower intends to reimburse such Issuing Lender for such drawing from other sources or funds, the Borrower shall be deemed to have timely given a Notice of Borrowing to the Administrative Agent requesting that the Revolving Credit Lenders make a Revolving Credit Loan funded in Dollars as a Base Rate Loan on the applicable repayment date in the Dollar Equivalent of (i) such draft so paid and (ii) any amounts referred to in Section 3.3(c) incurred by such Issuing Lender in connection with such payment (including, without limitation, any and all costs, fees and other expenses incurred by the Issuing Lender in effecting the payment of any Letter of Credit denominated in an Alternative L/C Currency), and the Revolving Credit Lenders shall make a Revolving Credit Loan funded in Dollars as a Base Rate Loan in such amount, the proceeds of which shall be applied to reimburse such Issuing Lender for the amount of the related drawing and such fees and expenses. Each Revolving Credit Lender acknowledges and agrees that its obligation to fund a Revolving Credit Loan in accordance with this Section to reimburse such Issuing Lender for any draft paid under a Letter of Credit issued by it is absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, non-satisfaction of the conditions set forth in Section 2.3(a) or Article VI. If the Borrower has elected to pay the amount of such drawing with funds from other sources and shall fail to reimburse such Issuing Lender as provided above, or if the amount of such drawing is not fully refunded through a Base Rate Loan as provided above, the unreimbursed amount of such drawing

shall bear interest at the rate which would be payable on any outstanding Base Rate Loans which were then overdue from the date such amounts become payable (whether at stated maturity, by acceleration or otherwise) until payment in full.

( c ) Exchange Indemnification and Increased Costs. The Borrower shall, upon demand from any Issuing Lender or L/C Participant, pay to such Issuing Lender or L/C Participant, the amount of (i) any loss or cost or increased cost incurred by such Issuing Lender or L/C Participant, (ii) any reduction in any amount payable to or in the effective return on the capital to such Issuing Lender or L/C Participant, (iii) any currency exchange loss, in each case that such Issuing Lender or L/C Participant sustains as a result of the Borrower's repayment in Dollars of any Letter of Credit denominated in an Alternative L/C Currency. A certificate of such Issuing Lender setting forth in reasonable detail the basis for determining such additional amount or amounts necessary to compensate such Issuing Lender shall be conclusively presumed to be correct save for manifest error.

SECTION 3.6 Obligations Absolute. The Borrower's obligations under this Article III (including, without limitation, the Reimbursement Obligation) shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment which the Borrower may have or have had against the applicable Issuing Lender or any beneficiary of a Letter of Credit or any other Person. The Borrower also agrees that the applicable Issuing Lender and the L/C Participants shall not be responsible for, and the Borrower's Reimbursement Obligation under Section 3.5 shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee or any adverse change in the relevant exchange rates or in the availability of any applicable currency to the Borrower or any applicable Subsidiary or in the relevant currency markets generally. No Issuing Lender shall be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit issued by it, except for errors or omissions caused by such Issuing Lender's bad faith, gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final nonappealable judgment. The Borrower agrees that any action taken or omitted by any Issuing Lender under or in connection with any Letter of Credit issued by it or the related drafts or documents, if done in the absence of bad faith, gross negligence or willful misconduct shall be binding on the Borrower and shall not result in any liability of such Issuing Lender or any L/C Participant to the Borrower. The responsibility of any Issuing Lender to the Borrower in connection with any draft presented for payment under any Letter of Credit issued to it shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentment substantially conforms to the requirements under such Letter of Credit.

SECTION 3.7 Effect of Letter of Credit Application. To the extent that any provision of any Letter of Credit Application related to any Letter of Credit is inconsistent with the provisions of this Article III, the provisions of this Article III shall apply.

SECTION 3.8 Resignation of Issuing Lenders.

(a) Any Issuing Lender may resign at any time by giving 30 days' prior notice to the Administrative Agent, the Lenders and the Borrower. After the resignation of an Issuing Lender hereunder, the retiring Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Lender under this Agreement and the other Loan Documents with respect to

Letters of Credit issued by it prior to such resignation, but shall not be required to issue additional Letters of Credit or to extend, renew or increase the outstanding Letter of Credit.

(b) Any resigning Issuing Lender shall retain all the rights, powers, privileges and duties of an Issuing Lender hereunder with respect to all Letters of Credit issued by it that are outstanding as of the effective date of its resignation as an Issuing Lender and all L/C Obligations with respect thereto (including, without limitation, the right to require the Revolving Credit Lenders to take such actions as are required under Section 3.4). Without limiting the foregoing, upon the resignation of a Lender as an Issuing Lender hereunder, the Borrower may, or at the request of such resigned Issuing Lender the Borrower shall, use commercially reasonable efforts to, arrange for one or more of the other Issuing Lenders to issue Letters of Credit hereunder in substitution for the Letters of Credit, if any, issued by such resigned Issuing Lender and outstanding at the time of such resignation, or make other arrangements satisfactory to the resigned Issuing Lender to effectively cause another Issuing Lender to assume the obligations of the resigned Issuing Lender with respect to any such Letters of Credit.

**SECTION 3.9 Reporting of Letter of Credit Information and L/C Commitment.** At any time that there is an Issuing Lender that is not also the financial institution acting as Administrative Agent, then (a) no later than the fifth Business Day following the last day of each calendar month, (b) on each date that a Letter of Credit is amended, terminated or otherwise expires, (c) on each date that a Letter of Credit is issued or the expiry date of a Letter of Credit is extended, and (d) upon the request of the Administrative Agent, each Issuing Lender (or, in the case of clauses (b), (c) or (d) of this Section, the applicable Issuing Lender) shall deliver to the Administrative Agent a report setting forth in form and detail reasonably satisfactory to the Administrative Agent information (including, without limitation, any reimbursement, Cash Collateral, or termination in respect of Letters of Credit issued by such Issuing Lender) with respect to each Letter of Credit issued by such Issuing Lender that is outstanding hereunder. In addition, each Issuing Lender shall provide notice to the Administrative Agent of its L/C Commitment, or any change thereto, promptly upon it becoming an Issuing Lender or making any change to its L/C Commitment. No failure on the part of any Issuing Lender to provide such information pursuant to this Section 3.9 shall limit the obligations of the Borrower or any Revolving Credit Lender hereunder with respect to its reimbursement and participation obligations hereunder.

**SECTION 3.10 Letters of Credit Issued for Subsidiaries.** Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse, or to cause the applicable Subsidiary to reimburse, the applicable Issuing Lender hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of any of its Subsidiaries inures to the benefit of the Borrower and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

#### ARTICLE IV

[RESERVED]

#### ARTICLE V

#### GENERAL LOAN PROVISIONS

## SECTION 5.1 Interest.

(a) Interest Rate Options. Subject to the provisions of this Section, at the election of the Borrower, (i) Revolving Credit Loans denominated in Dollars and, if applicable, Incremental Term Loans, shall bear interest at (A) the Base Rate plus the Applicable Margin or (B) the Eurocurrency Rate plus the Applicable Margin; (ii) Revolving Credit Loans denominated in an Alternative Currency shall bear interest at the Eurocurrency Rate plus the Applicable Margin (provided that the Eurocurrency Rate shall not be available until three (3) Business Days after the Closing Date in the case of Eurocurrency Rate Loans denominated in Dollars, four (4) Business Days (or five (5) Business Days in the case of Special Notice Currencies) after the Closing Date in the case of Eurocurrency Rate Loans denominated in an Alternative Currency, in each case, unless the Borrower has delivered to the Administrative Agent a letter in form and substance reasonably satisfactory to the Administrative Agent indemnifying the Lenders in the manner set forth in Section 5.9 of this Agreement), (ii) Canadian Base Rate Loans shall bear interest at the Canadian Base Rate plus the Applicable Margin and (iii) any Swingline Loan shall bear interest at the Base Rate plus the Applicable Margin. The Borrower shall select the rate of interest and Interest Period, if any, applicable to any Revolving Credit Loan at the time a Notice of Borrowing is given or at the time a Notice of Conversion/Continuation is given pursuant to Section 5.2.

(b) Default Rate. Subject to Section 10.3, immediately upon the occurrence and during the continuance of an Event of Default under Section 10.1(a) or (b) all overdue amounts shall bear interest at a rate per annum of two percent (2%) in excess of the rate (including the Applicable Margin) then applicable to such amount and shall be payable on demand of the Administrative Agent. Interest shall continue to accrue on the Obligations after the filing by or against the Borrower of any petition seeking any relief in bankruptcy or under any Debtor Relief Law.

(c) Interest Payment and Computation. Interest on each Base Rate Loan and Canadian Base Rate Loan shall be due and payable in arrears on the last Business Day of each calendar quarter commencing March 31, 2019; and interest on each Eurocurrency Rate Loan shall be due and payable on the last day of each Interest Period applicable thereto, and if such Interest Period extends over three (3) months, at the end of each three (3) month interval during such Interest Period. All computations of interest for (i) Base Rate Loans when the Base Rate is determined by the Prime Rate, (ii) Canadian Base Rate Loans when Canadian Base Rate is determined by the Canadian Prime Rate or (iii) for all Eurocurrency Rate Loans denominated in Sterling or Canadian Dollars or shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest provided hereunder shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365/366-day year) or, in the case of interest in respect of Loans denominated in other Alternative Currencies as to which market practice differs from the foregoing, in accordance with such market practice. With respect to all Non-LIBOR Currencies, the calculation of the applicable interest rate shall be determined in accordance with market practice.

(d) Maximum Rate. In no contingency or event whatsoever shall the aggregate of all amounts deemed interest under this Agreement charged or collected pursuant to the terms of this Agreement exceed the highest rate permissible under any Applicable Law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such a court determines that the Lenders have charged or received interest hereunder in excess of the highest applicable rate, the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by Applicable Law and the Lenders shall at the Administrative Agent's option (i) promptly refund to the Borrower any interest received by the Lenders in excess of the maximum lawful rate or (ii) apply such excess to the principal

balance of the Obligations. It is the intent hereof that the Borrower not pay or contract to pay, and that neither the Administrative Agent nor any Lender receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by the Borrower under Applicable Law.

**SECTION 5.2 Notice and Manner of Conversion or Continuation of Loans.** Provided that no Default or Event of Default has occurred and is then continuing, the Borrower shall have the option to (a) convert at any time all or any portion of any outstanding Base Rate Loans or Canadian Base Rate Loans (other than Swingline Loans) in a principal amount equal to \$1,000,000 or any whole multiple of \$1,000,000 in excess thereof into one or more Eurocurrency Rate Loans denominated in Dollars and (b) upon the expiration of any Interest Period, (i) convert all or any part of its outstanding Eurocurrency Rate Loans denominated in Dollars in a principal amount equal to \$1,000,000 or a whole multiple of \$1,000,000 in excess thereof into Base Rate Loans or Canadian Base Rate Loans (other than Swingline Loans) or (ii) continue its outstanding Eurocurrency Rate Loans denominated in any applicable currency as Eurocurrency Rate Loans denominated in the same applicable currency. Whenever the Borrower desires to convert or continue Revolving Credit Loans as provided above, the Borrower shall give the Administrative Agent irrevocable prior written notice in the form attached as **Exhibit E** (a "Notice of Conversion/Continuation") not later than (A) 11:00 a.m. three (3) Business Days in the case of Eurocurrency Rate Loans denominated in Dollars or (B) four (4) Business Days (or five (5) Business Days in the case of a Special Notice Currency) in the case of a Eurocurrency Rate Loan denominated in Alternative Currencies before the day on which a proposed conversion or continuation of such Loan is to be effective specifying (1) the Revolving Credit Loans to be converted or continued, and, in the case of any Eurocurrency Rate Loan to be converted or continued, the last day of the Interest Period therefor, (2) the effective date of such conversion or continuation (which shall be a Business Day), (3) the principal amount of such Revolving Credit Loans to be converted or continued, (4) the Interest Period to be applicable to such converted or continued Eurocurrency Rate Loan and (5) the currency in which such Revolving Credit Loan is denominated. If the Borrower fails to give a timely Notice of Conversion/Continuation prior to the end of the Interest Period for any Eurocurrency Rate Loan denominated in Dollars, then the applicable Eurocurrency Rate Loan shall be converted to a Base Rate Loan. Any such automatic conversion to a Base Rate Loan shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loan. If the Borrower fails to give a timely Notice of Conversion/Continuation prior to the end of the Interest Period for any Eurocurrency Rate Loan denominated in an Alternative Currency, such Revolving Credit Loans shall be continued as a Eurocurrency Rate Loan in its original currency with an Interest Period of one month. If the Borrower requests a conversion to, or continuation of, Eurocurrency Rate Loans, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Notwithstanding anything to the contrary herein, no Revolving Credit Loan may be converted or continued as a Revolving Credit Loan denominated in a different currency, but instead must be prepaid in the original currency of such Revolving Credit Loan and reborrowed in the other currency. Notwithstanding anything to the contrary herein, a Swingline Loan may not be converted to a Eurocurrency Rate Loan. The Administrative Agent shall promptly notify the affected Lenders of such Notice of Conversion/Continuation.

**SECTION 5.3 Fees.**

(a) Commitment Fee. Commencing on the Closing Date, subject to Section 5.15(a)(iii)(A), the Borrower shall pay to the Administrative Agent, for the account of the Revolving Credit Lenders, a non-refundable commitment fee (the "Commitment Fee") in Dollars at a rate per annum equal to the Applicable Margin on the average daily unused portion of the Revolving Credit Commitment of the Revolving Credit Lenders (other than the Defaulting Lenders, if any); provided, that the amount of outstanding Swingline Loans shall not be considered usage of the Revolving Credit Commitment for the purpose of calculating

the Commitment Fee. The Commitment Fee shall be payable in arrears on the last Business Day of each calendar quarter during the term of this Agreement commencing March 31, 2019 and ending on the date upon which all Obligations (other than contingent indemnification obligations not then due) arising under the Revolving Credit Facility shall have been indefeasibly and irrevocably paid and satisfied in full, all Letters of Credit have been terminated or expired (or been Cash Collateralized) and the Revolving Credit Commitment has been terminated. The Commitment Fee shall be distributed by the Administrative Agent to the Revolving Credit Lenders (other than any Defaulting Lender) pro rata in accordance with such Revolving Credit Lenders' respective Revolving Credit Commitment Percentages.

(b) Other Fees. The Borrower shall pay, without duplication, to the Arrangers and the Administrative Agent for their own respective accounts and to the Arrangers for the account of the Lenders fees in the amounts and at the times specified in the Engagement Letter.

#### SECTION 5.4 Manner of Payment.

(a) Sharing of Payments.

(i) Each payment by the Borrower on account of the principal of or interest on the Loans denominated in Dollars or any fee, commission or other amounts (including the Reimbursement Obligation) denominated in Dollars payable to the Lenders under this Agreement shall be made not later than 2:00 p.m. on the date specified for payment under this Agreement to the Administrative Agent at the Administrative Agent's Office for the account of the Lenders entitled to such payment in Dollars, in Same Day Funds and shall be made without any set-off, counterclaim or deduction whatsoever. Any payment received after such time but before 3:00 p.m. on such day shall be deemed a payment on such date for the purposes of Section 10.1, but for all other purposes shall be deemed to have been made on the next succeeding Business Day. Any payment received after 3:00 p.m. shall be deemed to have been made on the next succeeding Business Day for all purposes.

(ii) Each payment by the Borrower on account of the principal of or interest on the Revolving Credit Loans denominated in an Alternative Currency or any fee, commission or other amounts (including the Reimbursement Obligation) denominated in an Alternative Currency or an Alternative L/C Currency shall be made not later than the Applicable Time specified by the Administrative Agent on the date specified for payment under this Agreement to the Administrative Agent at the applicable Administrative Agent's Office for the account of the Lenders entitled to such payment in such Alternative Currency or Alternative L/C Currency, in Same Day Funds and shall be made without any set-off, counterclaim or deduction whatsoever. Any payment received after such time but before an hour after the Applicable Time specified by the Administrative Agent on such day shall be deemed a payment on such date for the purposes of Section 10.1, but for all other purposes shall be deemed to have been made on the next succeeding Business Day. Any payment received after an hour after the Applicable Time specified by the Administrative Agent shall be deemed to have been made on the next succeeding Business Day for all purposes.

(iii) Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. If, for any reason, the Borrower is prohibited by any Applicable Law from making any required payment hereunder in an Alternative Currency or an Alternative L/C Currency, the Borrower shall make such payment in Dollars in the Dollar Equivalent of the Alternative Currency or the Alternative L/C Currency payment amount.

(iv) Upon receipt by the Administrative Agent of each such payment, the Administrative Agent shall distribute to each such Lender in the applicable Class at its address for notices set forth herein its applicable Commitment Percentage (or other applicable share as provided herein) of such payment and shall wire advice of the amount of such credit to each Lender. Each payment to the Administrative Agent on account of the principal of or interest on the Swingline Loans or of any fee, commission or other amounts payable to the Swingline Lender shall be made in like manner, but for the account of the Swingline Lender. Each payment to the Administrative Agent of any Issuing Lender's fees or L/C Participants' commissions shall be made in like manner, but for the account of such Issuing Lender or the L/C Participants, as the case may be. Each payment to the Administrative Agent of Administrative Agent's fees or expenses shall be made for the account of the Administrative Agent and any amount payable to any Lender under Sections 5.9, 5.10, 5.11 or 12.3 shall be paid to the Administrative Agent for the account of the applicable Lender. Subject to the definition of Interest Period, if any payment under this Agreement shall be specified to be made upon a day which is not a Business Day, it shall be made on the next succeeding day which is a Business Day and such extension of time shall in such case be included in computing any interest if payable along with such payment.

(b) Defaulting Lenders. Notwithstanding the foregoing clause (a), if there exists a Defaulting Lender each payment by the Borrower to such Defaulting Lender hereunder shall be applied in accordance with Section 5.15(a)(ii).

#### SECTION 5.5 Evidence of Indebtedness.

(a) Extensions of Credit. The Extensions of Credit made by each Lender and each Issuing Lender shall be evidenced by one or more accounts or records maintained by such Lender or such Issuing Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender or the applicable Issuing Lender shall be conclusive absent manifest error of the amount of the Extensions of Credit made by the Lenders or such Issuing Lender to the Borrower and its Subsidiaries and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender or any Issuing Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender to the Borrower made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Revolving Credit Note and/or Swingline Note and/or Incremental Term Loan Note, as applicable, which shall evidence such Lender's Revolving Credit Loans and/or Swingline Loans and/or Incremental Term Loan, as applicable, to the Borrower in addition to such accounts or records. Each Lender may attach schedules to its Notes and endorse thereon the date, amount, currency and maturity of its Loans and payments with respect thereto.

(b) Participations. In addition to the accounts and records referred to in subsection (a), each Revolving Credit Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Revolving Credit Lender of participations in Letters of Credit and Swingline Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Revolving Credit Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

SECTION 5.6 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender's receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations (other than pursuant to Sections 5.9, 5.10, 5.11 or 12.3) greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and

(ii) the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender or a Disqualified Institution), (B) the application of Cash Collateral provided for in Section 5.14 or (C) any payment obtained by a Lender as consideration for the assignment of, or sale of, a participation in any of its Loans or participations in Swingline Loans and Letters of Credit to any assignee or participant, other than to the Borrower or any of its Subsidiaries or Affiliates (as to which the provisions of this paragraph shall apply).

Each Credit Party consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Credit Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Credit Party in the amount of such participation.

SECTION 5.7 Administrative Agent's Clawback.

(a) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender (i) in the case of Base Rate Loans, not later than 12:00 noon on the date of any proposed borrowing and (ii) otherwise, prior to the proposed date of any borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Sections 2.3(b) and 5.13 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Overnight Rate and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such borrowing. Any



payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(b) Payments by the Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders, the Issuing Lender or the Swingline Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, the Issuing Lender or the Swingline Lender, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders, the Issuing Lender or the Swingline Lender, as the case maybe, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, Issuing Lender or the Swingline Lender, in Same Day Funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate.

(c) Nature of Obligations of Lenders Regarding Extensions of Credit. The obligations of the Lenders under this Agreement to make the Loans, to issue or participate in Letters of Credit and to make payments under this Section, Section 5.11(e), Section 12.3(c) or Section 12.7, as applicable, are several and are not joint or joint and several. The failure of any Lender to make available its Revolving Credit Commitment Percentage of any Loan requested by the Borrower shall not relieve it or any other Lender of its obligation, if any, hereunder to make its Revolving Credit Commitment Percentage of such Loan available on the borrowing date, but no Lender shall be responsible for the failure of any other Lender to make its Revolving Credit Commitment Percentage of such Loan available on the borrowing date.

#### SECTION 5.8 Changed Circumstances.

(a) Circumstances Affecting Eurocurrency Rate Availability. Unless and until a Replacement Rate is implemented in accordance with clause (c) below, in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof or otherwise, if for any reason (i) the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that deposits (whether in Dollars or an Alternative Currency) are not being offered to banks in the applicable offshore interbank market for such currency for the applicable amount and Interest Period of such Loan, (ii) the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that reasonable and adequate means do not exist for the ascertaining the Eurocurrency Rate for such Interest Period with respect to a proposed Eurocurrency Rate Loan (whether denominated in Dollars or an Alternative Currency) or (iii) the Required Lenders shall determine (which determination shall be conclusive and binding absent manifest error) that the Eurocurrency Rate does not adequately and fairly reflect the cost to such Lenders of making or maintaining such Loans during such Interest Period, then the Administrative Agent shall promptly give notice thereof to the Borrower. Thereafter, until the Administrative Agent notifies the Borrower that such circumstances no longer exist, the obligation of the Lenders to make Eurocurrency Rate Loans in the affected currency or currencies and the right of the Borrower to convert any Loan to or continue any Loan as a Eurocurrency Rate Loan in the affected currency or currencies shall be suspended, and in the case of Eurocurrency Rate Loans, the Borrower shall either (A) repay in full (or cause to be repaid in full) the then outstanding principal amount of each such Eurocurrency Rate Loan together with accrued interest thereon (subject to Section 5.1(d)), on the last day of the then current Interest Period applicable to such Eurocurrency Rate Loan; or (B) convert the then outstanding principal amount of each such Eurocurrency Rate Loan to a Base Rate Loan denominated in Dollars as of the last day of such Interest Period.

(b) Laws Affecting Eurocurrency Rate Availability. If, after the date hereof, the introduction of, or any change in, any Applicable Law or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any of the Lenders (or any of their respective Lending Offices) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, shall make it unlawful or impossible for any of the Lenders (or any of their respective Lending Offices) to honor its obligations hereunder to make or maintain any Eurocurrency Rate Loan (whether denominated in Dollars or an Alternative Currency), or to determine or charge interest rates based upon the Eurocurrency Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, such Lender shall promptly give notice thereof to the Administrative Agent and the Administrative Agent shall promptly give notice to the Borrower and the other Lenders. Thereafter, until the Administrative Agent notifies the Borrower that such circumstances no longer exist, (i) the obligations of the Lenders to make Eurocurrency Rate Loans in the affected currency or currencies, and the right of the Borrower to convert any Loan to a Eurocurrency Rate Loan or continue any Loan as a Eurocurrency Rate Loan shall be suspended and thereafter the Borrower may select only Base Rate Loans denominated in Dollars and (ii) if any of the Lenders may not lawfully continue to maintain a Eurocurrency Rate Loan to the end of the then current Interest Period applicable thereto, the applicable Loan shall immediately be converted to a Base Rate Loan denominated in Dollars for the remainder of such Interest Period.

(c) Alternative Rate of Interest. Notwithstanding anything to the contrary in Section 5.8(a) above, if the Administrative Agent has made the determination (such determination to be conclusive absent manifest error) that (i) the circumstances described in Section 5.8(a)(i) or (a)(ii) have arisen and that such circumstances are unlikely to be temporary, (ii) any applicable interest rate specified herein is no longer a widely recognized benchmark rate for newly originated loans in the U.S. syndicated loan market in the applicable currency or (iii) the applicable supervisor or administrator (if any) of any applicable interest rate specified herein or any Governmental Authority having, or purporting to have, jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which any applicable interest rate specified herein shall no longer be used for determining interest rates for loans in the U.S. syndicated loan market in the applicable currency, then the Administrative Agent may, to the extent practicable (in consultation with the Borrower and as determined by the Administrative Agent to be generally in accordance with similar situations in other transactions in which it is serving as administrative agent or otherwise consistent with market practice generally), establish a replacement interest rate (the "Replacement Rate"), in which case, the Replacement Rate shall, subject to the next two sentences, replace such applicable interest rate for all purposes under the Loan Documents unless and until (A) an event described in Section 5.8(a)(i), (a)(ii), (c)(i), (c)(ii) or (c)(iii) occurs with respect to the Replacement Rate or (B) the Administrative Agent (or the Required Lenders through the Administrative Agent) notifies the Borrower that the Replacement Rate does not adequately and fairly reflect the cost to the Lenders of funding the Loans bearing interest at the Replacement Rate. In connection with the establishment and application of the Replacement Rate, this Agreement and the other Loan Documents shall be amended solely with the consent of the Administrative Agent and the Borrower, as may be necessary or appropriate, in the opinion of the Administrative Agent, to effect the provisions of this Section 5.8(c). Notwithstanding anything to the contrary in this Agreement or the other Loan Documents (including, without limitation, Section 12.2), such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five (5) Business Days of the delivery of such amendment to the Lenders, written notices from such Lenders that in the aggregate constitute Required Lenders, with each such notice stating that such Lender objects to such amendment (which such notice shall note with specificity

the particular provisions of the amendment to which such Lender objects). To the extent the Replacement Rate is approved by the Administrative Agent in connection with this clause (c), the Replacement Rate shall be applied in a manner consistent with market practice; provided that, in each case, to the extent such market practice is not administratively feasible for the Administrative Agent, such Replacement Rate shall be applied as otherwise reasonably determined by the Administrative Agent (it being understood that any such modification by the Administrative Agent shall not require the consent of, or consultation with, any of the Lenders). Notwithstanding the foregoing, if the Replacement Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

SECTION 5.9 Indemnity for Losses. The Borrower hereby indemnifies each of the Lenders against any loss or expense (including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain a Eurocurrency Rate Loan or from fees payable to terminate the deposits from which such funds were obtained or from the performance of any foreign exchange contract, and any customary administrative fees charged by such Lender in connection therewith, which may arise or be attributable to each Lender's obtaining, liquidating or employing deposits or other funds acquired to effect, fund or maintain any Loan) incurred by it as a consequence of (a) any failure by the Borrower to make any payment when due of any amount due hereunder in connection with a Eurocurrency Rate Loan, (b) any failure of the Borrower to borrow, continue or convert a Loan on a date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation, (c) any payment, prepayment, continuation or conversion of any Eurocurrency Rate Loan on a date other than the last day of the Interest Period therefor (whether voluntary, automatic, by reason of acceleration or otherwise), (d) any failure of the Borrower to make payment of any Eurocurrency Rate Loan (or interest due thereon) denominated in an Alternative Currency on its scheduled due date or any payment thereof in a different currency or (e) any assignment of a Eurocurrency Rate Loan on the a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 5.12(b). The amount of such loss or expense shall be determined, in the applicable Lender's sole discretion, based upon the assumption that such Lender funded its Revolving Credit Commitment Percentage of the Eurocurrency Rate Loans in the offshore interbank market for such currency and using any reasonable attribution or averaging methods which such Lender deems appropriate and practical. A certificate of such Lender setting forth the basis for determining such amount or amounts necessary to compensate such Lender shall be forwarded to the Borrower through the Administrative Agent and shall be conclusively presumed to be correct save for manifest error. All of the obligations of the Credit Parties under this Section 5.9 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Revolving Credit Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

SECTION 5.10 Increased Costs.

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, any Lender (except any reserve requirement reflected in the Eurocurrency Rate) or any Issuing Lender;

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

(iii) impose on any Lender or any Issuing Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Eurocurrency Rate Loans made by such Lender or any Letter of Credit or participation therein;

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

(b) Capital Requirements. If any Lender or any Issuing Lender determines that any Change in Law affecting such Lender or such Issuing Lender or any Lending Office of such Lender or such Lender's or such Issuing Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's or such Issuing Lender's capital or on the capital of such Lender's or such Issuing Lender's holding company, if any, as a consequence of this Agreement, the Revolving Credit Commitment of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by such Issuing Lender, to a level below that which such Lender or such Issuing Lender or such Lender's or such Issuing Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Lender's policies and the policies of such Lender's or such Issuing Lender's holding company with respect to capital adequacy and liquidity), then from time to time upon written request of such Lender or such Issuing Lender the Borrower shall promptly pay to such Lender or such Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Lender or such Lender's or such Issuing Lender's holding company for any such reduction suffered.

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

(d) Delay in Requests. Failure or delay on the part of any Lender or any Issuing Lender or such other Recipient to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or such Issuing Lender's or such other Recipient's right to demand such compensation; provided that the Borrower shall not be required to compensate any Lender or an Issuing Lender or any other Recipient pursuant to this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender or such Issuing Lender or such other Recipient, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or such Issuing Lender's or such other Recipient's intention to claim compensation therefor (except that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Additional Reserve Requirements. The Borrower shall pay to each Lender, as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any central banking or financial regulatory authority imposed in respect of the maintenance of the Revolving Credit Commitment or the funding of the Eurocurrency Rate Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Revolving Credit Commitment or Eurocurrency Rate Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Eurocurrency Rate Loan, provided the Borrower shall have received at least ten (10) days' prior notice (with a copy to the Administrative Agent) of such additional costs from such Lender. If a Lender fails to give notice ten (10) days prior to the relevant payment date, such additional costs shall be due and payable ten (10) days from receipt of such notice.

(f) Survival. All of the obligations of the Credit Parties under this Section 5.10 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Revolving Credit Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

#### SECTION 5.11 Taxes.

(a) Defined Terms. For purposes of this Section 5.11, the term "Lender" includes any Issuing Lender and the term "Applicable Law" includes FATCA.

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

(c) Payment of Other Taxes by the Credit Parties. The Credit Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Indemnification by the Credit Parties. The Credit Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Recipient (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Recipient, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.9(d) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to setoff and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Authority pursuant to this Section 5.11, such Credit Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 5.11(g)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing:

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

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested

by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN-E establishing an exemption from, or reduction of, United States federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E establishing an exemption from, or reduction of, United States federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of **Exhibit H-1** to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of **Exhibit H-2** or **Exhibit H-3**, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of **Exhibit H-4** on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in United States federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to United States federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such

time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 5.11 (including by the payment of additional amounts pursuant to this Section 5.11), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival. Each party's obligations under this Section 5.11 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Revolving Credit Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

#### SECTION 5.12 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 5.10, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.11, then such Lender shall, at the request of the Borrower, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 5.10 or Section 5.11, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.



(b) Replacement of Lenders. If any Lender requests compensation under Section 5.10, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.11, and, in each case, such Lender has declined or is unable to designate a different Lending Office in accordance with Section 5.12(a), or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 12.9), all of its interests, rights (other than its existing rights to payments pursuant to Section 5.10 or Section 5.11) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 12.9;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and funded participations in Letters of Credit and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 5.9) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 5.10 or payments required to be made pursuant to Section 5.11, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with Applicable Law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

(c) Selection of Lending Office. Subject to Section 5.12(a), each Lender may make any Loan to the Borrower through any Lending Office, provided that the exercise of this option shall not affect the obligations of the Borrower to repay the Loan in accordance with the terms of this Agreement or otherwise alter the rights of the parties hereto.

#### SECTION 5.13 Incremental Increases.

(a) Request for Increase. At any time after the Closing Date, upon written notice to the Administrative Agent, the Borrower may, from time to time, request (i) one or more incremental term loans (each, an “Incremental Term Loan”) and/or (ii) one or more increases in the Revolving Credit Commitments (each, a “Revolving Credit Facility Increase” and, together with the Incremental Term Loans, the “Incremental Increases”); provided that (A) the aggregate initial principal amount of all Incremental Increases shall not exceed \$250,000,000 plus the amount of any permanent reduction of the Revolving Credit Commitment pursuant to Section 2.5 and (B) any such Incremental Increase shall be in a minimum amount of \$25,000,000 or, if less, the remaining amount permitted pursuant to the foregoing clause (A).

(b) Incremental Lenders. Each notice from the Borrower pursuant to this Section 5.13 shall set forth the requested amount and proposed terms of the relevant Incremental Increase. Incremental Increases may be provided by any existing Lender or by any other Persons (an “Incremental Lender”); provided that the Administrative Agent, the Issuing Lender and/or the Swingline Lender, as applicable, shall have consented (not to be unreasonably withheld or delayed) to such Incremental Lender’s providing such Incremental Increases to the extent any such consent would be required under Section 12.9(b) for an assignment of Loans or Revolving Credit Commitments, as applicable, to such Incremental Lender. At the time of sending such notice, the Borrower (in consultation with the Administrative Agent) shall specify the time period within which each Incremental Lender is requested to respond, which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the proposed Incremental Lenders. Each proposed Incremental Lender may elect or decline, in its sole discretion, and shall notify the Administrative Agent within such time period whether it agrees, to provide an Incremental Increase and, if so, whether by an amount equal to, greater than or less than requested. Any Person not responding within such time period shall be deemed to have declined to provide an Incremental Increase.

(c) Increase Effective Date and Allocations. The Administrative Agent and the Borrower shall determine the effective date (the “Increase Effective Date”) and the final allocation of such Incremental Increase (limited in the case of the Incremental Lenders to their own respective allocations thereof). The Administrative Agent shall promptly notify the Borrower and the Incremental Lenders of the final allocation of such Incremental Increases and the Increase Effective Date.

(d) Conditions to Effectiveness of Increase. Any Incremental Increase shall become effective as of such Increase Effective Date, which, in the case of an Incremental Term Loan incurred to finance a Limited Condition Acquisition, shall be subject to Section 1.14; provided that:

(i) no Default or Event of Default shall exist on such Increase Effective Date immediately prior to or after giving effect to (A) such Incremental Increase or (B) the making of the initial Extensions of Credit pursuant thereto;

(ii) all of the representations and warranties set forth in Article VII shall be true and correct in all material respects (or if qualified by materiality or Material Adverse Effect, in all respects) as of such Increase Effective Date, or if such representation speaks as of an earlier date, as of such earlier date;

(iii) the Administrative Agent shall have received from the Borrower, a Compliance Certificate demonstrating the Borrower is in compliance with the financial covenants set forth in Section 9.12 and based on the financial statements for the most recent Measurement Period, both before and after giving effect (on a Pro Forma Basis) to the incurrence of any such Incremental Increase (and assuming that any such Revolving Credit Facility Increase is fully drawn) and any Permitted Acquisition, refinancing of Indebtedness or other event consummated in connection therewith giving rise to a Pro Forma Basis adjustment;

(iv) each Incremental Increase shall constitute Obligations of the Borrower and will be guaranteed by the Guarantors;

(v) in the case of each Incremental Term Loan (the terms of which shall be set forth in the relevant Incremental Amendment):

(A) the maturity of any such Incremental Term Loan shall not be earlier than the Revolving Credit Maturity Date;

(B) original issue discount and the upfront fees, if any, Applicable Margin pricing grid, if applicable, an interest rate floor, if applicable, and, amortization for any Incremental Term Loan shall be determined by the applicable Incremental Lenders and the Borrower on the applicable Increase Effective Date; and

(C) except as provided above, all other terms and conditions applicable to any Incremental Term Loan, to the extent not consistent with the terms and conditions applicable to the Revolving Credit Facility, shall be determined by the Borrower and the Incremental Term Lenders providing such Incremental Term Loan (but in any case, will be no more restrictive, taken as a whole, on the Borrower and its Subsidiaries than the terms of the Loan Documents);

(vi) in the case of each Revolving Credit Facility Increase (the terms of which shall be set forth in the relevant Incremental Amendment):

(A) each such Revolving Credit Facility Increase shall have the same terms, including maturity, Applicable Margin and Commitment Fees, as the Revolving Credit Facility;

(B) the outstanding Revolving Credit Loans and Revolving Credit Commitment Percentages of Swingline Loans and L/C Obligations will be reallocated by the Administrative Agent on the applicable Increase Effective Date among the Revolving Credit Lenders (including the Incremental Lenders providing such Revolving Credit Facility Increase) in accordance with their revised Revolving Credit Commitment Percentages (and the Revolving Credit Lenders (including the Incremental Lenders providing such Revolving Credit Facility Increase) agree to make all payments and adjustments necessary to effect such reallocation and the Borrower shall pay any and all costs required pursuant to Section 5.9 in connection with such reallocation as if such reallocation were a repayment); and

(C) except as provided above, all of the terms and conditions applicable to such Revolving Credit Facility Increase shall be identical to the terms and conditions applicable to the Revolving Credit Facility; and

(vii) the Administrative Agent shall have received from the Borrower, any customary legal opinions or other documents (including a resolution duly adopted by the board of directors (or equivalent governing body) of each Credit Party authorizing such Incremental Increase), modifications to any other instruments and documents reasonably requested by Administrative Agent in connection with any such transaction.

(e) Incremental Amendments. Each such Incremental Increase shall be effected pursuant to an amendment (an “Incremental Amendment”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Credit Parties, the Administrative Agent and the applicable Incremental Lenders, which Incremental Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 5.13.

(f) Use of Proceeds. The proceeds of any Incremental Increase may be used by the Borrower and its Subsidiaries for working capital and other general corporate purposes, including the financing of Permitted Acquisitions and any other use not prohibited by this Agreement.

SECTION 5.14 Cash Collateral. At any time that there shall exist a Defaulting Lender, within one Business Day following the written request of the Administrative Agent or any Issuing Lender (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize the Fronting Exposure of such Issuing Lender, with respect to such Defaulting Lender (determined after giving effect to Section 5.15(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount. In addition, if the Administrative Agent notifies the Borrower at any time that the Dollar Equivalent amount of the aggregate outstanding amount of all L/C Obligations at such time exceeds 105% of the Letter of Credit Sublimit then in effect, then, within two (2) Business Days after receipt of such notice, the Borrower shall provide Cash Collateral for the amount by which the L/C Obligations exceeds the Letter of Credit Sublimit.

(a) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of each Issuing Lender, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lender's obligation to fund participations in respect of L/C Obligations, to be applied pursuant to subsection (b) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent and each Issuing Lender as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(b) Application. Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, Cash Collateral provided under this Section 5.14 or Section 5.15 in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of L/C Obligations (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(c) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce the Fronting Exposure of any Issuing Lender, shall no longer be required to be held as Cash Collateral pursuant to this Section 5.14 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent and the Issuing Lenders that there exists excess Cash Collateral; provided that, subject to Section 5.15, the Person providing Cash Collateral and the Issuing Lenders may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations.

#### SECTION 5.15 Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders and Section 12.2.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether

voluntary or mandatory, at maturity, pursuant to Article X or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 12.4 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Lenders or the Swingline Lender hereunder; *third*, to Cash Collateralize the Fronting Exposure of the Issuing Lenders and the Swingline Lender with respect to such Defaulting Lender in accordance with Section 5.14; *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan or funded participation in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (A) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans and funded participations under this Agreement and (B) Cash Collateralize the Issuing Lenders' future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 5.14; *sixth*, to the payment of any amounts owing to the Lenders, the Issuing Lenders or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any Issuing Lender or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (1) such payment is a payment of the principal amount of any Loans or funded participations in Letters of Credit or Swingline Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (2) such Loans were made or the related Letters of Credit or Swingline Loans were issued at a time when the conditions set forth in Section 6.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and funded participations in Letters of Credit or Swingline Loans owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or funded participations in Letters of Credit or Swingline Loans owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swingline Loans are held by the Lenders pro rata in accordance with the Revolving Credit Commitments under the applicable Revolving Credit Facility without giving effect to Section 5.15(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 5.15(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any Commitment Fee for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit commissions pursuant to Section 3.3 for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Revolving Credit Commitment Percentage of the

stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 5.14.

(C) With respect to any Commitment Fee or Letter of Credit commission not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (1) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (2) pay to each applicable Issuing Lender and Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Lender's or Swingline Lender's Fronting Exposure to such Defaulting Lender, and (3) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Revolving Credit Commitment Percentages (calculated without regard to such Defaulting Lender's Revolving Credit Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Credit Commitment. Subject to Section 12.23, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, repay Swingline Loans in an amount equal to the Swingline Lenders' Fronting Exposure and (y) second, Cash Collateralize the Issuing Lenders' Fronting Exposure in accordance with the procedures set forth in Section 5.14.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Issuing Lenders and the Swingline Lender agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), such Lender will, to the extent applicable, purchase at par that portion of outstanding Revolving Credit Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Credit Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the Lenders in accordance with the Revolving Credit Commitments (without giving effect to Section 5.15(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

## ARTICLE VI

### CONDITIONS OF CLOSING AND BORROWING

SECTION 6.1 Conditions to Closing and Initial Extensions of Credit. The obligation of the Lenders to close this Agreement and to make the initial Loans or issue or participate in the initial Letter of Credit, if any, is subject to the satisfaction of each of the following conditions:

(a) Executed Loan Documents. This Agreement, a Revolving Credit Note in favor of each Revolving Credit Lender requesting a Revolving Credit Note, a Swingline Note in favor of the Swingline Lender (if requested thereby), the Guaranty Agreement, together with any other applicable Loan Documents, shall have been duly authorized, executed and delivered to the Administrative Agent by the parties thereto, shall be in full force and effect and no Default or Event of Default shall have occurred and be continuing.

(b) Closing Certificates; Etc. The Administrative Agent shall have received each of the following in form and substance reasonably satisfactory to the Administrative Agent:

(i) Officer's Certificate. A certificate from a Responsible Officer of the Borrower to the effect that (A) all representations and warranties of the Credit Parties contained in this Agreement and the other Loan Documents are true, correct and complete in all material respects (except to the extent any such representation and warranty is qualified by materiality or reference to Material Adverse Effect, in which case, such representation and warranty shall be true, correct and complete in all respects); (B) none of the Credit Parties is in violation of any of the covenants contained in this Agreement and the other Loan Documents; (C) after giving effect to the Transactions, no Default or Event of Default has occurred and is continuing; (D) since March 31, 2018, no event has occurred or condition arisen, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect; and (E) each of the Credit Parties, as applicable, has satisfied each of the conditions set forth in Section 6.1.

(ii) Certificate of Secretary of each Credit Party. A certificate of a Responsible Officer of each Credit Party certifying as to the incumbency and genuineness of the signature of each officer of such Credit Party executing Loan Documents to which it is a party and certifying that attached thereto is a true, correct and complete copy of (A) the articles or certificate of incorporation or formation (or equivalent), as applicable, of such Credit Party and all amendments thereto, certified as of a recent date by the appropriate Governmental Authority in its jurisdiction of incorporation, organization or formation (or equivalent), as applicable, (B) the bylaws or other governing document of such Credit Party as in effect on the Closing Date, (C) resolutions duly adopted by the board of directors (or other governing body) of such Credit Party authorizing and approving the transactions contemplated hereunder and the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party, and (D) each certificate required to be delivered pursuant to Section 6.1(b)(iii).

(iii) Certificates of Good Standing. Certificates as of a recent date of the good standing of each Credit Party under the laws of its jurisdiction of incorporation, organization or formation (or equivalent), as applicable.

(iv) Opinions of Counsel. Opinions of counsel to the Credit Parties addressed to the Administrative Agent and the Lenders with respect to the Credit Parties, the Loan Documents and such other matters as the Administrative Agent shall request (which such opinions shall expressly permit reliance by permitted successors and assigns of the Administrative Agent and the Lenders subject to customary qualifications).

(c) Consents; Defaults.

(i) Governmental and Third Party Approvals. The Credit Parties shall have received all material governmental, shareholder and third party consents and approvals necessary in connection with the Transactions, which shall be in full force and effect.

(ii) No Injunction, Etc. No action, suit, investigation or proceeding shall be pending or, to the knowledge of the Borrower, threatened in any court or before any arbitrator or any Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

(d) Financial Matters.

(i) Financial Statements. The Administrative Agent shall have received copies of audited consolidated financial statements for the Borrower and its Subsidiaries for the three Fiscal Years most recently ended for which financial statements are available and interim unaudited financial statements for each quarterly period ended since the last audited financial statements for which financial statements are available.

(ii) Financial Projections. The Administrative Agent shall have received projections prepared by management of the Borrower, of balance sheets, income statements and cash flow statements on a quarterly basis for the first year following the Closing Date and on an annual basis for the next two years thereafter (the “Projections”).

(iii) Financial Condition/Solvency Certificate. The Borrower shall have delivered to the Administrative Agent a certificate, in form and substance reasonably satisfactory to the Administrative Agent, and certified as accurate by the chief financial officer of the Borrower, that (A) after giving effect to the Transactions, the Borrower and its Subsidiaries, on a Consolidated basis are Solvent, (B) attached thereto are calculations evidencing compliance on a Pro Forma Basis after giving effect to the Transactions with the covenant contained in Section 9.12(a), (C) after giving effect to the Transactions, the Borrower and its Subsidiaries shall be in compliance with the covenant contained in Section 9.12(b) and (D) attached thereto is a calculation of the Applicable Margin.

(iv) Payment at Closing. The Borrower shall have paid or made arrangements to pay contemporaneously with closing (A) to the Administrative Agent, the Arrangers and the Lenders the fees set forth or referenced in Section 5.3 and any other accrued and unpaid fees or commissions due hereunder and (B) all reasonable, documented fees and out-of-pocket expenses of McGuireWoods LLP, as counsel to the Administrative Agent, to the extent accrued and unpaid prior to or on the Closing Date, plus such additional amounts of such fees and expenses as shall constitute its reasonable estimate of such fees and expenses incurred or to be incurred by it through the closing proceedings which are associated with the preparation, negotiation, execution, delivery and administration of the Loan Documents.

(e) Miscellaneous.

(i) Notice of Account Designation. The Administrative Agent shall have received a Notice of Account Designation specifying the account or accounts to which the proceeds of any Loans made on or after the Closing Date are to be disbursed.

(ii) Existing Credit Agreement. All existing Indebtedness (other than the obligations with respect to the Existing Letter of Credit) of the Borrower and its Subsidiaries under the Existing



Credit Agreement shall be repaid in full, all commitments (if any) in respect thereof shall have been terminated and all guarantees therefor and security therefor shall be released, and the Administrative Agent shall have received pay-off letters in form and substance reasonably satisfactory to it evidencing such repayment, termination and release.

(iii) PATRIOT Act, etc. The Administrative Agent shall have received, at least five (5) Business Days prior to the Closing Date, all documentation and other information required by regulatory authorities under applicable “know your customer” and Anti-Money Laundering Laws, including, without limitation, the PATRIOT Act, requested at least ten (10) Business Days prior to the Closing Date. If the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, it shall have delivered to each Administrative Agent and any Lender requesting the same, a Beneficial Ownership Certification in relation to the Borrower, in each case at least five (5) Business Days prior to the Closing Date.

(iv) Investment Policy. The Administrative Agent shall have received a copy of the Borrower’s investment policy as in effect as of the Closing Date.

(v) Other Documents. All opinions, certificates and other instruments and all proceedings in connection with the transactions contemplated by this Agreement shall be satisfactory in form and substance to the Administrative Agent. The Administrative Agent shall have received copies of all other documents, certificates and instruments reasonably requested thereby, with respect to the transactions contemplated by this Agreement.

Without limiting the generality of the provisions of Section 11.3(c), for purposes of determining compliance with the conditions specified in this Section 6.1, the Administrative Agent and each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

SECTION 6.2 Conditions to All Extensions of Credit. Subject to Section 1.14 with respect to any Incremental Term Loan incurred to finance a Limited Condition Acquisition, the obligations of the Lenders to make or participate in any Extensions of Credit (including the initial Extension of Credit) and/or any Issuing Lender to issue or extend any Letter of Credit are subject to the satisfaction of the following conditions precedent on the relevant borrowing, issuance or extension date:

(a) Continuation of Representations and Warranties. The representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects, on and as of such borrowing, issuance or extension date with the same effect as if made on and as of such date (except for any such representation and warranty that by its terms is made only as of an earlier date, which representation and warranty shall remain true and correct in all material respects as of such earlier date, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects as of such earlier date).

(b) No Existing Default. No Default or Event of Default shall have occurred and be continuing (i) on the borrowing date with respect to such Loan or after giving effect to the Loans to be made on such

date or (ii) on the issuance or extension date with respect to such Letter of Credit or after giving effect to the issuance or extension of such Letter of Credit on such date.

(c) Notices. The Administrative Agent shall have received a Notice of Borrowing or Letter of Credit Application, as applicable, from the Borrower in accordance with Section 2.3(a) or Section 3.2, as applicable.

(d) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii) the Issuing Lender shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

(e) Compliance with Specified Agreements. The Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower certifying that the Borrower has deposited funds (excluding the proceeds of the Loan or Loans being requested) in accordance with the terms of the Specified Agreements (as applicable) in an amount not less than the amount of the next scheduled payment to be made by the Borrower under the applicable Specified Agreement; provided that this Section 6.2(e) shall only apply until the Liens created by the Specified Documents have been released and fully terminated.

Each Notice of Borrowing or Letter of Credit Application submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 6.2(a) and (b) have been satisfied on and as of the date of the applicable Extension of Credit.

## ARTICLE VII

### REPRESENTATIONS AND WARRANTIES OF THE CREDIT PARTIES

To induce the Administrative Agent and Lenders to enter into this Agreement and to induce the Lenders to make Extensions of Credit, the Borrower represents and warrants to the Administrative Agent and the Lenders, which representations and warranties shall be deemed made on the Closing Date and as otherwise set forth in Section 6.2, that:

SECTION 7.1 Organization; Power; Qualification. The Borrower and each Subsidiary thereof (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, (b) has all requisite corporate or other organizational power and authority to own its Properties and to carry on its business as now being conducted and (c) is qualified to do business, and is in good standing (to the extent such concept exists in the relevant jurisdiction, in each jurisdiction where its ownership, lease or operation of Properties or the conduct of its business requires such qualification) except in jurisdictions where the failure to be so qualified or in good standing could not reasonably be expected to result in a Material Adverse Effect. The jurisdictions in which such Credit Party and each Subsidiary thereof are organized as of the Closing Date are described on Schedule 7.1. No Credit Party nor any Subsidiary thereof is an EEA Financial Institution.

SECTION 7.2 Ownership. As of the Closing Date, Schedule 7.2 sets forth (a) the name and jurisdiction of organization or incorporation of the Borrower and each Subsidiary of the Borrower and type of entity of each such Subsidiary (b) the number of shares or other Equity Interests, authorized, issued and outstanding of each such Subsidiary and (c) the name of the record owners of such outstanding shares and

other Equity Interests of each Subsidiary. As of the Closing Date, all such outstanding shares and other Equity Interests are duly authorized, validly issued, fully paid and non-assessable.

SECTION 7.3 Authorization; Enforceability. Each Credit Party has all requisite corporate or other organizational power and has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of this Agreement and each of the other Loan Documents to which it is a party in accordance with their respective terms. This Agreement and each of the other Loan Documents to which such Credit Party is a party have been duly executed and delivered by such Credit Party, and each such document constitutes the legal, valid and binding obligation of such Credit Party, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar state or federal Debtor Relief Laws from time to time in effect which affect the enforcement of creditors' rights in general and the availability of equitable remedies.

SECTION 7.4 Compliance of Agreement, Loan Documents and Borrowing with Laws, Etc. The execution, delivery and performance by each Credit Party of the Loan Documents to which it is a party, in accordance with their respective terms, the Extensions of Credit hereunder and the transactions contemplated hereby or thereby do not (a) require any Governmental Approval, except (i) such as have been obtained or made and are in full force and effect, (ii) for consents, filings and recordings necessary to perfect Liens created pursuant to the Loan Documents and (iii) where the failure to obtain such Governmental Approvals could not reasonably be expected to have a Material Adverse Effect, (b) violate any Applicable Law relating to such Credit Party, except where such violation could not reasonably be expected to have a Material Adverse Effect, (c) conflict with, result in a breach of or constitute a default under the articles of incorporation, bylaws or other Organizational Documents of such Credit Party or (d) conflict with, result in a breach of or constitute a default under any indenture, agreement or other instrument to which such Credit Party is a party or by which any of its properties are bound (excluding any indebtedness under the Existing Credit Agreement being repaid pursuant to Section 6.1(e)(ii)), which could reasonably be expected to have a Material Adverse Effect.

SECTION 7.5 Compliance with Law. The Borrower and each Subsidiary thereof is in compliance with Applicable Laws applicable to it or its Properties, except in each case where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 7.6 Tax Returns and Payments. The Borrower and each Subsidiary thereof has timely filed or caused to be filed all Tax returns required by Applicable Law to have been filed, and has paid, or made adequate provision for the payment of, all Taxes upon it and its property, income, profits and assets that are due and payable, other than (a) Taxes (or any requirement to file Tax returns with respect thereto) that are being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of the Borrower or such Subsidiary or (b) to the extent that the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 7.7 Intellectual Property Matters. The Borrower and its Subsidiaries owns or is licensed or otherwise has the right to use all of the patents, copyrights, trademarks, service marks, trade names and other intellectual property rights that are required for the operation of its businesses as currently conducted by it, except to the extent that failure to hold such ownership, license or other right could not reasonably be expected to result in a Material Adverse Effect. To the Borrower's knowledge, the use of such intellectual property by the Borrower and its Subsidiaries and the operation of its business do not infringe any valid and enforceable intellectual property rights of any other Person, except to the extent any such infringement could not, individually or in the aggregate, reasonably be expected to result in a Material

Adverse Effect (it being understood that, except for Section 7.15, this sentence constitutes the Borrower's sole representation as to non-infringement of intellectual property).

SECTION 7.8 Environmental Matters. Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect:

(a) The Borrower and each Subsidiary thereof are, and to their knowledge have been, in compliance, with all applicable Environmental Laws;

(b) Neither the Borrower nor any Subsidiary thereof has received any unresolved written notice of violation, alleged violation, non-compliance, liability or potential liability regarding Hazardous Materials or Environmental Laws, nor does the Borrower or any Subsidiary thereof have knowledge or reason to believe that any such notice will be received or is being threatened;

(c) Hazardous Materials have not been transported or disposed of to or from the properties owned, or, to the knowledge of Borrower and each Subsidiary, leased or operated by the Borrower or any Subsidiary thereof in violation of Environmental Laws or in a manner or to an unpermitted location which could reasonably be expected to give rise to liability of the Borrower or such Subsidiary under Environmental Laws, nor, to the knowledge of Borrower and each Subsidiary, have any Hazardous Materials been generated, treated, stored or disposed of by the Borrower or any Subsidiary at, on or under any of such properties in violation of Environmental Laws, and in a manner that could reasonably be expected to give rise to liability under, any applicable Environmental Laws;

(d) No Environmental Claim is pending, or, to the knowledge of the Borrower and its Subsidiaries, threatened, against the Borrower or any of its Subsidiaries, or relating to any real property owned or, to the knowledge of Borrower and each Subsidiary, leased or operated by the Borrower or any Subsidiary; and

(e) There has been no release of Hazardous Materials at or from properties owned or, to the knowledge of Borrower and each Subsidiary, leased or operated by the Borrower or any Subsidiary as a result of the operations of the Borrower or its Subsidiaries, now or in the past, in violation of Environmental Laws and in amounts or in a manner that could reasonably be expected to give rise to liability under applicable Environmental Laws.

SECTION 7.9 Employee Benefit Matters.

(a) As of the Closing Date, no Credit Party nor any ERISA Affiliate maintains or contributes to, or has any obligation under, any Employee Benefit Plans other than those identified on Schedule 7.9;

(b) Each Credit Party and each ERISA Affiliate is in compliance with all applicable provisions of ERISA, the Code and the regulations and published interpretations thereunder with respect to all Employee Benefit Plans except for any required amendments for which the remedial amendment period as defined in Section 401(b) of the Code has not yet expired and except where a failure to so comply could not reasonably be expected to have a Material Adverse Effect. Each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code has been determined by the IRS to be so qualified, and each trust related to such plan has been determined to be exempt under Section 501(a) of the Code except for such plans that have not yet received determination letters but for which the remedial amendment period for submitting a determination letter has not yet expired. No liability has been incurred by any Credit Party or any ERISA Affiliate which remains unsatisfied for any Taxes or penalties assessed

with respect to any Employee Benefit Plan or any Multiemployer Plan except for a liability that could not reasonably be expected to have a Material Adverse Effect;

(c) As of the Closing Date, no Pension Plan has been terminated, nor has any Pension Plan become subject to funding based upon benefit restrictions under Section 436 of the Code, nor has any funding waiver from the IRS been received or requested with respect to any Pension Plan, nor has any Credit Party or any ERISA Affiliate failed to make any contributions or to pay any amounts due and owing as required by Sections 412 or 430 of the Code, Section 302 of ERISA or the terms of any Pension Plan on or prior to the due dates of such contributions under Sections 412 or 430 of the Code or Section 302 of ERISA, nor has there been any event requiring any disclosure under Section 4041(c)(3)(C) or 4063(a) of ERISA with respect to any Pension Plan;

(d) Except where the failure of any of the following representations to be correct could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, no Credit Party nor any ERISA Affiliate has: (i) engaged in a nonexempt prohibited transaction described in Section 406 of the ERISA or Section 4975 of the Code, (ii) incurred any liability to the PBGC which remains outstanding other than the payment of premiums and there are no premium payments which are due and unpaid, (iii) failed to make a required contribution or payment to a Multiemployer Plan, or (iv) failed to make a required installment or other required payment under Sections 412 or 430 of the Code;

(e) No Termination Event has occurred or is reasonably expected to occur;

(f) Except where the failure of any of the following representations to be correct could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, no proceeding, claim (other than a benefits claim in the ordinary course of business), lawsuit and/or investigation is existing or, to its knowledge, threatened concerning or involving (i) any employee welfare benefit plan (as defined in Section 3(1) of ERISA) currently maintained or contributed to by any Credit Party or any ERISA Affiliate, (ii) any Pension Plan or (iii) any Multiemployer Plan.

(g) As of the Closing Date the Borrower is not nor will be using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments.

SECTION 7.10 Margin Stock. Neither the Borrower nor any Subsidiary thereof is engaged principally or as one of its activities in the business of extending credit for the purpose of “purchasing” or “carrying” any “margin stock” (as each such term is defined or used, directly or indirectly, in Regulation U of the Board of Governors of the Federal Reserve System). No part of the proceeds of any of the Loans or Letters of Credit will be used for purchasing or carrying margin stock or for any purpose which violates the provisions of Regulation T, U or X of such Board of Governors.

SECTION 7.11 Investment Company Act Status. Neither the Borrower nor any Subsidiary thereof is required to register as an “investment company” or a company “controlled” by an “investment company” (as each such term is defined or used in the Investment Company Act).

SECTION 7.12 Financial Statements. The audited and unaudited financial statements delivered pursuant to Section 6.1(d)(i) fairly present in all material respects on a Consolidated basis the Consolidated financial position of the Borrower and its Subsidiaries as at such dates, and the Consolidated results of their operations and cash flows for the periods then ended (other than customary year-end and fiscal quarter

adjustments for unaudited financial statements, the absence of footnotes from unaudited financial statements). All such financial statements have been prepared in accordance with GAAP.

SECTION 7.13 No Material Adverse Change. Since March 31, 2018, no event or condition has occurred that could reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

SECTION 7.14 Solvency. The Borrower and its Subsidiaries, on a Consolidated basis, are Solvent.

SECTION 7.15 Litigation. Other than as set forth on Schedule 7.15, there are no material actions, suits or proceedings pending nor, to its knowledge, threatened against or in any other way relating adversely to or affecting the Borrower or any Subsidiary thereof or any of their respective properties in any court or before any arbitrator of any kind or before or by any Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

SECTION 7.16 Anti-Corruption Laws; Anti-Money Laundering Laws and Sanctions.

(a) None of (i) the Borrower, any Subsidiary thereof, any of their respective directors, senior officers or, to the knowledge of the Borrower or such Subsidiary, any of their respective employees, or (ii) to the knowledge of the Borrower, any agent or representative of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the Credit Facility, (A) is a Sanctioned Person or currently the subject or target of any Sanctions, (B) has its assets located in a Sanctioned Country, (C) to the knowledge of the Borrower, is under administrative, civil or criminal investigation for an alleged violation of, or has received notice from or made a voluntary disclosure to any governmental entity regarding a possible violation of, Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions by a Governmental Authority that enforces Sanctions or any Anti-Corruption Laws or Anti-Money Laundering Laws, or (D) directly or, to the knowledge of the Borrower, indirectly derives revenues from investments in, or transactions with, Sanctioned Persons, except, in each of clauses (B) and (D), as permitted by applicable Sanctions or other Applicable Law related to Sanctions applicable to all the parties to this Agreement.

(b) Each of the Borrower and its Subsidiaries has implemented and maintains in effect policies and procedures designed to promote and achieve compliance by the Borrower and its Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions applicable to the Borrower and its Subsidiaries.

(c) Each of the Borrower and its Subsidiaries, and to the knowledge of Borrower or any such Subsidiary, each of their respective directors, officers and employees, is in compliance in all material respects with all Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions applicable to the Borrower and its Subsidiaries.

(d) No proceeds of any Extension of Credit have been used, directly or, to the Borrower's knowledge, indirectly, by the Borrower, any of its Subsidiaries or, to the Borrower's knowledge, any of its or their respective directors, officers, employees and agents in violation of Section 8.13(b).

SECTION 7.17 Disclosure. No financial statement, material report, material certificate or other material written information (other than Projections and information of a general economic or industry-specific nature) furnished by or on behalf of the Borrower or any Subsidiary thereof to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished), when

taken together as a whole, contained any untrue statement of a material fact or omitted to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Projections were prepared in good faith on the basis of the assumptions believed by the Borrower to be reasonable at the time delivered to the Administrative Agent, it being understood that (a) actual results may vary materially from the Projections, (b) the Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Borrower and its Subsidiaries, (c) the Projections are not to be viewed as facts, and (d) no assurance can be given that the Projections will be realized.

## ARTICLE VIII

### AFFIRMATIVE COVENANTS

Until all of the Obligations (other than contingent indemnification obligations not then due) have been paid and satisfied in full in cash, all Letters of Credit have been terminated or expired (or been Cash Collateralized) and the Commitments terminated, the Borrower will and will cause each of its Subsidiaries to:

SECTION 8.1 Financial Statements and Budgets. Deliver to the Administrative Agent, in form and detail reasonably satisfactory to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(a) Annual Financial Statements. As soon as practicable and in any event within ninety (90) days after the end of each Fiscal Year (commencing with the Fiscal Year ended March 31, 2019), an audited Consolidated balance sheet of the Borrower and its Subsidiaries as of the close of such Fiscal Year, and audited Consolidated statements of income, retained earnings and cash flows including the notes thereto, all in reasonable detail setting forth in comparative form the corresponding figures as of the end of and for the preceding Fiscal Year, and prepared in accordance with GAAP and, if applicable, containing disclosure of the effect on the financial position or results of operations of any change in the application of accounting principles and practices during the year. Such annual financial statements shall be audited by an independent certified public accounting firm of recognized national standing reasonably acceptable to the Administrative Agent, and accompanied by a report and opinion thereon by such certified public accountants prepared in accordance with generally accepted auditing standards that is not subject to any “going concern” or similar qualification or exception or any qualification as to the scope of such audit or with respect to accounting principles followed by the Borrower or any of its Subsidiaries not in accordance with GAAP.

(b) Quarterly Financial Statements. As soon as practicable and in any event within forty-five (45) days (or, if earlier, on the date of any required public filing thereof) after the end of the first three fiscal quarters of each Fiscal Year (commencing with the fiscal quarter ended June 30, 2019), an unaudited Consolidated balance sheet of the Borrower and its Subsidiaries as of the close of such fiscal quarter and unaudited Consolidated and consolidating statements of income, retained earnings and cash flows and a report containing management’s discussion and analysis of the Borrower’s material quarterly operating results for the fiscal quarter then ended and that portion of the Fiscal Year then ended, including the notes thereto, all in reasonable detail setting forth in comparative form the corresponding figures as of the end of and for the corresponding period in the preceding Fiscal Year and prepared by the Borrower in accordance with GAAP and, if applicable, containing disclosure of the effect on the financial position or results of operations of any change in the application of accounting principles and practices during the period, and certified by the chief financial officer of the Borrower to present fairly in all material respects

the financial condition of the Borrower and its Subsidiaries on a Consolidated basis as of their respective dates and the results of operations of the Borrower and its Subsidiaries for the respective periods then ended, subject to normal year-end adjustments and the absence of footnotes.

SECTION 8.2 Certificates; Other Reports. Deliver to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(a) at each time financial statements are delivered pursuant to Sections 8.1(a) or (b), a duly completed Compliance Certificate that, among other things, (i) states that no Default or Event of Default is continuing as of the date of delivery of such Compliance Certificate or, if a Default or Event of Default is continuing, states the nature thereof and the action that the Borrower proposes to take with respect thereto, (ii) demonstrates compliance with the financial covenants set forth in Section 9.12 as of the last day of the applicable Measurement Period ending on the last day of the Measurement Period covered by such financial statements, together with a report containing management's discussion and analysis of the Borrower's material quarterly and annual operating results, as applicable and (iii) solely with respect to the financial statements delivered pursuant to Section 8.1(a), a certification of the Consolidated total revenue and Consolidated Total Assets attributable to Immaterial Subsidiaries;

(b) promptly upon receipt thereof, copies of all material reports, if any, submitted to the Borrower, any Subsidiary thereof or any of their respective boards of directors by their respective independent public accountants in connection with their auditing function, including any management report and any management responses thereto;

(c) promptly after the same are available, copies of each annual report, proxy or financial statement or other material report or communication sent to the stockholders of the Borrower, and copies of all annual, regular, periodic and special reports and registration statements (other than amendments to any registration statement (to the extent such registration statement, in the form it becomes effective, is delivered to the Administrative Agent)) which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act;

(d) promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any non-compliance by the Borrower or any Subsidiary thereof with any Environmental Law that could reasonably be expected to have a Material Adverse Effect;

(e) promptly upon the request thereof, such other information and documentation required by bank regulatory authorities under applicable Anti-Money Laundering Laws (including any applicable "know your customer" rules and regulations and the PATRIOT Act), as from time to time reasonably requested by the Administrative Agent or any Lender;

(f) such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary thereof as the Administrative Agent or any Lender may reasonably request; and

(g) no later than the 5th day after the end of each calendar month (or if such day is not a Business Day, then on the immediately succeeding Business Day), a detailed report in form and detail reasonably satisfactory to the Administrative Agent regarding the Unrestricted Cash and Cash Equivalents held by the Credit Parties as of such month end, including the owner of the applicable account, balance and location of account.



Documents required to be delivered pursuant to Section 8.1(a), 8.1(b), 8.2(a) (solely with respect to the requirement to provide a report containing management’s discussion and analysis of the Borrower’s material quarterly and annual operating results, as applicable) or 8.2(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower’s website on the Internet at the website address listed in Section 12.1 or (ii) on which such documents are posted on the Borrower’s behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Borrower shall, to the extent requested, deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent and each Lender (by facsimile or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the Compliance Certificates required by Section 8.2 to the Administrative Agent. Except for such Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and the Issuing Lender materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on the Platform and (b) certain of the Lenders may be “public-side” Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a “Public Lender”). The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, means that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers, the Issuing Lender and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 12.10); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Investor;” and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Investor.”

SECTION 8.3 Notice of Litigation and Other Matters. Promptly (but in no event later than ten (10) days after any Responsible Officer of the Borrower obtains knowledge thereof) notify the Administrative Agent in writing of (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(a) the occurrence of any Default or Event of Default;

(b) the commencement of all proceedings and investigations by or before any Governmental Authority and all actions and proceedings in any court or before any arbitrator against or involving the

Borrower or any Subsidiary thereof or any of their respective properties, assets or businesses in each case that could reasonably be expected to result in a Material Adverse Effect;

(c) any notice of any violation received by the Borrower or any Subsidiary thereof from any Governmental Authority including any notice of violation of Environmental Laws which in any such case could reasonably be expected to have a Material Adverse Effect;

(d) any labor controversy that has resulted in, or threatens to result in, a strike or other work action against the Borrower or any Subsidiary thereof which in any such case could reasonably be expected to have a Material Adverse Effect; and

(e) (i) any unfavorable determination letter from the IRS regarding the qualification of an Employee Benefit Plan under Section 401(a) of the Code (along with a copy thereof), (ii) all notices received by any Credit Party or any ERISA Affiliate of the PBGC's intent to terminate any Pension Plan or to have a trustee appointed to administer any Pension Plan, (iii) all notices received by any Credit Party or any ERISA Affiliate from a Multiemployer Plan sponsor concerning the imposition or amount of withdrawal liability pursuant to Section 4202 of ERISA and (iv) the Borrower obtaining knowledge or reason to know that any Credit Party or any ERISA Affiliate has filed or intends to file a notice of intent to terminate any Pension Plan under a distress termination within the meaning of Section 4041(c) of ERISA.

Each notice pursuant to Section 8.3 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 8.3(a) shall describe the provisions of this Agreement and any other Loan Document that have been breached.

**SECTION 8.4 Preservation of Corporate Existence and Related Matters.** Except as permitted by Section 9.4, preserve and maintain its separate corporate existence or equivalent form and all rights, franchises, licenses and privileges necessary to the conduct of its business, and qualify and remain qualified as a foreign corporation or other entity and authorized to do business in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Effect.

**SECTION 8.5 Maintenance of Property and Licenses.**

(a) Protect and preserve all Properties necessary in and material to its business, including copyrights, patents, trade names, service marks and trademarks; maintain (or use commercially reasonable efforts to cause any landlord to maintain) in good working order and condition, ordinary wear and tear, casualty and condemnation excepted, all buildings, equipment and other tangible real and personal property; and from time to time make or cause to be made all repairs, renewals and replacements thereof and additions to such Property necessary for the conduct of its business, so that the business carried on in connection therewith may be conducted in a commercially reasonable manner, in each case except as such action or inaction could not reasonably be expected to result in a Material Adverse Effect.

(b) Take all reasonable actions to maintain, in full force and effect in all material respects, all Governmental Approvals required for each of them to the normal conduct their respective businesses, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

**SECTION 8.6 Insurance.** Maintain insurance with financially sound and reputable insurance companies against at least such risks and in at least such amounts as are customarily maintained by similar businesses and as may be required by Applicable Law. On the Closing Date and from time to time thereafter

deliver to the Administrative Agent upon its request information in reasonable detail as to the insurance carried by the Borrower and its Subsidiaries then in effect, stating the names of the insurance companies and the amounts, the dates of the expiration thereof and the properties and risks covered thereby.

SECTION 8.7 Payment of Taxes. Pay and perform all Taxes, assessments and other governmental charges that may be levied or assessed upon it or any of its Property; provided that such payment and discharge shall not be required with respect to any Tax, assessment, charge or levy so long as (a) the validity or amount thereof is being contested in good faith by appropriate proceedings and adequate reserves are maintained with respect thereto in accordance with GAAP or (b) the failure to make such payment and discharge could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

SECTION 8.8 Compliance with Laws. Observe and remain in compliance with all Applicable Laws (including ERISA and Environmental Laws) applicable to it, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 8.9 Environmental. In addition to and without limiting the generality of Section 8.8, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect, promptly take necessary actions to (a) respond to any violation of applicable Environmental Laws by it and (b) make an appropriate response to any Environmental Claim against it and discharge any finally determined legal obligations it may have to any Person thereunder.

SECTION 8.10 Compliance with ERISA. In addition to and without limiting the generality of Section 8.8, (a) except where the failure to so comply could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) comply with applicable provisions of ERISA, the Code and the regulations and published interpretations thereunder with respect to all Employee Benefit Plans, (ii) not take any action or fail to take action the result of which could reasonably be expected to result in a liability to the PBGC or to a Multiemployer Plan, (iii) not participate in any prohibited transaction that could result in any civil penalty under ERISA or Tax under the Code and (iv) operate each Employee Benefit Plan in such a manner that will not incur any Tax liability under Section 4980B of the Code or any liability to any qualified beneficiary as defined in Section 4980B of the Code and (b) furnish to the Administrative Agent upon the Administrative Agent's request such additional information about any Employee Benefit Plan as may be reasonably requested by the Administrative Agent.

SECTION 8.11 Visits and Inspections. Permit representatives of the Administrative Agent, accompanied by representatives of any Lender (which representatives will be subject to the confidentiality obligations of the Administrative Agent and the Lenders pursuant to Section 12.10) and Borrower, from time to time upon prior reasonable notice to the Borrower and at such reasonable times during normal business hours, to visit and inspect the primary corporate office of the Borrower; inspect, audit and make extracts from its books, records and files, including management letters prepared by independent public accountants; and discuss with its principal officers, and its independent public accountants, its business, affairs, finances and accounts; provided that, excluding any such visits and inspections during the continuation of an Event of Default, the Administrative Agent shall not exercise such rights more often than once during any calendar year at the Borrower's expense; provided further that upon the occurrence and during the continuance of an Event of Default, the Administrative Agent or any Lender may do any of the foregoing at the Borrower's expense at any time without advance notice. Notwithstanding the foregoing, neither the Borrower nor any Subsidiary will be required to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter (a) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives) is prohibited by Applicable Law or

any binding, arm's-length agreement with a third party or (b) is subject to attorney-client or similar privilege or constitutes attorney work product; provided that the Borrower shall notify the Administrative Agent as to what is not being disclosed or made available in reliance on this sentence unless doing so is prohibited by Applicable Law or such agreement or would result in waiver of such privilege or cause such material not to constitute attorney work product.

#### SECTION 8.12 Additional Subsidiaries.

(a) Additional Domestic Subsidiaries. Promptly notify the Administrative Agent (x) of the creation or acquisition (including by division) of a Person that becomes a Domestic Subsidiary (other than an Excluded Subsidiary) or (y) any Subsidiary that is required to become a Guarantor by virtue of ceasing to constitute an Immaterial Subsidiary pursuant to the definition of "Immaterial Subsidiary" and, within forty-five (45) days after such creation, acquisition or event, as such time period may be extended by the Administrative Agent in its sole discretion, cause such Domestic Subsidiary (other than an Excluded Subsidiary) to (i) become a Guarantor by delivering to the Administrative Agent a duly executed supplement to the Guaranty Agreement or such other document as the Administrative Agent shall deem appropriate for such purpose and (ii) deliver to the Administrative Agent such opinions, documents and certificates referred to in Section 6.1 as may be reasonably requested by the Administrative Agent.

(b) Merger Subsidiaries. Notwithstanding the foregoing, to the extent any new Domestic Subsidiary is created solely for the purpose of consummating a merger transaction pursuant to a Permitted Acquisition, and such new Domestic Subsidiary at no time holds any assets or liabilities other than any merger consideration contributed to it contemporaneously with the closing of such merger transaction, such new Subsidiary shall not be required to take the actions set forth in Section 8.12(a) until the consummation of such Permitted Acquisition (at which time, the surviving entity of the respective merger transaction shall be required to so comply with Section 8.12(a) within forty-five (45) days of the consummation of such Permitted Acquisition, as such time period may be extended by the Administrative Agent in its sole discretion).

#### SECTION 8.13 Use of Proceeds.

(a) Use the proceeds of the Revolving Credit Facility to (i) refinance the loans and commitments under the Existing Credit Agreement and (ii) pay fees and expenses incurred in connection with the Transactions, and (iii) for working capital and general corporate purposes of the Borrower and its Subsidiaries.

(b) Not request any Extension of Credit, and not use, and shall ensure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Extension of Credit, directly or indirectly, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or Anti-Money Laundering Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 8.14 Compliance with Anti-Corruption Laws; Beneficial Ownership Regulation, Anti-Money Laundering Laws and Sanctions. (a) Maintain in effect and enforce policies and procedures designed to promote and achieve compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with all Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions, (b) notify the Administrative Agent and each Lender that previously received a Beneficial Ownership Certification of any change in the information provided in the Beneficial Ownership Certification

that would result in a change to the list of beneficial owners identified therein and (c) promptly upon the reasonable request of the Administrative Agent or any Lender, provide the Administrative Agent or such Lender, as the case may be, any information or documentation requested by it for purposes of complying with the Beneficial Ownership Regulation.

## ARTICLE IX

### NEGATIVE COVENANTS

Until all of the Obligations (other than contingent, indemnification obligations not then due) have been paid and satisfied in full in cash, all Letters of Credit have been terminated or expired (or been Cash Collateralized) and the Commitments terminated, the Borrower will not, and will not permit any of its Subsidiaries to:

SECTION 9.1 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness except:

(a) the Obligations;

(b) Indebtedness owing under Hedge Agreements entered into in order to manage existing or anticipated interest rate, exchange rate or commodity price risks and not for speculative purposes;

(c) Indebtedness existing on the Closing Date and listed on Schedule 9.1, and any Permitted Refinancing Indebtedness in respect thereof;

(d) Attributable Indebtedness with respect to Capital Lease Obligations and Indebtedness incurred in connection with purchase money Indebtedness in an aggregate principal amount not to exceed at any time outstanding the greater of \$40,000,000 and 1% of Consolidated Total Assets, and any Permitted Refinancing Indebtedness in respect thereof;

(e) Indebtedness of a Person existing at the time such Person became a Subsidiary or assets were acquired from such Person in connection with an Investment permitted pursuant to Section 9.3, to the extent that (i) such Indebtedness was not incurred in connection with, or in contemplation of, such Person becoming a Subsidiary or the acquisition of such assets, (ii) neither the Borrower nor any Subsidiary thereof (other than such Person or any other Person that such Person merges with or that acquires the assets of such Person) shall have any liability or other obligation with respect to such Indebtedness and (iii) the aggregate principal amount of such Indebtedness does not exceed at any time outstanding \$25,000,000;

(f) (i) Guarantees by any Credit Party of Indebtedness of any other Credit Party not otherwise prohibited pursuant to this Section 9.1, (ii) Guarantees by any Non-Guarantor Subsidiary of Indebtedness of Borrower or any Subsidiary not otherwise prohibited pursuant to this Section 9.1, and (iii) Guarantees by any Credit Party of Indebtedness of any Non-Guarantor Subsidiary to the extent permitted pursuant to Section 9.3;

(g) unsecured intercompany Indebtedness: (i) owed by any Credit Party to another Credit Party, (ii) owed by any Credit Party to any Non-Guarantor Subsidiary (provided that such Indebtedness shall be subordinated to the Obligations in a manner reasonably satisfactory to the Administrative Agent), (iii) owed by any Non-Guarantor Subsidiary to any other Non-Guarantor Subsidiary and (iv) owed by any Non-Guarantor Subsidiary to any Credit Party to the extent permitted pursuant to Section 9.3;

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

(i) Indebtedness under performance bonds, surety bonds, customs, bid, stay, return of money, release, appeal and similar bonds, statutory obligations, or with respect to workers' compensation claims, unemployment insurance (including premiums related thereto), other types of social security, pension obligations, vacation pay, health, disability or other employee benefits in each case incurred in the ordinary course of business, and reimbursement obligations in respect of any of the foregoing;

(j) Indebtedness arising from agreements providing for indemnification, adjustment of purchase price or similar obligations (including earn-out and other contingent obligations) incurred in connection with any Asset Disposition permitted hereunder, any Acquisitions or other purchases of assets or Equity Interests permitted hereunder;

(k) Indebtedness in respect of Cash Management Agreements in the ordinary course of business;

(l) Indebtedness consisting of (i) the financing of insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(m) Indebtedness consisting of obligations owing under any customer or supplier, supply, license or similar agreements (including customer deposits and advance payments), in respect of Guarantees of the obligations of suppliers, customers and licensees, in respect of obligations to pay the deferred purchase price of goods or services or progress payments in connection therewith, or in respect of any letter of credit, bankers' acceptance, bank guaranty or similar instrument supporting trade payables, warehouse receipts or similar facilities, in each case under this clause (m) in the ordinary course of business;

(n) Indebtedness, including Subordinated Indebtedness, of the Borrower and its Subsidiaries so long as, both immediately prior to and after giving effect thereto on a Pro Forma Basis (i) no Default or Event of Default has occurred and is continuing and (ii) the Borrower is in compliance with the financial covenants set forth in Section 9.12 (provided that, in connection with any such Indebtedness to be used to finance a Limited Condition Acquisition, the requirements set forth in clauses (i) and (ii) shall be subject to Section 1.14); provided that the aggregate principal amount of all Indebtedness incurred pursuant to this clause (n) by Subsidiaries that are not Credit Parties (and do not become Credit Parties within the time period required pursuant to Section 8.12, as such time period may be extended pursuant to such section) shall not exceed, at any time outstanding, \$50,000,000; and

(o) to the extent constituting Indebtedness, all premium (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on Indebtedness otherwise permitted to be incurred pursuant to this Section 9.1.

SECTION 9.2 Liens. Create, incur, assume or suffer to exist, any Lien on or with respect to any of its Property, whether now owned or hereafter acquired, except:

(a) Liens in favor of the Administrative Agent, for the benefit of the Guaranteed Parties, securing the Obligations (including Liens in favor of the Swingline Lender and/or the Issuing Lender, as applicable, on Cash Collateral);

(b) Liens in existence on the Closing Date and described on Schedule 9.2, and the replacement, renewal or extension thereof (including Liens incurred, assumed or suffered to exist in connection with any Permitted Refinancing Indebtedness permitted pursuant to Section 9.1(c)) (solely to the extent that

such Liens were in existence on the Closing Date and described on Schedule 9.2); provided that the scope of any such Lien shall not be increased, or otherwise expanded, to cover any additional property or type of asset, as applicable, beyond that in existence on the Closing Date, except for products and proceeds of the foregoing;

(c) Liens for Taxes, assessments and other governmental charges or levies (i) not yet due, or (ii) which are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP;

(d) Liens imposed by law such as materialmen, mechanics, carriers, warehousemen, processors or landlords Liens and other like Liens for labor, materials, supplies or rentals incurred in the ordinary course of business, which are not overdue for a period of more than sixty (60) days, or if more than sixty (60) days overdue, no action has been taken to enforce such Liens and such Liens are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP;

(e) deposits and pledges made and other Liens incurred in the ordinary course of business in connection with, or to secure payment of, obligations under workers' compensation, unemployment insurance (including premiums related thereto) and other types of social security, pension obligations, vacation, health, disability, other employee benefits, or similar Applicable Laws, or to secure the performance of tenders, bids, government contracts, trade contracts, leases, statutory obligations, surety, stay, customs, release and appeal bonds, performance and return-of-money bonds, statutory obligations and other similar obligations (including reimbursement obligations in respect of any of the foregoing);

(f) Liens in the nature of zoning, building and land use restrictions, entitlements, title restrictions, easements, rights-of-way, covenants and other similar rights or restrictions and encumbrances and minor title irregularities and defects affecting real property, which do not in any case materially and adversely interfere with the ordinary conduct of the business of the Borrower and its Subsidiaries, taken as a whole;

(g) Liens arising from the filing of precautionary UCC financing statements relating solely to operating leases or consignment or bailee arrangements entered into in the ordinary course of business;

(h) Liens securing Indebtedness permitted under Section 9.1(d); provided that (i) such Liens shall be created within one hundred and twenty (120) days of the acquisition, repair, construction, improvement or lease, as applicable, of the related Property, (ii) such Liens do not at any time encumber any Property (except for replacements, additions and accessions to such Property) other than the Property financed or improved by such Indebtedness and (iii) the principal amount of Indebtedness secured by any such Lien shall at no time exceed one hundred percent (100%) of the original price for the purchase, repair, construction, improvement or lease amount (as applicable) of such Property at the time of purchase, repair, construction, improvement or lease (as applicable) ;

(i) Liens securing judgments, orders or decrees not constituting an Event of Default under Section 10.1(l) or securing appeal or other surety bonds relating to such judgments;

(j) Liens on Property (i) of a Person that becomes a Subsidiary existing at the time that such Person becomes a Subsidiary in connection with an acquisition permitted hereunder and (ii) of the Borrower or any of its Subsidiaries existing at the time such Property is purchased or otherwise acquired by the Borrower or such Subsidiary pursuant to a transaction permitted hereunder and any modification, replacement, renewal and extension thereof; provided that, with respect to each of the foregoing clauses (i)

and (ii), (A) such Liens are not incurred in connection with, or in anticipation of, such acquisition, (B) such Liens do not encumber any Property other than Property encumbered at the time of such acquisition or such Person becoming a Subsidiary and the proceeds and products thereof and (C) such Liens will secure only those obligations which it secures at the time such acquisition or purchase occurs;

(k) Liens (i) on cash deposits in favor of the seller of any property to be acquired in connection with a Permitted Acquisition to be applied against the purchase price for such Permitted Acquisition, or (ii) consisting of an agreement to sell or otherwise dispose of any property in an Asset Disposition permitted under Section 9.5;

(l) (i) Liens of a collecting bank arising in the ordinary course of business under Section 4-210 of the Uniform Commercial Code in effect in the relevant jurisdiction, (ii) Liens of any depository bank in connection with statutory, common law and contractual rights of setoff and recoupment with respect to any deposit or securities account of the Borrower or any Subsidiary thereof and (iii) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of any assets or property in the ordinary course of business;

(m) (i) Liens of landlords arising in the ordinary course of business to the extent relating to the property and assets relating to any lease agreements with such landlord, and (ii) Liens of suppliers (including sellers of goods) or customers arising in the ordinary course of business to the extent limited to the property or assets relating to such contract;

(n) (i) leases, licenses, subleases or sublicenses granted to others (including with respect to intellectual property) which do not (A) interfere in any material respect with the business of the Borrower and its Subsidiaries, taken as a whole or (B) secure any Indebtedness, (ii) any interest or title of a licensor, sub-licensor, lessor or sub-lessor with respect to any assets under any such lease, license, sublease or sublicense, any restriction or encumbrance to which the interest or title of such licensor, sub-licensor, lessor or sub-lessor may be subject or any subordination of the interest of any licensor, sub-licensor, lessor or sub-lessor under such lease, license, sublease or sublicense to any such restriction or encumbrance, and (iii) any interest or title of a licensor, sub-licensor, lessor or sub-lessor under leases, licenses, subleases or sublicenses entered into by any of the Borrower and its Subsidiaries as licensee, sub-licensee, lessee or sub-lessee in the ordinary course of business or any customary restriction or encumbrance with respect to the property or assets subject to any such lease, license, sublease or sublicense;

(o) Liens on assets of Foreign Subsidiaries securing Indebtedness of Foreign Subsidiaries in an aggregate principal amount not to exceed at any time outstanding \$50,000,000;

(p) (i) Liens on Equity Interests of joint ventures securing capital contributions thereto and (ii) customary rights of first refusal and tag, drag and similar rights in joint venture agreements and agreements with respect to Non-Wholly-Owned Subsidiaries; and

(q) Liens on assets of the Borrower and its Subsidiaries securing Indebtedness of the Borrower and its Subsidiaries in an aggregate amount not to exceed at any time outstanding the greater of (i) \$185,000,000 and (ii) 5% of Consolidated Total Assets.

SECTION 9.3 Investments. Make any Investment, except:

(a) Investments existing on the Closing Date (other than Investments in Subsidiaries existing on the Closing Date) and described on Schedule 9.3 and any modification, replacement, renewal or



extension thereof so long as such modification, renewal or extension thereof does not increase the amount of such Investment except as otherwise permitted by this Section 9.3;

(b) Investments (i) existing on the Closing Date in Subsidiaries existing on the Closing Date, (ii) made after the Closing Date by any Credit Party in any other Credit Party, (iii) made after the Closing Date by any Non-Guarantor Subsidiary in any Credit Party and (iv) made after the Closing Date by any Non-Guarantor Subsidiary in any other Non-Guarantor Subsidiary;

(c) Investments in cash and Cash Equivalents;

(d) Investments consisting of Capital Expenditures;

(e) deposits made in the ordinary course of business to secure the performance of leases or other obligations and other Liens as permitted by Section 9.2;

(f) Hedge Agreements permitted pursuant to Section 9.1;

(g) purchases of assets in the ordinary course of business;

(h) Investments in the form of Restricted Payments permitted pursuant to Section 9.6;

(i) Guarantees permitted pursuant to Section 9.1;

(j) Investments in the ordinary course of business consisting of endorsements for collection or deposit and customary trade arrangements with customers;

(k) Investments in the form of loans and advances of payroll payments or other compensation, or for moving, entertainment and travel expenses, drawing accounts and similar expenditures, in each case, to present or former employees, directors, members of management, officers, managers or consultants of any of the Borrower and its Subsidiaries in the ordinary course of business and consistent with past practices;

(l) Investments in securities of account debtors received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of such account debtors;

(m) Investments consisting of indemnification obligations to the officers, directors, managers, employees, consultants and agents of any of the Borrower and its Subsidiaries to the extent required under the bylaws or other constitutive documents of the Borrower or any such Subsidiary in the ordinary course of business;

(n) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit; and

(o) other Investments so long as, both immediately prior to and after giving effect thereto on a Pro Forma Basis (i) no Default or Event of Default has occurred and is continuing and (ii) the Borrower is in compliance with the financial covenants set forth in Section 9.12 (provided that, in connection with any Limited Condition Acquisition, the requirements set forth in clauses (i) and (ii) shall be subject to Section 1.14).

For purposes of determining the amount of any Investment outstanding for purposes of this Section 9.3, such amount shall be deemed to be the amount of such Investment when made, purchased or acquired (without adjustment for subsequent increases or decreases in the value of such Investment) less any amount realized in respect of such Investment upon the sale, collection or return of capital (not to exceed the original amount invested).

SECTION 9.4 Fundamental Changes. Merge, amalgamate or consolidate with or into, or sell, transfer, license, lease or otherwise dispose of all or substantially all of its Property (whether in a single transaction or a series of related transactions) to, any other Person or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution of itself) (including, in each case, pursuant to division), except:

(a) (i) any Subsidiary may be merged, amalgamated or consolidated with or into the Borrower (provided that the Borrower shall be the continuing or surviving entity), (ii) any Subsidiary may be merged, amalgamated or consolidated with or into any Guarantor (provided that a Guarantor shall be the continuing or surviving entity or simultaneously with such transaction, the continuing or surviving entity shall become a Guarantor and the Borrower shall comply with Section 8.12 in connection therewith), and (iii) any Subsidiary may be dissolved (provided, that a Guarantor shall acquire all the assets of such dissolved Subsidiary);

(b) (i) any Non-Guarantor Subsidiary may be merged, amalgamated or consolidated with or into, or be liquidated into, any other Non-Guarantor Subsidiary and (ii) any Non-Guarantor Subsidiary may be dissolved, provided, that a Non-Guarantor Subsidiary shall acquire all the assets of such dissolved Non-Guarantor Subsidiary;

(c) any Subsidiary may sell, transfer, license, lease or otherwise dispose of all or substantially all of its assets (upon voluntary liquidation, dissolution, winding up or otherwise) to any Credit Party or any Subsidiary; provided that, (i) if the transferor, licensor or lessor in such a transaction is a Guarantor, then either (A) the transferee, licensee or lessee, as applicable, must be another Credit Party or (B) simultaneously with such transaction, the transferee, licensee or lessee, as applicable, shall become a Guarantor and the Borrower shall comply with Section 8.12 in connection therewith and (ii) with respect to any such disposition by any Non-Guarantor Subsidiary to a Credit Party, the consideration for such disposition shall not exceed the fair value (as determined in good faith by the Borrower) of such assets;

(d) Asset Dispositions permitted by Section 9.5 (other than clause (b) thereof);

(e) any Subsidiary may merge, amalgamate or consolidate with or into the Person such Subsidiary was formed to acquire in connection with any acquisition permitted hereunder; provided that in the case of any merger, amalgamation or consolidation with a Subsidiary that is a Domestic Subsidiary (other than an Excluded Subsidiary), either (i) a Guarantor shall be the continuing or surviving entity or (ii) simultaneously with such transaction, the continuing or surviving entity shall become a Guarantor and the Borrower shall comply with Section 8.12 in connection therewith;

(f) any Person may merge, amalgamate or consolidate with or into the Borrower or any of its Subsidiaries in connection with a Permitted Acquisition; provided that (i) in the case of a merger, amalgamation or consolidation with the Borrower or a Guarantor, the continuing or surviving Person shall be the Borrower or such Guarantor and (ii) in the case of a merger, amalgamation or consolidation not with the Borrower or a Guarantor, the continuing or surviving Person shall be a Subsidiary; and

(g) any merger, amalgamation, consolidation, liquidation, winding up or dissolution of a Guarantor pursuant to a division so long as each newly created division becomes a Guarantor or the resulting investment in such newly created division would be permitted under Section 9.3.

SECTION 9.5 Asset Dispositions. Make any Asset Disposition except:

(a) the sale, transfer or other disposition of inventory in the ordinary course of business;

(b) Asset Dispositions permitted pursuant to Section 9.4;

(c) the sale, transfer or other disposition of equipment in the ordinary course of business to the extent that such equipment is exchanged for credit against the purchase price of similar replacement equipment, or the proceeds of such sale, transfer or disposition are applied with reasonable promptness to the purchase price of such replacement equipment;

(d) the write-off, discount, sale or other disposition of receivables and similar obligations in the ordinary course of business and not undertaken as part of an accounts receivable financing transaction;

(e) the termination, unwinding or other disposition of any Hedge Agreement;

(f) dispositions of cash and Cash Equivalents;

(g) Asset Dispositions (i) between or among Credit Parties, (ii) by any Non-Guarantor Subsidiary to any Credit Party (provided that in connection with any new transfer, such Credit Party shall not pay more than an amount equal to the fair value of such assets, as determined the Borrower in good faith at the time of such transfer), (iii) by any Non-Guarantor Subsidiary to any other Non-Guarantor Subsidiary and (iv) by any Credit Party to any Non-Guarantor Subsidiary to the extent permitted pursuant to Section 9.3;

(h) the sale or other disposition of obsolete, worn-out or surplus assets no longer used or useful in the business of the Borrower and its Subsidiaries, or the swap of equipment and related assets in exchange for similar equipment and related assets, in the ordinary course of business, of comparable or greater value or useful to the business;

(i) licenses and sublicenses of intellectual property rights in the ordinary course of business not materially interfering with the business of the Borrower and its Subsidiaries, taken as a whole;

(j) leases, subleases, licenses or sublicenses of real or personal property granted by the Borrower or any of its Subsidiaries to others in the ordinary course of business not materially interfering with the business of the Borrower and its Subsidiaries, taken as a whole;

(k) Asset Dispositions of Investments in joint ventures if required by, or made pursuant to customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;

(l) Investments permitted by Section 9.3, Permitted Liens and Restricted Payments permitted by Section 9.6;

(m) the lapse or abandonment in the ordinary course of business of any registrations or applications for registration of any intellectual property or the discontinuance of the use or maintenance

of any intellectual property, if the Borrower or any Subsidiary determines in its reasonable business judgment that it would not materially interfere with the business of the Borrower and its Subsidiaries, taken as a whole; and

(n) any Asset Disposition so long as, both immediately prior to and after giving effect thereto on a Pro Forma Basis (i) no Default or Event of Default has occurred and is continuing and (ii) the Borrower is in compliance with the financial covenants set forth in Section 9.12.

SECTION 9.6 Restricted Payments. Declare or make any Restricted Payments; except:

(a) the Borrower or any Subsidiary may declare and make Restricted Payments in Qualified Equity Interests of such Person;

(b) any Subsidiary of the Borrower may declare and make Restricted Payments to the Borrower or any Subsidiary (and, in the case of any Restricted Payment by a Non-Wholly-Owned Subsidiary, to the Borrower and any such other Subsidiary and to each other owner of Equity Interests of such Subsidiary based on their relative ownership interests);

(c) the Borrower and its Subsidiaries may make Restricted Payments so long as, both immediately prior to and after giving effect thereto on a Pro Forma Basis (i) no Default or Event of Default has occurred and is continuing and (ii) the Borrower is in compliance with the financial covenants set forth in Section 9.12;

(d) the Borrower and its Subsidiaries may pay cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof or any Permitted Acquisition; and

(e) repurchases of Equity Interests in the Borrower and its Subsidiaries deemed to occur upon exercise of stock options or warrants or the settlement or vesting of other Equity Interests if such Equity Interests represent all or a portion of the exercise price of, or tax withholdings with respect to, such Equity Interests.

SECTION 9.7 Transactions with Affiliates. Directly or indirectly enter into any transaction, including any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with (a) any officer, director, holder of any Equity Interests in, or other Affiliate of the Borrower or any of its Subsidiaries, or (b) any Affiliate of any such officer, director or holder and:

(i) transactions permitted by Sections 9.1, 9.3, 9.4, 9.5 and 9.6;

(ii) transactions existing on the Closing Date and described on Schedule 9.7;

(iii) transactions among Credit Parties not prohibited hereunder;

(iv) other transactions on terms as favorable to the Borrower or such Subsidiary as would be obtainable by it at the time in a comparable arm's-length transaction with a Person other than an Affiliate of it as determined in good faith by the Borrower;

(v) employment and severance arrangements (including equity incentive plans and employee benefit plans and arrangements) with their respective officers and employees in the ordinary course of business;

(vi) payment of customary fees and reasonable out of pocket costs to, and indemnities for the benefit of, directors, officers and employees of the Borrower and its Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and its Subsidiaries; and

(vii) the issuance or transfer of Qualified Equity Interests of the Borrower or a Subsidiary.

**SECTION 9.8 Accounting Changes; Organizational Documents.**

(a) Change its Fiscal Year end, or make (without the consent of the Administrative Agent) any material change in its accounting treatment and reporting practices, in each case except as required by GAAP or as required to implement any such change.

(b) Amend, modify or change the Organizational Documents of any Credit Party or amend, modify or change any Credit Party's bylaws (or other similar documents) in any manner materially adverse to the rights or interests of the Lenders under the Loan Documents.

**SECTION 9.9 No Further Negative Pledges; Restrictive Agreements.** Enter into, assume or be party to any consensual encumbrance or restriction on the ability of (a) the Borrower or any Guarantor to create, incur, assume or suffer to exist Liens on Property of such Person, whether now owned or hereafter acquired, for the benefit of the Lenders with respect to the Obligations, (b) (i) any Subsidiary of the Borrower to pay dividends or make any other distributions to any Credit Party on such Subsidiary's Equity Interests or (ii) the Borrower or any Subsidiary thereof to (x) pay any Indebtedness or other obligation owed to any Credit Party, (y) make loans or advances to any Credit Party or (z) sell, lease or transfer any of its properties or assets to any Credit Party, except, in each case, any such encumbrance or restriction: (A) pursuant to this Agreement and the other Loan Documents, (B) pursuant to any document or instrument governing Indebtedness incurred pursuant to Section 9.1(c) (provided that any such encumbrance or restriction is permitted pursuant to Section 9.2(c)) or Section 9.1(d) (provided that any such encumbrance or restriction is permitted pursuant to Section 9.2(h)), (C) contained in the Organizational Documents of any Non-Guarantor Subsidiary as of the Closing Date or any Non-Wholly-Owned Subsidiary (provided that such restriction was added or incorporated in the Organizational Documents of such Non-Wholly-Owned Subsidiary or agreement as a result of good faith negotiations concerning such Non-Wholly-Owned Subsidiary among the Borrower (or any Affiliate of the Borrower) and the joint venture partners or Equity Interest holders of such Non-Wholly-Owned Subsidiary), (D) any Permitted Lien or any document or instrument governing any Permitted Lien (provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien), (E) existing from time to time under or by reason of Applicable Law or required by any Governmental Authority, (F) pursuant to obligations that are binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary of the Borrower, so long as such obligations are not entered into in contemplation of such Person becoming a Subsidiary, (G) contained in an agreement related to the sale or other disposition of Property (to the extent such sale is permitted pursuant to Section 9.5) that is customary and limits the transfer of such Property pending the consummation of such sale or other disposition, (H) in leases, subleases, licenses and sublicenses or asset sale agreements otherwise permitted by this Agreement so long as such encumbrance or restriction is in the ordinary course of business and relates only to the assets subject thereto, or (I) pursuant to customary provisions restricting assignment of any agreement entered into in the ordinary course of business or so long as such encumbrance or restriction relates only to the rights and obligations under such agreement or any related agreement.

SECTION 9.10 Nature of Business. Engage in any business other than the businesses conducted by the Borrower and its Subsidiaries as of the Closing Date, businesses and business activities reasonably related or ancillary thereto and reasonable extensions thereof.

SECTION 9.11 Sale Leasebacks. Except as permitted by Section 9.1(d) and Section 9.5, directly or indirectly become or remain liable as lessee or as guarantor or other surety with respect to any lease, whether an operating lease or a capital lease, of any Property (whether real, personal or mixed), whether now owned or hereafter acquired, (a) which any Credit Party or any Subsidiary thereof has sold or transferred or is to sell or transfer to a Person which is not another Credit Party or Subsidiary of a Credit Party and (b) which any Credit Party or any Subsidiary of a Credit Party intends to use for substantially the same purpose as any other Property that has been sold or is to be sold or transferred by such Credit Party or such Subsidiary to another Person which is not another Credit Party or Subsidiary of a Credit Party in connection with such lease.

SECTION 9.12 Financial Covenants.

(a) Consolidated Net Leverage Ratio. As of the last day of any fiscal quarter, permit the Consolidated Net Leverage Ratio to be greater than 3.75 to 1.00. Notwithstanding the foregoing, in connection with any Permitted Acquisition having aggregate cash consideration (including cash, Cash Equivalents and other deferred payment obligations) in excess of \$150,000,000, the Borrower may, at its election, in connection with such Permitted Acquisition and upon prior written notice to the Administrative Agent, increase the required Consolidated Net Leverage Ratio pursuant to this Section 9.12(a) to 4.25 to 1.00, which such increase shall be applicable (i) with respect to a Permitted Acquisition that is not a Limited Condition Acquisition, for the fiscal quarter in which such Permitted Acquisition is consummated and the three (3) consecutive quarterly test periods thereafter or (ii) with respect to a Permitted Acquisition that is a Limited Condition Acquisition, for purposes of determining compliance on a Pro Forma Basis with this Section 9.12(a) on the LCA Test Date, for the fiscal quarter in which such Permitted Acquisition is consummated and for the three (3) consecutive quarterly test periods after which such Permitted Acquisition is consummated (each, a "Leverage Ratio Increase"); provided that there shall be at least two full fiscal quarters following the cessation of each such Leverage Ratio Increase during which no Leverage Ratio Increase shall then be in effect.

(b) Minimum Cash Reserves. Fail to maintain, at any time, Unrestricted Cash and Cash Equivalents in an aggregate amount of at least \$200,000,000 in deposit accounts and/or securities accounts owned by Credit Parties; provided that this Section 9.12(b) shall only apply until the Liens created by the Specified Documents have been released and fully terminated.

(c) Interest Coverage Ratio. At all times after the minimum cash reserve requirement pursuant to Section 9.12(b) is no longer in effect, as of the last day of any fiscal quarter, permit the Interest Coverage Ratio to be less than 3.00 to 1.00.

SECTION 9.13 Amendments. Directly or indirectly, amend, modify, alter, increase, or change in any material respect any of the payment or other material terms or conditions of any of the Specified Documents except to the extent that such amendment, modification, alteration, increase, or change could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect; provided that this Section 9.13 shall only apply until the Liens created by the Specified Documents have been released and fully terminated.

## ARTICLE X

### DEFAULT AND REMEDIES

SECTION 10.1 Events of Default. Each of the following shall constitute an Event of Default:

(a) Default in Payment of Principal of Loans and Reimbursement Obligations. The Borrower or any other Credit Party shall default in any payment of principal of any Loan or Reimbursement Obligation when and as due (whether at maturity, by reason of acceleration or otherwise) or fail to provide Cash Collateral pursuant to Section 2.4(b), Section 2.5(b), Section 5.14 or Section 5.15(a)(v).

(b) Other Payment Default. The Borrower or any other Credit Party shall default in the payment when and as due (whether at maturity, by reason of acceleration or otherwise) of interest on any Loan or Reimbursement Obligation or the payment of any other Obligation, and such default shall continue for a period of three (3) Business Days.

(c) Misrepresentation. Any representation, warranty or certification made by the Borrower on behalf of itself or any of its Subsidiaries in this Agreement or any other Loan Document that is subject to materiality or Material Adverse Effect qualifications, shall prove to have been untrue when made or deemed made, or any representation, warranty or certification made by the Borrower on behalf of itself or any of its Subsidiaries in this Agreement or any other Loan Document that is not subject to materiality or Material Adverse Effect qualifications, shall prove to have been untrue in any material respect when made or deemed made.

(d) Default in Performance of Certain Covenants. Any Credit Party or any Subsidiary thereof shall default in the performance or observance of any covenant or agreement contained in Sections 8.1, 8.2(a), 8.3(a), 8.4 (solely as to corporate existence), 8.11, 8.12, 8.13 and 8.14 or Article IX.

(e) Default in Performance of Other Covenants and Conditions. Any Credit Party or any Subsidiary thereof shall default in the performance or observance of any term, covenant, condition or agreement contained in this Agreement (other than as specifically provided for in this Section 10.1) or any other Loan Document on its part to be performed or observed and such default shall continue for a period of thirty (30) days after the earlier of (i) a Responsible Officer of the Borrower becomes aware thereof and (ii) receipt by the Borrower of written notice thereof from the Administrative Agent.

(f) Indebtedness Cross-Default. Any Credit Party or any Subsidiary thereof shall (i) default in the payment of any Indebtedness (other than the Loans or any Reimbursement Obligation) the aggregate principal amount (including undrawn committed or available amounts), or with respect to any Hedge Agreement, the Hedge Termination Value, of which is in excess of the Threshold Amount beyond the period of grace if any, provided in the instrument or agreement under which such Indebtedness was created, or (ii) default in the observance or performance of any other agreement or condition relating to any Indebtedness (other than the Loans or any Reimbursement Obligation) the aggregate principal amount (including undrawn committed or available amounts), or with respect to any Hedge Agreement, the Hedge Termination Value, of which is in excess of the Threshold Amount or contained in any instrument or agreement evidencing, securing or relating thereto or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, with the giving of notice and/or lapse of time, if required, such Indebtedness to (A) become due, or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem

such Indebtedness to be made, prior to its stated maturity (any applicable grace period having expired) or (B) be cash collateralized.

(g) Change in Control. Any Change in Control shall occur.

(h) Voluntary Bankruptcy Proceeding. Any Credit Party or any Subsidiary thereof (other than an Immaterial Subsidiary) shall (i) commence a voluntary case under any Debtor Relief Laws, (ii) file a petition seeking to take advantage of any Debtor Relief Laws, (iii) consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under any Debtor Relief Laws, (iv) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign, (v) admit in writing its inability to pay its debts as they become due, (vi) make a general assignment for the benefit of creditors, or (vii) take any corporate action for the purpose of authorizing any of the foregoing.

(i) Involuntary Bankruptcy Proceeding. A case or other proceeding shall be commenced against any Credit Party or any Subsidiary thereof (other than an Immaterial Subsidiary) in any court of competent jurisdiction seeking (i) relief under any Debtor Relief Laws, or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like for any Credit Party or any Subsidiary thereof or for all or any substantial part of its assets, domestic or foreign, and such case or proceeding shall continue without dismissal or stay for a period of sixty (60) consecutive days, or an order granting the relief requested in such case or proceeding under such Debtor Relief Laws shall be entered.

(j) Failure of Agreements. Any material provision of this Agreement or material any provision of any other Loan Document shall at any time after its execution and delivery and for any reason, other than as expressly permitted hereunder or thereunder (including as a result of a transaction permitted under Section 9.4 or 9.5), cease to be valid and binding on any Credit Party or any Subsidiary thereof party thereto or any such Person shall so state in writing, other than in accordance with the express terms hereof or thereof.

(k) ERISA Events. The occurrence of any of the following events: (i) any Credit Party or any ERISA Affiliate fails to make full payment when due of all amounts which, under the provisions of any Pension Plan or Sections 412 or 430 of the Code, any Credit Party or any ERISA Affiliate is required to pay as contributions thereto and such failure could reasonably be expected to result in a Material Adverse Effect, (ii) a Termination Event or (iii) any Credit Party or any ERISA Affiliate as employers under one or more Multiemployer Plans makes a complete or partial withdrawal from any such Multiemployer Plan and the plan sponsor of such Multiemployer Plans notifies such withdrawing employer that such employer has incurred a withdrawal liability requiring payments in an amount that could reasonably be expected to result in a Material Adverse Effect.

(l) Judgment. One or more judgments, orders or decrees shall be entered against any Credit Party or any Subsidiary thereof (other than an Immaterial Subsidiary) by any court and continues without having been discharged, vacated or stayed for a period of thirty (30) consecutive days after the entry thereof and such judgments, orders or decrees are either (i) for the payment of money, individually or in the aggregate (to the extent not paid or covered by insurance as to which the relevant insurance company has acknowledged or has not disputed coverage), in excess of the Threshold Amount or (ii) for injunctive relief and could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.



(m) Default under Specified Agreement. The Borrower or any of its Subsidiaries shall have (i) defaulted in the payment when due of any amounts under any Specified Agreement beyond the period of grace, if any, provided in such Specified Agreement, or (ii) (A) defaulted in the observance or performance of any other obligation, agreement or condition under any Specified Agreement, or any other event shall have occurred or condition shall exist under any Specified Agreement, and, in each case of this clause (ii)(A), any applicable notice shall have been given or applicable period of grace shall have lapsed, and (B) any applicable party to such Specified Agreement shall have (x) commenced an exercise of remedies against the Borrower or any of its Subsidiaries pursuant to the security interest provisions contained in the Specified Documents, or (y) notified the Borrower or any of its Subsidiaries that it intends to commence such an exercise of remedies; provided that this Section 10.1(m) shall only apply until the Liens created by the Specified Documents have been released and fully terminated.

SECTION 10.2 Remedies. Upon the occurrence and during the continuance of an Event of Default, with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower:

(a) Acceleration: Termination of Credit Facility. Terminate the Revolving Credit Commitment and declare the principal of and interest on the Loans and the Reimbursement Obligations at the time outstanding, and all other amounts owed to the Lenders and to the Administrative Agent under this Agreement or any of the other Loan Documents (including, without limitation, all L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented or shall be entitled to present the documents required thereunder) and all other Obligations, to be forthwith due and payable, whereupon the same shall immediately become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by each Credit Party, anything in this Agreement or the other Loan Documents to the contrary notwithstanding, and terminate the Credit Facility and any right of the Borrower to request borrowings or Letters of Credit thereunder; provided, that upon the occurrence of an Event of Default specified in Section 10.1(h) or (i), the Credit Facility shall be automatically terminated and all Obligations shall automatically become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by each Credit Party, anything in this Agreement or in any other Loan Document to the contrary notwithstanding.

(b) Letters of Credit. With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to the preceding paragraph, demand that the Borrower shall at such time deposit in a Cash Collateral account opened by the Administrative Agent an amount equal to the Minimum Collateral Amount of the aggregate then undrawn and unexpired amount of such Letter of Credit. Amounts held in such Cash Collateral account shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay the other Obligations in accordance with Section 10.4. After all such Letters of Credit shall have expired or been fully drawn upon, the Reimbursement Obligation shall have been satisfied and all other Obligations shall have been paid in full, the balance, if any, in such Cash Collateral account shall be returned to the Borrower.

(c) General Remedies. Exercise on behalf of the Guaranteed Parties all of its other rights and remedies under this Agreement, the other Loan Documents and Applicable Law, in order to satisfy all of the Obligations.

SECTION 10.3 Rights and Remedies Cumulative; Non-Waiver; etc.

(a) The enumeration of the rights and remedies of the Administrative Agent and the Lenders set forth in this Agreement is not intended to be exhaustive and the exercise by the Administrative Agent and the Lenders of any right or remedy shall not preclude the exercise of any other rights or remedies, all of which shall be cumulative, and shall be in addition to any other right or remedy given hereunder or under the other Loan Documents or that may now or hereafter exist at law or in equity or by suit or otherwise. No delay or failure to take action on the part of the Administrative Agent or any Lender in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege or shall be construed to be a waiver of any Event of Default. No course of dealing between the Borrower, the Administrative Agent and the Lenders or their respective agents or employees shall be effective to change, modify or discharge any provision of this Agreement or any of the other Loan Documents or to constitute a waiver of any Event of Default.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Credit Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 10.2 for the benefit of all the Lenders and the Issuing Lenders; provided that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Issuing Lender or the Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as an Issuing Lender or Swingline Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 12.4 (subject to the terms of Section 5.6), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Credit Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 10.2 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 5.6, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

SECTION 10.4 Crediting of Payments and Proceeds. In the event that the Obligations have been accelerated pursuant to Section 10.2 or the Administrative Agent or any Lender has exercised any remedy set forth in this Agreement or any other Loan Document, all payments received on account of the Obligations and all net proceeds from the enforcement of the Obligations shall, subject to the provisions of Sections 5.14 and 5.15, be applied by the Administrative Agent as follows:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts, including attorney fees, payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees (other than Commitment Fees and Letter of Credit fees payable to the Revolving Credit Lenders), indemnities and other amounts (other than principal and interest) payable to the Lenders, the Issuing Lender and the Swingline Lender under the Loan Documents, including attorney fees, ratably among the Lenders, the Issuing Lender and the Swingline Lender in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Commitment Fees, Letter of Credit fees payable to the Revolving Credit Lenders and interest on the Loans and Reimbursement Obligations, ratably among the Lenders, the Issuing Lender and the Swingline Lender in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and Reimbursement Obligations and Specified Hedge Obligations and Specified Cash Management Obligations then owing and to Cash Collateralize any L/C Obligations then outstanding, ratably among the holders of such obligations in proportion to the respective amounts described in this clause Fourth payable to them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Applicable Law.

Notwithstanding the foregoing, Specified Cash Management Obligations and Specified Hedge Obligations shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may request, from the applicable holders thereof following such acceleration or exercise of remedies and at least three (3) Business Days prior to the application of the proceeds thereof. Each holder of Specified Hedge Obligations or Specified Hedge Obligations not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article XI for itself and its Affiliates as if a "Lender" party hereto.

SECTION 10.5 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on any Credit Party) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Lenders and the Administrative Agent under Sections 3.3, 5.3 and 12.3) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 3.3, 5.3 and 12.3.

## ARTICLE XI

### THE ADMINISTRATIVE AGENT

SECTION 11.1 Appointment and Authority. Each of the Lenders and each Issuing Lender hereby irrevocably appoints Wells Fargo to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Except as provided in Sections 11.6 and 11.9 the provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Lenders, and neither the Borrower nor any Subsidiary thereof shall have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

SECTION 11.2 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

#### SECTION 11.3 Exculpatory Provisions.

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

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

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may affect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating

to the Borrower or any of its Subsidiaries or Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 12.2 and Section 10.2) or (ii) in the absence of its own bad faith, gross negligence or willful misconduct as determined by a court of competent jurisdiction by final nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Administrative Agent by the Borrower, a Lender or an Issuing Lender.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith (including, without limitation, any report provided to it by an Issuing Lender pursuant to Section 3.9), (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article VI or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or (vi) the utilization of any Issuing Lender's L/C Commitment (it being understood and agreed that each Issuing Lender shall monitor compliance with its own L/C Commitment without any further action by the Administrative Agent).

(d) The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution.

**SECTION 11.4 Reliance by the Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender or such Issuing Lender unless the Administrative Agent shall have received notice to the contrary from such Lender or such Issuing Lender prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 11.5 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Credit Facility as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with bad faith, gross negligence or willful misconduct in the selection of such sub-agents.

SECTION 11.6 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders and the Issuing Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that in no event shall any such successor Administrative Agent be a Defaulting Lender or a Disqualified Institution. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by Applicable Law, by notice in writing to the Borrower and such Person, remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable), (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (ii) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each Issuing Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and

under the other Loan Documents, the provisions of this Article and Section 12.3 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

(d) Any resignation by, or removal of, Wells Fargo as Administrative Agent pursuant to this Section shall also constitute its resignation as an Issuing Lender and Swingline Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Lender, if in its sole discretion it elects to, and Swingline Lender, (ii) the retiring Issuing Lender and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor Issuing Lender, if in its sole discretion it elects to, shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Issuing Lender to effectively assume the obligations of the retiring Issuing Lender with respect to such Letters of Credit.

SECTION 11.7 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and each Issuing Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each Issuing Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

SECTION 11.8 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the syndication agents, documentation agents, co-agents, arrangers or bookrunners listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an Issuing Lender hereunder.

SECTION 11.9 Specified Hedge Obligations and Specified Cash Management Obligations. No holder of any Specified Hedge Obligations or Specified Cash Management Obligations that obtains the benefits of Section 10.4 by virtue of the provisions hereof shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article XI to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Specified Cash Management Obligations and Specified Hedge Obligations unless the Administrative Agent has received written notice of such Specified Cash Management Obligations and Specified Hedge Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable holders thereof.

## ARTICLE XII

### MISCELLANEOUS

SECTION 12.1 Notices.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

If to the Borrower:

Take-Two Interactive Software, Inc.  
110 West 44th Street  
New York, New York 10036  
Attention: Treasury and Legal Department  
Telephone No.: (646) 536-2992  
Facsimile No.: (646) 536-2923  
E-mail: [treasury@take2games.com](mailto:treasury@take2games.com)

With copies to:

Willkie Farr & Gallagher LLP  
787 Seventh Avenue  
New York, NY 10019  
Attention: Jeffrey Goldfarb  
Telephone No.: (212) 728-8507  
Facsimile No.: (212) 728-9507  
E-mail: [jgoldfarb@willkie.com](mailto:jgoldfarb@willkie.com)

If to Wells Fargo as Administrative Agent, Swingline Lender or Issuing Lender (for payments and requests for Extensions of Credit):

Wells Fargo Bank, National Association  
MAC D1109-019  
1525 West W.T. Harris Blvd.  
Charlotte, NC 28262  
Attention of: Syndication Agency Services  
Telephone No.: (704) 590-2706  
Facsimile No.: (844) 879-5899

With copies to:

Wells Fargo Bank, National Association  
MAC D5013-144  
301 South College Street  
14<sup>th</sup> Floor  
Charlotte, NC 28202  
Attention of: Kieran Mahon  
Telephone No.: (704) 715-5575  
Email: [Kieran.Mahon@wellsfargo.com](mailto:Kieran.Mahon@wellsfargo.com)

If to any Lender:



To the address of such Lender set forth on the Register with respect to deliveries of notices and other documentation that may contain material non-public information.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or any Issuing Lender pursuant to Article II or III if such Lender or such Issuing Lender, as applicable, has notified the Administrative Agent that is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or other communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) Administrative Agent's Office. The Administrative Agent hereby designates its office located at the address set forth above, or any subsequent office which shall have been specified for such purpose by written notice to the Borrower and Lenders, as the Administrative Agent's Office referred to herein, to which payments due are to be made and at which Loans will be disbursed and Letters of Credit requested.

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent, any Issuing Lender or the Swingline Lender may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. Any Lender may change its address or facsimile number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, each Issuing Lender and the Swingline Lender.

(e) Platform.

(i) Each Credit Party agrees that the Administrative Agent may, but shall not be obligated to, make the Borrower Materials available to the Issuing Lenders and the other Lenders by posting the Borrower Materials on the Platform. The Borrower acknowledges and agrees that the DQ List shall be deemed suitable for posting and may be posted by the Administrative Agent on the Platform, including the portion of the Platform that is designated for “public side” Lenders.

(ii) The Platform is provided “as is” and “as available.” The Agent Parties (as defined below) do not warrant the accuracy or completeness of the Borrower Materials or the adequacy of the Platform, and expressly disclaim liability for errors or omissions in the Borrower Materials. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Borrower Materials or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to any Credit Party, any Lender or any other Person or entity for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Credit Party’s or the Administrative Agent’s transmission of communications through the Internet (including, without limitation, the Platform), except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Agent Party; provided that in no event shall any Agent Party have any liability to any Credit Party, any Lender, any Issuing Lender or any other Person for indirect, special, incidental, consequential or punitive damages, losses or expenses (as opposed to actual damages, losses or expenses).

SECTION 12.2 Amendments, Waivers and Consents. Except as set forth below or as specifically provided in any Loan Document, any term, covenant, agreement or condition of this Agreement or any of the other Loan Documents may be amended or waived by the Lenders, and any consent given by the Lenders, if, but only if, such amendment, waiver or consent is in writing signed by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and delivered to the Administrative Agent and, in the case of an amendment, signed by the Borrower; provided, that no amendment, waiver or consent shall:

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

(b) increase or extend the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 10.2) or increase the amount of Loans of any Lender, in any case, without the written consent of such Lender;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan or Reimbursement Obligation, or (subject to clauses (iv) and (viii) of the proviso set forth in the paragraph below) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby; provided that only the consent of the Required Lenders shall be necessary (i) to waive any obligation of the Borrower to pay interest at the rate set forth in Section 5.1(b) during the continuance of an Event of Default or (ii) to amend any financial covenant

hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Obligation or to reduce any fee payable hereunder;

(d) change Section 5.6 or Section 10.4 in a manner that would alter the pro rata sharing of payments or order of application required thereby without the written consent of each Lender directly and adversely affected thereby;

(e) except as otherwise permitted by this Section 12.2 change any provision of this Section or reduce the percentages specified in the definitions of “Required Lenders,” or “Required Revolving Credit Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender directly and adversely affected thereby;

(f) consent to the assignment or transfer by any Credit Party of such Credit Party’s rights and obligations under any Loan Document to which it is a party (except as permitted pursuant to Section 9.4), in each case, without the written consent of each Lender;

(g) release (i) all of the Guarantors or (iii) Guarantors comprising substantially all of the credit support for the Obligations, in any case, from the Guaranty Agreement, without the written consent of each Lender;

(h) amend the definition of “Alternative Currency”, the definition of “Alternative L/C Currency” or Section 1.13 without the written consent of each Revolving Credit Lender and each Issuing Lender; or

(i) (i) waive any condition precedent to any Extension of Credit under the Revolving Credit Facility set forth in Section 6.2 or (ii) amend or otherwise modify Section 6.2, if the effect of such amendment or modification is to require the Revolving Credit Lenders to make Revolving Credit Loans, the Swingline Lender to make any Swingline Loans or any Issuing Lender to issue any Letter of Credit (in each case, pursuant to a substantially concurrent request by the Borrower) when the Revolving Credit Lenders, Swingline Lender or Issuing Lender would not otherwise be required to do so, in each case, without the written consent of Required Revolving Credit Lenders;

provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by each affected Issuing Lender in addition to the Lenders required above, affect the rights or duties of such Issuing Lender under this Agreement or any Letter of Credit Application relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders required above, affect the rights or duties of the Swingline Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document or modify Section 12.24 hereof; (iv) the Engagement Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto, (v) each Letter of Credit Application may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; provided that a copy of such amended Letter of Credit Application shall be promptly delivered to the Administrative Agent upon such amendment or waiver, (vi) the Administrative Agent and the Borrower shall be permitted to amend any provision of the Loan Documents (and such amendment shall become effective without any further action or consent of any other party to any Loan Document) if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error, ambiguity, defect or inconsistency or omission of a technical or immaterial nature in any such

provision and (vii) the Administrative Agent may, without the consent of any Lender, enter into amendments or modifications to this Agreement or any of the other Loan Documents or to enter into additional Loan Documents as the Administrative Agent reasonably deems appropriate in order to implement any Replacement Rate or otherwise effectuate the terms of Section 5.8(c) in accordance with the terms of Section 5.8(c). Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that (A) the Commitment of such Lender may not be increased or extended without the consent of such Lender, and (B) any amendment, waiver, or consent hereunder which requires the consent of all Lenders or each affected Lender that by its terms disproportionately and adversely affects any such Defaulting Lender relative to other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding anything in this Agreement to the contrary, each Lender hereby irrevocably authorizes the Administrative Agent on its behalf, and without further consent of any Lender (but with the consent of the Borrower and the Administrative Agent), to (x) amend and restate this Agreement if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated, such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement and (y) enter into amendments or modifications to this Agreement (including, without limitation, amendments to this Section 12.2) or any of the other Loan Documents or to enter into additional Loan Documents as the Administrative Agent reasonably deems appropriate in order to effectuate the terms of Section 5.13 (including, without limitation, as applicable, (1) to permit the Incremental Term Loans and the Revolving Credit Facility Increases to share ratably in the benefits of this Agreement and the other Loan Documents and (2) to include the Incremental Term Loan Commitments and the Revolving Credit Facility Increase, as applicable, or outstanding Incremental Term Loans and outstanding Revolving Credit Facility Increase, as applicable, in any determination of (i) Required Lenders or Required Revolving Credit Lenders, as applicable or (ii) similar required lender terms applicable thereto); provided that no amendment or modification shall result in any increase in the amount of any Lender's Commitment or any increase in any Lender's Commitment Percentage, in each case, without the written consent of such affected Lender.

#### SECTION 12.3 Expenses; Indemnity.

(a) Costs and Expenses. The Borrower and each other Credit Party, jointly and severally, shall pay (i) all reasonable out of pocket expenses incurred by the Administrative Agent, the Arrangers, and their respective Affiliates (including, without limitation, reasonable and documented fees and expenses of one firm of lead counsel and one firm of counsel in each relevant jurisdiction), in connection with the syndication of the Credit Facility, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out of pocket expenses incurred by any Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out of pocket expenses incurred by the Administrative Agent, any Lender or any Issuing Lender (including, without limitation, reasonable and documented fees and expenses of one primary firm of counsel for counsel for the Administrative Agent and all of the Lenders and one firm of counsel in each relevant jurisdiction, and in the case of an actual or perceived conflict of interest of any of the foregoing counsel, one additional counsel for each group of affected parties similarly situated and taken as a whole)), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section 12.3, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out of pocket

expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each Issuing Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, and shall pay or reimburse any such Indemnitee for, any and all losses, claims (including, without limitation, any Environmental Claims), penalties, damages, liabilities and related expenses (including the fees, charges and disbursements of one primary counsel for all Indemnitees and, if reasonably necessary, a single local counsel in each relevant jurisdiction (unless there is an actual or perceived conflict of interest in which case each such Indemnitee may retain its own counsel)), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Credit Party), other than such Indemnitee and its Related Parties, arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby (including, without limitation, the Transactions), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Credit Party or any Subsidiary thereof, or any Environmental Claim related in any way to any Credit Party or any Subsidiary, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Credit Party or any Subsidiary thereof, and regardless of whether any Indemnitee is a party thereto, or (v) any claim (including, without limitation, any Environmental Claims), investigation, litigation or other proceeding (whether or not the Administrative Agent or any Lender is a party thereto) and the prosecution and defense thereof, arising out of or in any way connected with the Loans, this Agreement, any other Loan Document, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby, including without limitation, reasonable out-of-pocket attorneys and consultant’s fees, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (A) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee, (B) result from a claim brought by any Credit Party or any Subsidiary thereof against an Indemnitee for material breach of such Indemnitee’s obligations hereunder or under any other Loan Document, if such Credit Party or such Subsidiary has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (C) arise out of a dispute that is solely between Indemnitees in their capacities as such (and not in their capacity as Arranger, Administrative Agent, Swingline Lender or Issuing Lender) and not arising out of any act or omission of the Borrower or any Subsidiary or Affiliate thereof. This Section 12.3(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under clause (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), any Issuing Lender, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such Issuing Lender, the Swingline Lender or such Related Party, as the case may be, such Lender’s pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender’s share of the Total Credit Exposure at such time, or if the Total Credit Exposure has been reduced to zero, then based on such Lender’s share of the Total

Credit Exposure immediately prior to such reduction) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that with respect to such unpaid amounts owed to any Issuing Lender or the Swingline Lender solely in its capacity as such, only the Revolving Credit Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Credit Lenders' Revolving Credit Commitment Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought or, if the Revolving Credit Commitment has been reduced to zero as of such time, determined immediately prior to such reduction); provided, further, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), such Issuing Lender or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), such Issuing Lender or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this clause (c) are subject to the provisions of Section 5.7.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, the Borrower and each other Credit Party shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in clause (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable promptly after demand therefor.

(f) Survival. Each party's obligations under this Section shall survive the termination of the Loan Documents and payment of the obligations hereunder.

SECTION 12.4 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, each Issuing Lender, the Swingline Lender and each of their respective Affiliates (with the consent of or at the direction of the Required Lenders) is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to setoff and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such Issuing Lender, the Swingline Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Credit Party against any and all of the obligations of the Borrower or such Credit Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, such Issuing Lender or the Swingline Lender or any of their respective Affiliates, irrespective of whether or not such Lender, such Issuing Lender, the Swingline Lender or any such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Credit Party may be contingent or unmatured or are owed to a branch or office of such Lender, such Issuing Lender, the Swingline Lender or such Affiliate different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender or any Affiliate thereof shall exercise any such right of setoff, (x) all amounts so setoff shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 10.4 and, pending such payment, shall be segregated by such Defaulting Lender or Affiliate of a Defaulting Lender from its other funds and deemed held in trust for the

benefit of the Administrative Agent, the Issuing Lenders, the Swingline Lender and the Lenders, and (y) the Defaulting Lender or its Affiliate shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender or any of its Affiliates as to which such right of setoff was exercised. The rights of each Lender, each Issuing Lender, the Swingline Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such Issuing Lender, the Swingline Lender or their respective Affiliates may have. Each Lender, such Issuing Lender and the Swingline Lender agree to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 12.5 Governing Law; Jurisdiction, Etc.

(a) Governing Law. This Agreement and the other Loan Documents and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of New York.

(b) Submission to Jurisdiction. The Borrower and each other Credit Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Administrative Agent, any Lender, any Issuing Lender, the Swingline Lender, or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by Applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Administrative Agent, any Lender, any Issuing Lender or the Swingline Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower or any other Credit Party or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. The Borrower and each other Credit Party irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 12.1. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by Applicable Law.

SECTION 12.6 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING

OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 12.7 Reversal of Payments. To the extent any Credit Party makes a payment or payments to the Administrative Agent for the ratable benefit of any of the Guaranteed Parties or to any Guaranteed Party directly or the Administrative Agent or any Guaranteed Party receives any payment or any Guaranteed Party exercises its right of setoff, which payments or proceeds (including any proceeds of such setoff) or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any Debtor Relief Law, other Applicable Law or equitable cause, then, to the extent of such payment or proceeds repaid, the Obligations or part thereof intended to be satisfied shall be revived and continued in full force and effect as if such payment or proceeds had not been received by the Administrative Agent, and each Lender and each Issuing Lender severally agrees to pay to the Administrative Agent upon demand its applicable ratable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent plus interest thereon at a per annum rate equal to the Federal Funds Rate from the date of such demand to the date such payment is made to the Administrative Agent.

SECTION 12.8 Injunctive Relief. The Borrower recognizes that, in the event the Borrower fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, any remedy of law may prove to be inadequate relief to the Lenders. Therefore, the Borrower agrees that the Lenders, at the Lenders' option, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

SECTION 12.9 Successors and Assigns; Participations.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Credit Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

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



Credit Commitment and the Revolving Credit Loans at the time owing to it); provided that, in each case, any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it (in each case with respect to any Credit Facility) or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000, in the case of any assignment in respect of the Revolving Credit Facility, or \$5,000,000, in the case of any assignment in respect of any Incremental Term Loan, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided that the Borrower shall be deemed to have given its consent five (5) Business Days after the date written notice thereof has been delivered by the assigning Lender (through the Administrative Agent) unless such consent is expressly refused by the Borrower prior to such fifth (5th) Business Day;

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned;

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

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided, that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 5 Business Days after having received notice thereof; and provided, further, that the Borrower's consent shall not be required during the primary syndication of the Credit Facility;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) the Revolving Credit Facility or any unfunded Incremental Term Loan Commitments if such assignment is to a Person that is not a Lender with a Revolving Credit Commitment or an Incremental Term Loan Commitment, as applicable, an Affiliate of such Lender or an

Approved Fund with respect to such Lender or (ii) any Incremental Term Loans to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consents of the Issuing Lenders and the Swingline Lender (such consents not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Credit Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 for each assignment; provided that (A) only one such fee will be payable in connection with simultaneous assignments to two or more related Approved Funds by a Lender and (B) the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignments or Participations to Certain Persons. No such assignment shall be made to (A) a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person), (B) the Borrower or any of the Borrower's respective Subsidiaries or Affiliates or (C) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (C).

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested, but not funded by, the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Lenders, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Revolving Credit Commitment Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 5.8, 5.9, 5.10, 5.11 and 12.3 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent

otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section (other than a purported assignment to a natural Person or the Borrower or any of the Borrower's Subsidiaries or Affiliates, which shall be null and void).

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in Charlotte, North Carolina, a copy of each Assignment and Assumption and Incremental Amendment delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Credit Commitment of, and principal amounts of (and stated interest on) the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender (but only to the extent of entries in the Register that are applicable to such Lender), at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower, the Administrative Agent, any Issuing Lender or the Swingline Lender, sell participations to any Person (other than a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person), or the Borrower or any of the Borrower's respective Subsidiaries or Affiliates) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Revolving Credit Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Issuing Lender, the Swingline Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 12.3(c) with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Section 12.2(a), (b), (c), (d) or (e) that directly and adversely affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 5.9, 5.10 and 5.11 (subject to the requirements and limitations therein, including the requirements under Section 5.11(g) (it being understood that the documentation required under Section 5.11(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 5.12 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 5.10 or 5.11, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 5.12(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the

benefits of Section 12.4 as though it were a Lender; provided that such Participant agrees to be subject to Section 5.6 and Section 12.4 as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts of (and stated interest on) each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Cashless Settlement. Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue or rollover all or a portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

(g) Disqualified Institutions. (i) No assignment or participation shall be made to any Person that was a Disqualified Institution as of the date (the "Trade Date") on which the assigning Lender entered into a binding agreement to sell and assign or participate all or a portion of its rights and obligations under this Agreement to such Person (unless the Borrower has consented to such assignment or participation in writing in its sole and absolute discretion, in which case such Person will not be considered a Disqualified Institution for the purpose of such assignment or participation). For the avoidance of doubt, with respect to any assignee that becomes a Disqualified Institution after the applicable Trade Date (including as a result of the delivery of a notice pursuant to, and/or the expiration of the notice period referred to in, the definition of "Disqualified Institution"), (x) such assignee shall not retroactively be disqualified from becoming a Lender and (y) the execution by the Borrower of an Assignment and Assumption with respect to such assignee will not by itself result in such assignee no longer being considered a Disqualified Institution. Any assignment in violation of this clause (h)(i) shall not be void, but the other provisions of this clause (h) shall apply.

(ii) If any assignment or participation is made to any Disqualified Institution without the Borrower's prior written consent in violation of clause (i) above, or if any Person becomes a Disqualified Institution after the applicable Trade Date, the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) terminate any Revolving Credit Commitment of such Disqualified Institution and repay all obligations of the Borrower owing to such Disqualified Institution in connection with such Revolving Credit Commitment, (B) in the case of outstanding Incremental Term Loans held by Disqualified Institutions, purchase or prepay such Incremental Term Loan by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution

paid to acquire such Incremental Term Loans, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and/or (C) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in this Section 12.9), all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

(iii) Notwithstanding anything to the contrary contained in this Agreement, Disqualified Institutions (A) will not (x) have the right to receive information, reports or other materials provided to Lenders by the Borrower, the Administrative Agent or any other Lender, (y) attend or participate in meetings attended by the Lenders and the Administrative Agent, or (z) access any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of the Administrative Agent or the Lenders and (B) (x) for purposes of any consent to any amendment, waiver or modification of, or any action under, and for the purpose of any direction to the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) under this Agreement or any other Loan Document, each Disqualified Institution will be deemed to have consented in the same proportion as the Lenders that are not Disqualified Institutions consented to such matter, and (y) for purposes of voting on any Plan, each Disqualified Institution party hereto hereby agrees (1) not to vote on such Plan, (2) if such Disqualified Institution does vote on such Plan notwithstanding the restriction in the foregoing clause (1), such vote will be deemed not to be in good faith and shall be “designated” pursuant to Section 1126(e) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws), and such vote shall not be counted in determining whether the applicable class has accepted or rejected such Plan in accordance with Section 1126(c) of the Bankruptcy Code (or any similar provision in any other Debtor Relief Laws) and (3) not to contest any request by any party for a determination by the bankruptcy court (or other applicable court of competent jurisdiction) effectuating the foregoing clause (2).

(iv) The Administrative Agent shall have the right, and the Borrower hereby expressly authorizes the Administrative Agent, to (A) post the list of Disqualified Institutions provided by the Borrower and any updates thereto from time to time (collectively, the “DQ List”) on the Platform, including that portion of the Platform that is designated for “public side” Lenders and/or (B) provide the DQ List to each Lender requesting the same.

**SECTION 12.10 Treatment of Certain Information: Confidentiality.** Each of the Administrative Agent, the Lenders and the Issuing Lenders agree to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates’ respective Related Parties in connection with the Credit Facility, this Agreement, the transactions contemplated hereby or in connection with marketing of services by such Affiliate or Related Party to the Borrower or any of its Subsidiaries (it being understood that the Persons to whom such disclosure is made shall be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by, or required to be disclosed to, any regulatory or similar authority purporting to have jurisdiction over such Person or its Related Parties or in accordance with the Administrative Agent’s, any Issuing Lender’s or any Lender’s regulatory compliance policy if the Administrative Agent, the Issuing Lender or such Lender, as applicable, deems such disclosure to be necessary for the mitigation of claims by those authorities against the Administrative Agent, the Issuing Lender or such Lender, as applicable, or any of its Related Parties (in which case, the Administrative Agent, the Issuing Lender or such Lender, as applicable, shall use commercially reasonable efforts to, except with respect to any audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulatory authority, promptly notify the Borrower, in advance, to the extent practicable and otherwise permitted by Applicable Law), (c) as to the extent required by Applicable Laws

or regulations or in any legal, judicial, administrative proceeding or other compulsory process, (d) to any other party hereto, (e) in connection with the exercise of any remedies under this Agreement, under any other Loan Document or under any Specified Hedge Agreement or Specified Cash Management Agreement, or any action or proceeding relating to this Agreement, any other Loan Document or any Specified Hedge Agreement or Specified Cash Management Agreement, or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, and in each case, their respective financing sources or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder (it being understood that the DQ List may be disclosed to any assignee or Participant, or prospective assignee or Participant, in reliance on this clause (f)), (iii) to an investor or prospective investor in an Approved Fund that also agrees that Information shall be used solely for the purpose of evaluating an investment in such Approved Fund, (iv) to a trustee, collateral manager, servicer, backup servicer, noteholder or secured party in an Approved Fund in connection with the administration, servicing and reporting on the assets serving as collateral for an Approved Fund, (g) on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Credit Facility, (h) with the consent of the Borrower, (i) deal terms and other information customarily reported to Thomson Reuters, other bank market data collectors and similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of the Loan Documents, (j) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Lender, any Issuing Lender or any of their respective Affiliates from a third party that is not, to such Person's knowledge, subject to confidentiality obligations to the Borrower, (k) to the extent that such information is independently developed by such Person, (l) for purposes of establishing a "due diligence" defense or (m) to the extent required by an insurance company in connection with providing insurance coverage or providing reimbursement pursuant to this Agreement. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments. For purposes of this Section, "Information" means all information received from any Credit Party or any Subsidiary thereof relating to any Credit Party or any Subsidiary thereof or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any Issuing Lender on a nonconfidential basis prior to disclosure by any Credit Party or any Subsidiary thereof; provided that, in the case of information received from a Credit Party or any Subsidiary thereof after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

SECTION 12.11 Performance of Duties. Each of the Credit Party's obligations under this Agreement and each of the other Loan Documents shall be performed by such Credit Party at its sole cost and expense.

SECTION 12.12 All Powers Coupled with Interest. All powers of attorney and other authorizations granted to the Lenders, the Administrative Agent and any Persons designated by the Administrative Agent or any Lender pursuant to any provisions of this Agreement or any of the other Loan Documents shall be deemed coupled with an interest and shall be irrevocable so long as any of the Obligations

remain unpaid or unsatisfied, any of the Revolving Credit Commitments remain in effect or the Credit Facility has not been terminated.

SECTION 12.13 Survival.

(a) All representations and warranties set forth in Article VII and all representations and warranties contained in any certificate, or any of the Loan Documents (including, but not limited to, any such representation or warranty made in or in connection with any amendment thereto) shall constitute representations and warranties made under this Agreement. All representations and warranties made under this Agreement shall be made or deemed to be made at and as of the Closing Date (except those that are expressly made as of a specific date), shall survive the Closing Date and shall not be waived by the execution and delivery of this Agreement, any investigation made by or on behalf of the Lenders or any borrowing hereunder.

(b) Notwithstanding any termination of this Agreement, the indemnities to which the Administrative Agent and the Lenders are entitled under the provisions of this Article XII and any other provision of this Agreement and the other Loan Documents shall continue in full force and effect and shall protect the Administrative Agent and the Lenders against events arising after such termination as well as before.

SECTION 12.14 Titles and Captions. Titles and captions of Articles, Sections and subsections in, and the table of contents of, this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement.

SECTION 12.15 Severability of Provisions. Any provision of this Agreement or any other Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction. In the event that any provision is held to be so prohibited or unenforceable in any jurisdiction, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such provision to preserve the original intent thereof in such jurisdiction (subject to the approval of the Required Lenders).

SECTION 12.16 Counterparts; Integration; Effectiveness; Electronic Execution.

(a) Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, the Issuing Lender, the Swingline Lender and/or the Arrangers, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 6.1, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (i.e., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) Electronic Execution of Assignments. The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or

the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 12.17 Term of Agreement. This Agreement shall remain in effect from the Closing Date through and including the date upon which all Obligations (other than contingent indemnification obligations not then due) arising hereunder or under any other Loan Document shall have been indefeasibly and irrevocably paid and satisfied in full, all Letters of Credit have been terminated or expired (or been Cash Collateralized) or otherwise satisfied in a manner acceptable to the Issuing Lender) and the Revolving Credit Commitment has been terminated. No termination of this Agreement shall affect the rights and obligations of the parties hereto arising prior to such termination or in respect of any provision of this Agreement which survives such termination.

SECTION 12.18 USA PATRIOT Act; Anti-Money Laundering Laws. The Administrative Agent and each Lender hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act or any other Anti-Money Laundering Laws, each of them is required to obtain, verify and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Lender to identify each Credit Party in accordance with the PATRIOT Act or such Anti-Money Laundering Laws.

SECTION 12.19 Independent Effect of Covenants. The Borrower expressly acknowledges and agrees that each covenant contained in Articles VIII or IX hereof shall be given independent effect. Accordingly, the Borrower shall not engage in any transaction or other act otherwise permitted under any covenant contained in Articles VIII or IX, before or after giving effect to such transaction or act, the Borrower shall or would be in breach of any other covenant contained in Articles VIII or IX.

SECTION 12.20 No Advisory or Fiduciary Responsibility.

(a) In connection with all aspects of each transaction contemplated hereby, each Credit Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that (i) the facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrower and its Subsidiaries, on the one hand, and the Administrative Agent, the Arrangers, Issuing Lenders and the Lenders, on the other hand, and the Borrower is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof), (ii) in connection with the process leading to such transaction, each of the Administrative Agent, the Arrangers, Issuing Lenders and the Lenders is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrower or any of its Affiliates, stockholders, creditors or employees or any other Person, (iii) none of the Administrative Agent, the Arrangers, Issuing Lenders or the Lenders has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any Arranger, Issuing Lenders or Lender has advised or is currently advising the Borrower or any of its Affiliates on other matters) and none of the Administrative Agent, the Arrangers, Issuing Lenders or the Lenders has any obligation to the Borrower or any of its Affiliates with respect to the financing transactions contemplated hereby except those obligations expressly set forth



herein and in the other Loan Documents, (iv) the Arrangers, Issuing Lenders and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from, and may conflict with, those of the Borrower and its Affiliates, and none of the Administrative Agent, the Arrangers, Issuing Lenders or the Lenders has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship and (v) the Administrative Agent, the Arrangers, Issuing Lenders and the Lenders have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Credit Parties have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate.

(b) Each Credit Party acknowledges and agrees that each Lender, the Arrangers, Issuing Lenders and any Affiliate thereof may lend money to, invest in, and generally engage in any kind of business with, any of the Borrower, any Affiliate thereof or any other person or entity that may do business with or own securities of any of the foregoing, all as if such Lender, Arranger, Issuing Lender or Affiliate thereof were not a Lender, Arranger, Issuing Lender or an Affiliate thereof (or an agent or any other person with any similar role under the Credit Facilities) and without any duty to account therefor to any other Lender, the Arrangers, the Issuing Lenders, the Borrower or any Affiliate of the foregoing. Each Lender, the Arrangers, Issuing Lenders and any Affiliate thereof may accept fees and other consideration from the Borrower or any Affiliate thereof for services in connection with this Agreement, the Credit Facilities or otherwise without having to account for the same to any other Lender, the Arrangers, Issuing Lenders, the Borrower or any Affiliate of the foregoing.

SECTION 12.21 Inconsistencies with Other Documents. In the event there is a conflict or inconsistency between this Agreement and any other Loan Document, the terms of this Agreement shall control.

SECTION 12.22 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

SECTION 12.23 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under Applicable Law).

SECTION 12.24 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit or the Commitments;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration

of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Credit Party, that none of the Administrative Agent, any Arranger and their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

[Signature pages to follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal by their duly authorized officers, all as of the day and year first written above.

**TAKE-TWO INTERACTIVE SOFTWARE, INC.**, as Borrower

By: Daniel P. Emerson

Name: Daniel P. Emerson

Title: EVP and General Counsel

Take-Two Interactive Software, Inc.  
Credit Agreement  
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**ADMINISTRATIVE AGENT AND LENDERS:**

**WELLS FARGO BANK, NATIONAL ASSOCIATION**, as Administrative Agent,  
Swingline Lender, Issuing Lender and Lender

By: Kieran Mahon  
Name: Kieran Mahon  
Title: Managing Director

Take-Two Interactive Software, Inc.  
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**JPMORGAN CHASE BANK, N.A.**, as an Issuing Lender and a Lender

By: Daglas Panchal  
Name: Daglas Panchal  
Title: Executive Director

Take-Two Interactive Software, Inc.  
Credit Agreement  
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**BNP PARIBAS, as a Lender**

By: Maria Mulic  
Name: Maria Mulic  
Title: Director

By: Barbara E. Nash  
Name: Barbara E. Nash  
Title: Managing Director

Take-Two Interactive Software, Inc.  
Credit Agreement  
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**HSBC BANK USA, NATIONAL ASSOCIATION**, as a Lender

By: Peter I. Sanchez  
Name: Peter I. Sanchez  
Title: SVP

Take-Two Interactive Software, Inc.  
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Subsidiaries of Take-Two Interactive Software, Inc.

<u>Name</u>	<u>Jurisdiction of Incorporation</u>
2K Czech, s.r.o.	Czech Republic
2K Games (Chengdu) Co., Ltd.	China
2K Games (Shanghai) Co., Ltd.	China
2K Games, Inc.	Delaware
2K, Inc.	New York
2K Marin, Inc.	Delaware
2K Play, Inc.	Delaware
2K Games Songs LLC	Delaware
2K Games Sounds LLC	Delaware
2K Games Tunes LLC	Delaware
2K Studios Montreal, Inc.	Quebec
2K Vegas, Inc.	Delaware
2KSports, Inc.	Delaware
A.C.N. 617 406 550 Pty Ltd.	Australia
A.C.N. 633 146 291 Pty Ltd.	Australia
Cat Daddy Games, L.L.C.	Washington
DMA Design Holdings Limited	United Kingdom
Double Take LLC	Delaware
Firaxis Games, Inc.	Delaware
Frog City Software, Inc.	Delaware
Gathering of Developers, Inc.	Texas
Gearhead Entertainment, Inc.	Pennsylvania
Glennco Games, LLC	Delaware
Hangar 13 UK Limited	United Kingdom
Indie Built, Inc.	Delaware
Inventory Management Systems, Inc.	Delaware
Ghost Story Games, LLC	Delaware
Joytech Europe Limited	United Kingdom
Joytech Ltd.	Hong Kong
Kush Games, Inc.	California
Maxcorp Ltd.	Bermuda
Parrot Games, S.L.U.	Spain
Rockstar Events Inc.	New York
Rockstar Games, Inc.	Delaware
Rockstar Games Songs LLC	Delaware
Rockstar Games Sounds LLC	Delaware
Rockstar Games Toronto ULC	British Columbia
Rockstar Games Tunes LLC	Delaware
Rockstar Games Vancouver ULC	British Columbia
Rockstar Interactive India LLP	India
Rockstar International Limited	United Kingdom



<u>Name</u>	<u>Jurisdiction of Incorporation</u>
Rockstar Lincoln Limited	United Kingdom
Rockstar London Limited	United Kingdom
Rockstar New England, Inc.	Delaware
Rockstar North Limited	United Kingdom
Rockstar San Diego, Inc.	Virginia
Social Point, K.K.	Japan
Social Point, S.L.	Spain
T2 Developer, Inc.	Delaware
Take 2 Interactive Software Pty. Ltd.	Australia
Take 2 Productions, Inc.	Delaware
Take-Two Asia Pte. Ltd.	Singapore
Take-Two Chile SpA	Chile
Take-Two Contracting, LLC	Delaware
Take-Two Esports Holdings, LLC	Delaware
Take-Two Europe (Holdings) Limited	United Kingdom
Take-Two GB Limited.	United Kingdom
Take-Two Holdings III LLC	Delaware
Take-Two Holdings II LLC	Delaware
Take Two Holdings LLC	Delaware
Take-Two Hong Kong Limited	Hong Kong
Take-Two Interactive Benelux B.V.	Netherlands
Take-Two Interactive Canada Holdings, Inc.	Ontario
Take-Two Interactive Canada, Inc.	Ontario
Take-Two Interactive Espana S.L.	Spain
Take-Two Interactive France SAS	France
Take-Two Interactive GmbH	Germany
Take-Two Interactive Japan G.K.	Japan
Take-Two Interactive Korea Ltd.	South Korea
Take-Two Interactive Software Europe Limited	United Kingdom
Take-Two Interactive Software UK Limited	United Kingdom
Take-Two International B.V.	Netherlands
Take-Two International Holdings L.P.	Cayman Islands
Take-Two Invest Espana, S.L.	Spain
Take-Two Talent, LLC	Delaware
Take-Two UK Holdings Limited	United Kingdom
Take-Two Vegas, LLC	Delaware
Take Two International GmbH	Switzerland
Talonsoft, Inc.	Delaware
Techcorp Ltd.	Hong Kong
Venom Games Limited	United Kingdom
Visual Concepts China Co., Ltd.	China
Visual Concepts Entertainment	California
Visual Concepts Hungary Kft	Hungary

VLM Entertainment Group, Inc.

WC Holdco, Inc.

Delaware

New York

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in the following Registration Statements (Form S-8 Nos. 333-158735, 333-177822, 333-191993, 333-198787, 333-214285 and 333-220895 and Form S-3 Nos. 333-189246, 333-204318, 333-204339, 333-211473, 333-211474, 333-216019, 333-218235, 333-224284 and 333-230884) of Take-Two Interactive Software, Inc. of our reports dated May 13, 2019, with respect to the consolidated financial statements of Take-Two Interactive Software, Inc. and the effectiveness of internal control over financial reporting of Take-Two Interactive Software, Inc. included in this Annual Report (Form 10-K) of Take-Two Interactive Software, Inc. for the year ended March 31, 2019.

New York, New York

/s/ ERNST & YOUNG LLP

May 13, 2019

TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES

CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
Section 302 Certification

I, Strauss Zelnick, certify that:

1. I have reviewed this Annual Report on Form 10-K of Take-Two Interactive Software, Inc. (the “registrant”);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and
5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

May 13, 2019

/s/ STRAUSS ZELNICK  
Strauss Zelnick  
*Chairman and Chief Executive Officer*

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TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES

CERTIFICATION OF CHIEF FINANCIAL OFFICER  
Section 302 Certification

I, Lainie Goldstein, certify that:

1. I have reviewed this Annual Report on Form 10-K of Take-Two Interactive Software, Inc. (the “registrant”);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and
5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

May 13, 2019

/s/ LAINIE GOLDSTEIN  
Lainie Goldstein  
*Chief Financial Officer*

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**TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES**

**CERTIFICATION PURSUANT TO  
18 U. S. C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Take-Two Interactive Software, Inc. (the "Company") on Form 10-K for the period ended March 31, 2019 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Strauss Zelnick, as Chairman and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

May 13, 2019

/s/ STRAUSS ZELNICK  
Strauss Zelnick  
*Chairman and Chief Executive Officer*

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**TAKE-TWO INTERACTIVE SOFTWARE, INC. and SUBSIDIARIES**

**CERTIFICATION PURSUANT TO  
18 U. S. C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Take-Two Interactive Software, Inc. (the "Company") on Form 10-K for the period ended March 31, 2019 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Lainie Goldstein, as Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

May 13, 2019

/s/ LAINIE GOLDSTEIN  
Lainie Goldstein  
*Chief Financial Officer*

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